

Act No. 571, 19 December 1985

THE DANISH PUBLIC ADMINISTRATION ACT

We, Margrethe the Second, By the Grace of God Queen of Denmark, Do Hereby Make Known;

The Folketing has passed and We by our Assent have affirmed the following Act:

Chapter 1

Scope

Section 1

1. This Act shall apply to all branches of the public administration.
2. After consulting with the Minister for Justice, the minister concerned may by order provide that this Act shall apply in whole or in part to specified companies, partnerships, institutions, associations etc. that cannot be classified as part of the public administration, provided that the operating expenses of such entities are mainly covered by central or local government funds or in so far as by or pursuant to statutory provision they are empowered to make decisions on behalf of central or local governments. The minister concerned may also lay down more detailed rules by order on document filing etc. and on secrecy.

Section 2

1. This Act shall apply to consideration of cases in which a decision has been or will be made by an administrative authority.
2. The provisions on disqualification in Chapter 2 of this Act shall also apply to consideration of cases on the making of contracts and the like civil law agreements.
3. The provisions of Chapter 8 of this Act shall apply to all activity exercised by the public administration.
4. After consulting with the Minister for Justice, the minister concerned may by order provide that provisions of this Act other than those referred to in Parts 2 and 8 of this Act shall in whole or in part apply to administration activity other than that referred to in subsection (1) of this Section.

Chapter 2

Disqualification

Section 3

1. Any person working for the public administration shall be disqualified relative to a specific case if
 - they have a particular personal or financial interest in the outcome of the case or if they have previously represented any person in the same case with such interests;

- their husband or wife, any person related by blood or marriage in the direct line of ascent or descent or in a collateral branch as close as a first cousin, or any other closely attached person, has a particular personal or financial interest in the outcome of the case or represents any person with such interests;
- they are involved in the management of or are otherwise closely associated with any company, partnership, association or other private legal entity with a particular interest in the outcome of the case;
- the case concerns a complaint about or exercise of the control or supervision of another public authority, and the person previously served with that authority and assisted in making the decision or in implementing the measures at issue in the case; or
- there are other grounds for questioning the person's impartiality.

2. No person shall be disqualified if the nature or strength of his interest, the nature of the case, or his tasks in connection with the handling of the case are such that the decision on the case is unlikely to be affected by extraneous considerations.

3. No person disqualified relative to any specific case shall be allowed to decide, to take part in deciding, or otherwise to assist in the consideration of the case in question.

Section 4

1. Section 3 shall not apply if it would be impossible or cause substantial difficulties or misgivings to arrange for another person to act in place of that person in considering the case.

2. Section 3 shall apply to members of a collegiate administrative authority even where a substitute cannot be called in. However, this provision shall not apply if members of the authority would not form a quorum or if the composition of the authority would be called into question if the member could not attend its meetings, and if consideration of the case cannot be stayed without material damage to public or private interests.

3. Notwithstanding Section 3, any member of a collegiate administrative authority may take part in electing members for specific duties, even if his own name is put forward. Section 3 shall not apply to decision-making by local government councils on the remuneration etc. of their own members.

Section 5

After consulting with the Minister for Justice, the minister concerned may lay down more detailed rules by order on the scope of Sections 3 and 4 for specific sectors of the administration.

Section 6

1. Any person who is aware of circumstances relating to them as referred to in Section 3(1) shall immediately advise their hierarchical superior thereof, unless it is clear that the circumstances are immaterial. In the case of a member of a collegiate administrative authority, the authority shall be advised.

2. Disqualification shall be decided by the authority referred to in paragraph 1.

3. The person concerned must not himself take part in considering or deciding his own disqualification, but see Section 4(1) and (2). This shall not apply to areas subject to other provisions laid down by law.

Chapter 3

Advice and representation etc.

Section 7

1. An administrative authority shall advise and assist, to the extent required, any person consulting them on areas within their purview.

2. Any written enquiry that falls outside the purview of the administrative authority to whom it has been sent, shall as far as possible be forwarded to the proper authority.

