

Law on duty of disclosure, document re-use, data protection, national statistics and infrastructure for spatial information [Gesetz über Auskunftspflicht, Dokumentenweiterverwendung, Datenschutz, Landesstatistik und Geodateninfrastruktur], version of 6 August 2015

[...]

Section 2
Re-use of documents
Aim and scope of Section 2
§ 8

- (1) The provisions of this section serve to facilitate the creation of new information products and the setting up of information services based on the re-use of documents available at public-sector bodies.
- (2) This section governs the legal framework for the re-use of documents created by a public-sector body as part of its public task, and held by a public-sector body.
- (3) This section does not affect any of the legal provisions that regulate access to documents of public-sector bodies. This also applies to all the provisions for data protection and statutory obligations of secrecy.
- (4) This section shall not apply to:
 1. documents, the drawing up of which is an activity falling outside the scope of the public task of the public-sector body concerned as defined by law or Regulation or, in the absence of such rules, as defined in line with common administrative practice, provided that the scope of the public tasks is transparent and subject to review;
 2. documents to which access is restricted in accordance with the rules governing access to documents of public-sector bodies, including those that are not accessible or accessible only where a particular interest is demonstrated;
 3. documents to which access is excluded or restricted by virtue of the relevant access regimes 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;
 4. documents for which third parties hold intellectual property rights;
 5. documents covered by industrial property rights;
 6. parts of documents containing only logos, crests and insignia;
 7. documents held by educational and research establishments, excluding university libraries;
 8. documents held by cultural establishments other than libraries, museums and archives.
- (5) The provisions of § 11 and § 17 (Processing the requests and Judicial protection) also apply to requests concerning documents produced by a public-sector body not as part of its public task, or to documents pursuant to paragraph 4(1) to (6).

Definitions
§ 9

In this section the following definitions apply:

1. public entities:
 - a) organs of a province, a municipality or a municipal association;
 - b) establishments managed under provincial law;
2. document: any content, or parts thereof, whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) produced by a public-sector body in order to carry out its public task;
3. Document held by a public-sector body: a document whose re-use may be authorised by the public-sector body;
4. Re-use: the use of documents held by public-sector bodies, for commercial or non-commercial purposes other than the initial purpose of the public task within which the documents were produced. The exchange of documents between public-sector bodies within the meaning of Article 2(1) of Directive 2003/98/EC purely in pursuit of their public task does not constitute re-use.

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.

General principles

§ 9a

- (1) Documents 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 § 12 to § 16.
- (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 § 12 to § 16.
- (3) If a public-sector body provides a document held by them for re-use, it may not exclude other interested parties, except in the case of § 16(2), from the re-use even if value-added products based on these documents already exist, nor may it discriminate against these parties with regard to the conditions and charges for the reuse (§ 13 and § 14).

Requests for documents to be provided for re-use

§ 10

- (1) Requests for documents to be provided for re-use are to be made in writing to the public-sector body which holds the document requested. 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.
- (2) Should a request not make the content, scope or manner of the re-use of the requested document sufficiently clear, the public-sector body shall immediately require the applicant to specify the request more clearly in writing within an appropriate period. If the applicant does not comply within the specified period, the request shall be deemed not to have been submitted.

Processing the requests

§ 11

- (1) Requests for the provision of documents for re-use must be dealt with promptly by the public-sector bodies, and in any case within no longer than four weeks, in writing and, as far as possible, in electronic form as set out below:
 1. the requested documents shall be made available in their entirety;
 2. the requested documents shall be made partly available, stating the reasons for the request not being completely granted;
 3. a written offer of contract shall be presented if conditions are stipulated or charges levied for the re-use of the requested documents;
 4. the fact that the request is not being granted shall be communicated, stating the main reasons for this.

The possibilities for legal redress pursuant to § 17(1) shall be referred to when stating the reasons for not (fully) granting the request.

