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## Sachstand

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### Informationsfreiheitsgesetz

EZPWD-Anfrage Nr. 1759



**Informationsfreiheitsgesetz**

EZPWD-Anfrage Nr. 1759

Verfasser/in:

[REDACTED],  
[REDACTED]

Aktenzeichen:

WD 3 – 3000 – 223/11

Abschluss der Arbeit:

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Fachbereich:

WD 3: Verfassung und Verwaltung

Telefon:

+ [REDACTED]

## 1. Legal basis

There are several laws in Germany regulation the freedom of information:

- Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act - **FOIA**); it regulates the right of individuals to obtain information from the federal authorities (English translation: [http://www.gesetze-im-internet.de/englisch\\_ifg/freedom\\_of\\_information\\_act.pdf](http://www.gesetze-im-internet.de/englisch_ifg/freedom_of_information_act.pdf)),
- Federal Data Protection Law (**FDPL**); some of the provisions of this law are demanded to be applied by the Federal FOIA (only in German: [http://www.gesetze-im-internet.de/bundesrecht/bdsg\\_1990/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/bdsg_1990/gesamt.pdf)),
- Decree Governing Fees and Expenses Concerning the FOIA (only in German: <http://bundesrecht.juris.de/bundesrecht/ifggebv/gesamt.pdf>),
- State Statutes Governing Access to Information; each federal state (“Land”) regulates the access to information held by his government or local authorities; these laws are very similar to the Federal FOIA and establish as well a special institution (“Landesbeauftragter”),
- Code of Administrative Court Procedure (**CACP**); English translation: [http://www.gesetze-im-internet.de/englisch\\_vwgo/code\\_of\\_administrative\\_court\\_procedure.pdf](http://www.gesetze-im-internet.de/englisch_vwgo/code_of_administrative_court_procedure.pdf).



# Deutscher Bundestag

## 2. Questionnaire

<i>My Country:</i>	YES	NO	Comment, if it is necessary, and provision of national FOI / RTI act
1) Do you have in your country an <b>institution</b> established by law that <b>enforces access to information?</b> (such as Information Commissioner)?	<b>YES</b>		Federal Commissioner for Freedom of Information (“Bundesbeauftragter für Datenschutz und Informationsfreiheit“) – Section 12 FOIA.  The following answers concern the regulations of the Federal FOIA.
If YES:			
- is that institution <b>independent</b> from government?	<b>YES</b>		Section 12 para. 3 FOIA in conjunction with section 22 para. 4 FDPL
- does it have an authority in the field of <b>data or privacy protection?</b>	<b>YES</b>		The function of Federal Commissioner for Freedom of Information shall be performed by the Federal Commissioner for Data Protection (section 12 para. 2 FOIA).  The Commissioner supervises the application of the FOIA (section 12 para. 3 FOIA in conjunction with section 24 para. 1 FDPL including the provisions on protection of personal data and protection of intellectual property and business or trade secrets (sections 5 and 6 FOIA).

- is it an <b>autocratic body</b> (such as one person at the head of institution)? <i>(if it is combined, please mark both)</i>	<b>YES</b>		
- is it a <b>collective</b> body (such as a commission)? <i>(if it is combined, please mark both)</i>		<b>NO</b>	
- does it have the power <b>to order to public bodies</b> implementation of some general measures in the field of <b>access to information</b> , include <b>proactive publication</b> ?		<b>NO</b>	The Commissioner has only the power to object to breaches of the FOIA (section 12 para. 3 FOIA in conjunction with section 25 FDPL).
- does it have the power <b>to recommend to public bodies</b> implementation of some general measures in the field of <b>access to information</b> , include <b>proactive publication</b> ?	<b>YES</b>		The Commissioner can recommend improvements of the information of freedom and provide advice (section 12 para. 3 FOIA in conjunction with section 26 para. 3 FDPL).  Proactive publication (organizational and filling plans) is stipulated in section 11 FOIA.
- does it have some <b>powers in procedure</b> regarding individual request to information?		<b>NO</b>	
If YES:			
○ does it have the power to <b>inspect a proceeding regarding</b> individual request to information (inspect the file or on-site inspection)?			
○ does it have the right to become <b>acquainted with the requested information</b> ?			
○ does it have the power <b>to overturn the decision withholding</b> requested information ?			
○ does it have the power <b>to order to public body to release the information</b> ?			

