ACCESS TO INFORMATION AS ANTI-CORRUPTION TOOL

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INTRODUCTORY STORY OF A SUN, DOCTOR AND SLOVAKIA

"If the sun does not reach you, a doctor will," says an old Slovak folk wisdom, which is certainly driven at positive effects of sunshine on people's lives. However, thinking deeply of a general meaning of this proverb, we found out that our ancestors left us another important message in this apparently short sentence. Its substance says that if environment is not healthy enough, it sees something that should be subsequently laboriously removed by means of an external aid and in fact at high cost.

Slovakia has been suffering from lack of sun for a long time. It does not get the life-giving light of civic participation and supervision. Unconcern and resignation prevail here and dark corners of fusty drawers provide optimal conditions for breakout of a serious disease, The corruption.

The situation is not good but fortunately it is curable. In the latest years the number of people truly worrying about destiny of the fading country has also been increasing. Step by step shining sunny days are appearing again, and the number of activists, various alliances and organizations is growing. Moreover, strong medicines seem to have been discovered to cure the serious disease. One of them, the Freedom of Information Act can be the right injection, which will help the country to stand on its feet. Let us all become doctors at least for a while and prescribe this medicine to the sick patient. Let us use the Freedom of Information Act and let everybody contribute to heal Slovakia from apathy, corruption, cronyism, etc.

Let as many as possible people do so. Let the sun rule over us again!

1. WHY DO WE NEED INFORMATION

Motto:

Democracy without informing people or without possibility to acquire information is only a prologue of farce or tragedy, or maybe the both.

James Madison, 18th century

1.1 INFORMATION AND CORRUPTION

Information is oxygen of democracy. If the acts of those, who govern us, are hidden and people do not know what is happening, it is impossible to participate in solution of public matters in a society. Information, however, is not only a need for people - It is an essential part of a good ruling. A bad government needs secrets to survive. The secrets enable non-effectiveness, wastage and corruption to prosper (Principles..., 1999).

CORRUPTION - misuse of power over others' property or rights in effect to acquire own private advantages. (Ivantysyn – Sicakova, 1999)

Amartya Sen, holder of Nobel's Prize, noticed that a serious famine has never occurred in a country with democratic form of government and a quite free press. The reason is that information enables people to investigate the acts of the government and it is a base of a proper and informed discussion about these acts (Principles..., 1999).
Where openness and trust prevail, there at the same time well-being and abundance prevail. Where there is no openness and trust, destructing consequences take their turns.

**CORRUPTION**
- doubts equality before the law
- creates unequal business conditions
- deforms competition
- increases prices of projects
- reduces a volume of taxes
- increases a share of black economy
- impairs the image of a country
- supports formation of non-democratic power structures (National..., 2000)

Information is a necessity for the citizens of each country that wants to be successful. Therefore it is not too surprising that eight of ten states with the lowest rate of corruption have special laws regulating an access of public to information. On the contrary, such legal norms do not exist either in one of ten countries with the highest corruption.

1.2 INFORMATION AND THE WORLD

In some countries the right to information has had its legal support already for over two hundred years. The oldest legislation regulating an access to documents was introduced in Sweden in 1776. The present legal system in this country is exceptional in a sense that this legal regulation is one of four key acts forming the constitution of this country (Pope, 2000, Page 127).

The situation in the USA is interesting. In the United States the right to information has been guaranteed in its first constitution amendment also for almost two hundred years. The Freedom of Information Act was adopted after a long-lasting pressure of citizens and journalists in 1966. That time President Lyndon Johnson commented passing of the Act saying that "nobody should have a possibility to make secret those decisions that can be published" (Sicáková, 2000, Page 28). The Act saw its biggest "blossom" in the beginning of the 1970's when the Watergate affair broke out and when the people "learnt to ask". An often use of the act resulted in the so called "electronic amendment" in 1996, the substance of which is to impose a duty on all offices to publish the most frequently required information on their web sites. "We got accustomed that providing information is so natural like opening a window," the employees of state administration in the USA claim after applying the Act of Information Freedom for over thirty years. (Zemanovicová, 2000).

However, this Act is not only the speciality of Sweden or the USA. It can also be found in many other countries including Albania, Bulgaria, the Czech Republic, France, Georgia, the Netherlands, Ireland, Lithuania, Hungary, Ukraine as well as Canada, Australia, or New Zealand.

In Hungary the Act of Information Freedom was approved in 1992 and as a part of its implementation the institute of a special independent ombudsman for information freedom and personal data protection was also formed (Majtényi, 1997). The Czech Republic passed this act in 1999 and the citizens have rich and inspiring experience in application and use of the Act (www.ostosest.cz).

