

CROATIAN PARLIAMENT

403

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the following

DECISION

PROMULGATING THE RIGHT OF ACCESS TO INFORMATION ACT

I hereby promulgate the Act on the Right of Access to Information, passed by the Croatian Parliament at its session on 15 February 2013.

Class: 011-01/13-01/27

Reg. No: 71-05-03/1-13-2

Zagreb, 21 February 2013

President

of the Republic of
Croatia

Ivo Josipović, m. p.

RIGHT OF ACCESS TO INFORMATION

ACT

I. GENERAL PROVISIONS

Contents

Article 1

(1) This Act shall regulate the right of access to information and re-use of information in the possession of public authorities, stipulate the principles of the right of access to information and re-use of information, as well as any exceptions to the right of access to information and re-use of information, the procedure for the exercise and protection of the right of access to information and re-use of information, scope, method of operation, and the terms and conditions of appointing and dismissing the Information Commissioner and the inspection supervision over the implementation of this Act.

(2) This Act shall also regulate other obligations of public authorities, as well as penal provisions related to the exercise of the right of access to information.

(3) The provisions of this Act shall not apply to the parties in judicial, administrative or other statutory proceedings, the information availability to which has been laid down by a special regulation.

(4) The provisions of this Act shall not apply to the information entailing the obligation of confidentiality, in accordance with the act regulating the security and intelligence system of the Republic of Croatia.

(5) The provisions of this Act shall not apply to the information constituting classified information owned by international organisations or other countries, or to classified information of public authorities created or exchanged within the scope of cooperation with international organisations or other countries.

Harmonisation with European Union regulations

Article 2

This Act contains provisions that have been harmonised with the following European Union regulatory documents:

– Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information,

– Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Objective

Article 3

The objective of this Act is to enable and ensure the exercise of the right of access to information guaranteed by the Constitution of the Republic of Croatia, as well as of its re-use, to natural and legal persons through openness and the public nature of the actions of public authorities.

Gender neutrality of terms

Article 4

Any terms used in this Act and the regulations passed pursuant to it, which bear gender connotations, regardless of whether they have been used in male or female gender, shall be understood to cover equally both male and female gender.

Definitions

Article 5

Individual terms used in this Act shall have the following meanings:

- 1) 'Beneficiary of the right of access to information and re-use of information' (hereinafter: the beneficiary) shall mean any local or foreign natural and legal person;
- 2) 'Public authorities', within the meaning of this Act, shall mean the state administration and other government bodies, bodies of local and regional self-government, legal persons vested with public authority and other persons to whom public authority has been delegated, legal persons established by the Republic of Croatia or local or regional self-government units, legal and other persons providing public services, legal persons entirely funded from the state budget or from the budgets of respective local or regional self-government units, as well as companies in which the Republic of Croatia and local or regional self-government units have a majority interest, separately or jointly;
- 3) 'Information' shall mean any data owned by a public authority in the form of a document, record, file, register or any other form, regardless of the manner in which it is presented (written, drawn, printed, recorded, magnetic, optical, electronic or any other recording);
- 4) 'International information' shall mean the information imparted to the Republic of Croatia by a foreign country or international organisation with which the Republic of Croatia co-operates or is a member of;
- 5) 'Right of access to information' shall mean the right of the beneficiary to request and obtain information, as well as the obligation of a public authority to enable access to the requested information, or to publish information regardless of the submitted request where such publication arises out of the obligation stipulated by law or other regulation;
- 6) 'Re-use' shall mean any use of public authority information by any natural or legal person, for commercial or non-commercial purposes other than the original purpose within the scope of public activities for which this information was created. The exchange of information among public authorities for the purpose of performing activities within their scope of work shall not be considered re-use;
- 7) 'Proportionality and public interest test' shall mean the assessment of proportionality between the reasons to enable access to information and reasons for restricting and allowing access to information where public interest prevails;
- 8) 'Information owner', within the meaning of this Act, shall mean the competent public authority of the Republic of Croatia or a foreign country or an international organisation, within the scope of whose work the information was created;
- 9) 'Central Catalogue of Official Documents of the Republic of Croatia' shall mean the online tool enabling the users to have permanent access to the documents stored in the electronic document database and/or physical collections, through a complete text and/or an arranged group of metadata;
- 10) 'Information Commissioner' (hereinafter: the Commissioner) shall mean the independent government body for the protection of the right of access to information.

II. PRINCIPLES

Principle of publicity and free access

Article 6

Information shall be available to any Croatian or foreign natural and legal person in accordance with the terms and conditions and the restrictions of this Act.

Principle of timeliness, completeness and accuracy of information

Article 7

The information published or given by the public authorities shall be timely, complete and accurate.

Principle of equality

Article 8

(1) All beneficiaries shall have the right of access to information and re-use of information in the same manner and under the same terms. Beneficiaries shall be equal in terms of the exercise of this right.

(2) Public authorities shall not put any beneficiaries in an unequal position, particularly in terms of providing information to certain beneficiaries earlier than to others or putting them in a more favourable position.

Principle of disposing of information

Article 9

Any beneficiary which has certain information available in accordance with this Act shall be entitled to disclose such information to the public.

