

PROVINCIAL LAW GAZETTE FOR UPPER AUSTRIA

Provincial Law

amending Upper Austria's Duty of Disclosure, Data Protection and Re-Use of Information Law

By decision of the Upper Austrian Parliament, the following is hereby enacted:

Article I

The Duty of Disclosure, Data Protection and Re-Use of Information Law for Upper Austria (LGBI. No 46/1988, as amended by Provincial Law LGBI. No 90/2013, is hereby amended as follows:

1. In the Table of contents the following is inserted after Section 10:

‘Section 10a General Principle‘

2. In the first sentence of Section 10(2), the phrase ‘documents made available for re-use that are produced in the course of their public tasks’ is replaced by the word ‘documents’.

3. Section 10(4) reads:

‘(4) This Section – excluding Sections 11, 12 and 19 – does not apply to documents,

1. the production 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; or*

2. which cannot be accessed, in particular for reasons of national security, general national defence, public security, statistical confidentiality or because they contain commercial secrets (such as business secrets, professional secrets or company secrets) or are otherwise confidential, or;

3. 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, or;

4. 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, or;

5. for which third parties hold intellectual property rights, or;
6. which are covered by industrial property rights, or;
7. which are held by educational and research establishments, excluding university libraries, or;
8. which are held by cultural establishments other than libraries, museums and archives.'

4. *The following sub-paragraph (5) is inserted after Section 10(4):*

'(5) This section does not apply to parts of documents containing only logos, crests and insignia.'

5. *After Section 10, Section 10a is inserted as follows:*

**'Section 10a
General principle**

- (1) Documents falling within the scope of this section may – without prejudice to paragraph 2 – be re-used for commercial or non-commercial purposes.
- (2) Documents made available for re-use for which libraries, including university libraries, museums and archives hold intellectual property rights may be re-used for commercial or non-commercial purposes.

6. *The following points are added to Section 11:*

'4. 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;

5. 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;

6. Formal open standard: a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;

7. University: any public sector body that provides post-secondary-school higher education leading to academic degrees.'

7. *In Section 12(5) the following sentence is added:*

'Libraries, including university libraries, museums and archives are not required to include such a reference.'

8. *Section 13 reads as follows:*

**'Section 13
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 does not entail an obligation for public sector bodies to create or adapt documents or provide extracts of documents, 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.'

9. *Section 14 reads as follows:*

**'Section 14
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 to be defined by law or regulation 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 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 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.'

10. Section 16 reads as follows:

**'Section 16
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 Section 14(2)(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. compiling 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. designating contact persons and information points.'

11. Section 18 reads as follows:

**'Section 18
Prohibition of exclusive arrangements**

- (1) Contracts or other agreements between public sector bodies and third parties establishing exclusive rights with regard to the re-use of the documents falling within the scope of this section (exclusive arrangements) are prohibited.
- (2) Paragraph 1 does 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, and at least every three years. The exclusive arrangement shall 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 entered into after 31 December 2003 shall be transparent and made public in a suitable manner - where possible on the internet. 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 eleventh year and, if applicable, every seven years thereafter. The exclusive arrangement shall 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 existence on the date of entry into force of Provincial Law LGBl. No 86/2006 that are not covered by the exceptions in the first sentence of paragraph 2 shall end when the contract expires or be considered to have been terminated at midnight on 31 December 2008 at the latest.
- (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 at midnight on 18 July 2043 at the latest.'

Article II

This Provincial Law shall enter into force on 18 July 2015.

The President of the Upper Austrian
Parliament
Viktor Sigl

Provincial Governor
Dr Pühringer