[DE] Federal Administrative Court: No right to information on origin of COVID-19 pandemic

IRIS 2025-6:1/19

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In its decision of 14 April 2025, the *Bundesverwaltungsgericht* (Federal Administrative Court – BVerwG) rejected an application from a newspaper publisher (the applicant) for information concerning the origin of the COVID-19 pandemic to be disclosed by the *Bundesnachrichtendienst* (Federal Intelligence Service – BND). By way of a temporary injunction, the applicant had submitted a list of questions to the BND, asking when the BND had informed the Federal Chancellery of its findings on the origin of the virus, as well as whether and, if so, when this information had been classified as "secret" by the intelligence services. It had also asked for information about the possible security clearance of a virologist and his access to classified information.

The court had no doubt that there was a high level of public interest in the subject of the reporting; the requested information was highly topical and had high news value, justifying the issue of an order in summary proceedings. However, the court subsequently concluded that there were grounds for refusing to disclose the requested information. Nevertheless, the court began by considering the derivation of the right to information, since such a right was not enshrined in positive law, but was a constitutional right derived from the fundamental right of freedom of the press (Art. 5(1)(2) of the *Grundgesetz* (Basic Law)) and also applied to audiovisual media. This right allowed press and other media representatives to request information from public authorities in response to sufficiently specific questions, provided that the requested information was available and its disclosure did not conflict with the interests of public bodies or private individuals. The constitutional right to information therefore required the press's interest in information to be weighed against the opposing legitimate interests in each individual case.

In the present case, the Federal Administrative Court concluded that there were legitimate grounds to withhold the information with regard to all the questions asked.

These grounds were primarily based on the need to protect the BND's functionality. The intelligence services' functionality was recognised both as limiting the parliamentary right to information and as a reason for refusing to provide information under the press laws of the individual *Bundesländer.* The

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same applied to the constitutional right to information. The Federal Administrative Court regularly held that the interest in keeping BND operational processes confidential took precedence over the press's interest in information. However, the passage of time could be taken into account if it was no longer possible to draw conclusions about current intelligence service operations from the requested information. In the present case, the Federal Administrative Court assessed the list of questions on the use of the BND's findings on the origin of the SARS-CoV-2 virus as a whole. In order to answer these questions, the BND would have had to comment on the alleged operational processes and their results, which would have made it possible to draw conclusions about its intelligence sources. This could have jeopardised its intelligence work. Such a leak of information could also have jeopardised the BND's future intelligence work in cooperation with foreign intelligence services.

Furthermore, the protection of Germany's foreign interests could also be an overriding factor, as most recently decided by the Federal Administrative Court in 2024 in relation to a claim for information under press law regarding the BND's assessment of the military situation in Ukraine. The maintenance of foreign relations fell within the competence of the federal government, which had a broad scope of discretion that was largely excluded from judicial review. The BND had clearly demonstrated to the court that disclosing information on the alleged BND findings could have had serious economic and political repercussions for diplomatic relations with the People's Republic of China.

Although there had therefore been no obligation to disclose the requested information, the Federal Administrative Court also specifically commented on the questions regarding the named virologist and a possible infringement of the general privacy right protected by Article 2(1) of the Basic Law. It was true that information on the virologist's security clearance and his possible job of checking the BND's findings did not concern his private life, but only his social sphere. However, the disclosure of information could have had consequences for his privacy, since he had already been harshly criticised on social media in relation to his professional activities and his advisory work for the previous German government. The Federal Administrative Court emphasised that his personal rights therefore took precedence over the interest in information and meant that the requested information did not need to be disclosed.

Link zur Entscheidung des BVerwG vom 14.04.2025

https://www.bverwg.de/140425B10VR3.25.0

Link to the Federal Administrative Court's decision of 14 April 2025

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