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Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act)

Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act) of 5 September 2005 (Federal Law Gazette [BGBl.] Part I, p. 2722)

Section 1

Underlying principles

- (1) Everyone is entitled to official information from the authorities of the Federal Government in accordance with the provisions of this Act. This Act shall apply to other Federal bodies and institutions insofar as they discharge administrative tasks under public law. For the purposes of these provisions, 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.
- (2) The authority may furnish information, grant access to files or provide information in any other manner. Where an applicant requests a certain form of access to information, the information may only be provided by other means for good cause. In particular, substantially higher administrative expenditure shall constitute good cause.
- (3) Provisions in other legislation on access to official information shall take precedence, with the exception of Section 29 of the Administrative Procedure Act (VwVfG) and Section 25 of Book Ten of the Social Code.

Section 2

Definitions

For the purposes of this Act,

1. official information shall be defined as every record serving official purposes, irrespective of the mode of storage. This shall not include drafts and notes which are not intended to form part of a file;
2. a third person shall be defined as anyone on whom personal data or other information are held.

Section 3

Protection of special public interests

The entitlement to access to information shall not apply

1. where disclosure of the information may have detrimental effects on
 - a) international relations,
 - b) military and other security-critical interests of the Federal Armed Forces,
 - c) internal or external security interests,
 - d) monitoring or supervisory tasks of the financial, competition and regulatory authorities,
 - e) matters of external financial control,
 - f) measures to prevent illicit foreign trade,
 - g) the course of current judicial proceedings, a person's entitlement to a fair trial or the pursuit of investigations into criminal, administrative or disciplinary offences,
2. where disclosure of the information may endanger public safety,
3. where and for as long as
 - a) the necessary confidentiality of international negotiations or
 - b) consultations between authorities are compromised,
4. where the information is subject to an obligation to observe secrecy or confidentiality by virtue of a statutory regulation or the general administrative regulation on the material and organisational protection of classified information, or where the information is subject to professional or special official secrecy,
5. with regard to information obtained on a temporary basis from another public body which is not intended to form part of the authority's own files,
6. where disclosure of the information would be capable of compromising fiscal interests of the Federal Government in trade and commerce or economic interests of the social insurance institutions,
7. in the case of information obtained or transferred in confidence, where the third party's interest in confidential treatment still applies at the time of the application for access to the information,
8. with regard to the intelligence services and the authorities and other public bodies of the Federal Government, where these perform duties pursuant to Section 10, no. 3 of the Security Clearance Check Act (SÜG).

Section 4

Protection of the official decisionmaking process

(1) Applications for access to information should be rejected for drafts relating to rulings and studies and decisions relating directly to the preparation of rulings, insofar as and for as long as premature disclosure of the information would obstruct the success of the ruling or impending official measures. Routine results of the taking and hearing of evidence and expert opinions or statements from third parties shall not be deemed to relate directly to the preparation of rulings pursuant to sentence 1.

(2) The applicant should be notified of the conclusion of the proceedings concerned.

Section 5

Protection of personal data

(1) Access to personal data may only be granted where the applicant's interest in obtaining the information outweighs the third party's interests warranting exclusion of access to the information or where the third party has provided his or her consent. Special types of personal data within the meaning of Section 3 (9) of the Federal Data Protection Act (BDSG) may only be transferred subject to the express consent of the third party concerned.

(2) The applicant's interest in accessing information shall not predominate in the case of information from records relating to the third party's service or official capacity or a mandate held by the third party or in the case of information which is subject to professional or official secrecy.

(3) The applicant's interest in accessing information shall generally outweigh the third party's interests warranting exclusion of access to the information where the information is limited to the third party's name, title, university degree, designation of profession and function, official address and official telecommunications number and the third party has submitted a statement in proceedings in the capacity of a consultant or expert or in a comparable capacity.

(4) Names, titles, university degrees, designations of professions and functions, official addresses and official telecommunications numbers of desk officers shall not be excluded from the scope of access to information where they are an expression and consequence of official activities and no exceptional circumstances apply.

Section 6

Protection of intellectual property and business or trade secrets

No entitlement to access to information shall apply where such access compromises the protection of intellectual property. Access to business or trade secrets may only be granted subject to the data subject's consent.

Section 7

Application and procedure

(1) The authority which is authorised to dispose of the requested information decides on the application for access to information. In the case of Section 1 (1), sentence 3 the application is to be filed with the authority which avails itself of the natural or legal person under private law in discharging its duties under public law. Pertinent reasons must be stated for applications concerning third parties within the meaning of Section 5 (1) and (2) or Section 6. In the case of uniform applications from more than 50 persons, Sections 17 to 19 of the Administrative Procedure Act shall apply mutatis mutandis.

(2) Where an entitlement to partial access to information applies, the appurtenant application is to be granted to the extent to which information can be accessed without revealing information which is subject to confidentiality or without unreasonable administrative expenditure. The same shall apply where the applicant agrees to information concerning the interests of third parties being blanked out.