Section 8

1. At any time during consideration of a case, any party thereto may to be assisted or represented by others. However, when it may affect the outcome of a case, the authority may demand that the party attend in person.

2. The first sentence of paragraph 1 shall not apply where it is considered appropriate that the party's interests in being assisted or represented give way to important considerations for public or private interests, or where otherwise specified by law.

Chapter 4

Access to files by parties to a case

Right of access to files

Section 9

1. Any party to a case in which a decision has been or will be made by an administrative authority may ask to see the case documents. A request for documents shall indicate the case to which the documents relate.

2. Provisions on secrecy applying to persons acting in public service or duty shall not limit the duty to grant access to files under this Chapter.

3. The provisions of this Chapter shall not apply in the case of infringements resulting in criminal prosecutions, but see Section 18.

Scope of access to files.

Section 10

1. Subject to the exceptions in Sections 12-15 of this Act, parties to a case may access

1) all documents relating to the case in question, including duplicates of letters issued by the authority concerned, provided such letters must be assumed to have reached the addressee; and

2) entries in journals, registers, and other lists concerning the documents of the case at issue.

2. However, any person applying for or having applied for employment or promotion in public service may ask to see only of the documents etc. relating to his own circumstances.

Stay of proceedings

Section 11

1. If, while a case is pending, a party applies for access to files and such application has to be granted under the provisions of this Act, proceedings in the case shall be stayed until the party concerned has been given an opportunity to acquaint himself with the documents.

2. However, paragraph 1 shall not apply if a stay of proceedings would mean that the case could not be decided within the statutory time limit or if it is considered appropriate that the party's interest in a stay of proceedings give way to important considerations for public or private interests in avoiding such a stay.

Documents subject to exemptions

Section 12

1. The right of access to files shall not apply to an authority's internal working documents. Internal working documents shall include

- 1) any document prepared by an authority for its own use in considering a case;
- 2) correspondence between units within the same authority, and
- 3) correspondence between a local council and its committees, departments and other administrative bodies, or between those bodies.

2. Notwithstanding paragraph 1, information on the facts of a case which may greatly affect the outcome of the case and is exclusively contained in internal working documents, shall be provided in accordance with this Chapter.

Section 13

1. Notwithstanding Section 12, the right of access to files shall include internal working documents in their final form if

- 1) the documents contain only the substance of the authority's final decision on the outcome of a case;
- 2) the documents contain only information that the authority had a duty to record pursuant to the Danish Access to Public Administrative Documents Act; or
- 3) the documents are self-contained instruments drawn up by an authority to provide proof or clarity concerning the actual facts of a case.

Section 14

1. The right of access to files shall not apply to:

- 1) records of meetings of the Council of State, minutes of meetings of ministers and documents prepared by an authority for use at such meetings.

2) documents exchanged in connection with one authority acting as a secretariat for another authority.

3) documents drawn up in connection with considering proposals for decisions to be taken by the European Community or to do with the interpretation of or compliance with EC rules.

4) correspondence between authorities and outside experts for use in court proceedings or in deliberations on possible legal proceedings.

2. Notwithstanding paragraph 1, information on the facts of a case which may greatly affect the outcome of the case and is exclusively contained in the documents mentioned in paragraph 1, shall be provided in accordance with this Chapter.

Information subject to exemptions

Section 15

1. The right of access to files may also be limited where it is considered appropriate that the party's interest in using a knowledge of documents in the case to protect his interests give way to important considerations for the interests of the party concerned or to other private or public interests, including

1) State security and the defence of the realm;

2) Danish foreign policy and Danish external economic interests, including relations with foreign powers and international institutions;

3) preventing and investigating any infringement of the law, prosecuting offenders, executing sentences and protecting the defendant, witnesses and others in criminal or disciplinary prosecutions.

4) carrying out public supervision, regulation and planning activities and measures planned under tax law; and

5) protecting public financial interests, including interests relating to public commercial activities.

2. Where paragraph 1 applies only to part of a document, the party requesting disclosure shall be allowed to see the remaining contents of the document.