As for multinational alliances, we must mention also the European Union and the Council of Europe. The former regulates an access to documents by means of a special code from December 10th, 1993 that relates to Declaration on Access to Information, which is a supplement to the Final Act to the Treaty of European Union. The Council of Europe passed a set of several resolutions, recommendations and decisions of the European Commission for Human Rights, in which the right to access official
information is connected with the right to freedom of expression and information pursuant to the Article 10 of the Convention for Protection of Human Rights and Fundamental Freedoms (the Slovak weekly Trend, No. 44, 1999).

1.3 INFORMATION AND SLOVAKIA

In the latest years the following sad and ridiculous situations happened in Slovakia. (Information Matter of Public, 1999):

*Employees of self-administration in Devínska Nová Ves, district of Bratislava, refused to issue the list of deputies of the local authority to applicants, explaining to them that the local authority did not approve it.*

*The director of a non-governmental organization administrating two facilities providing social services for handicapped children was not allowed to access the material Social Services Development Policy at the relevant department of a district office because the document was marked as internal and even its author remained concealed.*

*An official of a district office refused to provide information about construction block to a mayor of a village, which the block was imposed upon.*

*Request of anxious citizens for information about influences of cyanides dump in a town of Senica on the environment was rejected. The reason - medical secret.*

*A district office refused to provide the activists with a report on a environmental impact assessment giving the reason that “they could misuse it”.*  

*A citizen asking for an organizational structure of the Ministry of Agriculture of the Slovak Republic was refused at all the addressed departments explaining to them that such information is not available for the public. (Consecutively, the porter issued her the structure, together with contacts).*

*NGOs operating in the area of economic and social development wanted to transfer a process of assigning foreign aid under the stronger public supervision, and to work in teams together with representatives of the state administration and further sectors. They were refused because allegedly there was no reason „not to trust the state administration”.*

*Accreditation for press conferences of the Slovak Government was systematically refused to “non-loyal” journalists in 1997-1998. Also the National Property Fund of the Slovak Republic refused to provide them with information about its performance and even a ban of photographing from the balcony of the National Council of the Slovak Republic was issued in the Parliament.*

Thus for many reasons Slovakia has already for many years needed a legal norm regulating an access
of public to information. For example:

O **Right to Information is a fundamental human right.**

The right to information in the Slovak Republic has been guaranteed in the Constitution and other documents on human rights since the beginning of the 1990's. The documents include the International Covenant on Civil and Political Rights, the Declaration of Fundamental Rights and Freedoms, or the Convention for Protection of Human Rights and Fundamental Freedoms. The Article 26 of the Slovak Constitution has guaranteed this right since 1992. For a long time, however, Slovakia did not see any legal regulation complexly stipulating conditions, a method and a procedure enabling a use of the right to information. From this viewpoint, adoption of the Freedom of Information Act is not only an executive legal regulation to the blank-form provision of the relevant constitutional article that was expected for a long time but at the same time it is a significant step forward a highly valuable implementation of the fundamental human right to information.

O **Where the information does not flourish, the corruption does.**

Absence of information means absence of freedom. A quality Freedom of Information Act can successfully limit even the attempts for corruption or cronyism. Therefore as many as eight out of ten the least corrupted countries have had this legal norm for a long time. A long-term absence of the Act is only in those countries, where for some reason it fits the governing bodies. Fortunately, the Slovak Republic does not belong to such states any more.

O **Inflexible and ineffective public administration.**

An expensive and inflexible public administration can be one of the biggest obstacles on the way to a free and open society. Dispersion of responsibilities and powers results in frequent pursuing of protectionism and other undesired practices. Decentralization along with a removal of bureaucratisation and deregulation can be effective solution. This, however, is not possible without an open access to information. The Freedom of Information Act is an ideal mean for improvement of the information policy of individual offices and this way also for an increase of legal conscience of officials and citizens.

O **Absence of public supervision.**

As many as 83 percent of Slovak citizens do not trust state institutions (Gyarfášová - Zemanovicová, 2000, Page 22). However, anywhere in the world quality and sufficiency of information help not only to increase effectiveness of public administration but also to strengthen citizens' participation in decision-making. Thus the information is really a basic condition for direct public supervision. Sufficiency of information means existence of efficient supervision. Absence of information means domination of the state and officials in the relation of a citizen versus public administration. Those who pay for the state mechanism must also have a possibility to check the way his/her taxes are used. The Freedom of Information Act helps even to this.