○ does it have the right to review decisions and issue opinion <b>recommending</b> that documents be released?			
- does it have power in <b>another areas</b> ( such as whistleblowing, freedom of speech, black lists of providers of internet connection)?			
2) <b>What institution is competent to decide about the appeal</b> against refusal of request to information or another manner of withholding information?			The decision of the federal body to reject the application can be challenged by lodging an administrative appeal or bringing an action to compel performance of the requested administrative act (section 9 para. 4 FOIA).
- <b>superior body</b> , which is appropriate in case (such as information is withholding by local building regulator, the appeal is decided by regional / central building regulator) ?	YES		The appropriate superior body or the body which has issued the decision of refusal itself is competent to decide about the administrative appeal (section 73 para. 1 CACP).
- body or institution <b>specialized on access</b> to information (such as Information commissioner) ?		NO	
3) Does the FOIA (or RTI Act) stipulates <b>sanctions</b> (penalties) for incorrect withholding information / incorrect denial of request to information?		NO	
If YES ,			
- is the sanction <b>financial</b> ?			
- is the sanction <b>non-financial</b> , such as restricted liberty or penalty of deprivation of liberty, or denial of specific working activity?			
- is the sanction <b>addressed to whole office</b> (and usually are not demanded on answerable officer)?			
- is the sanction <b>addressed to answerable officer</b> (including when the sanction is addressed to whole office, but usually is demanded on an-			

swerable officer)?			
- is the sanction really enforced (it is not „dead provision“)?			
4) Does the FOIA (or RTI Act) include “public interest test” (special procedure to set, whether in particular cause public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information) ?	<b>YES</b>		<p>Access to personal data may only be granted where the applicant’s interest in obtaining the information outweighs the third party’s interests warranting exclusion of access to the information or where the third party has provided his or her consent (section 5 para. 1 FOIA).</p> <p>No entitlement to access to information shall apply where such access compromises the protection of intellectual property. Access to business or trade secrets may only be granted subject to the data subject’s consent (section 6 FOIA).</p> <p>The entitlement to access to information shall not apply for the protection of certain public interests such as e.g. international relations, military or other security-critical interests (section 3 FOIA).</p>
If YES,			
- This test is done by the public body, which received the request?	<b>YES</b>		

<p>- This test is done by other body (such as appellate body or information commissioner)?</p>		<b>NO</b>	
<p>- On what exclusion doesn't apply the test? (Please shortly describe, or mark the numbers of national FOIA provision): ..... .....</p>			.....
<p>5) Does the FOIA (or RTI Act) allow charge fees / costs for searching requested information (not for copies, CD's or so)?</p>	<b>YES</b>		<p>Fees and expenses shall be charged for official acts pursuant to this Act. This shall not apply to the furnishing of basic items of information (section 10 para. 1 FOIA).</p> <p>Fees amount from 30 up to 500 €, expenses are charged in the amount of 0,10 up to 7,50 € per copy or have to be payed in full when for example a film has to be copied.</p>
<p>If YES,</p>			
<p>- public authority may require the amount or advance payment before searching information?</p>		<b>NO</b>	
<p>6) Does the FOIA (or RTI Act) include special procedure allowing in case of requesting too large information, to narrow the matter of request in cooperation with an applicant ?</p>	<b>YES</b>		<p>The authority may furnish information, grant access to files or provide information in any other manner. Where an applicant requests a certain form of access to information, the information may only be provided by other means for good cause. In particular, substantially</p>



			<p>higher administrative expenditure shall constitute good cause (section 1 para.2 FOIA).</p> <p>Where an entitlement to partial access to information applies, the appurtenant application is to be granted to the extent to which information can be accessed without revealing information which is subject to confidentiality or without unreasonable administrative expenditure (section 7 para. 2 FOIA).</p>
7) Does the FOIA (or RTI Act) allow to deny the request, if the request is vexatious?		<b>NO</b>	If the request satisfies all prescribed conditions, the public body has to handle it.
If YES,			
- Is it decided by the public body, which received the request?			
- Is it decided by the superior authority, which usually decides upon an appeal?			
8) Does the FOIA (or RTI Act) allow to deny the request solely on the grounds of an excessive scope of the request or multiple request submitted by one applicant within short period of time?		<b>NO</b>	
If YES,			
- Is it decided by the public body, which received the request?			

- Is it decided by the superior authority, which usually decides upon an appeal?			
9) Does the FOIA (or RTI Act) allow separate an excessive scope of the request or multiple request submitted by one applicant within short period of time into portions and handle the portions stepwise, in following time limits?		<b>NO</b>	There is no such provision in the FOIA.  Nevertheless, it is a basic principle in German administrative law, that administrative acts can be issued successively (“Teilverwaltungsakt”), which can be advisable for complex administrative decisions.
10) Does the procedure concerning a disposal of the request to access to information regulated in the FOIA (or RTI Act) differs from the standard administrative procedure ?		<b>NO</b>	
If YES, the procedure according FOIA (or RTI Act) has:			
○ markedly shorter time limits ?			
○ less formal requirements on request and on appeal ?			
11) Does the FOIA (or RTI Act) or another provision allow disclose salary and/or expense of public administration / bodies officers and employees?	<b>YES</b>		Information about administrative expenses are not excluded from freedom of information by the provisions of the FOIA.  The salaries of public administration employees are defined by special laws concerning civil servants or by collective agreements. For this reason the salaries are

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			transparent anyway. Salary information can be object of a disclosure under the provisions of the FOIA as well.
If YES,			
Only some officers and employees?		<b>NO</b>	
Where lays the dividing line? .....			.....

