



NEJVYŠŠÍ SPRÁVNÍ SOUD



**Seminar organized by Supreme Administrative Court of the Czech Republic and ACA-Europe**

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**Supreme administrative courts and evolution of the right to publicity, privacy and information.**

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## Free Access to Information

	<u>Source of the right of free access to information</u>	<u>Special law on free access to information</u>	<u>Providing information about salaries of public servants</u>	<u>Time-limits to decide (legally bound subjects)</u>	<u>Private subjects as legally bound subjects</u>	<u>Oversight authority</u>	<u>Judicial review of access to information</u>	<u>Time-limits to decide (courts)</u>	<u>The Constitutional court review</u>
<u>Austria</u>	<b>Constitution</b> (art. 20 sec. 4), <b>Duty to Grant Information Act</b> (regarding the institutions of the Federation and the self-administrating bodies), <b>Fundamental Act on the Duty to Grant Information</b> (a federal law containing principles in this field for the provinces, the municipalities and self-administrating bodies) and <b>nine provincial implementing acts on the duty to grant information</b>	not known	not known	<b>without undue delay</b> , at the latest however <b>within 8 weeks</b> after the receipt of the request for information	not known	none	<b>administrative courts</b> (of the Federation or of the provinces, depending on what kind of authority has issued the contested ruling); a final complaint with the <b>Austrian Supreme Administrative Court</b>	as a rule the administrative court is obliged to decide on complaints <b>without undue delay</b> , however, at the latest <b>within six months</b> after the receipt of the complaint	yes, if the constitutionally guaranteed right is violated
<u>Belgium</u>	<b>Constitution</b> (art. 32); <b>Act on Publicity of the Administration</b>	Act on Free Access to Environmental Information	not known	<b>30 days</b>	not known	<b>Federal Commission of Free Access to Administrative Documents</b>	<b>Council of State</b>	not known	not known if possible against administrative courts' decisions, but there is a possibility to challenge constitutionality of legal provisions concerning free



<b><u>Czech Republic</u></b>	<b>Charter of Fundamental Rights and Freedoms (art. 17); Act on the Free Access to Information</b>	Act on the Freedom of Access to Information about the Environment	yes	<b>within 15 days</b> (can be <b>extended</b> for serious reasons up to <b>10 more days</b> )	those subjects that are enforced to decide upon the rights, legally protected interests or duties of physical and legal persons in public administration (these subjects are bound to provide information only to the extent of their decision making)	none	<b>administrative chamber of the regional court;</b> its decision may be challenge before the <b>Supreme Administrative Court</b>	None	yes, if the constitutionally guaranteed right is violated
<b><u>Denmark</u></b>	-----	-----	-----	-----	-----	-----	-----	-----	-----
<b><u>Estonia</u></b>	<b>Constitution (§ 44); Public Information Act</b>	not known	not known	a request for information shall be dealt with <b>promptly</b> but <b>not later than within 5 working days</b>	legal persons in private law and natural persons if they perform public duties	<b>Data Protection Inspectorate</b> or <b>Estonian Information System's Authority</b> (the latter only in cases related to the establishment, introduction and maintenance of databases and information systems)	<b>administrative court; circuit court; Supreme Court</b> (Administrative Law Chamber)	not known	not known
<b><u>Finland</u></b>	<b>Constitution</b> (section 12 para. 2); <b>Act on the Openness of Government Activities</b>	national legislation guarantees similar rights of access as EU Directives on public access to environmental information	not known	not known	private individuals appointed for the performance of a public task when exercising public power	none	<b>administrative courts</b> (regional and potentially Supreme Administrative Court)	not known	not known
<b><u>France</u></b>	<b>Act No. 78-753 of 17<sup>th</sup> July 1978</b>	Code of Environment; Act No. 2008-696 of 15 <sup>th</sup> July 2008, on Archives	not known	in general <b>1 month</b>	private legal persons charged with public service mission	<b>CADA – Commission of free access to administrative documents</b>	<b>administrative tribunals, administrative courts of appeal, Council of State</b>	time-limit according to general rules (droit commun)	in case of a lawsuit there is a possibility to submit a priority question of

