

Equality in the Access to Public Information. Between the Law and Modern Technology



DEFINITIONS OF PUBLIC INFORMATION

This article aims to identify the benefits of modern communication for the access to public information as exemplified on Public Employment Service against the Polish legal backdrop.

It is difficult to adopt a universal notion of information as it remains the object of several sciences, including sociology, political science, economy, cybernetics and, of course, legal sciences. Legal theory has endeavored to define it in many different ways¹.

Information is often treated as a valuable good – a commodity – a source of many tangible and intangible values. This commodity can be used individually and collectively and can be processed, given, gathered and disseminated². It can be distributed by, among others, state authorities, in particular by the legislature and the executive. G. Szpor identifies two meanings of the term “information” in administrative law theory: one related to an action and the other to its object. The actions include legal, factual, auxiliary, and authoritative and non-authoritative activities. In the second approach the term “information” is accompanied by indication a specific related action e.g. soliciting, gathering, processing and providing³.

One of the first definitions of public information was provided by W. Taras to whom it was a form of administrative activity⁴. A. Piskorz-Ryń,

¹ W. Wiewiórowski, G. Wierczyński, *Informatyka prawnicza. Technologia informacyjna dla prawników i administracji publicznej*, Kantor Wydawniczy Zakamycze, Warsaw 2008, pp. 29–51

² S. Biernat, *Rodział dóbr przez państwo. Uwarunkowania społeczne i konstrukcje prawne*, Wydawnictwo Uniwersytetu Jagiellońskiego, Warsaw 1989, p. 11.

³ G. Szpor, *Informacja i informatyka w administracji publicznej*, Gónośląskie Centrum Informacji, Katowice 1993, p. 21.

⁴ W. Taras, *Informowanie obywateli przez administrację*, Ossolineum, Warsaw 1992, p. 21.





in turn, defined it as an “information provided by an employee acting on behalf of a public authority in fulfilling its function. It is a message concerning a concrete situation in fact or in law as well as its legal consequences. The message must be delivered as part of the duties of an authority (within its competence). It does not carry any direct legal effects but may have an impact on the exercise of rights or performance of obligations of its recipients or third parties”⁵.

M. Jabłoński and K. Wygoda define public information in a more narrow sense as a document prepared or received by entities participating in the fulfillment of the powers of public authority. Regulations concerning access to public authority usually provide examples of public information subject to disclosure⁶.



THE ACCESS TO PUBLIC INFORMATION UNDER THE LAW

The access to public information has been introduced into several articles of the second chapter of the Constitution of 1997 concerning freedoms, rights and obligations of human beings and citizens. They include:

- ☒ Art. 51 sec. 3 – providing to everyone the right of access to official documents and personal data concerning themselves,
- ☒ Art. 54 sec. 1 – concerning the freedom to acquire and to disseminate information,
- ☒ Art. 61 – concerning the right to obtain information on the activities of public authorities as well as persons discharging public functions,
- ☒ Art. 74 sec. 3 – concerning the right to be informed of the quality of the environment and its protection⁷.

⁵ A. Piskorz-Ryń, *Prawo do informacji od podmiotów wykonujących administrację publiczną w polskim porządku prawnym*, Samorząd Terytorialny 2000, No. 7–8, p. 90.

⁶ M. Jabłoński, K. Wygoda, *Dostęp do informacji i jego granice. Wolność do informacji, prawo do informacji publicznej, ochrona danych osobowych*, Wrocław 2002, p. 110.

⁷ J. Kochanowski, *Dostęp do informacji publicznej jako gwarancja realizacji praw człowieka i obywatela*, in: *Dostęp do informacji publicznej – rozwój czy stagnacja*, conference materials, Warsaw 2008, p. 11.



Under Art. 54 all are free to express their views and solicit and disseminate information. It has sanctioned the perennial desire of men to receive information and be able to use it, thus supporting the development and functioning of the society⁸. Art. 61 of the Constitution certainly helps to achieve that goal as it states that the citizens have the right to obtain information on the activities of public authorities and public functionaries. The right specified in the above article was described as a public subjective right⁹ relating only to citizens. Thus citizens have a claim against a public authority.

