

Recommendation No. R (81) 19 on the access to information held by public authorities¹

*(Adopted by the Committee of Ministers on 25 November 1981
at the 340th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Having regard to Assembly Recommendation 854 on access by the public to government records and freedom of information;

Considering the importance for the public in a democratic society of adequate information on public issues;

Considering that access to information by the public is likely to strengthen confidence of the public in the administration;

Considering therefore that the utmost endeavour should be made to ensure the fullest possible availability to the public of information held by public authorities,

Recommends the governments of member states to be guided in their law and practice by the principles appended to this recommendation.

Appendix to Recommendation No. R (81) 19

The following principles apply to natural and legal persons. In the implementation of these principles, regard shall duly be had to the requirements of good and efficient administration. Where such requirements make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavour should nevertheless be made to achieve the highest possible degree of access to information.

1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Italy and Luxembourg reserved the right of their governments to comply with it or not.

I Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.

II Effective and appropriate means shall be provided to ensure access to information.

III Access to information shall not be refused on the ground that the requesting person has not a specific interest in the matter.

IV Access to information shall be provided on the basis of equality.

V The foregoing principles shall apply subject only to such limitations and restrictions as are necessary in a democratic society for the protection of legitimate public interests (such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence), and for the protection of privacy and other legitimate private interests, having, however, due regard to the specific interest of an individual in information held by the public authorities which concerns him personally.

VI Any request for information shall be decided upon within a reasonable time.

VII A public authority refusing access to information shall give the reasons on which the refusal is based, according to law or practice.

VIII Any refusal of information shall be subject to review on request.

Explanatory report

Introduction

1. It is generally recognised that a democratic system can best function effectively when the public is fully informed. Moreover, because of social and technological developments, modern life has become so complex that public authorities often possess large quantities of records and information of general interest and importance. To ensure adequate participation of all in public life, it is necessary that the public should, subject to unavoidable exceptions and limitations, have access to information held by public authorities at all levels.

2. The everyday life of the individual is profoundly affected by the activities of public authorities. In order to protect the rights of the individual it is most important that he should be aware of the information held by public authorities – in particular information concerning himself or his interests – and that access to information should be on the basis of equality.

3. It should be mentioned that access to information by the public is also in the interest of the public authorities themselves, because it can help to establish a closer relationship between the administration and the individual, and is thus likely to strengthen the confidence of the public in the administration.

4. Having regard to the importance of these general considerations, a colloquy was held on "Freedom of information and the duty for the public authorities to make available information". This colloquy was organised by the Council of Europe in Graz, from 21-23 September 1976, in collaboration with the Faculty of Law of the University of Graz. The conclusions of this colloquy were considered by the Steering Committee for Human Rights at its 3rd meeting (8-12 May 1978) and it was decided to set up a committee of experts to study the suggestions put forward at the colloquy. That committee proposed to undertake the drafting of a recommendation to member states on the matter. Before a decision was taken on that proposal, the Parliamentary Assembly of the Council of Europe adopted, on 1 February 1979, Recommendation 854 (1979) on access by the public to government records and freedom of information, recommending that the Committee of Ministers should:

"invite member states which have not yet done so to introduce a system of freedom of information, that is, access to government files, comprising the right to seek and receive information from government agencies and departments, the right to inspect and correct personal files, the right to privacy, and the right to rapid action before the courts in these matters".

5. Recommendation 854 (1979) was forwarded by the Committee of Ministers to the Steering Committee for Human Rights for consideration in May 1979.

6. By Decision No. CDDH/9/161179 of 16 November 1979, the Steering Committee for Human Rights instructed the Committee of Experts on public authorities and access to information "to continue its study of the question of access to government files, including the rights to seek and receive information from government agencies and departments and taking into account the right to privacy and the right to rapid action before the courts in these matters, with a view to drafting an appropriate recommendation to governments of member states".

The Committee of Experts on public authorities and access to information was instructed not to deal with the question of "the right to inspect and correct personal files" as mentioned in paragraph 13 (a) of Recommendation 854 (1979) of the Parliamentary Assembly of the Council of Europe. It was the opinion of the Steering Committee that

this right raised important problems concerning the protection of the individual against the acts of the administration and should be dealt with separately.

7. A draft recommendation on access to information held by public authorities was prepared by the Committee of Experts on public authorities and access to information in the course of two meetings held in 1980 and examined by the Steering Committee for Human Rights at its 9th meeting (4-8 May 1981). The text was submitted to the Committee of Ministers and adopted on 25 November 1981 [at the 340th meeting of the Ministers' Deputies].

General considerations

8. The committee of experts has drawn up a recommendation containing, in an appendix, eight general principles on access to information held by public authorities by which the governments of member states are recommended to be guided in their law and practice. The term "principles" has been used in order to leave member states as much freedom as possible in choosing the means for ensuring that administrations will conform in substance with the principles set out in the appendix to the recommendation.

These principles should be understood as indicating a general standard and not as preventing a member state from recognising additional or more extensive rights and safeguards for the provision of access to information or from extending the scope of their application. Likewise, nothing in the recommendation should be interpreted as implying the limitations of any rights or safeguards in relation to provisions on access to information which may already be recognised by a member state.

9. An introductory note to the principles makes it clear that they are applicable to both natural and legal persons, since both categories have a similar interest in having access to information.

10. Furthermore, the introductory note contains a general provision which applies to all of the principles. It aims to ensure that the principles are implemented in a way which is compatible with the requirements of good and efficient administration. In order to render the application of the principles more flexible, a clause has been inserted allowing for the possibility of modification or non-application of certain principles in particular cases or in specific areas of public administration whilst emphasising the desirability nevertheless of achieving the highest possible degree of access to information.

Comments on the appendix

Principle I

11. Principle I sets out the main object of the recommendation, that is, the right to obtain information, even where the interested person is not a party in an administrative procedure. The protection of the citizen in such a procedure is the object of Resolution (77) 31 on the protection of the individual in relation to the acts of the administration, adopted by the Committee of Ministers of the Council of Europe on 28 September 1977. This general principle applies to persons having a direct relationship with the public authorities, as indicated by the concept of jurisdiction.

12. The term “public authority” is understood to cover all administrative authorities at whatever level. The scope of application of the recommendation will not extend however to legislative bodies and judicial authorities.

Principle II

13. There can be different systems for ensuring access to information. These systems depend on the structure and practice of each administration. Principle II, therefore, does not intend to recommend any particular system for providing access to information. The important point is that appropriate and effective means shall be provided for obtaining the information required.

14. Accordingly, the choice between existing possibilities for making information available is left to each member state. It is a matter of decision whether the means adopted should be a law, a formal code of practice, special rules, or some other means.

15. The means of obtaining information may include the inspection of records, the provision of written or oral answers or the supply of copies. No preference need be given to any particular means but it should be appropriate and effective, having regard to the given circumstances and the nature of the information.

Principle III

16. The right of access to information is aimed at helping the public to be fully informed about the issues of public life. For this purpose the supply of information should not depend on the establishment of a specific interest in the information.

Principle IV

17. This principle is essentially a non-discrimination clause. It is intended to ensure that, subject to the provisions of Principle V, information will be given on the same basis and to the same extent to everyone who seeks it.