III. OBLIGATIONS OF PUBLIC AUTHORITIES

Publication of information

Article 10

(1) Public authorities shall publish the following on their website in an easily browsed manner:

- 1) laws and other regulations relating to their scope of work;
- 2) general enactments and decisions adopted by them and which affect the interests of beneficiaries, together with the reasons for their adoption;
- 3) draft acts and other regulations, as well as general enactment adopted by them, in accordance with the provisions of Article 11 of this Act;

- 4) annual plans, programmes, strategies, instructions, work reports, financial reports and other appropriate documents relating to the scope of work of the public authorities;
- 5) information on the source of funding, budget and budget execution;
- 6) information on any awarded subsidies, grants or donations, including a list of beneficiaries and the received amount;
- 7) information on their internal organisation, together with the names of the heads of public authorities and the managers of organisational units and their contact data;
- 8) minutes and conclusions of the official sessions of the public authorities and official documents adopted at those sessions, together with the information on the work of any formal working bodies within their competence;
- 9) information on public procurement procedures and the bidding documentation, as well as information on the performance of agreements;
- 10) notifications on published tenders and tender documentation;
- 11) registers and databases or information on the registers and databases within their competence and the method of access;
- 12) notifications on the manner of exercising the right of access to information and re-use of information with contact data of the information officer;
- 13) size of the fee for access to information and re-use of information, according to the criteria laid down in Article 19(3) of this Act;
- 14) most frequently requested information;
- 15) other information (news, press releases, information on other activities).

(2) The public authorities shall submit the documents referred to in paragraph 1(2),(3) and (4) of this article to the Central Catalogue of Official Documents of the Republic of Croatia for the purpose of their permanent availability and re-use of information, while the public authority competent for passing legal regulations and subordinate legislation shall also submit the documents referred to in paragraph 1(1) of this article. The Croatian Information-Documentation Referral Agency (HIDRA) shall perform the activities of keeping and maintaining the Central Catalogue of Official Documents of the Republic of Croatia.

(3) The manner of organising and keeping the Central Catalogue of Official Documents of the Republic of Croatia shall be stipulated by the rules of the minister competent for general administration affairs.

(4) The provisions of this article shall not apply to the information in respect of which the right of access is restricted under the provisions of this Act.

Document publication for the purpose of consulting the public

Article 11

(1) For the purpose of informing the public, in addition to their annual plan of normative activities, the public authorities competent for drafting acts and subordinate legislation shall also publish on their website a plan of consultations on the drafts acts and other regulations relating to their scope of work.

(2) The public authorities referred to in paragraph 1 of this article shall publish on their website the draft act or any other regulation in respect of which public consultations with the interested public are conducted, normally for 30 days, together with the reasons for their adoption and the objectives to be achieved by such consultations.

(3) After the consultations, the public authorities shall inform the interested public of accepted and unaccepted observations and suggestions through its website, on which a report on the consultations with the interested public submitted to the Croatian Government is to be published.

(4) Provisions of paragraphs 1, 2 and 3 of this article shall apply *mutatis mutandis* to the procedure of passing general enactments of the local and regional self-government units and legal persons with public authority, by which they regulate matters within their scope of work through which the needs of the citizens or other matters of interest for the general welfare of the citizens and legal persons within their territory or within the scope of their activities (development of settlements and housing, physical planning, utilities and other public services, environmental protection, etc.) are directly implemented.

Public nature of activities

Article 12

(1) Public authorities shall inform the public of:

1) the agenda of sessions or meetings of official bodies and the time they are to be held, the manner of their operation and the possibilities of direct insight into their work;

2) number of people who can be provided direct access to the work of public authorities simultaneously, taking into account the order in which they apply for such access.

(2) Public authorities are not obliged to provide direct access to their work involving any matters which must exclude the public under the law, or any information which is subject to any exceptions to the right of access under the provisions of this Act.

Information officer

Article 13

(1) In order to ensure the right of access to information, public authorities shall pass a decision, identifying a special official person competent for deciding on the exercise of the right of access to information (hereinafter: the information officer).

(2) Public authorities shall inform the public of the information officer's official data.

(3) The information officer shall:

1) perform the tasks of regular information publishing, in accordance with the internal organisation of the public authority concerned, as well as handling individual requests for access to information and re-use of information;

2) improve the manner of processing, classifying, protecting and publishing information contained in official documents relating to the activities of public authorities;

3) provide necessary assistance to requesting parties in relation to their exercise of the rights laid down in this Act.

(4) Public authorities shall notify the Commissioner of the decision to appoint an information officer within a month of passing the decision to appoint the information officer.

(5) The Commissioner shall keep a Register of Information Officers.

Official registry

Article 14

(1) Public authorities shall keep a special official registry of any requests, procedures and decisions on the exercise of the right of access to information and re-use of information, in accordance with the provisions of this Act.

(2) The organisation, contents and the manner of keeping the official registry shall be stipulated by the rules of the minister competent for general administration affairs.

IV. EXCEPTIONS TO THE RIGHT OF ACCESS TO INFORMATION

Restrictions and their duration

Article 15

(1) Public authorities shall restrict the access to information in relation to any proceedings conducted by the competent bodies during pre-investigation and investigation actions for the duration of such proceedings.

(2) Public authorities may restrict access to information in the following instances:

1) where information has been classified by a confidentiality level, in accordance with the act regulating confidentiality of information;

2) where information constitutes a trade or professional secret, under the law;

3) where information is a tax secret, under the law;

4) where information is protected by an act regulating the area of personal data protection;

5) where information is being created within a public authority, and its publication prior to completing the creation of comprehensive and final information might seriously damage the process of adopting a decision;

6) where access to information is restricted under international treaties;

7) in other cases stipulated by the law.

(3) Public authorities may restrict access to information if there are grounds to suspect that its publication might:

1) prevent efficient, independent and unbiased conduct of judicial, administrative or other legally regulated proceedings, or the execution of a court decision or sentence;

2) prevent the work of any bodies conducting administrative supervision, inspection supervision or the supervision of legality;

3) infringe on any intellectual property rights, except in the event of expressed written consent of the author or the owner.