The citizen's right to public information was further specified in the Access to Public Information Act of 6 September 2001¹⁰, the provisions of which came into force as of 1 January 2002. The obligation to provide information in the Public Information Bulletin was left outside of the Act. The Act set out the legal framework for the information obligation of public administration and the rules for the exercise of the constitutional right of access. The lack of provisions clarifying the way of exercise of the right to information rendered it fictitious, particularly that the Parliament kept expanding the scope of statutorily protected secrets.

The said Act covers a broader scope than the Constitution. Art. 2 sec. 1 states that "Everyone has (...), the right of access to public information, hereinafter referred to as the 'right to public information'", which should be considered a proper extension of the constitutional requirements.

Scholars often criticized the above definition as too narrow. It should be noted that the legislature expressly pointed out in Art. 2 sec. 2 of the Act that in order to obtain information a person exercising the right to public information does not need to indicate any legal or factual interest. Thus no one has to justify the demand for access to information. This is an unconditional access to information on equal terms to all interested parties.

Pursuant to Art. 4 of the Act, public authorities and other entities perform public tasks are obliged to disclose public information. This obligation rests in particular on:

1. public authorities,
2. business and professional self-governments,
3. the Treasury under separate provisions,

⁸ A.M. Dereń, *Prawna ochrona informacji w krajowym ustawodawstwie*, Oficyna Wydawnicza OPO, Bydgoszcz 2001, p. 10.

⁹ M. Bernaczyk, *Obowiązek bezwziostkowego udostępniania informacji publicznej*, Wolters Kluwer Polska, Warsaw 2008, p. 27.

¹⁰ Journal of Laws of 2001, No. 112, item 1198.



4. state legal persons or local government legal persons and other state-owned units, or organizational units owned by local governments,
5. other persons or organizational units performing public tasks or managing public property in which the Treasury, business and professional self-government have a dominant position.

The list of entities obliged to provide public information is non-exhaustive but still much longer than in the Constitution. The obligation to provide information was additionally extended onto business and professional self-governments. What is missing is what is meant by “public authorities” or “persons fulfilling public functions” as it was specified in the Informatization of the Entities Performing Public Tasks Act of 17 February 2005¹¹.

According to the Act of 6 September 2001, public information is any information concerning public matters. Its Art. 6 set out the objective scope of the right of access to public information, listing types of information subject to disclosure. It is a non-exhaustive list including in particular: information on the internal and foreign policy, on the rules of operation of entities obliged to provide public information, public data including the content and the form of official documents, positions taken on public matters by public authorities.

The objective scope of public information mentioned in this article was identified by the Supreme Administrative Court in a judgment issued on 25 March 2003¹². It defined public information as any message created by or concerning public authority as well as created by or concerning other entities trusted with public functions and management of municipal or state property.

¹¹ Journal of Laws of 2005, No. 64, item 565.

¹² SA 4059/02.





THE IMPLEMENTATION OF THE RIGHT OF ACCESS TO PUBLIC INFORMATION

Providing information by public authorities can be achieved through officially published documents or, in individual cases, by sending it to the interested party, through oral public announcements of representatives of public authorities or unofficial publications as well as indices of all these documents and their contents¹³. In the analysis of the various forms of relaying information the following types of information should be distinguished: oral information, written information and information relayed with the use of modern forms of transfer – ICT technology¹⁴.

The right to public information was specified in Art. 3 of the said Act as a right to:

- 1) obtain public information, including information processed in such a way which makes it particularly important for the public interest,
- 2) inspect official documents,
- 3) access the meetings of elected collegial public authorities.

The above provision indicates how the right of access should be exercised. The basic way of doing it is by access to official documents. It sometimes happens that the necessary information is dispersed, e.g. contained in several documents. This is why the law foresees the possibility to obtain a processed information so that the dispersion is not a barrier to the obtaining it.

Under the Act, public information is made available:

- through publication in the Public Information Bulletin,
- on application by the interested entity,
- by displaying it in public places or installing devices allowing the general public to learn about it,
- by entry to the meetings of the elected collegiate public authorities and providing materials, including audiovisual materials and ICT documenting those meetings.

¹³ Z. Duniewska, *Ignorancja iuris w prawie administracyjnym*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 1998, p. 63.

