

46.
Law of 27 March 2007 on the reuse of documents of public sector bodies
(
Styrian Document Re-Use Law)

The Parliament of Styria has decided:

Section 1
General provisions

§ 1
Scope

- (1) This law governs the legal framework for the re-use of documents held by a public sector body.
 - (2) This law should not be applied if documents are used exclusively for carrying out a public task.
 - (3) This law does not affect any of the legal provisions that regulate access to public sector documents.
- Federal Gazette, edition 14, Nos 45 and 46, published on 13 June 2007

§ 2
Exceptions from scope

Notwithstanding the provisions regarding legal protection, this law does not apply to documents

1. that are not created as part of the public task of the relevant public sector body;
2. that may not be accessed unless evidence of a particular interest is provided;
3. for which third parties hold intellectual property rights;
4. that are covered by industrial property rights;
5. that are held by an educational and research establishment or a cultural organisation.

§ 3
Definitions

For the purposes of this law, the following definitions shall apply:

1. **“document”**: any representation of a content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) or a part thereof;
2. **“document held by a public sector body”**: Document which the public sector body is authorised to make available;
3. **“public sector body”**:
 - 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 that
 - 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, a municipality, other establishments founded under provincial law or by 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 127 a(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);
4. **“Re-use”** any use serving different purposes than the one for which a document was created as part of a public task; the exchange of documents between public sector bodies within the meaning of Article 2(1) of Directive 2003/98/EC purely in pursuit of a public task does not constitute re-use.

Section 2
Provision of documents for re-use

§ 4
Provision of documents

- (1) The public sector bodies may provide documents for re-use if this is not contrary to other legal provisions, particularly those relating to data protection and the obligation of secrecy.
 - (2) This law does not make the provision of documents compulsory. If a public sector body provides a document for re-use, it may not discriminate against other applicants (§ 6 and § 7) or exclude them from the re-use (except in the case of § 8(2)).
- Federal Gazette, edition 14, No 46, published on 13 June 2007

§ 5
The form in which documents are provided and practical arrangements

- (1) If a public sector body provides documents for re-use, then it must do so in every available format and in every available language. If possible and useful, the documents must be provided in electronic form.
- (2) The public sector bodies are not obliged to
 1. reproduce or adapt documents in order to comply with an application for re-use,
 2. produce extracts from documents if this would involve more than a straightforward operation,
 3. continue to produce documents.
- (3) The public sector bodies should take practical steps to facilitate access to those documents that are provided for re-use. For this purpose they can, in particular, publish lists and registers of the most important documents, or designate a contact person or information point.

§ 6

Charges

- (1) The public sector bodies may impose charges for providing documents for re-use. The total income from providing and allowing the re-use of documents shall not exceed the cost of capture, production, reproduction and dissemination, together with a reasonable return on investment.
- (2) The charge that is normally imposed for the re-use of documents (standard charge) shall be defined and published in advance on the Internet homepage of the public sector body, if this is possible and useful.
- (3) The public sector bodies shall on request provide the basis of calculation for the standard charge and the factors taken into account when calculating charges in atypical cases.
- (4) The charge may not be discriminatory with regard to similar categories of re-use. The same charge that applies to other users shall also apply to the public sector body that produced the document, and later re-uses it.

§ 7

Other conditions for re-use

- (1) The public sector bodies may attach conditions to the re-use of documents. The conditions shall be laid down in an agreement dealing with fundamental questions concerning re-use. The conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.
- (2) The conditions that normally apply to the re-use of documents (standard conditions) shall be defined and published in advance on the Internet homepage of the public sector body, if this is possible and useful. The standard conditions shall be made available in digital form. It shall be possible to process them electronically.
- (3) The conditions may not be discriminatory with regard to similar categories of re-use. The same conditions that apply to other users shall also apply to the public sector body that produced the document, and later re-uses it.

§ 8

Exclusivity agreements

- (1) The public sector body may not grant anyone an exclusive right to re-use a document. This shall also be the case if value-added products based on this document are already being used.
- (2) The public sector body may in exceptional cases grant an exclusive right if this is necessary to provide a service that is in the public interest. These prerequisites shall be checked at least every three years.
- (3) Exclusivity agreements shall be transparent and shall be made public by publishing them on the Internet homepage of the public sector body, if this is possible and useful.

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Section 3

Application, legal redress

§ 9

Application for re-use

- (1) Every natural or legal person can make an application to re-use documents. The application shall be submitted to the public sector body that holds the document. The application shall be made in writing in any technical form that the public sector body is able to receive.
- (2) The document intended for re-use shall be indicated in the application. In addition, it shall be stated how and for what purpose the document is to be re-used.
- (3) The public sector body shall request that an incomplete or incorrect application be corrected in writing. The applicant shall be set a deadline for this purpose of no longer than two weeks. If the application is not corrected within the deadline, it shall be considered as not having been submitted.

§ 10

Processing period

- (1) The public sector body shall make a decision regarding the application within four weeks. The period begins on the day on which the application, or in the case of a corrected application (§ 9(3)), its deadline-compliant corrected version, is received by the public sector body.
- (2) The public sector body may extend the deadline by another four weeks if the application is extensive or complex. It shall inform the applicant of this within three weeks of receiving the original application or its deadline-compliant corrected version.

§ 11

Decision on the application

- (1) Within the deadline the public sector body shall
 1. make the requested documents available for re-use in their entirety, or
 2. make the requested documents partly available for re-use and shall inform the applicant in writing that part of the request is not being granted, stating the reasons for this, or
 3. submit a written offer containing the conditions (including any possible charges) for providing all or some of the requested documents, or
 4. inform the applicant in writing, stating the reasons, that the application will not be granted.
- (2) If an application is not granted in whole or in part (paragraph 1(2) and (4)), in particular because the requested documents are not subject to this law 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 § 12.
- (3) 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.

§ 12

Legal redress

- (1) On the basis of a written application from the applicant, in which the request to re-use documents should be formulated again, a decision shall be issued in this respect, if
 1. the request is not granted in whole or in part (§ 11(1), Nos 2 and 4), or
 2. the applicant maintains that individual precisely defined provisions of a contract offer made in writing (§11(1) No 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 a delay – 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 no later than eight weeks after the application is received.
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- (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 § 3(3)(d) which is assigned to the municipality and is not subject to No 4, the mayor,
 2. where the public sector body is an association of local authorities or a public sector body within the meaning of § 3(3)(d) which is attributable to the association of local authorities and is not subject to No 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 §3(3)(d) which is assigned to the self-governing body and is not subject to No 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 §3(3)(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 directly 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 law and is entitled to lodge appeals and make complaints to the Higher Administrative Court.

Section 4

Final provisions

§ 13

Areas of competence

The tasks of the municipality laid down in this law are those within its own area of competence.

§ 14

References

References to provisions of the European Union are made to the following versions:

Directive 2003/98/EC: Directive 2003/98/EC on the re-use of public sector information, OJ L 345 of 31 December 2003, p. 90.

§ 15

Community legislation

Directive 2003/98/EC is implemented by means of this law.

§ 16

Transitional provisions

In the case of exclusivity agreements concluded after 31 December 2003, § 8(3) shall apply by analogy. Exclusivity agreements that already exist when this law enters into force and that are not subject to the exception in § 8(2), shall end on 31 December 2008 at the latest.

§ 17

Entry into force

This law shall enter into force on the day following its promulgation, which is 14 June.

Provincial Governor, First Deputy Provincial Governor

Voves, Schützenhöfer