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52nd Act: Re-use of public sector information – Vienna Re-use of Information Act (WIWG)
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52nd
Vienna Provincial Act on the Re-use of Public Sector Information – Vienna Re-use of
Information Act (*Wiener Informationsweiterverwendungsgesetz* (WIWG))

By decision of the Vienna State Parliament, the following is hereby enacted:

Underlying principles

- § 1.** (1) The purpose of this Provincial Act is to facilitate the creation of information products and services based on public sector documents.
- (2) Legislation regulating access to the documents belonging to public sector bodies (Article 2(1) of Directive 2003/98/EC) (access regimes) shall not be affected by this Provincial Act.
- (3) Provided that public sector bodies in general permit the re-use of certain or of all their documents, they must ensure that these documents can be made available for commercial and non-commercial purposes and, if possible in electronic form, in accordance with the provisions of §§ 5 to 10.

Substantive scope, data protection

- § 2.** (1) This Provincial Act governs the legal framework for the re-use of existing documents held by public sector bodies (§3).
- (2) §1(3) and §§5 to 10 shall not to apply to:

1. documents which are not created as part of the public task of the relevant public sector body;
 2. documents which are the intellectual property of third parties;
 3. documents covered by industrial property rights;
 4. documents which are excluded from access by virtue of the relevant access regimes or which require proof of a special interest, particularly for reasons of national security, general national defence, public security or in the interests of commercial or company secrecy;
 5. documents held by public service broadcasters and their subsidiaries and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;
 6. documents held by educational and research establishments, in particular schools, universities, private universities, vocational colleges, management and other academies, archives, libraries and research institutes of the public sector bodies, as defined in §3;
 7. documents held by cultural institutions, in particular museums, libraries, archives, orchestras, operas and theatres belonging to public sector bodies, as defined in §3;
- (3) The provisions of the Federal Law on the protection of personal data (Data Protection Act 2000), BGBl. I No. 165/1999 as amended by Federal Law BGBl. I No. 13/2005, and the Vienna Provincial Act on the protection of personal data (Vienna Data Protection Act) LGBl. No 125/2001, and legal obligations of confidentiality shall not be affected;

Personal scope

§ 3. This Provincial Act shall apply to the following public sector bodies:

1. the City of Vienna as a province or municipality;
2. self-governing bodies established under provincial law;
3. institutions established under provincial law which
 - a) were set up for the express purpose of performing tasks of a non-commercial nature in the general interest and
 - b) have at least some legal capacity and
 - c) are funded mainly by the City of Vienna and/or institutions within the meaning of 2 and 3 above and/or by other public sector bodies (Article 2(1) of Directive 2003/98/EC), or which are supervised by the latter or whose administration, management or supervisory body is composed mainly of members appointed by the City of Vienna and/or by institutions within the meaning of 2 and 3 above and/or other public sector bodies (Article 2(1) of Directive 2003/98/EC).

Definitions

§ 4. (1) The following definitions shall apply within the scope of this Provincial Act:

1. “Document” means any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) as well as any part of such content, with the exception of computer programs;

2. “Re-use” means the use by persons or legal entities of documents held by public sector bodies, for commercial or 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 (Article 2(1) of Directive 2003/98/EC) purely in pursuit of their public tasks does not constitute re-use.

(2) A document is held by a public sector body when this body has the right to authorise re-use.

Available formats

§ 5. (1) Public sector bodies shall make all documents authorised for re-use available in any pre-existing format or language, through electronic means where possible and appropriate. However, this shall not imply an obligation to create or adapt documents in order to comply with the request for re-use.

(2) Extracts requested from documents shall not be made available where this would involve disproportionate effort, going beyond a simple operation.

(3) On the basis of this Provincial Act, public sector bodies shall not be required to continue the production of a certain type of documents with a view to the re-use of such documents.

Charges

§ 6. Where charges are made, the total anticipated income from providing documents and authorising their re-use should not exceed the costs of collecting, producing, reproducing and disseminating documents together with a reasonable return on investment. In line with this, all applicable charges must be based on the costs of the relevant calculation period and must be calculated in compliance with the applicable accounting principles for the public sector body in question.

Transparency and practical arrangements

§ 7. (1) Public sector bodies must fix the conditions for use and the usual charges made for the re-use of documents in advance and must publish these in a suitable format, wherever possible and appropriate on the internet.

(2) The public sector body in question must, on request, provide the basis for calculating the published charges as well as those factors which are taken into account in calculating the charge in unusual cases.

(3) Should public sector bodies decide no longer to make specific documents or any documents at all available for re-use, they must publicise this decision without delay in a suitable way, wherever possible and appropriate on the internet.

