

On 27 March 2014, after almost three years of preparation and consideration of the draft law No 0947 "On Amendments to Certain Legislative Acts of Ukraine in relation to the adoption of the Law of Ukraine "On Information" (new version) and the Law of Ukraine "On Access to Public Information", finally, the Parliament of Ukraine voted for the adoption of this law as a whole. Now we are awaiting its signing by the President shortly and its entry into force.



Given that it alters a large range of legislative provisions, it is important to analyse in detail what novelties it provides for and why it was so necessary to adopt it.

Freedom of Expression and Mass Media

One very important provision of the new law, yet not directly related to the access to information, is the abolition of a rule under the Civil Code, which established a presumption of unreliability of negative information about a person. That rule obliged a defendant in libel cases to prove the veracity of negative information. Obviously, this provision was clearly contrary to the recognized international standards on freedom of speech and did not comply with the new version of the Law "On Information".

Another provision concerns the improvement of grounds for the exemption of the print media and news agencies from liability for spreading false information. Specifically, some purely technical changes were made as to the exemption from liability for the information contained in a response to the enquiry, submitted under the Law of Ukraine "On Access to Public Information", or in a response to the request/application. Worth noting is more expanded exemption from liability for quoting of the public statements or communications by the representatives of governing authorities, by individuals and legal entities. Previously, this exemption applied only to the official statements by public officials, organisations and civil society organisations. In addition, the list of legal grounds for such an exemption becomes non-exhaustive.

The changes also touch upon recognition of the status of journalist. Previously, this status had to be confirmed exclusively by an editorial certificate or other document, issued to a person by the editorial body of print media. With the entry into force of this law, professional affiliation of a journalist might be confirmed by a document, issued by a professional association of journalists.

Access to Public Information vs. Personal Data Protection

Current wording of the Law of Ukraine "On Personal Data Protection", the Article 5, automatically refers all personal data to the restricted information (apart from non-personified data). The exception is the personal data of an individual who intends to occupy or occupies an elective public office or a position of the first category public servant (except for some data directly provided for by law), and in cases where there is a direct prohibition by law to refer personal data to the restricted information. Such an approach seemed essentially contrary to the principle of maximum openness of public information and was often used by the administrators of relevant public information and by courts for refusing to provide information.

So, first of all, amendments to the Law "On the Personal Data Protection" abolish a presumption of confidentiality for personal data and stipulate that personal data *maybe* attributed to the confidential information about a person only by law or by that person. Importantly, the law expressly provides that shall not be restricted in access the following information:

- personal data relating to the exercise by a person holding the position that implies performing functions of the state or the local self-governance, official or public service powers;
- personal data as specified in the declaration of assets, income, expenses and financial obligations filled in a form and manner established by the Law of Ukraine "On Principles of Prevention and Combating Corruption" (except for the listed data); and
- information on receiving by an individual of any form of budget funds, of state or municipal property.

The revised provisions provide for an opportunity to establish other legal prohibitions on referring of personal data to the restricted information.

Access to Public Information at the Local Level



The Law of Ukraine «On Access to Public Information», the Article 15, establishes a general list of information that shall be published by the information providers on their official websites or in the media. However, without direct inclusion of similar provisions into the laws governing the status and powers of the public authorities, these requirements have not been fulfilled in practice, especially at the local level.

In this regard, the new law amends the law "On Local Self-Governance in Ukraine" and "On the Verkhovna Rada of the Autonomous Republic of Crimea" and establishes an obligation for the local authorities and parliament ARC to disclose:

- × minutes of meetings of the local councils;
- × acts of the local self-governance bodies/ of the Verkhovna Rada of Crimea;
- × draft acts of the local self-governance bodies/ of the Verkhovna Rada of Crimea (in case of emergencies and other urgent cases are made public immediately after their preparation);
- × conclusions, proposals, minutes of the standing committees` meetings that work at the local councils.

Similar requirements apply to the publication of information on the activity of local administrations and the Council of Ministers of Crimea, in particular, the publication of regulations and individual acts, as well as draft legal acts subject to public discussion.

Access to the Verkhovna Rada and the Local Councils` Meetings

Important provisions of the new law is to ensure the right of every individual to be present at meetings of public authorities what meets the requirements of transparency enshrined in the Constitution of Ukraine.

Open shall be the sessions of the Verkhovna Rada of Ukraine, local councils, the Verkhovna Rada of Crimea. The procedure for access to public meetings is determined by the resolution of Verkhovna Rada or by the relevant councils. Additionally, as regards accreditation of journalists at the Parliament, it is now impossible to withdraw the accreditation of a journalist for a "bad behaviour."

