

## **Regional Law**

### **amending Upper Austria's Duty of Disclosure and Data Protection Law**

The Parliament of Upper Austria has decided:

#### Article I

Upper Austria's Duty of Disclosure and Data Protection Law, LGBl. Nr. 46/1988, as amended by Regional Law LGBl. Nr. 41/2000, is amended as follows:

1. The title reads:

"Regional Law on the Duty of Disclosure, Data Protection and the Re-use of Information of Public Sector Bodies (Upper Austrian Duty of Disclosure, Data Protection and Information Re-use Law)"

2. The following list of contents is added:

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3. Articles 1 to 9 are each given the heading indicated in the contents.

4. Article 6 reads:

“Article 6

### **Legal protection**

(1) The following are competent to issue a decision under Article 5:

1. where the public sector body is a municipal body, the mayor,
2. where the public sector body is an organ of a municipal association, the organ authorised to represent the association,
3. where the public sector body is an organ of another self-governing body established under regional law, the organ authorised to represent that body,
4. where the public sector body is the district administrative authority or the agricultural district authority, that authority,
5. where the public sector body is another body hierarchically subordinate to the province, the provincial government, unless otherwise provided in paragraph (2).

(2) Where the public sector body is the Independent Administrative Court, the latter is competent to issue a decision under Article 5 in the first and last instance.

(3) With regard to decisions that have been issued under paragraph 1(1) and (2), representations may be made direct to the supervisory authority within the meaning of the appropriate institutional provisions.

(4) Appeals against decisions that have been taken under paragraph 1(3) to (5) shall be decided by the Independent Administrative Court."

5. In Article 7, paragraph 1 and the paragraph number "(2)" are deleted.

6. The previous Section 3 is replaced by the following Sections 3 and 4:

## "SECTION 3

### Re-use of information

#### Article 10

##### **Purpose; Scope**

(1) The purpose of this Section is to facilitate the re-use of documents of public sector bodies, in order in particular to promote the creation of new information products and services.

(2) This Section governs the legal framework for the commercial and non-commercial re-use of documents held, and produced in the course of their public tasks, by public sector bodies, in so far as they make them available for re-use. A document is held by a public sector body, if the latter has the right to make it available for re-use.

(3) Legal provisions regulating access to documents of public sector bodies (access rules), data protection provisions and statutory obligations of secrecy are not affected by this Section.

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

1. which are not created under the public tasks of the public sector body concerned, or
2. which, in particular for reasons of national security, general national defence, public security or because they contain commercial or company secrets or are otherwise subject to confidentiality, are not accessible, or
3. which may be accessed only if evidence of a particular interest is provided, or
4. which are the intellectual property of third parties, or
5. which are covered by industrial property rights, or
6. which are held by educational and research establishments, or
7. which are held by cultural establishments.

#### Article 11

##### **Definitions**

For the purposes of this Section:

1. "public sector body" means
  - a) the province;
  - b) the municipality;
  - c) self-governing bodies established under provincial law;
  - d) establishments founded under provincial law, such as foundations, funds, institutes and public-law corporations, which

- were set up for the express purpose of performing tasks of a non-commercial nature in the public interest,
  - have at least limited legal capacity,
  - are predominantly financed by the province, by a municipality, by other establishments founded under provincial law or other public sector bodies (Article 2(1) of Directive 2003/98/EC) or as regards their management are subject to supervision by such or whose administrative, management or supervisory organ is composed mainly of members appointed by the province, a municipality, other establishments founded under provincial law or other public sector bodies (Article 2(1) of Directive 2003/98/EC), and
  - are not undertakings within the meaning of Article 127(3) or Article 127a(3) of the Federal Constitution (*Bundes-Verfassungsgesetz - B-VG*);
- e) associations which are mainly composed of two or more public sector bodies in accordance with subparagraphs (a) to (d).

2. "Document" means:

- a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording);
- b) any part of such content.

