

## PRACTICAL GUIDE ON THE ACCESS TO INFORMATION OF PUBLIC INTEREST

**THE CONSTITUTIONAL RIGHT OF ACCESS TO INFORMATION OF PUBLIC INTEREST CAME, FROM THEORY, INTO PRACTICE. SINCE DECEMBER 2001, WE HAVE THE RIGHT TO REQUEST THIS KIND OF INFORMATION FROM AUTHORITIES. BUT AUTHORITIES ALSO HAVE THE EXPRESS OBLIGATION TO MAKE IT AVAILABLE FOR US.**

**LET US LEARN HOW TO MAKE USE OF THIS RIGHT.**

THE LEGAL PROVISIONS WE CAN RELY ON

- Law no. 544/2001, on free access to information of public interest, published in the Official Gazette of Romania, Part I, no. 663 of October 23, 2001;
- Methodological norms of applying Law no. 544/2001 on free access to information of public interest, approved by Government Decision no. 123 of February 7, 2002. The norms and the decision have been published in the official Gazette of Romania, Part I, no. 167 of March 8, 2002.

WHAT WE SHOULD KNOW

- **Which information is of public interest**

Any kind of information that refers to or results from the activities of a public institution or authority or of an autonomous administration that uses **public money**.

**Attention:** under its present form, the Law does not cover information concerning the use of public money by *anyone else* than public institutions, public authorities and autonomous administrations (e.g.: trade companies, foundations, etc.).

- **Which restrictions apply to the free access to information of public interest**

1. Part of the classified information, that is only that from the field of national defence, public safety and order, or that concerning consultations of authorities, as well as that regarding the economic and political interests of Romania. (Classified information is regulated by a distinct law, Law no. 182 of April 12, 2002, on the protection of classified information, published in the Official Gazette, Part I, no. 248 of April 12, 2002).

**ATTENTION:** this restriction does not refer to information which favours or cover the breaches of law done by a public authority/institution. This kind of information cannot be considered as classified information and represents information of public interest. **Therefore, the access to this kind of information is free (article 13 of Law no. 544/2001).** Also, **in accordance with article 24 paragraph 5 of Law no. 182/2002 on classified information**, it is forbidden to classify information, data or documents as state secrecy, for the purpose of covering breaches of law, administrative errors, the limiting of access to information of public interest, the illegal restriction on one's exercise of certain rights or the prejudicing of some other legitimate interests.

**Possible reactions:**

a) If such information has, nevertheless, been classified, any person has the right to initiate a procedure for the information to be declassified (a procedure established in article 20 of Law no. 182/2002).

b) If the release of such information has been denied on the ground that it is classified, as part of **the procedure of contesting the denial**, one must also distinctly request for the information to be declassified, according to Law no. 182/2002.

2. Information regarding commercial or financial activities, **but only if their publicity affects the principle of fair competition**, according to the law, (the fight against unfair competition is provided for by Law no. 11/1991, published in the Official Gazette, Part I, no. 24 of January 30, 1991, amended by Law no. 298/2001, published in the Official Gazette, Part I, no. 313 of June 12, 2001).

3. Information on personal data, according to law (Law no. 677/2001, published in the Official Gazette, Part I, no. 790 of December 12, 2001, refers to the protection of individuals with regard to automatic processing of personal data and to the free circulation of these data).

**ATTENTION:** this restriction does not cover information referring to personal data on a citizen capacity of exercising a public function. Therefore, the access to such information is free (**article 14 paragraph 1 of Law no. 544/2001**).

4. Information regarding the proceedings during criminal or disciplinary investigation, if the result of the investigation is endangered, confidential sources are uncovered or a person's life, body integrity or health are endangered during or after the conclusion of the investigation.

5. Information concerning the judicial proceedings, if the publicity of these impairs the right to a fair trial or to a legitimate interest of any of the parties involved in the trial.

6. Information of which publishing prejudices the measures for protecting the young people.

- **Who may request information of public interest**

Any person, legal or natural, Romanian or foreign, may request information of public interest (art. 20 of the Norms). **The applicant should not justify, in any way, his or her request.** Information of public interest may even be requested only out of "mere curiosity", as the access to such information is free, which implies its being at everyone's disposal.

- **How information of public interest can be obtained**

Information is released ex officio (without any necessary request) or upon the verbal or written request of the applicant. The access to information of public interest is free of charge. Still, the applicant should bear the costs of copying the documents that he requested.

- **Which information is released ex officio by public institutions/authorities and autonomous administrations that use public money**

Information regarding:

- the organizing and functioning of the public authority/institution;
- identification data (name, address, telephone numbers, fax, electronic addresses);

- organizational structure;
- financial sources, budget, financial statements;
- own programmes and strategies;
- the lists with the documents of public interest and the categories of created and/or administrated documents;
- the ways of appeal available for the applicant.

**- How the *ex officio* release is achieved**

- by publishing bulletins/reports;
- by organizing an information - documentation department at the headquarters of each public authority/ institution, where the applicant may study the documents;
- by displaying the information at the headquarters of each public authority/institution, or by publishing of the respective information in the Official Gazette or in the mass media, in own publications, as well as on the own Internet page.