O **Euro-integration ambitions of the Slovak Republic.**

Slovakia is declaring its will to become a member of the European Union. Based on the accession process rules the EU requires ethic values such as transparency, responsibility, or credibility within the public sector. Securing a non-problematic access to information, performed on the basis of fixed rules stipulated by the law is a significant step towards the set goal.

Adoption of a good Freedom of Information Act (Act No. 211/2000 Coll.), effective as of January 1st, 2001 thus means a more open and more transparent public administration, more effective supervision over funds acquired from the citizens' taxes and limitation of corruption and cronyism. Thus not only a certain group profits from this Act. Everybody benefits from this legal regulation.
2. INTERPRETATION OF THE FREEDOM OF INFORMATION ACT

Motto:

„What is not secret is public”.  
Slogan of Slovak NGOs in the campaign for passing the Act

After an almost one year campaign of Civil Initiative associating over hundred thousand citizens from hundred and twenty non-governmental organizations and media, in May 1999 finally also the Slovak Parliament approved the Freedom of Information Act. Thereby the Slovak Republic definitely joined dozens of other democratic countries, which guarantee the right to information by a special act.

The Freedom of Information Act specifies who is entitled to information, it defines persons who are obliged to publish data and it also determines, which information is available and when can be their publication limited. The law further regulates the form in which the information is requested; it stipulates periods for satisfaction of applications. In addition, it determines remedies and sanction for non-declassification of the information.

2.1. WHO IS ENTITLED TO REQUIRE INFORMATION

The Act emphasizes that everybody has right to access information, no matter whether an applicant is a physical or legal entity. Also it is not important if a Slovak citizen or a foreigner, a person with double state citizenship or a person without state citizenship requires the information. The age of an applicant is not essential either. It is necessary to mention that the applicant does not need to have any particular reason or interest to apply for information (Pirošík, 2000).

2.2. WHO IS OBLIGED TO DECLASSIFY INFORMATION

The Freedom of Information Act stipulates a relatively wide group of entities, which are obliged (on the basis of an application or from their own initiative) to provide information. Bodies, organizations and institutions having this duty are called „obliged persons“. They are divided into six categories (Mogelská, 2000):

O state bodies: National Council of the Slovak Republic, Government of the Slovak Republic, President of the Slovak Republic, ministries, other central bodies of state administration, district and regional offices, courts, National Bank of Slovakia, General Prosecution Office, Supreme Audit Office, tax, customs and mining offices, military administrations, labour inspectorates,...;

O bodies of territorial self-administration: municipal and local authorities, mayors, municipal and town councils, bodies of higher territorial units,...;

O legal entities or physical entities, which are entitled by law to decide on certain rights and duties to a defraed extent: Council of the Slovak Television, Broadcasting Council, License Council, Slovak Inspection of the Environment, members of nature guard, forest guard, water guard,...;

O fully and partially subsidized organizations established by the state or a municipality: funeral services, housing enterprises, schools, in some cities transport companies or companies providing handling of municipal waste,...;
0 legal entities established by law: the Slovak Television, the Slovak Radio, the Slovak Railways, the National Property Fund, the Fond Pro Slovakia Fund, the Social Insurance Company (Sociálna poistovna), the General Health Insurance Company (Všeobecná zdravotná poistovna),...;

0 legal entities established by all the previous bodies provided that they manage public funds or property of the state or municipalities: joint-stock companies, limited liability companies and other commercial companies or co-operatives established by the state or a municipality if they are granted subsidies from state or municipalities.

2.3. WHAT INFORMATION ARE ACCESSIBLE TO PUBLIC

The basic principle, which the Freedom of Information Act is based on, could be described in words “what is not secret is public”. It means that any information the publication of which is not expressly excluded by other regulations and which, at the same time, an obliged person disposes of, is accessible to public (Pirošík, 2000).

Thus information shall be declassified if:
O it is not secret (see 2.4),
O an office disposes of the information (see hereinafter).

The term "dispose of something" means that the information is situated (or it should be situated by law) somewhere within an obliged person. At the same time the obliged person is not only a particular addressed workplace but also an entire institution (Kamenec et al., 2000).

Therefore if for example the District Office in Banská Bystrica has its workplaces in this town and at the same time for example in village Slovenská Lupca, pursuant to the law it disposes of the information regardless of the fact, in which particular workplace the information is situated.

