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Federal Act on Freedom of Information in the Administration (Freedom of Information Act, FoIA)

of 17 December 2004 (Stand am 1. Januar 2009)

The Federal Assembly of the Swiss Confederation,

based on Article 173 paragraph 2 of the Federal Constitution¹,
and having considered the Federal Council Dispatch dated 12 February 2003²
decrees:

Section 1: General Provisions

Art. 1 Aim and subject matter

This Act seeks to promote transparency with regard to the mandate, organisation and activities of the Administration. To this end, it contributes to informing the public by ensuring access to official documents.

Art. 2 Personal scope of application

¹ This Act applies to:

- a. the Federal Administration
- b. public and private bodies outside the Federal Administration, insofar as they enact legislation or issue first instance rulings within the meaning of Article 5 of the Federal Act of 20 December 1968³ on Administrative Procedure (Administrative Procedure Act);
- c. the Parliamentary Services.

² This Act does not apply to the Swiss National Bank or the Swiss Financial Market Supervisory Authority.⁴

AS 51 117 and BS 10 337

¹ SR 101

² BBl 2003 1963

³ SR 172.021

⁴ Amended in accordance with Annex No. 1 the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR 956.1).

³ The Federal Council is authorised to exclude other organisational units of the Federal Administration, as well as other organisations and persons outside the Federal Administration, from the scope of this Act, should:

- a. the functions assigned to same so require;
- b. their competitiveness be prejudiced by being subject to this Act; or
- c. the functions assigned to them be of only minor importance.

Art. 3 Material scope of application

¹ This Act does not apply to:

- a. access to official documents relating to:
 1. civil proceedings;
 2. criminal proceedings;
 3. international mutual and administrative assistance proceedings;
 4. international dispute settlement proceedings;
 5. constitutional and administrative judicial proceedings; or
 6. arbitration proceedings; and
- b. the consultation, by a party, of the case file in first-instance administrative proceedings.

² Access to official documents containing personal information about the applicant is governed by the Federal Act of 19 June 1992⁵ on Data Protection (Data Protection Act).

Art. 4 Reservation of special provisions

Special provisions contained in other Federal Acts are reserved where they:

- a. declare certain information secret; or
- b. declare the access to certain information to be subject to requirements derogating from those set out herein;

Art. 5 Official Documents

¹ An official document is any information:

- a. which has been recorded, regardless of the medium;
- b. retained by the authority which issued the same or to which it has been communicated; and
- c. which concerns the execution of a public function.

² Documents which have been produced by means of a simple computerised process from recorded information which meets the requirements of paragraph 1 letters a, b and c above are deemed to be official documents.

⁵ SR 235.1

- ³ Not deemed to be official documents are any documents which:
- a. are used by an authority in a commercial capacity;
 - b. have not been issued; or
 - c. are intended for personal use.

Section 2: Right of Access to Official Documents

Art. 6 Principle of freedom of information

¹ Any person has the right to inspect official documents and to obtain information about the content of official documents.

² The documents may be inspected *in situ* or a copy thereof may be requested. The legislation governing copyright is reserved.

³ Where an official document has already been published by the Federal Government in paper or electronic format, the rights under paragraphs 1 and 2 above are deemed to have been fulfilled.

Art. 7 Exceptions

¹ The right of access shall be limited, deferred or refused if such access to an official document:

- a. significantly impairs the free opinion-forming and decision-making processes of an authority which is subject to this Act, or of another legislative, administrative or judicial body;
- b. affects the execution of specific measures taken by an authority in conformity with its objectives;
- c. is likely to compromise the domestic and international security of Switzerland;
- d. is likely to affect the interests of Switzerland in matters of foreign policy and international relations;
- e. is likely to affect relations between the Federal Government and the cantons, or inter-cantonal relations;
- f. is likely to affect the economic or monetary interests of Switzerland;
- g. is likely to reveal professional, business or manufacturing secrets; or
- h. is likely to result in the release of information provided voluntarily by a third party to an authority which undertook to maintain secrecy with regard thereto.

² The right of access shall be limited, deferred or refused if such access to an official document is likely to prejudice the privacy of a third party, unless exceptionally outweighed by public interest.

Art. 8 Special cases

¹ There is no right of access to official documents of joint reporting proceedings.

² Access to official documents is granted only after the political or administrative decisions based thereon have been taken.

³ By way of exception, the Federal Council may decide to withhold access to official documents resulting from official departmental consultation processes even after decisions have been made.

⁴ Under no circumstances may access to official documents about the status of pending or future negotiations be granted.

⁵ Access to reports on the evaluation of the performance of the Federal Administration and the effectiveness of its measures is guaranteed.

Art. 9 Protection of personal data

¹ Official documents containing personal data shall, wherever possible, be rendered anonymous prior to inspection.