Displaying of information at the headquarters of the public authority/institution is **the minimum compulsory modality** of imparting information of public interest released *ex officio*, for all public authorities and institutions (art. 11 of the Norms).

**The *ex officio* released information should be presented in an *accessible and concise* form, which should facilitate the contact of interested individuals with the public authority/institution (art. 10 of the Norms). It results that if information is not presented in an accessible form, the obligation of releasing information *ex officio* is not accomplished.**

**HOW WE PROCEED TO OBTAIN INFORMATION OF PUBLIC INTEREST**

**A. DIRECTLY, AT THE HEADQUARTERS OF THE PUBLIC INSTITUTION OR AUTONOMOUS ADMINISTRATION**

Here, there should be an information and public relation department/office or, at least, a person specially assigned to this purpose. **All documents released *ex officio* should be at the disposal of the applicant.**

**Example:** the applicant may request information regarding financial aspects (financial sources, budget, financial statements) and organizational structure (departments, commissions, number of employees, etc.).

**Besides the *ex officio* information, we can verbally request any kind of information of public interest** (for example: what kind of sponsorship the public institution/authority or autonomous administration granted and to whom; what kind of measures there have been taken against the X company which repaired the electric network in the Y area and left uncovered pits/ditches behind; how much money there have been collected for the health care fund and how

much of it **effectively** reached hospitals or family doctors etc.). The answer is given on the spot, following a timetable which has to be displayed at the headquarters of the public institution/authority. If the requested information is not immediately available, the applicant is advised to request it in writing.

**Attention:** The present tendency is to **deny** requests concerning financial aspects, under the pretext, among other things, that the categories that fall under the incidence of the Law on classified information are not clarified yet.

**Possible reaction:** we resort to actions in court, according to this law.

B. WRITTEN REQUEST (preferably: mailed with acknowledgement or deposited at the headquarters of the public institution/authority or autonomous administration, bearing a registration number).

The written request may be on paper or electronic support (e-mail). It should contain: the name and residence of the public institution/authority; the name, surname and signature of the applicant, as well as the address to which the answer should be received; which is the requested information and, if copies of documents are requested (indicating them as accurate as possible), the availability to pay for the costs of copying services.

**Attention: the written request may refer to any kind of information of public interest, including that which is released *ex officio*.** In the contrary case, one's right to request in writing for any kind of information of public interest, provided for in article 6 of Law no. 544/2001, would be unjustifiably impaired. In this respect, there are also court decisions (the civil sentence no. 577/F of June 27, 2002, held by the Bucharest Tribunal in the file no. 782/2002), the court holding that the obligation of the public institutions/authorities to release *ex officio* certain information of public interest does not exclude their obligation to also communicate the information **in writing**, upon request of the applicant, according to article 6 of Law no. 544/2001.

If the request is not of the addressed to public institution/authority's competence, this one should not return it to the applicant, but, within 5 days since receiving it, should send it to the competent institution/authority and inform the applicant on that (art. 24 of the Norms).

#### **Time limits for communicating answers:**

The law provides for communicating answers time limits of: 5 days, 10 days and 30 days.

- Within 5 days since receiving the written request, the denial of releasing information and its grounds is sent in writing;
- Within 10 days since the request was registered, the requested information or, in case complex information was requested, the acknowledgement that information will be released in writing in 30 days since registration, is communicated in writing;
- Within 30 days since registration, the complex information, whose identification and release takes longer than 10 days, is sent in writing.

Non-observance of legal time limits for written acknowledgement of the denial or for communicating information in writing **amounts to unjustified denial** of solving the request and, implicitly, of applying the Law on free access to information of public interest.

Even if the denial or information is communicated eventually, **but after the legal time limits expired**, the one accountable for the delay cannot be exempted from disciplinary responsibility.

Neither will the public institution/authority be exempted from the obligation to pay for non-pecuniary and/or pecuniary damages the applicant incurred as a result of the breach of law.

**If we did not obtain the information we want either by verbal request (at the headquarters of the institution/authority or autonomous administration) or by written request, WE STILL HAVE**

### C. WAYS OF APPEAL

For the unjustified denial, explicit or tacit, of communicating information or for any other breach of one's right of free access to information of public interest (communicating information in an inaccessible, unclear, dim, incomplete form, communicating information or denial tardily, the non-acknowledgement of extending the time limit from 10 to 30 days, etc.) the applicant has **two ways of appeal** at his disposal: **the administrative complaint and the court complaint.**

#### 1. The administrative complaint

- it is addressed to the manager of the public authority/institution which the employee who refused to apply the provisions of the Law on information of public interest works in;
- it is filed within 30 days since the applicant for information took notice of the right breaching.

**Attention:** if, within 10 days since registration (the usual time limit for communicating information), the applicant does not receive either any answer to the initial request for information or the acknowledgement that the time limit has been extended from 10 to 30 days, the administrative complaint should be filed within 30 days since **the first time limit of 10 days** expired. That is because **the non-communicating in due time** amounts to unjustified denial of solving the request and, implicitly, of applying the law.