¹⁴ J. Supernat, *Informacyjne instrumenty działania administracji publicznej*, in: *Nauka administracji wobec wyzwań współczesnego państwa prawa*, International Scientific Conference, Cisna 2–4 June 2002, Rzeszów 2002, pp. 487–518.





The access to public information may be denied and the proceedings for the disclosure thereof may be discontinued by a public authority by administrative decision subject to the provisions of the Code of Administrative Proceedings. However, there are differences between them and other decisions issued under the Code with respect to their review:

- ☒ appeal from a decision is examined within 14 days,
- ☒ justification of the decision refusing access to information must include names and surnames and positions of persons who took a stance in the course of the proceedings and of persons interest was in the way of disclosure.

The adoption of the Access to Public Information Act was needed for the exercise of the constitutional right of access to information on the activity of public authorities. That right is based on the following principles: unconditionality, equality, promptness and being free of charge.

4

RESEARCH ON THE ACCESS TO PUBLIC INFORMATION

The theoretical principles of the provisions cited above are put into practice only to a limited extent which was proved by a project “Implementation of the Access to Public Information Act. Monitoring and promotion” carried out from January 2006 to December 2006 by Transparency International Polska. It transpires from the ranking of “transparency of public authorities” that among the entities interviewed only 34% of municipal offices and 17% of *powiat* authorities replied to a written application for access to public information sent by e-mail. From 5% to 35% of authorities (the percentage differed depending on the question) did not reply to a question asked by phone. The interviewers checked how easy it was to contact a given office (responsiveness) as well as the quality of information provided and the websites of the Public Information Bulletin. Rural municipalities came out worst obtaining 14.90 points (on a scale from 10 to 19 points where 19 was the highest mark), whereas municipalities located in cities of 100,000 to 500,000 inhabitants came out best – 16.57 points.

The bigger the territorial entity the better was the implementation of the Act. However, this tendency did not apply to the largest cities. They came



out a little worse (16.32 points) than cities between 100 000 to 500 000 inhabitants (16.57 points).

The report identified the most important barriers to the access to public information. They included the so-called “secrecy culture”, lack of knowledge of legal regulations among citizens and civil servants and a low level of internet penetration.

There is a general conviction, the report said, that in the culture of secrecy “applicants” and “inquirers” are in the way of good and effective work of civil servants. There was an unspoken and prevailing assumption that the less the applicant knows, the better for the office. Civil servants with such an attitude mindlessly tried to avoid responsibility, using personal data protection as an excuse for making access to information more difficult. The prevailing motivation was not the fear of disclosure of irregularities or striving after power, but rather the set of mind in the civil service.

This explains why it happens relatively often that civil servants try to convince the citizens that certain data are classified although it had been published via the internet version of the Public Information Bulletin or on the information board.

The civil servants’ lack of awareness of legal provisions and non-compliance with internal regulations are another barrier to public information. The authors of the report pointed out that not all interviewed servants knew the content of the Access to Public Information Act and consequently did not know that they were obliged to provide information on demand; the same refers to the Personal Data Protection Act. The interviewed officials often cited that Act where it did not apply.

Another reason behind the inadequate access to public information was the citizens’ lack of knowledge of and their non-compliance with the law. They rarely refer to the Act, evidenced, for example, by the fact that in some offices civil servants recalled that some time ago someone had referred to that Act asking “strange questions” by e-mail or phone.

A distressing limitation of the access to public information resulted from the low level of internetization of offices and the fact that they were not prepared to receive the disabled. Insufficient computerization infringed on the rights of the disabled to equal treatment. Only every fifth office was somehow adapted to the needs of the handicapped. In many offices with a minimum of good will it would be possible to build a ramp or replace doors that are hard to enter.



According to the report, the only way to improve the access to information on a national scale for persons physically disabled is computerization on both ends of the information cycle. These findings differ from the project "Condition of Civil Society 2007", conducted among a sample of 198 practitioners and social leaders, scientists, decision-makers and representatives of administration, journalists, etc. interested in civic activity. Nearly 75% of polled spoke favorably of the access to public information. In experts' opinion, the results of the panel survey reflected universally insufficient knowledge and lack of understanding of the notion "access to public information". The launching of the Public Information Bulletins and the statutory obligation to announce public tenders was found extremely important but, at the same time it was noted, that access to other information was very limited. The media played a positive role in promoting of the Act, particularly local newspapers for whom the Act is an important tool. The report emphasized also that modern IT solutions should be more intensively applied to improve access to public information. After several years of the Act being in force, the situation significantly improved. A good example of the use of the new technology are the outlets of the Public Employment Services.