² Where a request for access covers official documents which cannot be rendered anonymous, Article 19 of the Data Protection Act⁶ shall apply. The relevant procedure shall be governed by this Act.

Section 3: Procedure for Access to Official Documents**Art. 10** Access application

¹ An application for access to official documents shall be addressed to the authority which created the documents or received the same as primary addressee from third parties not subject to this Act.

² The Federal Council may provide a special procedure for access to official documents by Swiss representations abroad and by missions to international organisations.

³ The application must be formulated in a sufficiently accurate manner.

⁴ The Federal Council shall enact regulations governing the particulars of this procedure:

- a. it shall take the special needs of the media into account;
- b. should a large number of applications cover the same document, it may stipulate other modalities governing such access;
- c. it may extend the processing deadlines for applications which require particularly extensive processing.

⁶ SR 235.1

Art. 11 Consultation

¹ Should an application be made for access to official documents which contain personal data, and which the authority is considering granting, it shall consult the person concerned and afford him the opportunity to submit comments within ten days.

² The authority shall then inform such consulted person of the position it intends to take concerning the application for access.

Art. 12 Decision of the Authority

¹ The authority shall make a decision as soon as possible and in any case no later than 20 days after receipt of the application.

² The deadline may, under exceptional circumstances, be extended by 20 days, should the application for access concern a large number of documents or documents which are complex or difficult to obtain. Should an application concern official documents containing personal information, the deadline shall be extended for the required period.

³ Should an application concern official documents containing personal information, the authority shall suspend access until the legal situation has been clarified.

⁴ The authority shall inform the applicant, with summary grounds, of any extension of the deadline, limitation or refusal of access. Information concerning the limitation or denial of access, as well as the grounds therefor, shall be conveyed in writing.

Art. 13 Mediation

¹ A request for mediation may be filed by any person:

- a. whose access to official documents has been limited, deferred or refused;
- b. whose application was not decided by the authority within the deadline;
- c. who was consulted pursuant to Article 11, should the authority intend granting access contrary to his wishes.

² The request for mediation must be filed in writing with the Federal Data Protection and Information Commissioner within 20 days of receipt of the decision from the authority or the date of the authority's failure to comply with the deadline.

³ Should mediation succeed, the matter is deemed to have been settled.

Art. 14 Recommendation

Should mediation fail, the Federal Data Protection and Information Commissioner shall provide the participants to the mediation proceedings with a written recommendation within 30 days of receipt of the request for mediation.

Art. 15 Decision

¹ Within ten days of receipt of the recommendation, the applicant or the person consulted may request a decision pursuant to Article 5 of the Administrative Procedure Act of 20 December 1968⁷.

² Furthermore, the authority shall hand down a decision, where, contrary to the recommendation, it intends to:

- a. limit, defer or refuse the right of access to an official document;
- b. grant the right of access to an official document containing personal information.

³ A decision shall be issued within 20 days of receipt of the recommendation or the request for a decision pursuant to paragraph 1 above.

Art. 16⁸ Appeal

¹ The appeals procedure are subject to the general provisions found in the relevant legislation governing the federal administration of justice.

² The appeal instances shall also have access to official documents which are secret.

Art. 17 Fees

¹ In principle, access to official documents is subject to payment of a fee.

² No fee is charged for:

- a. the processing of an application which gives rise to minimal costs;
- b. mediation proceedings (Art. 13); and
- c. proceedings before the first instance (Art. 15).

³ The Federal Council shall regulate the details and fee rates on the basis of the effective costs incurred. Specific provisions set out in other legislation are reserved.

⁴ Fees may, in any event, be charged for the release of reports, brochures and other printed material and information carriers.

Section 4: Federal Data Protection and Information Commissioner**Art. 18** Duties and Competencies

The Federal Data Protection and Information Commissioner (the Commissioner) pursuant to Article 26 of the Data Protection Act⁹ shall, in particular, have the following duties and competencies under the present Act:

⁷ SR 172.021

⁸ Amended in accordance with Annex No. 7 the Federal Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (SR 173.32).

⁹ SR 235.1

- a. conducting mediation proceedings (Art. 13) and making a recommendation (Art. 14), should mediation not succeed;
- b. providing information *ex officio*, or at the request of individuals or authorities, on the modalities governing access to official documents;
- c. commenting on draft legislation and measures of the Federal Government which have a fundamental impact on the principle of freedom of information.

Art. 19 Evaluation

¹ The Commissioner shall review the execution and effectiveness of this Act and, in particular, the costs incurred in its implementation, and shall report on a regular basis to the Federal Council.

² The Commissioner shall submit the first report on the implementation costs of this Act to the Federal Council within three years of its entry into force.

³ The reports of the Commissioner shall be published.