Of course, if, within 10 days since registration, the applicant receives the acknowledgement that the time limit has been extended to 30 days, the time limit for filing the administrative complaint starts to flow after the time limit of 30 days expired.

- The administrative complaint will contain, besides the mentions from the initial application for information, an exposition on the reasons for which the applicant considers that the law has been violated.

**Comments:** the reasons can be of a general nature (the requested information is of interest for a community; the requested information, if released, cannot endanger national security, public order, etc.) or of a punctual nature (the applicant discovers that the X autonomous administration, that refuses to release any kind of information, for the reason that it would not make use of public money and, therefore, it would not fall under Law no. 544, has received certain funds from the state budget) or of both.

- **The applicant receives an answer to his administrative complaint only if it is accepted.** The answer is in writing and it is communicated within 15 days since the date of submitting the complaint and it should contain both the requested information, and the disciplinary measures taken against the one responsible for breaching Law no. 544.

- **If the complaint is rejected, the applicant receives no answer.**

**Comment:** this provision is in breach of article 47 paragraph 4 of the Constitution, which stipulates that the public authorities have the obligation to answer requests, no matter if they are accepted or rejected. Therefore, the solution should be communicated in all cases, not only when the complaint is accepted.

## 2. Court complaint

**Comment:** Law no. 544/2001 does not provide **that the court complaint should be compulsorily preceded by an administrative complaint**, as Law no. 29/1990 on administrative contentious matters does. Yet, such a condition is provided for in article 36 of the Norms, which, thus, adds to Law no. 544/2001. Until a legislative intervention would clarify this aspect, there exists the risk of exposing to contradictory solutions, depending on the view of each court.

**Recommendation:** the applicant should file the administrative complaint.

**Attention:** in the event that the applicant wishes to complain to a court, he should do it within 30 days **since the time limits** (provided for in article 7 of Law no. 544/2001) **for communicating the denial or the information expired**, irrespective of filing or not an administrative complaint.

- **The complaint is exempted from court fees.**

- In his complain, **the applicant must ask the court to ascertain that the requested information is of public interest and to obligate the public authority/institution to communicate the requested information in writing.** Also, there must be also requested that **the instance court should settle a term within which the information should be communicated to the applicant.** The applicant may also request the court to compel the public authority/institution to pay certain amounts of money as non-pecuniary and/or pecuniary damages. The applicant must indicate the value of damages per each category, the nature of damages, how damages were incurred and how they can be proved.

- The complaint should be addresses **only to a tribunal**, as first instance court. This is a special jurisdiction *materiae*, expressly stipulated by Law no. 544/2001, which departs from the jurisdiction *materiae* of administrative contentious matters courts.

- The territorial jurisdiction is alternative, being at the choice of the applicant: the tribunal in whose territorial area his domicile is or the tribunal in whose territorial area the public authority/institution's headquarters are.

- The complaint is judged by the administrative contentious matters section of the tribunal.

**Attention:** This does not mean that all the rules and principles of the administrative contentious matters law are applied. Law no. 544/2001 has its own characteristics and rules that differ and take precedence over the law on administrative contentious matters. One difference has already been mentioned and it regards the jurisdiction *materiae*. Other differences regard the compulsory/facultative nature of the administrative complaint, the time limits, court fees etc. An important difference refers to the issue of proving the interest under debate. In the case of Law no. 544/2001, only "the mere curiosity" is enough for obtaining information of public interest, which has to be at everyone's disposal; **the applicant should not have the obligation prove a direct, personal interest in connection with that information.**

- The complaint is judged under speedy proceedings. This bounds the court to set shorter than normal time limits, to allow postponements with grater restraint, to judge also during the judiciary's holiday, to expeditiously draw up judgements.

- The tribunal's judgement is subject to appeal – *recurs* – **(also exempted from court fees)**, which is judged by an appeal court. The time limit for lodging the appeal (*recurs*) is the normal one, of 15 days since communicating the decision. Within the same time limit, the appeal (*recurs*) has to be also grounded.

**- The appeal (*recurs*) is addressed to a court of appeal, but it is lodged at the tribunal** (before the court whose decision is appealed), under the sanction of nullity.

- The appeal (*recurs*) is not limited to the grounds provided for by article 304 of the Civil Procedure Code, but it has a general character. This is due to the fact that article 304<sup>1</sup> of the Civil Procedure Code provides that any kind of objection against the tribunal's decision can be taken under discussion during the appeal (*recurs*).

- The decision of the appeal court is final and irrevocable. It can be appealed only by way of exceptional appeals: *contestatie in anulare*, *revizuire* or *recurs in anulare*. **The public institutions/authorities and the autonomous administrations have the obligation to enforce the decision.**

#### **IN BRIEF**

**1. Any person, at his or her choice, can request, verbally or in writing, information of public interest. The request does not have to be grounded.**

**2. In the case of a denial or unjustified delay, an administrative complaint should be filed.**

**3. If the administrative complaint remains without any kind of effect, a complaint should be addressed to a tribunal.**

**4. The tribunal's decision, can be appealed before a court of appeal.**

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