THE PUBLIC EMPLOYMENT SERVICE

The the Promotion of Employment and Institutions of the Labor Market Act of 20 April 2004¹⁵ defines the system of employment services and its components:

- ☒ public employment services – *powiat* and *województwo* employment offices; office of the minister for labor;
- ☒ Voluntary Labor Corps – specialized in actions for the benefit of the youth, in particular youth at risk of social exclusion and unemployed under 25 years old;
- ☒ employment agencies – non-public entities providing permanent and temporary recruitment services, and other outlets providing services in Poland and abroad, temporary jobs, HR consulting services, career advice services;

¹⁵ Consolidated text – Journal of Laws of 2008, No. 69, item 415, as amended.



- ☒ training institutions – public and non-public,
- ☒ social dialogue institutions,
- ☒ local partnership institutions.

The Public Employment Services (further referred to as the PES) consist of:

1) *Województwo* Employment Offices (WEO) – 16 units, part of local government structure, not to be confused with governmental authorities at the same level. They do not supervise *powiat* employment services. They also include:

- ☒ Branches of WEO – 33 units. As a result of the reduction of the number of *województwo* (from 49 to 16), located in cities formerly at the *województwo* level acquired the status of branches of WEOs. They were trusted with different tasks and personnel;
- ☒ Centers for Information and Career Planning (49 units) – are part of the WEO structure and are located in all former and present cities at the level of *województwo*;

2) *Powiat* Employment Offices (338 units) are part of local government of a middle level. Since in the public administration structure there are *powiats* and towns with rights of a *powiat*, some of the *powiats* have “joint” employment offices, hence the difference between the number of *powiats* and *powiat* employment offices. In addition, a number of *powiat* employment offices have branches or local offices to serve the unemployed within their structure.

OBJECTIVES OF THE PUBLIC EMPLOYMENT SERVICES

According to the Promotion of Employment and Institutions of Labor Market Act, the tasks of the state in promotion of employment, mitigating effects of unemployment and professional activation are performed by labor market institutions acting in order to:

- ☒ achieve full and productive employment;
- ☒ develop human resources;
- ☒ achieve high quality work;
- ☒ strengthen integration and social solidarity.



Worth noting is a shift in priorities in relation to the repealed Employment and Counteracting Unemployment Act of 14 December 1994. Art. 1 sec. 1 of the above-mentioned Act specifies the tasks of the state in mitigating the effects of unemployment, employment and professional activation of the unemployed and other employment seeking persons. The mitigation of the effects of unemployment becomes secondary to the promotion of employment, part of a policy to increase the number of persons employed as the best method to counteract unemployment.

The interpretation of the above regulations should be set within the European context. Pursuant to the Guidelines on the Employment Policies¹⁶ of June 2003, a “full” employment means carrying out such policy which ensures the maximum possible investment in human resources, accepting at the same time that certain level of unemployment is a norm in the market economy and that the unemployment, though a misfortune from the individual perspective, is not yet a pathology in the perspective of the society at large. It becomes a pathology when long-term unemployment continues and has a tendency to increase.

The development of the human capital in accordance with the idea of a lifelong learning means the continuous improvement of qualifications and development of skills for which individuals, the state and employers are responsible alike.

The objective of high quality work entails encouraging the creation of workplaces denoted by a “job well-done”. It is about work in a good, modern organization respecting the development of an individual, protecting natural environment and ensuring healthy working conditions. The idea of enhanced integration and social solidarity is strongly emphasized in the EU documents, in particular in the Lisbon Strategy.

The goals set before the PES include: reacting to a dynamically changing situation on the labor market, encouraging the unemployed to look for a job and taking actions that have a long-lasting effect on the stabilization of the economy. PES offices are also responsible for the provision of information the unemployed and job-seeking. One of the tools is the use of advanced information systems, including infomats.

¹⁶ 2003/578/EC, OJL 197/13 z 5.08.2003.