(4) Public sector bodies must comply with the practical arrangements for facilitating access to information for all documents available for re-use, in particular by naming the contact persons or information points for this, or by compiling lists and catalogues of the documents in their possession which are available for re-use.

Contracts for use

§ 8. (1) If re-use of documents is bound by conditions for use, these must be laid down in contracts laying down the principal rights and obligations of the contracting parties. The conditions for use must not be allowed to unnecessarily restrict the re-use of the requested documents or to hamper competition.

(2) Public sector bodies which make the re-use of documents subject to conditions for use must provide standardised contracts online which can be processed electronically and adapted in individual cases in accordance with the principles laid down in this Provincial Act.

Non-discrimination

§ 9. (1) Fees and conditions for use for the re-use of documents must be non-discriminatory for comparable categories of re-use.

(2) If a public sector body uses documents it holds as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

Prohibition of exclusive arrangements

§ 10. (1) Provided that the exceptions specified in paragraph 2 do not apply, the re-use of documents which are available for re-use shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents.

(2) Contracts or other agreements between public sector bodies and third parties concerning the exclusive use of documents covered by the scope of this Provincial Act (exclusive arrangements) shall not be permitted unless the right to exclusive use is needed in order to provide a service in the public interest.

(3) If an exclusive arrangement is made, the public sector body in question must publish it in a suitable way, wherever possible and appropriate on the internet, and must check regularly, at least every three years, that the grounds given in paragraph 2 justifying the exclusive agreement still apply. However, the exclusive arrangement must include a provision ensuring that the public sector body has the right to give notice of withdrawal in the event that the regular review shows that the grounds set out in paragraph 2 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, wherever possible and appropriate on the internet.

(4) Exclusive arrangements not covered by the exceptions specified in paragraph 2 and which are valid when this Provincial Act enters into force must be terminated no later than 31 December 2008.

Requirements for and the further processing of requests

§ 11. (1) Requests for documents to be made available for re-use must be made in writing. This may be done in any technical form which the public sector body in question is able to receive.

(2) Should a request within the meaning of paragraph 1 not make the contents or the scope of the documents requested sufficiently clear, the public sector body in question must immediately ensure that this is clarified, and may require the applicant to provide additional written details of his or her request while specifying that the request shall be deemed not to have been submitted if it is not resolved after a period set at the same time, which shall not exceed two weeks.

(3) Without unnecessary delay, but no later than eight weeks after the request, if appropriate as clarified under (2), is submitted the public sector body must:

1. make available the whole or, if appropriate, part of the requested documents and/or
2. present a binding contract offer and/or
3. inform the applicant in writing that all or part of his or her request cannot be met, stating the reasons why not and indicating the possibilities for legal redress (§12(1)).

The public sector body must do this through electronic means where possible and appropriate.

(4) If the public sector body bases its negative decision ((3) No 3) on §2(2) No 2, it must include a reference to the legal entity which is the rightholder, where known, or alternatively to the licensor from which the public sector body has obtained the material in question.

(5) In the case of voluminous or complex requests the time limit specified in (3) shall be extended for a further four weeks if the public sector body informs the applicant within three weeks after the request is submitted that more time is required to deal with his or her request.

(6) If the public sector body is late in dealing with the request, it must, on written application from the applicant, make a decision and notify the applicant within eight weeks of receipt of such application or, if it has no decision-making power, it must without undue delay forward the application, including any relevant requests for re-use which require authorisation, to the supervisory administrative authority. The supervisory authority must then take a decision on the matter and give notification with eight weeks of receipt of the application. If the documents requested are later made available and/or a binding licence offer is provided, this shall cancel the obligation on the public sector bodies to take a decision or forward applications to the supervisory authority. The provisions laid down in the second to fourth sentence of §12(2) shall apply to cases brought before the first or second instance supervisory authority.

Legal redress in the event of a negative decision (§11(3), No 3)

§ 12. (1) If the applicant is informed pursuant to §11(3) No 3 that his or her request cannot be met or can only partly be met, the public sector body must take a decision on the application if so requested, provided that it has the power to do so. The applicant must send such an application in writing to the public sector body within two weeks of the date of receiving the negative decision.

(2) Public sector bodies which have no decision-making power must without undue delay forward applications made under (1), including the initial related request and the negative decision, to the supervisory administrative authority. The public sector body shall be party to any cases pertaining to this which come before the first or second instance supervisory authority. Where applicable, the stages of appeal shall be based on the provisions of provincial law which govern the supervisory process. The public sector body has the right to submit a complaint to the Higher Administrative Court and to the Constitutional Court against unlawful decisions taken by the supervisory authority in procedures carried out pursuant to this Provincial Act after having gone through the official stages of appeal.