(4) Any information in respect of which the right of access is restricted for the reasons stated in paragraph 3(3) of this article shall become available to the public on the date specified by the person to whom the publication of information might cause damage, but no later than 20 years from the day of information creation, unless a longer period has been laid down by law or other regulation.

(5) If the requested information also includes any data which is subject to the restriction referred to in paragraphs 2 and 3 of this article, the remaining parts of the information shall be made available.

(6) The information shall be available to the public on cessation of the reasons for which the public authority has restricted the access to such information.

Proportionality and public interest test

Article 16

(1) Public authorities competent for acting on the request for access to information referred to in Article 15(2)(2-7) and (3) of this Act shall, prior to passing a decision, conduct a proportionality and public interest test. Information owners referred to in Article 15(2)(1) of this Act shall conduct a proportionality and public interest test prior to passing a decision, and having previously obtained an opinion of the Office of the National Security Council.

(2) When carrying out a proportionality and public interest test, public authorities shall determine whether access to information may be restricted for the purpose of protecting any of the protected interests referred to in Article 15(2) and (3) of this Act, whether enabling access to the requested information in each individual case would seriously damage such interest and whether the need to protect the right to restriction or public interest prevails. Where public interest is found to prevail against the protected interests, the information shall be made available.

(3) Information on the management of public resources shall be available to the public even without conducting the procedure referred to in paragraph 1 of this article, unless the information constitutes classified information.

V. PROCEDURAL PROVISIONS

Methods of exercising the right of access to information

Article 17

(1) Public authorities shall enable access to information by:

1) publishing information on their work in a timely, appropriate and accessible manner on the website of public authorities or in a public journal and the Central Catalogue of Official Documents of the Republic of Croatia, for the purpose of informing the public;

2) providing the information to the beneficiary who has submitted a request for access to information in one of the following ways:

– direct provision of information;

– provision of information in writing;

– inspecting the documents and making copies of the documents containing the requested information;

– delivering copies of the document containing the requested information;

– any other way suitable for the exercise of the right of access to information.

(2) In the request for access to information, the beneficiary may indicate suitable way of receiving the information, and if not indicated, the information shall be delivered in the same way in which the request was submitted.

Request

Article 18

(1) A beneficiary may exercise the right of access to information by submitting an oral or a written request to the competent body.

(2) If the request is submitted orally or by telephone, an official note shall be drawn up, and if it is submitted by e-mail, the request shall be considered submitted in writing.

(3) A written request shall contain: the name and the seat of the public authority to which the request is submitted, data important for the recognition of the requested information, full name of the natural person submitting the request, company or the name of the legal person and its registered office.

(4) The person submitting the request is not obliged to state the reasons for seeking access to the information or to refer to the application of this Act.

Access to information fee

Article 19

(1) Access to information in the proceedings before public authorities shall not be subject to any administrative or judicial fees.

(2) Public authorities are entitled to require the beneficiary to reimburse their actual material expenses incurred by the provision of information, in accordance with Article 17 of this Act, as well as the costs of delivery for the requested information. Public authorities shall deliver the method of fee calculation at the beneficiary's request.

(3) The criteria for determining the size and the method of collecting the fee referred to in paragraph 2 of this article shall be stipulated by the Commissioner.

(4) The fee income generated pursuant to paragraph 2 of this article shall be deemed to constitute public authorities' income.

Time limits

Article 20

(1) Public authorities shall process the request for access to information no later than 15 days from the day a valid request is submitted.

(2) In the case of incomplete or unintelligible requests, the public authority shall promptly ask the person who submitted the request to amend it within five days from the day of receiving such a call for amendment. In the event of failure by the person who submitted the request to amend it in an appropriate way, and what information is requested cannot be ascertained from that which has been delivered, the public authority shall deny the request by a decision.

Request forwarding

Article 21

(1) If a public authority does not possess the information, but has knowledge of which body has it, it shall promptly, but within eight days of receiving the request at the latest, forward the request to the respective body and notify the person who submitted it thereof. The time for exercising the right of access to information shall run from the day on which the competent public authority received the forwarded request.

(2) If a public authority receives a request for access to information referred to in Article 15(2)(1) of this Act and is not its owner, it shall promptly, but within eight days of receiving the request at the latest, forward the request to the information owner and notify the person who submitted it thereof.

(3) If a public authority receives a request for access to international information, it shall promptly, but within eight days of receiving it at the latest, forward the request to the information owner and notify the person who submitted it thereof. By way of exception, a public authority shall act on the received request for access to international information where the information itself indisputably indicates that it is intended for immediate publication.

Time limit extension

Article 22

(1) The time limits for the exercise of the right of access to information may be extended by 15 days, running from the day on which the public authority was supposed to decide on the request for access to information if:

- 1) the information must to be sought outside the seat of the public authority;
- 2) a single request covers several different pieces of information;
- 3) necessary to ensure the completeness and accuracy of the requested information;
- 4) it is required to conduct the proportionality and public interest test, in accordance with the provisions of this Act.

(2) A public authority shall notify the extension promptly, but within eight days of receiving a valid request at the latest, to the person who submitted it, stating the reasons for the extension of the time limit.

Deciding on requests

Article 23

(1) A public authority need not pass a decision on the request when it:

- 1) enables access by the beneficiary to the requested information;
- 2) notifies the beneficiary that it has already obtained the same information within the past 90 days;
- 3) notifies the beneficiary that the information has been publicly disclosed;
- 4) notifies the beneficiary that the availability of information from court, administrative and other legally-based proceedings to him or her, as a party in proceedings, is grounded in regulations;
- 5) notifies the beneficiary that the information concerned is subject to the obligation of confidentiality, in accordance with Article 1(4) and (5) of this Act.

(2) The public authority shall promptly notify the person who submitted the request of any reasons laid down in paragraph 1(2-5) of this article, if they exist, in writing.

