

# WHY does the Association of Leaders of Local Civic Groups give opinion on re-use of public sector information?

We are a watchdog organization, acting for the protection of the right to information in Poland.

This right is guaranteed in Article 61 of the Polish Constitution of 1997. The procedures regulating access to public information are specified in the Act on Access to Public Information of 2001. The Act was amended in 2011 to include provisions concerning re-use of public information.

Our Association monitored introduction of the provisions pertaining to re-use of public information since November 2008. At that time the Ministry of the Interior and Administration announced its intention to work on amendments aimed at introduction of Directive 2003/98/EC into the Polish legal system.<sup>1</sup> In 2011 when the changes actually began, we expressed our critical opinion on the suggested solutions. This opinion was based on experience resulting from our counselling activity and frequent cases of litigation, as well as from permanent monitoring of the implementation of the Act by public institutions.

## *We have expressed our opinion about re-use of public information on numerous occasions:*

- >>> In August 2011 we presented the opinion on amendments to the Act in the Sejm - the Polish Parliament (practically no changes were accepted due to political circumstances).<sup>2</sup>
- >>> In November 2011 and in July 2012 we expressed our comments on executive regulations to the Act, pertaining to the application form for re-use of public sector information<sup>3</sup> and establishing the central repository of public information.<sup>4</sup>
- >>> In February 2012 we consulted the position of the Polish government on changes in PSI Directive.<sup>5</sup>
- >>> During the current preliminary discussions about next amendments to the Act on Access to Public Information, we presented our position (advocacy paper) and specified what must be changed in the provisions pertaining to re-use of public information.<sup>6</sup>

As a civic organization, we participate also in crucial legal cases concerning re-use of public information.

<sup>1</sup> History of the amendments since 2008 is available at [http://informacjapubliczna.org.pl/18,nowelizacja\\_ustawv.html](http://informacjapubliczna.org.pl/18,nowelizacja_ustawv.html)

<sup>2</sup> [http://informacjapubliczna.org.pl/wwwdane/files/opinie/uuwagi\\_nowelizacja\\_2170.pdf](http://informacjapubliczna.org.pl/wwwdane/files/opinie/uuwagi_nowelizacja_2170.pdf)

<sup>3</sup> [http://informacjapubliczna.org.pl/wwwdane/files/sligo\\_mswia\\_wzor\\_wniosku\\_fax\\_zbev.pdf](http://informacjapubliczna.org.pl/wwwdane/files/sligo_mswia_wzor_wniosku_fax_zbev.pdf)

<sup>4</sup> [http://informacjapubliczna.org.pl/wwwdane/files/opinia\\_rozporzadzenie\\_opgt.pdf](http://informacjapubliczna.org.pl/wwwdane/files/opinia_rozporzadzenie_opgt.pdf)

<sup>5</sup> [http://informacjapubliczna.org.pl/wwwdane/files/opinia\\_nowela\\_dvrektvuv\\_sligo\\_6vqv.pdf](http://informacjapubliczna.org.pl/wwwdane/files/opinia_nowela_dvrektvuv_sligo_6vqv.pdf)

<sup>6</sup> [http://informacjapubliczna.org.pl/18,763,postulatv\\_sligo\\_dotyczace\\_nowelizowanej\\_ustawv\\_o\\_dostepie\\_do\\_informacji\\_publicznej.html](http://informacjapubliczna.org.pl/18,763,postulatv_sligo_dotyczace_nowelizowanej_ustawv_o_dostepie_do_informacji_publicznej.html)

## Comments of the Association of Leaders of Local Civic Groups on provisions pertaining to re-use of public information, **submitted during the legislative process**

1. We were concerned that the **lack of differentiation between dissemination and re-use of public sector information** would result in obliged bodies' arbitrary interpretation of the purpose of requests submitted by the requesters. This would contribute to limiting the political right by the the economic right. Specifically, citizens and journalists would be required to initiate a complex procedure for re-use of public sector information (special application form, longer time limit for processing requests for re-use, amounting to 20 days, obligation to reveal the purpose of information re-use, possible introduction of charges and terms of re-use), while applicants simply wish to have access to information (with no formalized application forms, maximum 14-day time limit, with no need to reveal the purpose of information request, no charges and no terms of re-use).

2. We were afraid that the new provisions would create a situation where **institutions automatically impose all statutory conditions**, and applicants have **limited possibilities to appeal and challenge them in court**.

3. We were worried about **imprecise provisions concerning charges** for re-use of public information. We protested against **prolongation of time limits** (from 14 to 20 days) and against enabling the obliged bodies to **assess the purpose of requests** for information.

4. We were also concerned about the introduction, contrary to Article 4 of the currently binding Act, a specific list of bodies obliged to make available information for re-use, thus posing the risk of reinforcing the State monopoly on key information stored by public utility companies and State Treasury companies.

5. We also emphasized the **lack of a guarantee that obliged bodies would provide regular and up-to-date information**. Easy access was supposed to be the focus of re-use of public sector information. Nevertheless, according to the adopted solution, the obliged body expects the applicant to submit a request every time the information is updated. On the other hand, **the legislator emphasized that a modern solution, stimulating development of the economic added value, would be the Central Repository of Public Information with raw data (modelled on: <http://data.gov.uk/>)**.