3. "Re-use" means: the use by persons or legal entities of documents held by public sector bodies, for commercial and non-commercial purposes other than the initial purpose within the public task for which the documents were produced. 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 tasks does not constitute re-use.

## Article 12

### **Requests for re-use;**

#### **Requirements and processing**

(1) Requests to re-use documents are to be made in writing to the public sector body which holds the document requested. This may be done in any technical form which the public sector body has published or is otherwise able to receive.

(2) Should a request within the meaning of paragraph 1 not make the content, scope or manner of the re-use of the requested documents sufficiently clear, the public sector body shall immediately require the applicant to specify the request in writing within a period of not more than two weeks. If the applicant complies with the specification requirement within the time limit, the time limit under paragraph 3 shall start to run afresh after the arrival of that information. Otherwise the request shall be deemed not to have been submitted.

(3) The public sector body shall process the request within the time limit for processing applications and requests for access to documents under the current access rules or, if no such time limit is laid down, within four weeks after the arrival of the request and

1. shall make all the requested documents available for re-use, or

2. shall make the requested documents partly available for re-use and shall inform the applicant in writing, stating the reasons, that the request is in part not being granted, or
  3. shall present a final offer of contract, if it is necessary under Article 15(1) to agree conditions for the re-use of the requested documents, or
  4. shall inform the applicant in writing, stating the reasons, that the request will not be granted.
- (4) If a request within the meaning of paragraph 1 is not granted in whole or in part (paragraph 3(2) and (4)), in particular because the requested documents do not fall within this section under Article 10(4) or because they are not made available for re-use, the public sector body shall in its notice of refusal alert the applicant to the possibility of redress under Article 19.
- (5) If the basis for the notice of refusal 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.
- (6) In the case of voluminous and complex requests, the time limit specified in paragraph 3 shall be extended for a further four weeks, if the public sector body informs the applicant within three weeks after the arrival of the request that more time is required to process it.
- (7) Where possible and appropriate, public sector bodies shall use electronic means to process requests for re-use and to make documents available for re-use.

### Article 13

#### **Available formats**

- (1) Where public sector bodies authorise the re-use of documents which they hold, they shall provide them in any pre-existing format or language, through electronic means where possible and appropriate. Public sector bodies are not obliged under this provincial law to reproduce, adapt or further develop documents for the purpose of their re-use.
- (2) If extracts from documents are requested, they shall not be made available where this would involve disproportionate effort, going beyond a simple operation.
- (3) Public sector bodies are not obliged under this provincial law to continue the production of specified types of documents with a view to the re-use of such documents.

### Article 14

#### **Charges**

- (1) Where public sector bodies levy charges for the re-use of documents which they hold, the total income from supplying and allowing re-use of the documents may not exceed the cost of collection, production, maintenance, reproduction, provision and dissemination, together with a reasonable return on investment.
- (2) Charges shall be cost-oriented over the appropriate accounting period and should be calculated in line with the accounting principles applicable to the public sector bodies involved.

(3) In calculating charges, account should be taken in particular of the economic value of the documents and of whether they are intended for commercial or non-commercial re-use.

#### Article 15

##### **Conditions**

(1) Public sector bodies may lay down conditions for the re-use of documents they hold in a contract regulating the essential aspects of that re-use.

(2) The conditions under paragraph 1 may not limit the re-use of the requested documents unnecessarily or restrict competition.

#### Article 16

##### **Transparency and practical arrangements**

(1) The standard conditions and charges for the re-use of documents shall be established in advance by public sector bodies and published in appropriate fashion, if possible on the Internet.

(2) Public sector bodies shall on request provide the basis of calculation for the published charges and the factors which are taken into account when calculating charges in atypical cases.

(3) Public sector bodies shall make practical arrangements for facilitating access to those documents which are available for re-use, in particular by

1. keeping lists and indexes of the most important documents which they hold and which can be accessed for re-use and publishing them in appropriate fashion, if possible on the Internet, and

2. designating information staff and information agencies.