									constitutionality of a legal provision
<b><u>Germany</u></b>	<b>Constitution</b> (art. 5 sec. 1); <b>Freedom of Information Act</b> (at Federation level) and <b>Freedom of Information Acts</b> (at Federated States level)	Environmental Information Act	not known	<b>forthwith but not later than within 1 month)</b>	even a natural or legal person shall be treated as equivalent to an authority where an authority avails itself of such a person in discharging its duties under public law	<b>Federal Commissioner for Data Protection and Freedom of Information</b> (at Federation level and Federated States level)	<b>administrative courts; higher administrative courts</b> (as courts of appeal); <b>Federal Administrative Court</b>	not known	yes, if the constitutionally guaranteed right is violated.
<b><u>Greece</u></b>	Art. 10 (3) of the <b>Constitution</b> ; <b>Act on Administrative Procedure</b>	not known	not known	<b>60 days</b>	not known	<b>no specified authority</b> , but there is a possibility to refer to the Ombudsman	<b>Council of State</b>	not known	not known
<b><u>Hungary</u></b>	<b>Constitution</b> (art. VI); <b>Act on the Right of Informational Self-Determination and on Freedom of Information</b>	not known	not known	not known	not known	<b>National Authority for Data Protection and Freedom of Information</b>	<b>administrative and labour courts; Curia</b> (former Supreme Court)	not known	if the constitutionally guaranteed right is violated
<b><u>Ireland</u></b>	-----	-----	-----	-----	-----	-----	-----	-----	-----
<b><u>Italy</u></b>	<b>Act No. 241/1990</b>	not known	not known	not known	not known	<b>Commission of Access to Administrative Documents</b>	<b>administrative courts</b>	not known	not known
<b><u>Latvia</u></b>	<b>Constitution, Freedom of Information Act</b>	not known	not known	<b>7 - 30 days</b> (depending on complexity or necessity for additional processing of information)	not known	none	<b>administrative courts</b> ; Freedom of Information Act determined two instance procedure ( <b>district court</b> and the <b>Department of Administrative</b>	not known	individuals have no right to submit constitutional complaint against the ruling of the Administrative Court; the Supreme Court

							<b>Cases of the Supreme Court)</b>		stays proceedings and submits to the Constitutional Court if it believes that the legal provision does not comply with the Constitution
<b><u>Lithuania</u></b>	<b>Constitution (art. 25); Act on the Right to Access Information from State and Municipal Institutions; Act on the Provision of the Information to the Public</b>	not known	yes	<b>within 20 working days</b> following the day when the application was received by the institution; if the information is voluminous or complicated, the head of the institution has the right to <b>extend</b> this term for <b>another 20 working days</b>	state and municipal companies, public enterprises the owner or one of the owners of which is the state or a municipality, joint-stock companies and limited liability companies in which the state or a municipality holds more than 50 percent of votes at the general meeting of shareholders, when they provide information about their employees' salaries under Act on the Right to Access Information	there is <b>no administrative authority</b> responsible specifically for free access to information in Lithuania; however, the complaints of this kind may be addressed to an <b>administrative disputes commission</b> (regional or central) which carries out pre-trial investigation of administrative disputes including those related to free access to information	<b>administrative court of first instance; appeal: Supreme Administrative Court of Lithuania</b>	not known	not known
<b><u>Luxembourg</u></b>	<b>no general act on free access to information</b>	<b>regulation of 8<sup>th</sup> June 1979</b> (administrative files)	not known	not known	not known	none	yes (free access to administrative files concerning applicants)	not known	not known
<b><u>Malta</u></b>	-----	-----	-----	-----	-----	-----	-----	-----	-----
<b><u>Netherlands</u></b>	<b>Constitution (art. 110); Wet Openbaarheid</b>	not known	not known	the governmental body has <b>4 weeks</b> to decide whether or	not known	none	<b>court of first instance; Administrative</b>	the court of first instance can give an oral	not known