- (2) The deadline laid down in paragraph 2 applies only if effective access rules do not stipulate a deadline for processing. The period begins when the request is received or, in the case of a request for clarification pursuant to § 10(2), when the clarification is received. The deadline can be extended by a further four weeks for extensive or complex requests. The applicant shall be informed of this within three weeks of the public-sector body receiving the request or the clarification.

- (3) If the basis for the notice of refusal (last sentence of paragraph 1) is that the requested document is the intellectual property of third parties or is covered by industrial property rights, the public-sector

body shall refer to the known rightholder or alternatively to the person from whom it obtained the material concerned. Libraries, including universities, museums and archives shall not be required to include such a reference.

Available form and languages

§ 12

(1) Public-sector bodies shall make documents held by them available in any pre-existing format and 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. There is no obligation to create or adapt documents or provide extracts where this would involve disproportionate effort, going beyond a simple operation.

(2) 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.

Conditions for re-use

§ 13

(1) The public-sector bodies may stipulate conditions, which they agree upon with the applicant, for the re-use of documents that they hold. The conditions shall not unnecessarily restrict possibilities for re-using the requested documents and shall not be used to restrict competition.

(2) The conditions, which can be stipulated in a contract that has been standardised as far as possible, must meet the following requirements:

1. The conditions that apply in standard cases shall be defined in advance (standard conditions), and published in electronic form as far as possible.

2. The conditions for similar categories of re-use shall not be defined so as to be discriminatory.

(3) When re-using documents, public-sector bodies shall be subject to the same conditions as other users.

Principles governing the calculation of charges

§ 14

(1) The public-sector bodies may charge for the re-use of documents that they hold. These charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination.

(2) Paragraph 1 shall not apply to the following:

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. These requirements shall be defined by law or Regulation or, in the absence of such rules, in accordance with common administrative practice and, where possible and appropriate, shall be published on the internet;

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 shall be defined by law or Regulation 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 relevant 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 relevant 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.

(5) The standard charges for the re-use of documents and the calculation basis for such charges shall be pre-established by public-sector bodies and published in electronic form where possible and appropriate. 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.

Facilitating access to documents, and transparency

§ 15

(1) Public-sector bodies shall make practical arrangements facilitating access to documents available for re-use. To this effect they can in particular:

1. designate information points and contact persons;
2. publish asset lists of main documents with relevant metadata, made available online and in machine-readable format, and set up portal sites that are linked to the asset lists.

Where possible the public-sector bodies shall allow cross-linguistic search for documents.

(2) The public-sector body shall on request provide explanations for all the conditions that apply to re-use.

Prohibition of exclusive arrangements

§ 16

(1) Arrangements between public-sector bodies and third parties which establish exclusive rights with regard to the re-use of documents (exclusive arrangements) are unlawful.

(2) Paragraph 1 shall not apply if the granting of an exclusive right is necessary for the provision of a service in the public interest. The grounds for such an exclusive arrangement shall be checked regularly, at least every three years. The exclusive arrangement shall in any case include a provision giving the public-sector body a special right of termination if the regular review shows that the grounds justifying the arrangement no longer apply. Exclusive arrangements must be transparent and shall be published in electronic form where possible; this also applies to arrangements entered into after 31 December 2003. This paragraph does not apply to digitisation of cultural resources.

(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.

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

Judicial protection

§ 17

(1) Within two weeks of receiving notice that their request is being granted only partially or not at all, or is being made subject to a contract (subparagraphs 2, 3 and 4 of § 11(2) [sic]), the applicant may apply to have a decision issued on their request.

(2) If the public-sector body does not deal with the request within the deadline laid down in § 11(2) [sic] or within the extended deadline pursuant to § 11(3) [sic], the applicant may apply to have a decision issued on their request.

(3) If the public-sector body is not authorised to issue a decision, the authority responsible for supervising the public-sector body shall issue decisions regarding requests pursuant to paragraphs 1 and 2. The public-sector body shall forward such requests promptly to the supervisory authority responsible.

(4) The General Law on Administrative Procedure 1991 shall apply to procedures for issuing decisions and calculating deadlines under this section.