#### Article 17

##### **Non-discrimination**

(1) Charges and other conditions for the re-use of documents held by public sector bodies shall be non-discriminatory for comparable categories of re-use.

If documents held by public sector bodies are re-used by them as input for their own commercial activities which fall outside the scope of their public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

(3) If documents held by public sector bodies are available for re-use, the latter shall be open to all market participants, even if the documents are already being used by one or more market participants as a basis for value added products.

#### Article 18

##### **Prohibition of exclusive arrangements**

(1) Contracts or other agreements between public sector bodies and third parties which establish exclusive rights with regard to the re-use of the documents falling within the scope of this provincial law (exclusive arrangements) are inadmissible.

(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. In any event, the exclusive arrangement shall include a provision ensuring that the public sector body has a special right of termination, if the regular review shows that the grounds justifying the exclusive arrangement no longer exist. Exclusive arrangements entered into after 31 December 2003 must be transparent and be made public in a suitable way, where possible on the Internet.

(3) Existing exclusive arrangements which are not covered by the exceptions in the first sentence of paragraph 2 shall end when the contract expires or shall be regarded as cancelled at the latest at the close of 31 December 2008.

## Article 19

### **Redress**

(1) On the basis of a written application from the applicant, in which the request to re-use documents should again be explained, a decision shall be issued in this respect, if

1. the request is not granted in whole or in part (Article 12 (3)(2) and (4)), or
2. the applicant maintains that individual precisely defined provisions of a final contract offer (Article 12(3)(3)) do not comply with the provisions of this provincial law, or
3. the public sector body is late in dealing with the request.

(2) An application under paragraph 1 shall – except in the case of default – be submitted within two weeks of the notice of refusal or the final contract offer. The General Law on Administrative Procedure 1991 shall apply to the proceeding, except that the decision shall be issued at the latest eight weeks after the arrival of the application.

(3) The following are competent to issue a decision under paragraph 1:

1. where the public sector body is the municipality or a public sector body within the meaning of Article 11(1)(d) which is assigned to the municipality and does not come under paragraph 4, the mayor,
2. where the public sector body is an association of local authorities or a public sector body within the meaning of Article 11(1)(d) which is attributable to the association of local authorities and does not come under paragraph 4, the organ representing that body,
3. where the public sector body is another self-governing body established under provincial law or a public sector body within the meaning of Article 11(1)(d) which is assigned to the self-governing body and does not come under paragraph 4, the organ representing that body,
4. where the public sector body is a foundation, a fund, an agency or a public law corporation within the meaning of Article 11(1)(d), the organ representing the entity concerned,

5. where the public sector body is the district administrative authority or the agricultural district authority, that authority,

6. in other cases the provincial government, unless otherwise provided in paragraph 4.

(4) Where the public sector body is the Independent Administrative Court, the latter is competent to issue a decision under paragraph 1 in the first and last instance.

(5) With regard to decisions that have been issued under paragraph 3(1) and (2), representations may be made direct to the supervisory authority within the meaning of the appropriate institutional provisions.

(6) Appeals against decisions that have been taken under paragraph 3(3) to (6) shall be decided by the Independent Administrative Court.

(7) The public sector body is a party in administrative proceedings under this Section and is entitled to lodge appeals and complain to the Higher Administrative Court.

## **SECTION 4**

### **Common provisions**

#### Article 20

### **Areas of competence**

The tasks to be performed by the municipality, the municipal associations and their organs under this provincial law are tasks within their own jurisdiction.

#### Article 21

### **Exemption from taxes**

The submissions made by interested parties to safeguard their interests and caused directly by this provincial law are exempt from provincial administrative taxes."

## **Article II**

This provincial law shall enter into force at the close of the day of publication in the Provincial Gazette for Upper Austria.