THE SYRIUSZ UNIFORM INFORMATION SYSTEM

Having been aware that the flow of information in offices was not perfect and the level of access to public information possessed by these offices insufficient, in 2001 the Ministry of Labor and Social Policy analyzed methods to refresh labor market offices by improving their efficiency and the effectiveness of knowledge management and improving access to public information. The original plan was to create one information exchange system for all employment offices in Poland. Just accepting the concept of a system dubbed Syriusz, accelerated the design process, mitigated the risk of errors, limited cost and made its implementation easier.

The SYRIUSZ Information System is based on four pillars:

- 1) business applications – a part of the system supporting the most tasks of the offices described in statutes, including the Employment Promotion Act, the Social Assistance Act, the Family Benefits Act and supporting information gathered by the PES;
- 2) eGovernment – software making the operation of the offices more efficient, providing information via the internet and making the access to public information easier;
- 3) eLearning – advanced platform for management of distance learning, currently five courses, via the internet.;
- 4) financial monitoring – is a multilevel system supporting the management of financial flows within the institutions supervised by the Minister. It allows to obtain up-to-date information on the use of and the need for funds.

The modern information system will compile information contained in the resources of the labor market offices, and through the network of infomats, it will provide public information to all interested parties.

An infomat is an internet kiosk equipped with a monitor, keyboard, printer, and, possibly, a card reader (chip or magnetic), and is connected to information systems of the Employment Offices. The goal of implementing the infomat system in various public places is to facilitate the access to the up-to-date information of employment offices to those who have no access to the internet. Location of such kiosks where concentrate



the activities of inhabitants, their cultural life or where they frequently visit (a neighborhood store, post office, school, church, community centre, library) ensures access to information without a need to travel.

Currently, the unemployed must visit the office personally just to check is offers. Modernized, the process will take the following course: the unemployed, using a chip card, obtained from the employment office during the first registration, logs into the system to search the website of labor office system for training or other needed information. The system will identify the person and generate an e-mail information with job offers corresponding to the expectations submitted in a relevant form.

Following simple instructions, the unemployed will be able to reply to any of the offers and arrange for an appointment or request additional information. The chip card will function as an electronic purse or a pay phone card. Having read the offers, it will be possible to call the office using the card and ask for additional information or register for a training session. The content presented in information kiosks will be largely the same as on the websites of employment offices.

The use of information kiosks will make it significantly easier to:

- browse websites with the possibility of the system administrator's restricting the scope of search;
- send e-mail;
- write texts using a touch screen or a traditional keyboard;
- print, job offers, certificates, etc.;
- enter in restricted access areas, e.g. logging in with a password or a card.

CONCLUSION

It is possible to improve access to public information in Poland and develop the information society. Is also possible to bridge the cyber gap between the Polish society, particularly in small towns and rural areas, and the Western Europe. The necessary prerequisite to accomplish it is to have a policy of absorbing the EU funds for the advancement of the information society.

In the years 2007–2013 the European Union is to allocate to Poland funds in excess of EUR 90 billion, a great portion of which for the improvement





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of the access to public information within the information society. It was carried out through various operational programs defined in the National Strategic Reference Frameworks. The funds were allocated, i.a., to the development of infrastructure in the areas where there is no competition and telecommunications operators had no interest in investing, to training of civil servants to improve the image of a citizen-friendly public administration.

In lieu of conclusion let me quote from the “Directional strategy for the development of informatization of Poland until 2013 and prospective forecast of transformation towards the information society until 2020”. It reads that “in the social and economic model of the European Union public administration’s role will become more significant. It is planned that until 2020 the idea of e-Government, citizen-friendly administration accessible in any place and at any time via the internet will exclude the need to participate personally in complicated administrative procedures, will be fully implemented”¹⁷.

The fundamental objective of the transfer of many public services to electronic platforms is expected to be achieved in full, that is the need for the citizen’s personal contact with the authorities will be limited to a minimum saving the time of civil servants and customers; there will be standardized procedures and access to public information will be significantly increased. The provision of more efficient services, faster exchange of processable and comparable information information will shorten the time of taking decisions.

¹⁷ *Directional strategy for the development of informatization of Poland until 2013 and prospective forecast of transformation towards information society until 2020*, Ministry of Science and Informatization, Warsaw, June 2005, pp. 47–48.