

STUDY 2022

Trends in access to public sector information

Summary

The Future of Data Freedom research stream

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Summary

This research was divided into three stages.

First stage: legal environment

In the first stage of the research key changes in the field of Estonian public information laws were analysed.

The right of access to information held by the State is regulated by the Public Information Act, which was adopted in 2000 and until this day it has been amended 39 times. The amendments have been the result of national i.e., State level developments, but also due to European Union regulations. The right of access to information has been affected the most by Open Data Directive (EU) 2019/1024 and the General Data Protection Regulation (EU) 2016/679.

The first stage of the research also examined the impact of case law on access to public information. The domestic and European case-law has clarified to which information and to what extent access may be granted, who has the right to request information, has explained the interaction between restrictions and permitting grounds provided in the law. Case law has also clarified the procedure for requesting/issuing data and stressed that the public interest and the right to information must be considered while weighing upon access requests.

Of the planned future changes, access to public information will be most affected by the European Commission Implementing Regulation (established on the basis of Directive (EU) 2019/1024 of the European Parliament and of the Council).

Problematic issues. The research identified three key problems related to the regulation of public information. Firstly, the controversial role of the Estonian Data Protection Inspectorate in carrying out supervision of State information holders, and at the same time monitoring compliance with personal data protection. Secondly, the wording of Public Information Act encourages the frivolous imposition of restrictions on access, since the wording of the Law emphasises only the balancing of the rights and freedoms of the data subject and not of those requesting access. Thirdly, attention has also been drawn to the question of the balance of safeguards implemented by the State to protect personal data as too restricting to the right of access to information.

Second stage: interviews were conducted for practical viewpoint

As part of the second stage of the research, 14 interviews were conducted to answer questions regarding implementation practice of the laws governing the use of public information. It emerged from the interviews that not all holders of public information have a set of rules in place to give access to public information. The misunderstandings in the field of public information are also caused by terminology. Representatives of the public and private sector both referred to ambiguity of the regulation. Interviewees pointed out that it is possible for the State to create much greater value with the information available and created by the State. As an example, targeted /need-based benefits can be provided, e.g., by providing child support to the persons most in need.

Third stage: comparison to other jurisdictions – Finland and Lithuania

During the third stage of the research, the availability of public information in Estonia were compared with Finland and Lithuania. Concerning Finland, questions in relation to the regulation of public information were answered by members of the team of Jarkko Levasma, information manager (CIO) of the government of the Republic of Finland, and in relation to Lithuania, answers were provided by attorneys from TRINITI JUREX law firm.

Similarly to Estonia, the right of access to public information in Finland is also regulated at the constitutional level. Both Lithuania and Finland have adopted laws providing restrictions on access to public information. In Finland, this is the Law on the Openness of Government Activities Act (621/1999) and in Lithuania the Law on Right of Access of Information and Re-use Data.

Finland and Lithuania do not have a separate state authority under the supervision of which are the questions concerning accessibility of public information.

Lithuanian experts consider that it possible that national data holders are not necessarily motivated in opening all the data they could and are allowed to open, because of their strong financial interest in keeping the data to themselves.

The representatives of both Lithuania and Finland pointed out that the EU's Open Data Directive (EU) 2019/1024 will affect the accessibility of data in the direction of openness.



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