(3) The public authority shall pass a decision specifying when the beneficiary is to be granted access to the requested information, by applying the provision of Article 16(1) of this Act.

(4) The public authority shall deny the request by a decision if it has no information and has no knowledge of its whereabouts.

(5) The public authority shall deny the request by a decision if:

1) the criteria stipulated in Article 15(1) of this Act have been met;

2) the criteria stipulated in Article 15(2) and (3), in conjunction with Article 16(1) of this Act, have been met;

3) it establishes that there are no grounds for amending or correcting the information provided, as referred to in Article 24 of this Act;

4) the requested information is not deemed to constitute the information within the meaning of Article 5(1)(3) of this Act.

Information amendment and correction

Article 24

(1) Any beneficiary believing that the information provided at his or her request is inaccurate or incomplete, he or she may request its amendment or correction within 15 days of receiving such information.

(2) The public authority shall decide on the request for amendment or correction of the information within 15 days of receiving the request, in accordance with the provisions of Article 23 of this Act.

Appeal

Article 25

(1) A decision of the public authority may be subject to appeal to be lodged with the Commissioner within 15 days from the day of decision delivery.

(2) An appeal may also be lodged where the public authority fails, in the prescribed time limit, to decide on the request of the submitting party.

(3) The Commissioner shall pass a decision on the appeal and deliver it the party through a first-instance body, no later than 30 days from the day on which a valid appeal was lodged.

(4) In the appeal proceedings against the decision on the restriction of information referred to in Article 15(2-3) of this Act, public authorities are required to provide access by the Commissioner to the information which is the subject matter of the proceedings. The Commissioner shall request the opinion of the Office of the National Security Council in respect of the information referred to in Article 15(2)(1) of this Act, in accordance with the act regulating data confidentiality.

(5) When, in the procedure of deciding on the appeal, the Commissioner needs to enquire into the regularity of the conducted proportionality and public interest test or conduct a proportionality and public interest test, the Commissioner shall pass the decision on the appeal and deliver it to the party, through a first instance body, no later than 60 days from the day on which a valid appeal was submitted.

(6) When requiring the opinion of the Office of National Security Council in respect of the information referred to in Article 15(2)(1) of this Act, the Commissioner shall pass a decision and deliver it to the party through a first instance body no later than 90 days from the day on which a valid appeal was submitted.

(7) When the appeal is found to be legitimate, the Commissioner shall enable access to the information to the beneficiary by a decision.

Administrative action

Article 26

(1) The decision of the Commissioner shall not be subject to appeal, but an administrative action may be instituted against it before the High Administrative Court of the Republic of Croatia. The High Administrative Court of the Republic of Croatia shall decide on the dispute within 90 days. If the decision enables access to information, the action may stay its effect.

(2) The administrative action to overrule the decision referred to in paragraph 1 of this article may also be instituted by the public authority which passed a first-instance decision.

(3) In the proceedings based on the action, public authorities shall enable access by the High Administrative Court to the information referred to in Article 15(2-3) of this Act which constitutes the subject matter of the proceedings.

VI. RE-USE OF INFORMATION

Right of re-using information

Article 27

(1) Any beneficiary is entitled to re-use information for commercial or non-commercial purposes, in accordance with the provisions of this Act.

(2) For the purpose of information re-use, public authorities shall render their information available in electronic form whenever possible and appropriate. Public authorities are not obliged to ensure the conversion of information from one form to another or to ensure the use of a part of the information, nor are they obliged to renew (update, upgrade, continue to create) a particular information for the sole purpose of its re-use.

Request for re-use

Article 28

A person submitting a request for information re-use, in addition to data referred to in Article 18(3) of this Act, shall specify the following in the request:

- 1) the information he or she wishes to re-use;
- 2) manner of receiving the contents of the requested information;
- 3) purpose for which he or she wishes to re-use the information (for commercial or non-commercial purposes).

Time limit for deciding on requests for re-use

Article 29

(1) Public authorities shall decide on the request for information re-use within 15 days from the day on which a valid request was submitted.

(2) In the event of an incomplete or unintelligible request, the public authority shall promptly ask the person who submitted it to correct the request within five days of receiving the call for its correction. If the person who submitted the request does not amend it in an appropriate manner, public authorities shall deny the request by a decision.

(3) The time limits for deciding on the request for information re-use may be extended by 15 days, running from the day on which the public authority was supposed to decide on the request for information re-use for the reasons stipulated in Article 22(1)(1-3) of this Act.

(4) Public authorities shall notify the submitting party promptly, but within eight days at the latest, of the extension and state the reasons for its.

Deciding on requests for information re-use

Article 30

(1) A public authority need not pass a decision on the request when it enable the re-use of information.

(2) The public authority which enables access to information for the purpose of its re-use may lay down the terms of the information re-use. These conditions must not unnecessarily restrict the possibility of re-use and must not be used to restrict market competition.

(3) In the event of granting an exclusive right to re-use, in accordance with Article 34(1) of this Act, the public authority shall enter into an agreement with the beneficiary to regulate the terms of the information re-use.

(4) The public authority shall deny the request for the information re-use if the request concerns the following:

- 1) information referred to in Article 15(1) of this Act;
- 2) information referred to in Article 15(2) and (3) of this Act;

- 3) information protected by the intellectual property rights of third parties, referring to the owner of the intellectual property right, if known;
- 4) information in the possession of bodies providing public radio and television services or bodies providing public services in the field of education, science, research and cultural activities;
- 5) information in respect of which access to authorised persons only is stipulated by another act;
- 6) information not created within the scope of activities of the public authority concerned.