2.4. WHAT INFORMATION MUST BE COMPULSORILY PUBLISHED

The Freedom of Information Act provides two methods to declassify information. Along with the first method, declassification on request (see 2.6.1), a significant innovation is introduced - duty of offices to be active in releasing a certain scope of data. Using this second method all the obliged persons must, from their own initiative and also without direct call for publication, release (by means of notice boards, brochures, the Internet, etc.) at least the following data (Kamenec - Pirošík, 2000);

? a method whereby they have been established, their powers, competencies and organizational structure,
? a place, time and a method whereby it is possible to acquire information on request,
? information regarding where it is possible to file an application, a proposal, a motion and a complaint and also data regarding where, when and how it is possible to lodge a remedy,
? a procedure, which must be kept when executing an application and period within which they must decide,
? a review of regulations, directions and instructions, on the basis of which an obliged person acts and decides
? a tariff of administrative fees and a tariff of payments for information declassification,

Besides these general data, which must be published by all the obliged persons, the Freedom of Information Act also stipulates a special extended information duty, namely for the following entities:

As of January Ist, 2001 the National Council of the Slovak Republic at their own initiative must
publish not only dates and times of plenary sessions and council sessions, proposal of meeting agenda and minutes of individual meetings, but also texts of submitted bills, namely maximally within three days from their submission to the Office of the National Council of SR and also texts of passed acts, namely within three days after their approval in the third parliamentary reading. In addition, the act stipulates a new duty for the National Council of Slovakia - to publish data regarding attendance of deputies at parliamentary meetings and sessions of councils as well as extracts from deputies' voting (except for cases of secret voting and non-public meetings).

Along with the already accessed or otherwise available data, the Office of the President of the Slovak Republic is obliged to publish agenda and results of business trips and visits of the President of Slovakia. Moreover, the Office is obliged to release information on a place of the President's stay and also pardon, mitigation or expunging of punishment or an order not to institute or not to continue in criminal prosecution. Also the organizational structure of the Office of the President of Slovakia must be published, including the number of employees of the Office.

Since 2001 Government of the Slovak Republic has been obliged to publish texts of materials submitted for session of Government and passed decrees including their annexes. The texts of materials include especially proposals, reports and analyses.

Ministries, other central bodies of state administration and bodies of local state administration publish materials of program, policy and of strategie character and texts of legal norms after their release for an interdepartmental amendment procedure.

The last group of bodies which according to the Freedom of Information Act have besides a general duty also a special information duty, are municipal councils, local authorities, municipal boards while after forming the second level of administration these will also include authorities of higher territorial units. As for extent in which these bodies are obliged to report on their activity at their initiative, the Act specifies "adequate use" of provisions regulating the information duty of the National Council of Slovakia. That is why municipal councils, local authorities, municipal boards should initatively publish inter alia also liste of deputies voting on a sale of municipal and town property, etc. (Kamenec et al., 2000).

According to a summary of foreign experience, one of the biggest merits of provisions of the Freedom of Information Act regarding the duty to publish a certain quota of data also without duty, i.e. actively, is the pressure on introduction of the Internet to the public administration (Kužílek, 2000). The thing is the Internet as the cheapest method of information release enables to publish a very big amount of data that brings advantages not only for an applicant's "comfort", but also for reduction of administrative pressure on the side of a provider. Anybody willing to see how some our offices fulfil this duty can do so on the basis of the list web sites of the most important Slovak bodies of the state power and state administration, attached in the Annex 1.

2.5. WHAT INFORMATION IS NOT ACCESSIBLE

The Freedom of Information Act is based on the idea of maximum openness, limited only by exactly specified spheres. These spheres include data, in case of which the interest of an individual or a company in their concealing or non-publishing is stronger than the public interest in their declassification.

Required information shall not be accessed if other acts mark it as official, professional, bank, tax or trade secret. The information shall not be declassified also in the case that other legal reasons for limitation of access to the information exist. Such reasons include hand-over of the information by a person upon whom such duty is not imposed and who, upon call of an obliged person, notified that he/she did not agree with declasification of the information, further publishing information on the basis of
special acts, data concerning personality and privacy of a physical person, data concerning decision-making activity of courts and bodies active in criminal proceedings and information, declassification of which could cause breaching of intellectual property protection, with the exception of a case that an author, upon call of an obliged person, has granted consent for declassification of the information or if the application concerns place of occurrence of protected species of plants, animals, minerals and fossils and if their non-permissible disturbing, damaging or destruction threatens (Kamenec - Pirosík, 2000).

A brief review of particular legal reasons for refusing access to information follows.

**Table 1**

**Review of particular legal reasons for refusing access to information**

Pursuant to the Freedom of Information Act the information marked by a special regulation as "confidential" or "a secret" shall not be declassified.

**Official secret**

- Data confidential pursuant to the Act No. 100/1996 Coll. on Protection of official secret, professional secret, on encrypted protection of information and on modification and amendment of the Criminal Code as later amended.