Description of **real problems** with re-use of public sector information, observed by the Association of Leaders of Local Civic Groups, **resulting from the framework of the currently binding law**

**1. Some entities deliberately restrict access to public information. Applicants are not protected against such situations by the currently binding law.** A negative example can be the authorities of the city of Cracow and the municipal transport company. An entrepreneur who wished to create a mobile phone application with current timetables of public transport had to file a lawsuit to have this request granted.<sup>7</sup> However, this has not changed the attitude of the obliged body which is unwilling to make public information available quickly and automatically, and hence **forces the entrepreneur to submit requests for re-use of public information every day.**

**2. The obliged bodies reserve the right to evaluate the purpose of public information re-use by the applicants.** Sometimes an entitled body applies for public information with a view to disseminating it, in accordance with the procedure which was functioning prior to the amendments and is still binding. However, **the obliged body decides that the aim of the applicant is to re-use the information and attempts to impose another procedure.** This way of reasoning is applied even by appeal organs, e.g. the Local Government Appeal Court in Nowy Sącz.<sup>8</sup> An applicant made a request in the local government for copies of building permits. The appeal organ – the Local Government Appeal Court – decided that **the purpose of information use was different from its original purpose. Thus, the procedures of re-use of public sector information should be applied.** This situation was caused by the abovementioned ambiguity of legal provisions. In accordance with this way of reasoning, the only procedure should be re-use of public sector information, because **the entitled bodies always request information for other purpose than the original one.** Therefore, dissemination of information (a political right guaranteed by Article 54 of the Polish Constitution) is limited by economic law.

**3. Imposition of terms of re-use became a standard practice.** Public Information Bulletins (official on-line publications) of obliged bodies contain standard requirements to give the source, time, information about processing, and even detailed identification data e.g. dates of issuing re-used judicial decisions, address of the court and file number.<sup>9</sup> It is also required that information should be made available to subsequent institutions under the same conditions.

**4. There is a doubt about the extent of adding publicly funded enterprises (operating as commercial companies) to the catalogue of bodies obliged to disclose information for re-use.** This may influence e.g. re-use of data about timetables of national railways.

Even though the abovementioned problems are isolated cases, it is worth noticing that they result from legal defects of the new provisions concerning re-use of public information.

<sup>7</sup> <http://transportoid.com/category/mpk-krakow/page/2/>

<sup>8</sup> For example, judgement of the Regional Administrative Court in Cracow of 28 November 2012, file no. II SA/Kr 1378/12

<sup>9</sup> For example, <http://bip.nsa.gov.pl/index.php/bip/BIP/Ponowne-wwykorzystywanie-informacji-publicznych/Warunki-ponownego-wykorzystywania-informacji-publicznej>

## Description of **real problems** with re-use of public sector information, observed by the Association of Leaders of Local Civic Groups, **resulting from faulty practice**

1. Although the Act does not permit<sup>10</sup> signing **exclusivity agreements**, in practice they are still used, as exemplified by the Institute of Meteorology and Water Management.

2. The obliged bodies arbitrarily **exclude data from the scope of public information**. This refers e.g. to access to cartographic data without which it is often impossible to create new added values of public information. The Main Geodesist of Poland claimed that maps were not public information. Applicants can only have recourse to the law.

3. **The Central Repository of Public Information**, which was supposed to be a collection of raw data, modelled on <http://data.gov.uk/>, does not exist. **Therefore, entities do not supply it with any information.**

4. **The interest in using new procedures is slight.** Random checks in 12 large offices revealed that only about in 4 of them 5-10 requests for re-use of public information were submitted throughout the year. Moreover, only several of these requests actually pertained to re-use.



<sup>10</sup> Article 11. The provisions of agreements concluded prior to the date of entry into force hereof which are contrary to Article 23e amended in Article 1, shall expire on the date of entry into force hereof. Article 23e. 1. The provision of access to public information for re-use may not introduce a restriction on the use of that information by other users, unless it is necessary for the correct execution of public tasks. 2. In the case where the terms of public information re-use provide for exclusivity in using that information, the contents of the terms of re-use are announced on the relevant page of the Public Information Bulletin of the body introducing the exclusivity.

## More about the Association of Leaders of Local Civic Groups

We are a non-governmental organization which is not financed from state funds and therefore has full independence in monitoring the activity of the public administration in Poland. Our donors are citizens, business, private foundations and foreign institutions.

Our purpose is to make the Polish government at all levels responsible, open and sensitive to social needs, ready for dialogue and accountable to the society which is aware of its rights.

We run three main programmes:

**Non-Governmental Centre on Access to Public Information - [www.informacjapubliczna.org.pl](http://www.informacjapubliczna.org.pl)**, whose aim is protection of the right to information. Since 2006, within the framework of the programme which is thematically connected with this study, we have:

- >>> advised on questions of law about 3000 times;
- >>> participated in about 100 court trials;
- >>> carried out about 100 training courses, workshops and meetings with local citizens;
- >>> run the website [www.informacjapubliczna.org.pl](http://www.informacjapubliczna.org.pl) with several hundred articles on public information, which was visited by about 70 thousand unique users in 2012, while the interest in the website grew by 140% in comparison to 2010.

**Civic Budget - [www.funduszesoleckie.pl](http://www.funduszesoleckie.pl)**, whose aim is to promote such a method of planning and spending public funds where citizens could participate using their rights, and which would be at the same time effective and suited to social policy goals.

**Powerful Watchdogs - [www.watchdog.org.pl](http://www.watchdog.org.pl)**, whose purpose is to facilitate the development of watchdog organizations in Poland.

*You can support us with your work or donation.*

*More information is available at: <http://sllgo.pl>*