Re-use of information fee

Article 31

- (1) The re-use of information shall not be subject to a fee payable to public authorities if they publish the same information on the Internet free of charge.
- (2) A public authority may charge a fee for the re-use of information, in accordance with Article 19(2) of this Act.

Publication of the criteria for the re-use of information

Article 32

Public authorities shall publish any criteria of the re-use, together with the fee referred to in Article 19(2) of this Act, on their website in advance.

No discrimination

Article 33

- (1) The criteria for the re-use of information shall not be discriminatory.
- (2) The re-use of information shall be allowed and available to any persons requesting it at the same fee and under the same terms. The number of persons to which a public authority grants the right to re-use information shall not be limited. The public authority shall not grant a request for information re-use to the person submitting it by a contract, other agreement or a decision if it might prevent the re-use of the same information by other beneficiaries.
- (3) The public authority which re-uses its own information as a basis for commercial activities outside the scope of its public activities shall be subject to the same criteria as other beneficiaries.

Exclusive rights

Article 34

(1) By way of derogation from Article 33(2) of this Act, public authorities may grant the exclusive right to information re-use if and when absolutely necessary for the provision of a public service or other services in the public interest. The validity of the reasons for granting such exclusive right shall be subject to regular verification by the Commissioner and shall be verified at least every three years.

(2) All stipulated data on the approval and verification of any agreements on the grant of the exclusive right of information re-use shall be submitted to the Commissioner within 15 days from their conclusion. The Commissioner shall keep publicly available records of all the exclusive rights granted.

(3) Detailed criteria for the re-use of information and the grant of exclusive rights referred to in paragraph 1 of this article, as well as the contents and manner of publication and the related recordkeeping, shall be stipulated by the rules of the minister competent for general administration affairs.

VII. INFORMATION COMMISSIONER

Information Commissioner

Article 35

(1) The Commissioner shall protect, monitor and promote the right of access to information guaranteed by the Constitution of the Republic of Croatia.

(2) The Commissioner may not be held accountable, put in custody or punished for any opinion expressed or action taken within the scope of his or her work, except in the event of a violation of law representing a criminal offence by the Commissioner.

(3) The Commissioner shall:

- perform the tasks of a second-instance body in deciding on the appeals concerning the exercise of the right of access to information and the right of information re-use;
- supervise and conduct inspection supervision of the implementation of this Act;
- monitor the implementation of this Act and regulations governing the right of access to information, and report to the public on their implementation;
- propose measures to public authorities for improving the exercise of the right of access to information, regulated by this Act;
- inform the public of the exercise by the beneficiaries of their right of access to information;
- propose measures for professional training and enhancement of the information officers at public authorities, and informing them of their obligations in relation to the application of this Act;
- initiate the adoption or amendment of regulations for the purpose of implementing and improving the right of access to information;

- submit a report to the Croatian Parliament on the implementation of this Act and other reports if and when necessary;
- participate in the activities of working bodies of the Croatian Parliament and attend the sessions of the Croatian Parliament, when matters within the scope of work of the Commissioner are on the agenda;
- submit a proposal to indict and issue a misdemeanour order in respect of any identified misdemeanours.

(4) In order to access and work with the classified data, the Commissioner and public servants at the Office shall meet the criteria stipulated by a special act and shall, in accordance with the act regulating the confidentiality of information, keep confidential all personal and other information that they learn of in the discharge of their duties.

Election of the Commissioner

Article 36

(1) The Commissioner shall be elected by the Croatian Parliament for a five-year term, with the possibility of re-election.

(2) No later than six months prior to the expiry of the Commissioner's term in office, and no later than 30 days after the cessation of his or her duties for other reasons, the Committee on the Constitution, Standing Orders and Political System of the Croatian Parliament shall publish a public call for the submission of candidacies for the election of the Commissioner.

(3) With a prior opinion of the Committee on the Information, Computerisation and the Media, the Committee on the Constitution, Standing Orders and Political System of the Croatian Parliament shall propose at least two Commissioner candidates on the basis of the received applications from the public call and make the proposal to the Croatian Parliament.

(4) In his or her work the Commissioner shall be autonomous and independent, and shall be accountable for his or her work to the Croatian Parliament.

Criteria for the election to the post of Commissioner

Article 37

(1) A person eligible to be elected to the post of Commissioner shall meet the following criteria:

- Croatian citizenship and permanent residence in the territory of the Republic of Croatia;
- graduate and post-graduate university degree or integrated graduate and post-graduate degree in law or social sciences;
- at least 10 years of work experience in their profession;

- renowned expert with an established ethical and professional reputation and experience in the field of protection and improvement of human rights, freedom of the media and development of democracy;
- not convicted of being criminally prosecuted for criminal offences in the proceedings instituted *ex officio*;
- not a member of a political party.

(2) The provisions of the Civil Servants Act shall apply to the Commissioner *mutatis mutandis*.

(3) The Commissioner is entitled to a salary equal to the salary of vice-presidents of the working bodies of the Croatian Parliament.

Dismissal of the Commissioner

Article 38

(1) The Croatian Parliament shall dismiss the Commissioner from duty prior to the expiry of the term for which he or she has been elected in the following events:

- at his or her personal request;
- circumstances due to which he or she no longer meets the criteria for the election referred to in Article 37 of this Act
- if he or she is prevented from discharging duties over a period of more than six months;
- failure to discharge his or her duties in accordance with this Act.

(2) The procedure for the dismissal of the Commissioner shall be initiated by the Committee on the Constitution, Standing Orders and Political System of the Croatian Parliament.

(3) The Commissioner shall be dismissed by the Croatian Parliament with a prior opinion of the Committee on the Information, Computerisation and the Media of the Croatian Parliament.