- Data must be marked as "Prísne tajné" (top secret) or "PT"* (from the Slovak "Prísne tajné")

An example from the list of facts, which are subject to official secret at the Ministry of the Environment of the Slovak Republic:

In the area of state defence

a) summary data about central bodies of state administration and their mobilization preparedness for state defence, b) summary documentation regarding introducing bodies of state administration to readiness of state defence.

**Professional Secret**

- Data confidential pursuant to the Act No. 100/1996 Coll. on Protection of official secret, professional secret, on encrypted protection of information and on modification and amendment of the Criminal Code as later amended.

- Data must be marked as "Tajné" (secret) or "T"* (from the Slovak "Tajné")

An example from the list of facts, which are subject to professional secret at the Ministry of Environment of the Slovak Republic:

In the area of state defence

a) data about mobilisation preparedness of the Ministry of the Environment of the Slovak Republic (hereinafter referred to as "Ministry") to state defence, b) directive for introducing the Ministry to readiness of state defence.

**Bank secret**

- Information confidential pursuant to the Article 38 of the Act No. 21/1992 Coli. on Banks

Bank secret is all information and documents about matters concerning bank clients, which is not publicly accessible, especially information about bank businesses, account statements and deposit balances, which a bank and branch of a foreign bank are obliged to keep in secrecy.

**Tax secret**

- Information confidential pursuant to the Act No. 511/1992 Coll. on Administration of taxes and fees

Táx secret is information about a táx entity, which is acquired within a táx proceeding or in connection with it, including for example incomes and expenses of a taxpayer, amount of táx advances and so on.

However

Publication of the following does not breach táx secret:

a) list of táx debtors - physical entities with
- debtors - legal entities with tax arrears higher than SKK 5,000,000.
b) a list of tax entities which were granted from penalties, fines, tax increase and interests,
c) data about committing a tax crime, which was lawfully decided and conviction was not expunged.
Trade secret

Data confidential pursuant to the Act No. 513/1991 Coll., Commercial Code

Trade secret are facts of trade, production or technical character connected with an enterprise, which are of a real material or at least potential material or non-material value, they are not commonly available in relevant business groups, they should be kept in secrecy from the will of an entrepreneur, and the entrepreneur provides their secrecy in an adequate manner; for example lists of customers, business plans, turnover of individual outlets, know how, organizational and management method of an enterprise...

However, according to the Article 10 of the Act No. 211/2000 Coll., for the purposes of access to information the following information cannot be considered as trade secret:

- Information having a serious influence on people's health, world cultural and natural heritage, the environment including biological diversity and ecological stability,
- Information concerning the environment pollution, information, which was acquired for public finances or concerns use of public funds or management of the state property or property of municipality,
- Information about state aid,
- Information about management of public funds by legal entities or management of state property or property of municipality by them.

Pursuant to the Freedom of Information Act also the information, privacy of which is protected on the basis of special regulations, shall not be declassified.

Voluntarily handed over to an obliged person

i.e. without legal duty

If for example a physical entity files a complaint pursuant to the Act No. 152/1998 Coll. on Complaints, it shall provide the office with information without having a legal duty to do so. Such information is declassified with the consent of a person who provided the information to the office.

Concerning the personality and privacy of a physical entity

For example data protected pursuant to the Act No. 40/1964 Coll. - Civil Code or the Act No. 52/1998 Coll. on Protection of personal data in information systems

Administrative decisions, which are information accessible, often contain information (birth registration number, address of permanent residence, ...), which have character of personal data of a physical entity and therefore such data from decisions are not declassified.

Protected as intellectual property

For example pursuant to the Act No. 383/1997 Coll. - the Copyright Act or the Act No. 527/1990 Coll. on Inventions, industrial designs and improvement proposals

One of the basic copyrights is the right to decide on publication of author's work or to approve making a copy of work, what is valid also in case of access to information, which have character of author's work.
The Press Agency of the Slovak Republic TA SR provides verbal and pictorial reporting, which, together with reports from other agencies, supplies information to periodical press, broadcast, televisions and other legal and physical entities on the basis of contracts.
Concerning decision-making of courts and bodies active in criminal proceedings


Access to information from a civil judicial proceeding and a criminal proceeding (access to judicial dossiers, information about trials) is provided on the basis of provisions of special acts.