Art. 20 Right to Information and Inspection

¹ Within the context of mediation proceedings, the Commissioner shall have access to official documents, even if they are subject to secrecy.

² The Commissioner and his secretariat shall be subject to official secrecy to the same extent as the authorities whose official documents they inspect or from whom they obtain information.

Section 5: Final Provisions

Art. 21 Implementation

The Federal Council may, in particular, enact provisions governing the:

- a. processing of official documents;
- b. information pertaining to official documents;
- c. publication of official documents.

Art. 22 Amendments of existing legislation

Amendments to existing legislation are regulated in the Annex.

Art. 23 Transitional provisions

This Act shall apply to official documents produced or received by authorities after its commencement.

Art. 24 Referendum and commencement

¹ This Act shall be subject to optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 July 2006¹⁰

¹⁰ Federal Council Decree of 24 May 2006 (AS **2006** 2326)

Amendment of Existing Legislation

The federal acts below are amended as follows:

1. Federal Act of 21 March 1997¹¹ on Measures to Safeguard Internal Security

*Art. 18 para. 1–4*¹²

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2. Federal Justice Act of 16 December 1943¹³

Art. 17a

...

3. Federal Criminal Court Act of 4 October 2002¹⁴

Art. 25a

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¹¹ SR 120. The amendment below is inserted in the said federal act.

¹² Para. 2 second and third sentence have now been reworded.

¹³ [BS 3 531; AS 1948 485 Art. 86, 1955 871 Art. 118, 1959 902, 1969 737 Art. 80 let. b 767, 1977 237 No. II 3 862 Art. 52 No. 2 1323 No. III, 1978 688 Art. 88 No. 3 1450, 1979 42, 1980 31 No. IV 1718 Art. 52 No. 2 1819 Art. 12 Abs. 1, 1982 1676 Annex No. 13,

1983 1886 Art. 36 No. 1, 1986 926 Art. 59 No. 1, 1987 226 No. II 1 1665 No. II,

1988 1776 Annex No. II 1, 1989 504 Art. 33 let. a, 1990 938 No. III Abs. 5, 1992 288,

1993 274 Art. 75 No. 1 1945 Annex No. 1, 1995 1227 Annex No. 3 4093 Annex

No. 4, 1996 508 Art. 36 750 Art. 17 1445 Annex No. 2 1498 Annex No. 2, 1997 1155

Annex No. 6 2465 Annex No. 5, 1998 2847 Annex No. 3 3033 Annex No. 2,

1999 1118 Annex No. 1 3071 No. I 2, 2000 273 Annex No. 6 416 No. I 2 505

No. I 1 2355 Annex No. 1 2719, 2001 114 No. I 4 894 Art. 40 No. 3 1029 Art. 11

Abs. 2, 2002 863 Art. 35 1904 Art. 36 No. 1 2767 No. II 3988 Annex No. 1, 2003 2133

Annex No. 7 3543 Annex No. II 4 let. a 4557 Annex No. II 1, 2004 1985

Annex No. II 1 4719 Annex No. II 1, 2005 5685 Annex No. 7. AS 2006 1205

Art. 131 Abs. 1]

¹⁴ SR 173.71. The amendment below is inserted in the said federal act.

4. Federal Act of 19 June 1992¹⁵ on Data Protection

Replacement of terms:

In Articles 6 paragraph 2, 11 paragraphs 1 and 2 and in the heading before Article 26, the term "Federal Data Protection Commissioner" shall be replaced by "..."; the grammatical changes directly connected with the change of term must also be made.

In Articles 27 paragraphs 1 and 2, 28, 29 paragraphs 1, 3 and 4, 30 paragraph 1, 32 paragraphs 1 and 3, 33 paragraph 1 letter a¹⁶ and paragraph 2 as well as 34 paragraph 2 letter b, the term "Federal Data Protection Commissioner" shall be replaced by "...".

In Articles 25 paragraph 5, 29 paragraph 4, 30 paragraph 2, 32 paragraph 3, 33 paragraphs 1 and 2 and in the heading before Article 33, the term "Data Protection Commission" shall be replaced by "..."; the grammatical changes directly connected with the change of term must also be made.¹⁷

Art. 19 para. 1bis and 3bis

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Art. 20 para. 3

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Art. 25bis

...

Art. 26 para. 1

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Art. 31 para. 1 introductory sentence and let. e

...

¹⁵ SR 235.1. The amendments below are inserted in the said federal act.

¹⁶ This Art. has now been reworded.

¹⁷ These provisions have now been reworded.

5. Federal Act of 7 October 1994¹⁸ on the Central Offices of the Federal Criminal Police

Art. 14 para. 2 and 3

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¹⁸ SR **360**. The amendment below is inserted in the said federal act.