Organisation of the Commissioner's Office

Article 39

(1) The Commissioner shall have a Commissioner's Office, as his or her administrative and professional service.

(2) Internal organisational units for particular fields of work shall be organised within the Commissioner's Office, in accordance with the type of work.

(3) The Provisions of the Act on Government Officials shall apply to the employees of the Commissioner's Office.

(4) The Commissioner's position shall be that of the head of the body over the employees of the Commissioner's Office.

(5) The internal organisation of the Commissioner's Office shall be regulated by Standing Orders.

(6) The seat of the Commissioner's Office shall be in Zagreb.

(7) The Commissioner's Office shall be funded from the state budget of the Republic of Croatia.

Commissioner's Standing Orders and Internal Organisation Rules

Article 40

(1) The Commissioner shall pass Standing Orders to be adopted by the Croatian Parliament. The Standing Orders shall be published in the Official Gazette.

(2) The Standing Orders shall regulate the internal organisation, the manner of work of the Commissioner, the manner of planning and performing the tasks and other matters important for the performance of the Commissioner's work.

(3) The Commissioner shall pass the Internal Organisation Rules, which govern the number of government officials required for the performance of tasks, together with an indication of their principal jobs and tasks, as well as the professional criteria for their performance, their powers and responsibilities and other matters of significance for the Commissioner's work.

VIII. SUPERVISION

Supervision of the implementation of this Act

Article 41

Supervision over the implementation of this Act shall be conducted by the Commissioner.

Inspection supervision

Article 42

(1) Inspection supervision of the implementation of this Act shall be conducted by inspectors and other authorised officers of the Commissioner's Office (hereinafter: inspectors).

(2) The inspectors shall meet the following professional criteria: a post-graduate university degree or specialist post-graduate professional degree in law or any other social science, three-year work experience in the implementation of law or supervision of the implementation of law and other regulations and a passed professional state exam.

Article 43

Inspection supervision shall be performed pursuant to received complaints of the beneficiaries of the right of access to information and re-use of information, at the proposal of a third party or *ex officio*.

Article 44

(1) Inspectors shall be independent in their work.

(2) No one shall, by using official position or otherwise, prevent or hinder the work of inspectors in conducting supervision and taking the measures and actions for which they are authorised.

Inspectors' tasks

Article 45

(1) In the course of their inspection supervision of the implementation of this Act, the inspectors shall supervise, in particular the following:

– whether there is an information officer appointed at the public authorities and whether the information officers act in compliance with their powers stipulated by this Act;

– whether a public authority keeps a special registry of the requests, procedures and decisions on the exercise of the right of access to information and re-use of information;

– whether a public authority publishes the fee payable for the access to information and re-use of information, in accordance with Article 19(2) of this Act;

– whether a public authority publishes information in accordance with Article 10(1) of this Act;

– whether a public authority submits reports in accordance with Article 60 of this Act;

– appropriate application of the provisions of this Act upon request for access to information and request for information re-use;

– taking other actions in respect of received requests for access to information and requests for information re-use.

(2) In conducting inspection supervision, the inspectors are entitled to request and receive from public authorities any information which is the subject matter of a proceeding, in accordance with this Act.

(3) Information referred to in Article 1(4) and (5) of this Act shall not be subject to inspection supervision.

Inspectors' working method

Article 46

Inspection supervision shall be conducted in the form of:

1. direct inspection supervision, by direct examination of any data and documentation of the supervised public authority, as well as the conditions and the working method of the supervised public authority;
2. indirect inspection supervision, by direct examination of any data and documents delivered.

Article 47

- (1) The inspector shall notify the head of the public authority in which inspection supervision is to be conducted (hereinafter: head of the public authority) of the pending direct inspection supervision no later than three days prior to the beginning of such supervision.
- (2) By way of derogation from paragraph 1 of this article, the inspector may conduct inspection supervision without prior notification where there are reasons for acting in urgent procedure.
- (3) The head of the public authority shall enable unhindered conduct of inspection supervision, including the provision of work space for conducting supervision, use of technical aids, data and documents which are subject to the supervision.
- (4) The inspector may, where necessary, take statements of the public authority heads or other officials while conducting supervision.

Article 48

- (1) In conducting indirect inspection supervision, the inspector is authorised to request in writing that certain documents be delivered, and set an appropriate time limit for their delivery.
- (2) The head of the public authority or another authorised person shall act as requested by the inspector, while also ensuring the delivery of complete and accurate information, and if unable to do so, promptly submit a written declaration thereof.

Article 49

- (1) On completing inspection supervision, the inspector shall draw up a record of any illegalities, irregularities and deficiencies found by it.
- (2) The record of inspection supervision referred to in paragraph 1 of this article (hereinafter: the record) shall contain the following:
 - 1) account of the factual situation and infringements of law and other regulations, work irregularities and deficiencies;
 - 2) evaluation of the situation;
 - 3) measures ordering the elimination of any illegalities found, and the time limit for the implementation of measures imposed;

4) proposals for the elimination of any irregularities and deficiencies in the operation found;

5) obligation to report to the inspector on the measures taken;

6) instruction on the right to complain.

(3) The inspector shall, depending on the nature of the measures imposed, set an appropriate time limit for the implementation of such measures.

(4) If the inspection supervision finds no illegalities, irregularities or deficiencies in its operation, the head of the supervised public authority shall be notified of it in writing.

Rights and obligations of the inspector

Article 50

The inspector may impose the following measures on the record:

1) order appropriate measures to be taken in order to eliminate the identified infringement of this Act and other regulations, irregularities and deficiencies in the operation of the supervised public authority;

2) prohibit the performance of actions taken contrary to this Act and other regulations;

3) propose measures to be taken with the aim to eliminate irregularities or deficiencies in the operation;

4) propose measures to be taken with the aim to improve the operation of the supervised public authority.