Application concerns a place of occurrence of protected species of plants, animals, minerals and fossils and if their non-permissible disturbing, damaging or destruction threatens

For the reason of nature and country protection, for example the following information is protected: information about rookeries of protected species and so on, declassification of which could threaten the interest of the society in nature protection

BRIEF SUMMARY OF PARTS 2.1 - 2.5

WHO - WHAT

<table>
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<th>WHO is entitled to information</th>
<th>WHO must declassify information</th>
<th>WHAT must be declassified even without filling application</th>
<th>WHAT can not be declassified</th>
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<tbody>
<tr>
<td>Anybody</td>
<td>bodies of state administration and territorial administration, physical and legal entities</td>
<td>all information, which are obliged person disposes of, if it is not excluded by act</td>
<td>secrets (official, professional, bank, tax, trade secrets), personal data, intellectual property,...</td>
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chef’s mystery
2.6. PROCESS OF INFORMATION DECLASSIFICATION

2.6.1. What an Application for Declassification of Information Must Contain

The Freedom of Information Act distinguishes two methods, whereby obliged persons can declassify information. In addition to the so-called active publication (see 2.4), the second possibility is declassification on request. An application can be filed in several ways - in written form, orally, by telephone, by fax, via e-mail or in other way, which is technically possible to perform by both sides - an applicant and an office. A properly filed application must contain four basic features. The application must include to which obliged person it is addressed to, who files the application, what information it concerns and what method of information declassification the applicant proposes.

If an application does not have all the set features, the obliged person shall immediately call the applicant to complete the application and guide him/her how to complete the application. The obliged person sets a period, during which the applicant shall complete the application, while the period must be at least seven days long. If the applicant does not complete the application even after the call, the obliged person shall put it aside and shall not deal with it anymore.

2.6.2. Possibilities of an Obliged Person

If an application is filled in right from a formal point of view, an obliged person shall judge the application and decide for one of the following steps (Kamenec et al., 2000):

O **declassify the information**

In case that an obliged person disposes of the required information (see 2.3.) and its declassification is not prevented by other legal regulation (see 2.5.), he/she declassifies the information and issues a decision on declassification by means of a record in the file. A method whereby the information will be declassified depends especially on a will of an applicant (determination of a method to declassify information is an obligatory feature of an application for information). An applicant can acquire information personally, directly in the office (including access to files) and also by delivery to an address, telephone/fax number or an e-mail address stated in the application. If it is technically possible, an applicant is entitled to get copies of the required information or copy them to a diskette. If the required method of information declassification is technically not possible to perform (for example the office does not dispose of an e-mail), the obliged person shall agree with the applicant on other feasible form of declassification.

O **provide reference to a published information**

If an application requires declassifying information that has been published already, an obliged person shall within not over five days notify the applicant, where such information can be found and acquired. Information is considered as published if it has been published in press, put on a notice board or if it is available in a public library or posted on the web site of an obliged person. An important condition for considering information as published is that anybody is able to repeatedly search and acquire such information without major difficulties. Otherwise, an applicant has right to insist on declassification of the published information by an obliged person.

O **advance the application**

If an obliged person does not dispose of the required information and he/she knows where to acquire such information, he/she shall advance the application to an obliged person who disposes of the required information. If the addressed obliged person does not know where to get the required information, he/she shall issue a decision on non-declassification of the information (see next article).
O shall not declassify the information

If an obliged person does not execute the application or its part, he/she shall have to issue a written decision about such fact. Commercial companies and other private entities, which are obliged to provide information about management of public funds and management of the state property, shall ask the entity which has established them, for a decision within three days, if within the period stipulated by law an obliged person does not issue a decision or declassify the information, the act shall presume a fiction that a decision on non-declassification of the information has been issued. The date of delivery of such decision shall be considered the third day from expiration of the period for the application execution.

2.6.3. Periods for Execution of Applications

Obliged person must execute an application without unreasonable delay, however, within ten days, the latest. This period can be exceptionally prolonged by further ten days if:
O it is necessary to search for the required information out of the seat of the obliged person,
O a higher amount of separated or different information is required,
O provable technical problems arose when declassifying or searching the required information.

2.6.4. Further Procedure in Case of Non-declassification of Information - Appeal

In case of non-declassification of information (if the entire required information was not declassified) or limitation of the access to information (a part of the information was not declassified), the applicant can lodge an appeal within fifteen days from delivery of a decision. Also an appeal can be lodged against the so-called fictive decision (i.e. decision by expiration of a period) on non-declassification of information, namely within fifteen days.

The application was submitted January 10th, 2001. The decision was delivered January 20th, 2001. The fifteen-day-period for lodging an appeal shall start to lapse January 21st, 2001 and it shall end February 4th, 2001.

The obliged person, which decided on non-declassification of information, shall decide himself/herself on the appeal namely within thirty days by the so-called auto-remedy or by his/her superior appellate body. The appellate body must bring a decision within fifteen days from the delivery. If the appellate body does not decide, it shall be presumed that this body confirmed the impugned decision of the lower body. The second day after the period of expiration shall be considered as the day of such decision delivery.