(3) Information may be furnished verbally, in writing or in electronic form. The authority is not obliged to verify that the contents of the information are correct.

(4) When examining official information, the applicant may take notes or arrange to have photocopies and print-outs produced. Section 6, sentence 1 shall remain unaffected.

(5) The information is to be made accessible to the applicant forthwith, with due regard to his or her interests. Access to the information should be provided within one month. Section 8 shall remain unaffected

Section 8

Procedure when third parties are involved

(1) The authority shall grant a third party whose interests are affected by the application for access to information opportunity to submit a written statement within one month when there are indications that the said third party may have an interest warranting exclusion of access to the information.

(2) The decision pursuant to Section 7 (1), sentence 1 shall be provided in writing and shall also be notified to the third party. The information may only be accessed when the decision

is final and absolute in relation to the third party or if immediate enforcement has been ordered and a period of two weeks has elapsed since notifying the third party of the order. Section 9 (4) shall apply mutatis mutandis.

Section 9

Rejection of the application: Legal remedies

- (1) Notification of a ruling rejecting the application in part or in its entirety is to be provided within the period stipulated in Section 7 (5), sentence 2.
- (2) In cases in which the authority rejects the application in part or in its entirety, it is to provide notification as to whether and when partial or full access to the information is likely to be possible at a later juncture.
- (3) The application may be rejected where the applicant is already in possession of the requested information or can reasonably be expected to obtain the information from generally accessible sources.
- (4) It is permissible to challenge the decision to reject the application by lodging an administrative appeal or bringing an action to compel performance of the requested administrative act.

Administrative appeal proceedings pursuant to the provisions of Part 8 of the Code of Administrative Court Procedure (VwGO) are also to be carried out when the decision has been reached by a supreme federal authority.

Section 10

Fees and expenses

- (1) Fees and expenses shall be charged for official acts pursuant to this Act. This shall not apply to the furnishing of basic items of information.
- (2) With due regard to the administrative expenditure involved, the fees shall be calculated such as to ensure that access to information pursuant to Section 1 can be claimed effectively.
- (3) The Federal Ministry of the Interior is authorised to assess the facts and circumstances determining the commensurate fee and to fix the scales of fees for official acts pursuant to this Act by means of statutory instruments, without the approval of the Bundesrat. Section 15 (2) of the Administrative Costs Act (VwKG) shall not be applicable.

Section 11

Obligations to publish information

- (1) The authorities should keep directories identifying the available information resources and the purposes of the collected information.
- (2) Organisational and filing plans without any reference to personal data shall be made generally accessible in accordance with the provisions of this Act.
- (3) The authorities should make the plans and directories stated in sub-sections 1 and 2 and other appropriate information generally accessible in electronic form.

Section 12

Federal Commissioner for Freedom of Information

- (1) Anyone considering their right to access to information pursuant to this Act to have been violated may appeal to the Federal Commissioner for Freedom of Information.
- (2) The function of Federal Commissioner for Freedom of Information shall be performed by the Federal Commissioner for Data Protection.
- (3) The provisions of the Federal Data Protection Act on the monitoring tasks of the Federal Commissioner for Data Protection (Section 24 (1) and (3) to (5)), on complaints (Section 25 (1), sentence 1, nos. 1 and 4, sentence 2 and sub-sections 2 and 3) and on further tasks pursuant to Section 26 (1) to (3) shall apply mutatis mutandis.

Section 13

Amendments to other regulations

- (1) The Federal Data Protection Act, as promulgated on 14 January 2003 (Federal Law Gazette I, p. 66), shall be amended as follows:

In the information in the table of contents regarding Chapter III in Part II and Sections 21 to 26 and in Section 4c (2), sentence 2, Section 4d (1), (6), sentence 3, Section 6 (2), sentence 4, Section 10 (3), sentence 1, Section 19 (5), sentence 2, Section 6, sentence 1, in the title of Chapter III in Part II, in Sections 21 to 26, in Section 42 (1), sentence 1, 2nd clause, Section 4, sentence 3 and Section 44 (2), sentence 2, the words “for Data Protection” are to be replaced in each instance by the words “for Data Protection and Freedom of Information”.

- (2) The following sentence is to be added to Section 5 (4) of the Federal Records Office Act (BArchG) of 6 January 1988 (Federal Law Gazette I, p. 62), most recently amended by the Act of 5 June 2002 (Federal Law Gazette I, p. 1782):

“The same shall apply to archival materials, where access to the information was available in accordance with the Freedom of Information Act (IFG) prior to transfer to the Federal archives or the archives of the legislative bodies.”

Section 14

Reporting and evaluation

The Federal Government shall report to the German Bundestag on application of this Act two years prior to its expiry. The German Bundestag shall evaluate the Act on a scientific basis one year prior to its expiry.

Section 15

Entry into force

This Act shall enter into force on 1 January 2006.