Article 51

(1) The record shall be delivered to the head of the supervised public authority.

(2) The record may also be delivered to the body to which the supervised body is directly accountable, pursuant to the regulations on the organisation of the state administration, or local and regional self-government.

Complaint against the record

Article 52

(1) The head of the supervised public authority may file a complaint against the record within eight days from the day of its receipt.

(2) The complaint may contest the record on the basis of:

1) incomplete identification or misidentification of the factual situation, misapplication of the regulations and the measure imposed pursuant to these;

- 2) transgression of authority by the inspector in conducting inspection supervision.
- (3) The complaint against the record shall be resolved by a decision (hereinafter: decision).
- (4) The decision referred to in paragraph 3 of this article of the Act shall not constitute an administrative enactment.

Article 53

- (1) The decision shall be passed within 30 days from the day of receipt of the complaint.
- (2) The complaint shall stay the obligation to act on the imposed measures until the decision is received.

Complaint handling

Article 54

- (1) A complaint filed against the inspector's record, for the reasons stated in Article 52(2)(1) of this Act shall be investigated by the inspector who conducted the supervision and drew up the record. In the event that the complaint is legitimate, the inspector shall amend the record with regard to the arguments contained in the complaint.
- (2) If the inspector finds that the complaint is completely or partially unfounded, the complaint, along with an explanation, shall be submitted to the Commissioner for deciding on it.
- (3) The Commissioner shall re-examine the complaint and the explanation, and is authorised to:
 - 1) rescind or amend the imposed measure, if the arguments in the complaint are legitimate;
 - 2) reject the complaint.

Article 55

- (1) The complaint against the record filed for the reasons stipulated in Article 52(2)(2) of this Act shall be decided on by the Commissioner.
- (2) In acting on the complaint, the Commissioner is authorised to:
 - 1) rescind the imposed measure, if imposed by the inspector acting outside his legal authority;
 - 2) reject the complaint.

Control of the implementation of measures in the record

Article 56

(1) The head of the supervised public authority shall implement the imposed measures in the time limit laid down in the record.

(2) The head of the supervised public authority shall submit a report and the evidence of the implementation of the imposed measures to the inspector within 15 days from the expiry of the time limit set for implementing them.

Article 57

(1) As a rule, the inspector shall perform control of the implementation of the imposed measures indirectly, by obtaining reports and evidence of their implementation.

(2) The control of the implementation of imposed measures may also be performed through direct control inspection supervision, where so required by the nature of the actions to be taken in the implementation of measures, or where the inspector establishes a need for direct control supervision because of the faults in the report.

Article 58

Where the supervised public authority fails to implement the measures imposed for the purpose of eliminating illegalities, the Commissioner shall report to the following:

1) Government of the Republic of Croatia, where the failure to implement such measures is imputed to the central bodies of state administration, the head of which is responsible directly to the Government;

2) central state administration body conducting supervision of the operations of the state administration organisation, in accordance with the law;

3) central state administration body competent for the system and organisation of the state administration, local and regional self-government, if the failure to implement the measures is imputed to the state administration office in the county, or to the bodies of local or regional self-government units;

4) founder of the public authority.

Motion handling

Article 59

(1) Inspectors shall act upon any motions concerning the work of public authorities in relation to the application of this Act.

(2) The inspector shall review the motion filed.

(3) Where, on reviewing the motion, the inspector finds the claims made in the motion to be founded, in addition to requesting a report, the inspector shall issue a warning for the purpose of urgent elimination of potential illegalities.

(4) Where, on acting on the motion, the facts stated in it are found to be accurate, while the elimination of the illegalities or irregularities requires a measure to be imposed, the inspector shall conduct inspection supervision *ex officio*, in a manner and in accordance with its powers referred to in this Act.

(5) The inspector shall notify the person who filed the motion in writing of any facts established, or measures imposed pursuant to it. Such notification shall not be deemed to constitute an administrative enactment.

IX. REPORTING

Reports

Article 60

(1) All public authorities shall cooperate with the Commissioner.

(2) Public authorities shall submit a report on the implementation of this Act for the previous year to the Commissioner no later than 31 January of the current year for the previous year.

(3) The report shall include data on the:

1) number of received requests for the access to information and re-use of information,

2) number of granted requests,

3) number of partially granted requests,

4) number of issued notifications, in accordance with Article 23(2) of this Act,

5) number of refused requests and the reasons for the refusal,

6) number of rejected requests and the reasons for the rejection,

7) number of forwarded requests,

8) number of received requests for correction or amendment of information,

9) number of granted requests for correction or amendment to information,

10) number of refused requests for correction or amendment to information,

11) number of rejected requests for correction or amendment to information,

12) number of requests resolved in the stipulated time limit,

13) number of requests resolve after the stipulated time limit,

14) number of unresolved requests,

- 15) number of suspended proceedings,
 - 16) number of lodged appeals,
 - 17) number of granted appeals,
 - 18) number of refused appeals,
 - 19) number of rejected appeals,
 - 20) number of actions filed,
 - 21) number of agreements on the exclusive rights to re-use information,
 - 22) amount of earned fees referred to in Article 19 of this Act,
 - 23) information published in accordance with the obligations stipulated in Article 10 of this Act.
- (4) Together with the delivery of data referred to in paragraph 3 of this article of the Act, public authorities shall provide an explanation and evaluation of the current situation on the basis of the stated data.
- (5) The Commissioner shall submit a report on the implementation of this Act to the Croatian Parliament no later than 31 March of the current year for the previous year.
- (6) The Commissioner shall create a template of the report referred to in paragraph 2 of this article and lay down the manner of data submission.