The appeal was delivered to the appellate body February 3rd. The appellate body must decide by February 18th. If a new decision was not issued to the applicant, then as of February 19th it is valid that the appellate body confirmed the decision of the lower body.

If an applicant was not satisfied either in the appellate proceeding, he/she can file an action at a court within two months from a delivery of a decision on appeal and require review of the decision on refusal of access to information.
2.7. SETTLEMENT OF COSTS AND SANCTIONS FOR BREACHING THE FREEDOM OF INFORMATION ACT

Information is declassified **free of charge**, except for settlement in an amount which must not exceed the amount of **material** costs connected with making copies, procurement of media or sending data to an applicant (the so-called postage and packaging costs). Under no circumstances thus the price of information may include for example costs on wages of the information provider. An applicant may be forgiven the duty to pay. The edict of the Ministry of Finance of the Slovak Republic stipulates details regarding the payments.

In connection with adoption of the Freedom of Information Act, the Act on Offences has been revised. A new offence in the section of access to information is introduced. The following shall be considered as offence: O cognisant issuing and publishing of untrue or incomplete information, O breaching duty stipulated by the Freedom of Information Act, O issue of such a decision, order or other measure that breaches the right to declassification of information.

For such an offence a fine up to SKK 50,000 (1500 USD) can be imposed and the activity can be prohibited as long as for two years.

3. ACCESS TO INFORMATION FROM THE VIEWPOINT OF STATE ADMINISTRATION AUDIT

**Motto:**

"Salvation of a state resides in alertness of a citizen." **Official motto of Nebraska**

On August 30th, 2000 the Government of the Slovak Republic approved Audit of Harmonization of Activities and Funding of Central Bodies of State Administration and Organizations within their Force (hereinafter referred to as "Audit"). The Audit was performed according to the Slovak Government Decree No. 985/1999, point C.26, whereby the Government commissioned Ivan Mikloš, Deputy Prime Minister, in co-operation with the Finance Minister, other ministers and chairmen of other central bodies of state administration to secure, by June 30th, 2000 the audit of harmonization of activities and funding of central bodies of state administration and organizations within their force as well as harmonization of activities and finding of the local state administration (www.ineko.sk).

The Audit partially concerns also regulation of the right to information. As for relation of the access of citizens to information, the Final Report to the Audit recommends, for example, to elaborate **annual reports** on a performance of an obliged person, while it should include evaluated results of the performance, effectiveness of the institution performance, or a catalogue of documents and information, which the obliged person produced for the last year. The Final Report to the Audit also recommends to hold annually the so-called **hearing - public review of performance**, as a tool to streamline and approach the administration execution to citizens. This will provide space for asking the management of institutions questions regarding aims of organization, effectiveness of meeting them as well as for submitting proposals to changes, while an official reaction should follow (Kamenec et al., 2000).

As for access to information, implementation of the Audit into practice is followed by a Government
Decree approved in December, stipulating a proposal of measures to provide a uniform procedure of all the obliged persons, who are in managing posts of the Slovak Government.

The Slovak Government Decree and measures are of an organizational character. It is assumed that statutory bodies of the persons obliged within the existing budgetary and personnel capacities, especially by internal re-distribution and rationalization of other activities would secure implementation of the act and these measures. For this reason a revision of organizational and working orders is proposed. In effect to secure a smooth meeting of tasks relating to application of the Freedom of Information Act, controlling mechanisms are added to measures, which should prevent from vain slowdown or possible lawsuits. A list of the most important measures is a part of the Annex No. 2.

CONCLUSION

Motto:

"Passing the Freedom of Information Act is one third of the journey only.
Another third is its implementation into the public administration,
practice and minds of offtcials and politicians.
The last third is to teach public to use possibilities of the Act."

O. Kužilek: Author of the Czech Freedom of Information Act

Corruption has been, is and probably also will be here. Fight against it is in fact a fight to eliminate and reduce it in as much as possible. Corruption has always existed and still does exist. The thing is to what extent.

From this viewpoint, adoption of the Freedom of Information Act thus is not and cannot either be a cure-all. It would be naive to expect that one act will change, like a magic, many offices and their staffs into a flexible information service ready to response day to day to citizens’ applications at hundred percent and transparently. Those dozens of years of misinforming "Austria- Hungary" cannot be simply skipped. Moreover, the citizens seem to forget to ask...

However, the Freedom of Information Act can serve as one of significant tools for anybody who is interested. It can serve to anybody who wants a decent country, a decent public administration, or decent politicians. It can serve those who are interested in how their tax sources are managed, those who are not neglectful to the method of managing public matters.

