

PROVINCIAL LAW GAZETTE FOR LOWER AUSTRIA

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58. Act: Lower Austria Information Act –
amendments [CELEX No: 32003L0098]

On 23 April 2015 the Lower Austrian Parliament decided as follows:

Amendments of the Lower Austrian Information Act

The Lower Austrian Information Act, LGBl. (Provincial Law Gazette) No 0020, is amended as follows:

1. In the list of contents the title of Section 38 is amended as follows:
‘Principles governing the calculation of charges’.
2. In the list of contents the title of Section 40 is amended to ‘Transparency and practical arrangements’ and that of Section 48 to ‘EU Directives transposed’.
3. In Section 33(1) the comma is replaced by a full stop and the words ‘insofar as they make them available for re-use’ are deleted.
4. Points 1 and 2 of Section 33(3) are amended as follows:
‘1. held by educational and research establishments, excluding university libraries, and
‘2. held by cultural establishments other than libraries, museums and archives’.
5. The following points 5 to 8 are added after point 4 of Section 34:
‘5. Machine-readable format:
a file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure;
6. open format:
a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents;
7. formal open standard:
a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;
8. university:
any public sector body that provides post-secondary-school higher education leading to academic degrees’.
6. The title and text of Section 35 are amended as follows:

‘Section 35

General principle

- (1) Documents of public sector bodies falling within the scope of this section may – without prejudice to paragraph 2 – be re-used for commercial or non-commercial purposes in accordance with Sections 37 to 42.
- (2) Documents made available for re-use in which libraries, including university libraries, museums and archives hold intellectual property rights may be re-used for commercial or non-commercial purposes in accordance with Sections 37 to 42.
- (3) Paragraphs 1 and 2 do not substantiate an independent regime of access to documents of public sector bodies. Paragraph 2 does not require libraries, including university libraries, museums and archives to allow public documents to be re-used in all cases.
- (4) This section establishes no right of re-use of
 1. documents, the drawing-up of which
 - a) is an activity falling outside the scope of the public task of the public sector body concerned as defined by law or by other binding rules or, in the absence of such rules;

- b) as defined in line with common administrative practice, provided that the scope of the public tasks is transparent and subject to review;
- 2. documents which cannot be accessed, in particular for reasons of national security, general national defence, public security or because they contain commercial or business secrets or are otherwise confidential;
- 3. documents, access to which is restricted in accordance with the rules governing access to documents of public sector bodies, including those accessible only where a particular interest is demonstrated;
- 4. documents, access to which is excluded or restricted in accordance with the rules governing access to documents of public sector bodies on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data, the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data;
- 5. documents for which third parties hold intellectual property rights;
- 6. documents covered by industrial property rights; and
- 7. parts of documents containing only logos, crests and insignia'.

7. The second sentence of Section 36(1) is amended as follows:

'Written notices may be sent to the public sector body in any technical form. They may, however, be sent by email only where no special forms of transmission are provided for electronic communication between the public sector body and the persons concerned. Any technical requirements for or organisational constraints on electronic communication between the public sector body and the persons concerned must be made known on the internet'.

8. Section 36(4) is amended as follows:

'(4) If the basis for the notice of refusal (point 2 or 4 of paragraph 3) is that the requested document is the intellectual property of third parties, the public sector body shall refer to the known rightholder or alternatively to the person from whom it obtained the material concerned. Libraries, including university libraries, museums and archives shall not be required to include such a reference'.

9. The title and text of Section 37 are amended as follows:

'Section 37. Available formats

(1) Public sector bodies shall make documents held by them available in any pre-existing format or language and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata should, in so far as possible, comply with formal open standards.

(2) Paragraph 1 shall not imply an obligation for public sector bodies to create or adapt documents or provide extracts in order to comply with that paragraph where this would involve disproportionate effort, going beyond a simple operation.

(3) This section does not require public sector bodies to continue to produce or store a certain type of documents with a view to the re-use of such documents'.

10. The title and text of Section 38 are amended as follows:

'Section 38

Principles governing the calculation of charges

(1) Where charges are made for the re-use of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination.

(2) Paragraph 1 does not apply to:

- 1. public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks;
- 2. by way of exception, documents for which the public sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination. Those requirements are defined by law or by other binding rules or, in the absence of such rules, in accordance with common administrative practice;
- 3. libraries, including university libraries, museums and archives.

(3) In the cases referred to in points 1 and 2 of paragraph 2, the public sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria. Those criteria are defined by law or by other binding rules or, in the absence of such rules, in accordance with common administrative practice. The total income of those bodies from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.

(4) Where charges are made by the public sector bodies referred to in point 3 of paragraph 2, the total

income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved’.

11. The title and text of Section 40 are amended as follows:

‘Section 40

Transparency and practical arrangements

(1) The standard charges for the re-use of documents, the calculation basis for such charges and any applicable conditions shall be pre-established by public sector bodies and published in a suitable manner, on the internet where possible and appropriate.

(2) Where no standard charges have been set, the public sector bodies shall indicate at the outset which factors are taken into account in the calculation of the charges. Upon request, the public sector body shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.

(3) The requirements referred to in point 2 of Section 38(2) shall be pre-established. They shall be published on the internet where possible and appropriate.

(4) Public sector bodies shall make practical arrangements facilitating the search for documents available for re-use, such as:

1. asset lists of main documents with relevant metadata, accessible where possible and appropriate online and in machine-readable format, and portal sites that are linked to the asset lists. Where possible the public sector bodies shall allow cross-linguistic search for documents;
2. information staff and information points’.

12. The following sentence is added to Section 42(2):

‘This paragraph does not apply to digitisation of cultural resources’.

13. In Section 42, paragraph 3 is renumbered as paragraph 4. In paragraph 4 (new) the reference to ‘paragraph 2’ is replaced by ‘paragraph 2, first sentence’.

14. Section 42(3) (new) is amended as follows:

‘(3) Notwithstanding paragraph 1, where an exclusive right relates to digitisation of cultural resources, the period of exclusivity shall in general not exceed ten years. In cases where that period exceeds ten years, its duration shall be subject to review during the 11th year and, if applicable, every seven years thereafter. The exclusive arrangement shall in any case include a provision giving the public sector body a special right of termination if the review shows that the grounds justifying the arrangement no longer apply. The arrangements granting exclusive rights referred to in the first sentence shall be transparent and made public. In the case of such exclusive rights, the public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. That copy shall be available for re-use at the end of the period of exclusivity.’

15. The following paragraph 5 is added to Section 42:

‘(5) Exclusive arrangements in place on 17 July 2013 that are not covered by the exceptions in paragraphs 2 and 3 shall end when the contract expires or be considered to have been terminated after 18 July 2043 at the latest’.

16. The heading of Section 48 is amended as follows:

‘EU Directives transposed’.

17. Point 2 of Section 48 is amended as follows:

- ‘2. Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90) as amended by Directive 2013/37/EU (OJ L 175, 27.6.2013, p. 1)’.

18. In Section 49 the current text is renumbered as paragraph 1.

19. The following paragraph 2 (new) is added to Section 49:

‘(2) The entry in the list of contents relating to Sections 38, 40 and 48, and points 1 and 2 of Section 33(1) and 3, points 5 to 8 of Section 34, Sections 35, 36(1) and (4), 37, 38, 40 and 42(2) to (5), the amended title of Section 48, point 2 of Section 48 and Section 49(1) as amended by Provincial Act in LGBl. No 58/2015 will enter into force on 18 July 2015’.

President:

Penz

Provincial Governor:

Pröll