Access to the Master Plans of Towns and Other Localities

For now, it appears challenging to get access to a city master plan or detailed plan of the territory, because most of them are groundlessly concealed under the stamp "For official use only". That is why the new law explicitly sets out that the materials of the general plan of a town, as well as a detailed plan of the territory cannot contain confidential information and be limited in access.

Additionally, the overall availability of these materials should be ensured by:

- its placing on the website of a local authority,
- publication in the local periodical print media,
- placement in a public place on the premises of the agency, and
- provision upon requests for access to public information.

Combating Corruption

The proposed changes involve a whole range of mechanisms for the public control over observance of the anti-corruption legislation.



Notably, several important amendments have been made on disclosure of information from the officials' declarations of assets. First, the law requires disclosing this information on the official website of relevant authorities (and only in case if there is no website – this information should appear in the official newspapers of the relevant public authorities and local bodies). Second, publication of this information on the official website should remain available online for at least one year.

In addition, any person will be entitled to receive upon request the information about the status of assets of the pension insurance fund, and information from the Register of State Property Objects.

Whereas, media representatives may now attend meetings of tender committees (in charge of public procurement) – not only at the bid opening procedure, but also at other stages of competitive tendering.

The law also provides a clear prohibition to restrict access to certain information included in the Unified State Register of Perpetrators of Corruption Offenses, including:

- 1) the name, surname, patronymic of a person;
- 2) place of employment, position at the time of commission of a corruption offense;
- 3) composition of a corruption offense;
- 4) type of punishment (penalty);
- 5) the way of committing of the offense;
- 6) type of disciplinary sanction.

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Access to Archival, Statistical Information and State Secret

The law provides for a greater access to archival and statistical information, with clear rules on the state secret in a specialised law.

Namely, it is set that one cannot be denied, upon request, in receiving of the non-personified statistical information, obtained in the course of statistical surveys conducted at the expense of the state budget or a customer under the contract. Such statistical information may not be classified as confidential and shall be provided free of charge, except for reimbursement of actual costs for copying and printing according to the Law of Ukraine "On Access to Public Information".

As the law also establishes, access to the documents of the National Archival Fund containing state secrets or other confidential information may be restricted only in accordance with the Law of Ukraine "On Access to Public Information". Whereas previously, the Law "On National Archival Fund and Archival Institutions" provided that such information is limited in access until the cancellation of a decision on referring such information to the state or other secrets.

Equally important are the complemented exceptions for disclosure of archival documents containing information about a person without his/her consent – namely, if there is a public interest in its disclosure.

Some changes concern the state secrets: any classification of information is carried out only in terms of data that constitutes a state secret, and access should be granted to documents in the part of non-classified information contained. Thus, the establishment and prolongation of the term for secrecy shall be made only in line with the three-step test.

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Administrative Responsibility

Amendments to the Law provide for a fine ranging from 425 to 850 USD, on the top of existing administrative responsibility for the ungrounded refusal to disclose information, untimely or incomplete provision of information, or provision of false information, namely:



- for failure to provide information, which is subject to mandatory publication;
- for ungrounded referral of the information to the restricted one, when there was an information inquiry; and
- for unlawful refusal to accept and consider an application, and other violations of the law on citizens' appeals.

For limiting access to the information or referring it to the restricted information, if this is expressly prohibited by law, a fine of 1020-1360 UAH is foreseen.

As regards the classified information, the law provides for the administrative responsibility for disclosure of the information gathered in the process of operational-investigative activity, counterintelligence activity and in the defence sphere.

Control

The law lays down that the parliamentary control over the observance of the right to access to public information is performed by Ukraine's Ombudsman. Still, no additional powers in this regard have been provided to this body. Therefore, the matter of effective and independent body remains on the table.

«For Official Use Only»

Quite important transitional provisions are enshrined in the Law No 0947 – they should have been enacted earlier, after the adoption of the Law "On Access to Public Information" itself. They concern the restrictive stamp "For Official Use Only" or other information-limiting classifications that appeared on the documents before the entry into force of the Law of Ukraine "On Access to Public Information".

In particular, all these restrictive stamps are repealed, except for a secrecy grading. Along with this, a transitional period of one year is established for revising the stamps applied and information-limiting classifications under the amended laws. This means that many documents, stamped "For Official Use Only", might be disclosed or provided upon request after such a revision.

To summarise, the Law No 0947 does not change the order of access to public information, the essence of that right or the ways to implement it. It rather strengthens the obligation of the public authorities to provide relevant information; specifies in more detail those principles and mechanisms that were established by the information legislation from the very beginning; and widely aligns the terminology used in this regulatory sphere.

Without amending and aligning the rules of various information-related laws, a full realization of the right to access to public information often appeared difficult in practice. Therefore, the adoption of this law is an important step to further improvement of the Ukrainian legislation information and its approximation to the European standards