X. PENAL PROVISIONS

Article 61

- (1) A fine of between HRK 20,000.00 and 100,000.00 for a misdemeanour shall be imposed on a public authority which prevents or restricts the exercise of the right of access to information and re-use of information in contravention of the provisions of this Act.
- (2) The responsible person at the public authority shall be fined between HRK 5,000.00 and 20,000.00 for the misdemeanour referred to in paragraph 1 of this article,.
- (3) A fine of between HRK 20,000.00 and 50,000.00 for a misdemeanour shall be imposed on any natural person who damages, destroys, hides or in any other way makes unavailable a document containing information with the intention of precluding the exercise of the right of access to information.
- (4) The responsible person at the public authority shall be fined between 20,000.00 and 50,000.00 for the misdemeanour referred to in paragraph 3 of this article.
- (5) A fine of between HRK 1,000.00 and 50,000.00, or between HRK 2,000.00 and 100,000.00 shall be imposed any natural or legal person respectively, who use the information

contrary to the published criteria for the re-use of information referred to in Article 32 of this Act.

Article 62

(1) A fine of between HRK 2,000.00 and 4,000.00 for a misdemeanour shall be imposed on a public authority for failing to:

- 1) publish information in accordance with Article 10(1) and Article 11 of this Act;
- 2) appoint an information officer;
- 3) submit an annual report on the implementation of the Act.

(2) The responsible person at the public authority shall be fined between HRK 1,000.00 and 2,000.00 for the misdemeanour referred to in paragraph 1 of this article.

(3) A fine of between HRK 5,000.00 and 10,000.00 for a misdemeanour shall be imposed on a public authority for the following:

- 1) failing to comply with the decision of the Commissioner;
- 2) not providing access by the Commissioner to the information which is the subject matter of the proceedings, deliver the required data or for delivering incomplete or inaccurate data;
- 3) preventing the inspector to conduct supervision unhindered;
- 4) failing to eliminate by the stipulated time limit the illegalities, irregularities or deficiencies established in the record.

(4) The responsible person at the public authority shall be fined between HRK 3,000.00 and 5,000.00 for the misdemeanour referred to in paragraph 3 of this article.

Complete performance of obligation

Article 63

A public authority shall enable the exercise of the right of access to information by the beneficiary even on pain of misdemeanour sanctions if it is found responsible for unfounded denial of or restrictions in the exercise of the right of access to information.

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 64

(1) The minister competent for general administration affairs shall pass the rules referred to in Article 10(3), Article 14 and Article 34(3) of this Act no later than 90 days from the day this Act enters into force.

(2) The Commissioner shall lay down the criteria for setting the size of the fee referred to in Article 19(3) of this Act within 90 days of his or her election.

Article 65

Public authorities shall provide organisational, material, technical and other conditions for the implementation of the provisions of this Act within 90 days from the day this Act enters into force.

Article 66

(1) The Personal Data Protection Agency shall perform the activities of an independent government body for the protection of the right of access to information until the Information Commissioner is elected.

(2) On the day the Commissioner is elected, the Commissioner's Office shall take over the tasks and the employees of the Right of Access to Information Department of the Personal Data Protection Agency, along with the equipment, archives and other documents, operating assets, financial assets, rights and obligations, proportionally to the activities taken over.

(3) Any administrative and technical tasks for the purposes of the Commissioner's Office shall be performed by the Personal Data Protection Agency, to be regulated by an Agreement entered into between the Commissioner and the Personal Data Protection Agency.

Election of the Commissioner [procedure]

Article 67

Within eight days of the entry into force of this Act, the Committee on the Constitution, Standing Orders and Political System shall initiate the procedure of the election of the Commissioner.

Article 68

(1) No later than 60 days from the day of his or her election, the Commissioner shall submit to the Croatian Parliament for approval the Standing Orders drafted pursuant to the provisions of this Act and a special act regulating the matters under the Commissioner's competence.

(2) The Commissioner shall pass the Internal Organisation Rules no later than 30 days from the day the Standing Orders referred to in paragraph 1 of this article enter into force.

Article 69

(1) Any procedures initiated by the day this Act enters into force shall proceed to completion under the provisions of the Act on the Right of Access to Information (Official Gazette, 172/03, 144/10, 37/11 and 77/11).

(2) The Rules of the Organisation, Content and Manner of Keeping the Official Registry of the Exercise of the Right of Access to Information (Official Gazette, 137/04) shall remain in force until the Rules referred to in Article 14(2) of this Act enter into force.

(3) The criteria for setting of the fee amount referred to in Article 19(2) of the Act of the Right of Access to Information (Official Gazette, 172/03, 144/10, 37/11 and 77/11) shall remain in force until the criteria for setting the size and the manner of collecting the fee referred to in Article 19(3) of this Act enter into force.

Article 70

On the day the Commissioner is elected, the employees of the Right of Access to Information of the Personal Data Protection Agency shall be assumed by the Commissioner's Office and shall continue to perform the tasks they are found to be performing on the day this Act enters into force, while retaining their right to a salary and other employment rights until a decision on their reassignment is passed in accordance with the qualifications, expertise, skills, abilities, work experience and work performance pursuant to the Internal Organisation Rules of the Commissioner.

Article 71

On the day this Act enters into force, the Act on the Right of Access to Information (Official Gazette, 172/03, 144/10, 37/11 and 77/11) shall cease to be valid.

Article 72

This Ordinance shall enter into force on the eighth day following the day of its publication in the Official Gazette.

Class: 008-02/12-01/03

Zagreb, 15 February 2013

CROATIAN PARLIAMENT

President

of the Croatian
Parliament

Josip Leko, m. p.