Decisions on access to files

Section 16

1. Decisions on whether and in what form an application for access to files shall be granted shall be made by the authority responsible for deciding the case at issue.

2. The authority shall decide without delay whether the application should be granted. If an application has not been granted or rejected within ten days of its receipt by the authority concerned, the authority shall inform the applicant of the reasons for this and also of the date when a decision can be expected.

3. If it is important for a party's ability to protect his interests that he be handed a transcript or an office copy of any document in the case, his application for such

transcript or office copy shall be granted. However, this shall not apply if the nature, number or form of documents make this unreasonable. The Minister for Justice shall lay down rules on the fees payable for transcripts and office copies.

4. Appeals against decisions on access to files shall be submitted to the appeals authority for the case to which the application for documents relates. Section 11 shall apply *mutatis mutandis*.

5. The minister concerned may lay down rules by order derogating from the provisions of paragraph 1 and the first sentence of paragraph 4.

Section 17

If the right to appeal against a decision in a case is limited in time and an application for access to files is submitted after the decision has been communicated to the party concerned but before the expiry of the time limit for appeal, the authority may decide that the time limit be suspended. The time limit for appeal shall then resume from the date when access to files is granted or denied, and be no less than fourteen days. Any other person notified in writing of the decision in the case and entitled to appeal shall also be notified of the expiry date of the extended time limit for appeal.

Access to files in criminal cases.

Section 18

1. When a criminal case has been decided, any party thereto may ask to see any document in the case provided that their request is reasonably founded on the need to protect the interests of the party concerned, and provided that it does not run counter to the need to prevent, investigate and prosecute any infringement of the law or protect defendants, witnesses or other persons. Sections 12-14 of this Act shall apply *mutatis mutandis*.

2. Paragraph 1 shall not apply to office copies of entries in court records concerning the criminal case or to documents in the case that have been produced in court. The same shall apply to office copies of entries in court records and to documents adduced in court relating to other criminal cases cited in the hearing of the case.

3. Decisions on whether and in what form an application for access to files may be granted under paragraph 1 shall be made by the authority which made the administrative decision in the criminal case. Appeals against such decisions shall be submitted to the relevant superior administrative authority. The Minister for Justice shall lay down rules on the fees payable for transcripts and office copies.

Chapter 5

Hearing the parties

Section 19

1. If a party to a case cannot be assumed to have notice that an authority is possessed of specific information on the facts of a case, no decision shall be made until the authority has notified that party of such information and has given him an opportunity to make a statement. However, this shall apply only if the information is unfavourable to the party concerned and essential to reaching a decision in the case. The authority may fix a time limit for the submission of a statement by the party concerned.

2. Paragraph 1 shall not apply if

- 1) the nature of the information and the case are such that it is considered unobjectionable or a decision to be made on the basis of the information available;
- 2) a stay of proceedings would mean that the case could not be decided within the statutory time limit;
- 3) it is considered appropriate that the party's interest in a stay of proceedings give way to important considerations for public or private interests in avoiding such a stay;
- 4) the party concerned does not have a right to access files under Chapter 4 concerning the information in question;
- 5) the decision would affect a wider, unspecified group of persons, enterprises etc., or if presenting the information to the party would cause other substantial difficulties; or
- 6) special provisions are laid down by law which give the party the right to acquaint himself with the grounds for the contemplated decision and to make a statement on the case before a decision is made.

3. After consulting with the Minister for Justice, the minister concerned may lay down rules by order to the effect that specific fields of responsibility to which points 1 and 5 of paragraph 2 would normally apply shall not be subject to paragraph 1.

Section 20

1. In cases where the authority may change its decision if requested to do so by a party, the authority may decide not to hear the party concerned if the nature of the case and considerations for the party concerned make it appropriate.
2. If a decision has been taken not to hear a party pursuant to paragraph 1, the decision shall enclose the information which would otherwise have been given to the party pursuant to Section 19. The party shall also be informed of his right to apply for the case to be re-considered. The authority may fix a time limit for submission of an application for re-consideration.
3. Where there is a time limit for submitting an appeal against a decision to another administrative authority and an application for the case to be re-considered is submitted in time, the appeal time limit shall be suspended. The time limit for appeal shall then resume from the date when the new decision is communicated to the party concerned, and be no less than fourteen days.