Legal redress in contracts for use (§11(3), No 2)

§ 13. (1) If the applicant feels that individual provisions of the proposed binding contract offer (§11(3), No 2) fail to comply with the provisions of this Provincial Act, in particular those of the second sentence of §8(1), he or she must inform the public sector body in writing within

the time limit fixed for accepting the contract offer. If the applicant is not offered an amended contract for use within eight weeks, he or she may propose through the appeal or supervisory authorities that individual, precisely defined provisions of the binding contract offer infringe the provisions of this Provincial Act, in particular those laid down in §8(1), No 2. Such an application must be presented to the public sector body which issued the contract offer within a further two weeks, and then submitted without undue delay to the competent appeal or supervisory authority. The provisions laid down in the second to fourth sentence of §12(2) shall apply to cases brought before the first or second instance supervisory authority.

(2) An application made under (1) must, however, contain:

1. the exact title of the public sector body;
2. the exact title of the provisions of the relevant contract offer which are considered to be illegal;
3. the exact title of the legal act which the applicant considers to have been infringed;
4. the grounds on which the claim of illegality is based;
5. a precise request;
6. the information necessary to assess the timeliness of the application.

(3) An application pursuant to paragraph 1 may refer only to those provisions with which the applicant found fault in his or her previous written communication (paragraph 1, first sentence).

(4) The public sector body must take account in its future contract offers (§11(3) line 2) of the decisions taken by the appeal or supervisory authorities as a result of an appeal pursuant to paragraph 1.

(5) If, pursuant to §16(2), the Vienna Independent Administrative Senate, the Public Procurement Review Chamber, the Civil Service Tribunal or the Vienna Regional Land Reform Board are called upon to rule on matters relating to this Provincial Act and if the City of Vienna is provided with a binding contract offer (§11(3) No 2) by one of these administrative authorities, paragraphs 1 to 4 shall be replaced by the following: “If the applicant feels that individual provisions of the proposed binding contract offer fail to comply with the provisions of this Provincial Act, in particular those of the second sentence of §8(1), he or she must inform the appropriate administrative body (first sentence) in writing within the time limit fixed for accepting the contract offer. If the applicant is not then offered an amended contract for use within eight weeks, he or she may request that the contract for use be concluded on his or her own terms. The application may refer only to the provisions which the applicant criticised in his or her previous written communication and must be submitted to the relevant administrative authority (first sentence) within two weeks. The relevant administrative authority (first sentence) must itself decide on the application in the first and last instance and give notification. The case may be referred to the Higher Administrative Court (§16(2)).”

Validity of the General Administrative Procedure Act

§ 14. (1) The General Administrative Procedure Act 1991 (*das Allgemeine Verwaltungsverfahrensgesetz*), BGBl. No 51 as amended by Federal Act BGBl. I No 10/2004 shall apply to the procedures for submitting an appeal provided for in §11(6), §12(1) and (2) and §13(1) to(3) and (5).

(2) §§32 and 33 of the General Administrative Procedure Act 1991, BGBl. No 51 as amended by BGBl. I No 10/2004 shall apply to the calculation of the time limits laid down in this Provincial Act.

Areas of competence

§ 15. (1) The municipal authorities shall carry out the tasks governed by this Provincial Act within their own municipality.

(2) Self-governing bodies (§3 No 2) shall carry out the tasks governed by this Provincial Act within their own areas of competence.

Responsibility within the “City of Vienna” public sector body (§3 No 1)

§ 16. (1) Requests made to the City of Vienna under §11(1) and decisions on ensuing requests made in accordance with §§11(6) and 12(1) shall be initially the responsibility of the Vienna City Council, and any appeals shall be handled by the Appeals Board.

(2) If the requests (§11(1)), and subsequent applications under §§11(6) and 12(1) concern documents to which only the Vienna Independent Administrative Court, the Public Procurement Review Chamber, the Civil Service Tribunal or the Vienna Regional Land Reform Board have access, contrary to paragraph 1 these administrative bodies shall themselves decide in the first and last instances. Appeals against decisions of the Vienna Independent Administrative Court, the Public Procurement Review Chamber, the Civil Service Tribunal or the Vienna Regional Land Reform Board on procedures under this Provincial Act may be referred to the Higher Administrative Court.

Reference to European Union legislation

§ 17. This Provincial Act transposes Directive 2003/98/EC of the re-use of public sector information, OJ L 345 of 31.12.2003, p. 90.

Entry into force

§ 18. This Provincial Act shall enter into force on the day following its publication.

Provincial Governor
Häupl

Head of the Office of the Provincial Government
Theimer