	<b>van Bestuur; Algemene wet bestuursrecht</b>			not to disclose the information; this period may be <b>extended for another 4 weeks</b> , though for environmental matters, the terms are shorter			<b>Law Division of the Council of State</b>	decision right after the hearing, or a decision in writing <b>within six weeks</b> of the hearing; the Administrative Law Division of the Council of State rules in the case <b>usually within six weeks</b> of the hearing	
<b>Norway</b>	<b>Freedom of Information Act</b>	not known	not known	the public body has to give the applicant an answer <b>within 5 days</b>	not known	none	<b>court of first instance; Court of Appeal; Supreme Court</b> (there are no administrative courts in Norway)	not known	not known
<b>Poland</b>	<b>Costitution (art. 61); Act on Access to Public Information</b>	not known	not known	not known	providing information on the activities of economic or professional unions and other persons or organisational units relating to the field in which they perform the duties of public authorities and manage communal or state property	none	<b>administrative courts; appeal: Supreme Administrative Court</b>	the complaint is examined <b>within 30 days</b> from the receipt of the case file together with the response to the complaint	not known
<b>Portugal</b>	<b>Constitution; Act. no. 67/98; Act no. 6/2007</b> regulates matters of access and re-use of administrative	Act 19/2006 regarding matters of information concerning the environment; the Code of Administrative	not known	not known	not known	<b>Commission for Access to Administrative Documents (CADA)</b>	<b>Administrative and Tax Courts;</b> decision may be appealed to the <b>Central Administrative Courts,</b>	not known	yes, if the constitutionally guaranteed right is violated

	documents	Procedure (right to procedural information); special legislation dealing with access to registry and notary documents, civil and criminal identification documents, documents deposited in historical archives					eventually to the <b>Supreme Administrative Court</b> (question of law)		
<b>Romania</b>	<b>Constitution (art. 31), Act no. 544/2001 on the Free Access to Public Information</b>	not known	not known	not known	not known	none	<b>Tribunal</b> (first instance); recourse shall be decided by the <b>administrative division of regional courts</b>	not known	not known
<b>Slovakia</b>	-----	-----	-----	-----	-----	-----	-----	-----	-----
<b>Slovenia</b>	<b>Constitution (art. 39 sec. 2); Access to Public Information Act; Media Act</b>	not known	yes	<b>within 20 working days</b> from receiving the request; the Information Commissioner can <b>prolong</b> the deadline for the body to decide on the applicant's request but <b>for no longer than 30 days</b>	business entities, which are primarily controlled by the state, local authorities and other legal entities governed by public law	<b>Information Commissioner</b>	<b>administrative court; the administrative department of the Supreme Court</b> (appeals and revisions)	not known	yes, if the constitutionally guaranteed right is violated; the Information Commissioner can also file a request before the Constitutional Court for the review of the constitutionality of a law, regulation, or general act issued for the exercise of public authority
<b>Spain</b>	<b>Act no. 19/2013</b>	Acts: on Electronic Access of Citizen to	not known	<b>1 month</b> , which can be <b>extended to another 1 month</b>	political parties, private entities receiving certain	<b>Council of Transparency and Good</b>	<b>administrative courts</b> (Unipersonal)	not known	the right of access to information is



		Public Services; on Access to Information on Environmental Matters; in local government; special publicity and access to information regime in judicial proceedings			public assistance	<b>Governance</b>	Courts, Provincial Courts); decisions of Provincial Courts can be appealed to the <b>Supreme Court</b>		not regulated as fundamental right; exception: if denial of information affects other fundamental rights
<b><u>Sweden</u></b>	<b>Constitution; Freedom and Press Act; Public Access to Information and Secrecy Act</b>	not known	not known	must be considered "speedily"	not known	none	<b>administrative courts of appeal; Supreme Administrative Court</b> (must be granted leave to appeal)	not known	not known
<b><u>Switzerland</u></b>	<b>Act of 17<sup>th</sup> December 2004, on Transparency Principle in Administration</b>	not known	not known	<b>20 days, can be prolonged</b>	not known	<b>Federal Data Protection and Information Commissioner</b>	<b>Federal Administrative Tribunal; Swiss Federal Tribunal</b>	not known	not known
<b><u>Turkey</u></b>	<b>Constitution (art. 74), Act on the Right to Information</b>	not known	not known	not known	not known	<b>Board of Review of the Access to Information</b>	<b>administrative courts</b>	not known	not known
<b><u>United Kingdom</u></b>	<b>Freedom of Information Act</b>	not known	not known	not known	not known	<b>Information Commissioners Office</b>	to the <b>Information Tribunal</b> ; then to the <b>Court of Appeal</b> ; finally to <b>UK Supreme Court</b> (questions of law)	not known	the UK Supreme Court is called upon to decide on constitutional matters