The right to issue a statement

Section 21

1. At any time in the proceedings, a party to a case may demand that a decision in the case be stayed until the party concerned has issued a statement on the case. The authority may fix a time limit for the submission of the statement.
2. Paragraph 1 shall not apply if

- 1) a stay of proceedings would mean that the case could not be decided within the statutory time limit;
- 2) it is considered appropriate that the party's interest in a stay of proceedings give way to important considerations for public or private interests in avoiding such a stay; or
- 3) any special statutory provision provides for the party to make a statement on the case before a decision is made.

Chapter 6

Grounds, etc.

Section 22

A decision communicated in writing shall set out the grounds, except where the decision is in every particular in favour of the party concerned.

Section 23

1. Any person who has been notified of a decision orally may demand that written grounds for the decision be given, except where the decision is in every particular in favour of the person concerned. An application for written grounds shall be submitted to the authority concerned within fourteen days of the party being notified of the decision.

2. An application for written grounds submitted pursuant to paragraph 1 shall be answered as soon as possible. If the application is not answered within fourteen days of its receipt by the authority concerned, the authority shall inform the applicant of the reason for not answering and of the date when its answer can be expected.

Section 24

1. The grounds for a decision shall refer to the laws on which the decision is based. To the extent that the rules provide for the decision to rest on administrative discretion, the grounds shall also state the main considerations taken into account when such discretion was exercised.

2. If necessary, the grounds shall also briefly state which facts in the case were deemed to be of paramount importance in making the decision.

3. The grounds may be limited to the extent it is considered appropriate that the party's interest in being able to use his knowledge of them to protect his interests should give way to considerations for the interests of the party concerned or other private or public interests, cf. Section 15.

Chapter 7

Advice on the right to appeal

Section 25

1. Written decisions which can be appealed against to another administrative authority shall be accompanied by written advice on the right to appeal indicating the appeals

authority and the appeals procedure, including any time limit. This shall not apply if the decision is in every particular in favour of the party concerned.

2. After consulting with the Minister for Justice, the minister concerned may lay down rules by order to the effect that in specific fields of responsibility subject to special conditions, advice on the right to appeal may be omitted or given in a way other than that described in paragraph 1.

Section 26

Any decision which can only be appealed against in court subject to a statutory time limit for the start of appeal proceedings shall be accompanied by information to that effect.

Chapter 8

Obligation to maintain secrecy etc.

Obligation to maintain secrecy.

Section 27

1. Any person working for the public administration has an obligation to maintain secrecy, cf. Section 152 and Sections 152c-152f of the Danish Criminal Code, whenever information is designated as confidential by law or other provision or whenever it is otherwise necessary to keep the information secret to protect important considerations for public or private interests, including in particular

- 1) the security of the State and the defence of the realm;
- 2) Danish foreign policy and Danish external economic interests, including relations with foreign powers and international institutions;
- 3) preventing, and investigating any infringement of the law, prosecuting offenders, executing sentences and protecting defendants, witnesses and others in criminal or disciplinary cases;
- 4) implementing public supervision, regulation and planning activities and measures planned under taxation law;
- 5) protecting public financial interests, including public commercial activities;
- 6) the interests of individual persons or private enterprises or societies in protecting information on their personal or internal, including financial, circumstances; and
- 7) the financial interests of individual persons or private enterprises or societies in protecting information on technical devices or processes or on business or operating procedures and policies.

2. Any person acting working for public administration may be ordered to maintain secrecy in respect of any particular piece of information only when secrecy is required to protect important considerations for particular public or private interests in accordance with paragraph 1.

3. An administrative authority may order a person outside the public administration to maintain secrecy in respect of any confidential information passed on by the authority to the person concerned when the authority was not obliged to do so.