This Act is a result of voluntary activity of more than 100,000 people from hundred and twenty non-governmental organizations. It arose “from below” and is designed for those “from below”. It is designed for any citizen, taxpayer, for anybody interested...

The Freedom of Information Act is a kind of a basic "cookery book" for acquisition of information. In relation between a citizen and public administration clear rules of a game in the area of access to information are finally set. This legal regulation creates a possibility to look into all official and clerical "kitchens", where it is cooked for our money. At the beginning not every "cook" may like this. In any event - lots of luck, strength and patience! And we cannot forget - bon appetit, CITIZENS.
ANNEX 1

WEB SITES OF THE MOST IMPORTANT BODIES OF STATE POWER AND STATE ADMINISTRATION

National Council of the Slovak Republic .......... http://www.nrsr.sk/
President of the Slovak Republic .................. http://www.prezident.sk/
Ministry of Interior of the Slovak Republic ...... http://www.minv.sk/
Ministry of Transport, Postal Services and Telecommunications of the Slovak Republic .................................. http://www.telecom.gov.sk/
Ministry of Education of the Slovak Republic .................................. http://www.education.gov.sk/
Ministry of Culture of the Slovak Republic ........ http://www.culture.gov.sk/
Ministry of Agriculture of the Slovak Republic .................................. http://www.mpsr.sk/
Ministry of Labour, Social Affairs and Family of the Slovak Republic .................................. http://employment.gov.sk/
Ministry of Administration and Privatisation of the National Property of the Slovak Republic .................................. http://www.privatiz.gov.sk/
Ministry of Construction and Regional Development of the Slovak Republic .................................. http://www.build.gov.sk/
Ministry of Foreign Affairs of the Slovak Republic http://foreign.gov.sk/
Ministry of Health of the Slovak Republic ........ http://www.health.gov.sk/
Anti-trust Office ........................................ http://www.antimon.gov.sk/
Industrial Property Office of the Slovak Republic .................................. http://www.inaprop.gov.sk/
Obliged persons shall declassify information in a way to enable a mass access. The way that enables a mass access is an access by means of telecommunication equipment, mainly via the Internet. This duty does not apply to physical entities and those municipalities that are not towns or cities.

Ministries, other central bodies of state administration and bodies of local state administration publish also materials of a policy and strategic character and draft texts of legal norms after their submission for interdepartmental amendment procedure. The published information needs to be updated at least once a month.

Based on an application for declassification of information an obliged person must declassify all information he/she disposes of, especially information concerning management of public funds and management of the state property, while the obliged person must accept, record and execute each application, proposal or other submission. In these terms, it is necessary to train employees who will work with the applications.

A workplace responsible for providing information duly and truly is an organizational unit of an obliged person, according to a focus of activity and a type of provided information (the so-called factual coordinators). Secretariats of different committees, boards, commissions or working groups also serve as factual coordinators.

In a call for completion of missing features an application an applicant is given a period of at least seven days to complete it. After vain expiry of this period the matter will be put aside without issuing a decision.

Settlement of material costs for information declassification including conditions of forgiving the settlement shall be set by an obliged person in accordance with a special generally binding regulation issued by the Slovak Finance Ministry. An obliged person shall declassify tariff of fees together with a method of settlement in a place accessible to the public.

It is an applicant who specifies a form of declassifying information. Only if it is impossible to declassify it in such a form, information may be declassified in different forms after an agreement with the applicant.

Registers and lists maintained by obliged persons, providing the law does not exclude public availability, are published on freely accessible web sites. Publication of personal data situated in these registers and lists does not mean breaching of personal data protection.

Information is also provided from an incomplete administrative procedure. Declassifying them, relevant organizational units respect protection of information marked as official, professional, bank, tax or trade secret, as a fact that is subject to encrypted information protection and personality protection.
Declassification of untrue or incomplete information, breaching the duty stipulated by the Freedom of Information Act or issuing a decision, order or measure which shall cause breaching of the right to declassification of information, shall mean breaching of working discipline and offence, for which a fine up to **SKK 50,000** can be imposed.

Obliged persons shall properly revise their organizational **orders and filing and shredding orders** pursuant to the Freedom of Information Act and these measures.

In accordance with the Act on Control in State Administration the Slovak Government Office carries out control of meeting tasks resulting from the Freedom of Information Act.
SOURCES:

10. Mišiga, P. - Pirošík, V.: Everything that is not secret by law is public. NGO's legislation initiative for freedom of access to information in Slovakia. In: Collection from the Conference "Access to Information in Central Europe". Budapest, COLPI April 2000,