4. Where rules on secrecy are laid down by virtue of Section 1(2), or secrecy is ordered by virtue of paragraph 3, Section 152 and Sections 152c-152f of the Danish Criminal Code shall apply *mutatis mutandis* to any infringement of such rules or orders.

The provision of information to other administrative authorities

Section 28

1. Information on an individual's strictly private circumstances, including information on race, religion, skin colour, political affiliation, union membership, sexual orientation, criminal record, health, major social problems, drug abuse, etc. shall not be provided to another administrative authority.

2. However, the information referred to in paragraph 1 may be provided if

1) the person concerned has given their consent;

2) the information must be provided by law or provisions laid down pursuant to a law;

3) it thereby protects private or public interests which clearly override the interests for which secrecy was maintained, including the interests of the person to whom the information relates; or

4) it is necessary for the consideration of the case at issue or required to enable an administrative authority to carry out its duties of supervision and control.

3. Other confidential information may be provided to another administrative authority outside the circumstances referred to in paragraph 2 only when the information can be assumed to be very important to the performance of that other authority's activities or for a decision to be made by the other authority.

4. Consent within the meaning of paragraph 1, point 1 shall be given in writing and state the type of information which may be provided, the person to whom the information may be provided, and for what purpose. A derogation may be granted from the requirement that consent be given in writing if the nature of the case or other circumstances make it appropriate.

5. Consent within the meaning of paragraph 2, point 1 shall lapse no later than one year after it has been given.

6. Local administrative bodies granted independent status by law shall be deemed to be independent administrative authorities in accordance with in paragraphs 1 and 3.

Section 29

1. In cases brought on application, information on the applicant's strictly private circumstances shall not be obtained from other branches of the public administration or from any other administrative authority.

2. Paragraph 1 shall not apply if

- 1) the applicant has consented to information being obtained;
- 2) laws or provisions laid down pursuant thereto provide otherwise; or
- 3) consideration for the applicant or a third party clearly overrides the applicant's interest in the information not being obtained.

Section 30

Confidential information obtained exclusively for the purpose of compiling statistics or as part of a scientific research programme shall not be passed on to an administrative authority for other use.

Section 31

1. To the extent that an administrative authority is entitled to pass on information, it shall do so at the request of another administrative authority if the information is important to the performance of the other authority's activities or for a decision to be taken by the other authority.

2. However, paragraph 1 shall not apply if passing on the information would cause the first authority additional work out of all proportion to the second authority's interest in obtaining the information.

Section 32

Any person working for the public administration shall not use his position to obtain confidential information that has no relevance to the performance of his duties.

Chapter 9

Entry into force, relationship to other legislation, etc.

Section 33

This Act shall enter into force on 1 January 1987. However, Sections 19 and 20 and Chapter 6 of this Act shall not apply to local councils until 1 January 1989.

Section 34

Other laws or provisions laid down pursuant thereto laying down stricter rules on disqualification than those in Chapter 2 shall be retained.

Section 35

1. Chapter 4 shall apply to documents drafted or received by an administrative authority on or after 1 October 1964. Section 18 shall not apply to criminal cases decided before the entry into force of this Act.

2. Chapter 4 shall, however, apply to factual information contained in documents drafted or received by an administrative authority before 1 October 1964 if the documents have been included in a case that has been or is being considered by an administrative authority after that date and if the information is or has been of material importance in deciding the case.

3. Provisions in other laws on the right of parties to a case to access documents shall be retained. However, this shall not apply to provisions which give more limited access to files than that provided for in Chapter 4 of this Act, unless they entered into force on or after 1 October 1964.

Section 36

Other laws or provisions laid down pursuant thereto which specify more detailed requirements for the contents of grounds than those in Section 24 shall be retained.

Section 37

This Act shall not apply to cases relating to matters in the Faeroes or Greenland but may be applied to such cases by Royal Decree with the derogations required by the special circumstances in the Faeroes and Greenland. However, this shall apply only to cases that are or have been considered by National Government Authorities.

Given at Amalienborg Palace, 19 December 1985

Under Our Royal Hand and Seal,
MARGRETHE R.

/ Erik Ninn-Hansen