# [DE] Discontinued porn films constitute official information in accordance with the Freedom of Information Act

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In a ruling of 22 September 2014 (case no. 13 K 4674/13), the Verwaltungsgericht Köln (Cologne Administrative Court - VG) upheld a private collector's right to a copy of a pornographic film.

The plaintiff had initially asked the Bundesprüfstelle für jugendgefährdende Medien (Federal Department for Media Harmful to Young People - BPjM) for a copy of the classified video film, which was no longer available to buy, "for his own use". His request was rejected by the BPjM on the grounds that, firstly, the request had not been made within the scope, and for the purposes of the Freedom of Information Act (Informationsfreiheitsgesetz - IFG), and secondly, the BPjM did not hold distribution rights for the purposes of Article 17(1) of the Copyright Act (Urhebergesetz - UrhG) or reproduction rights under Article 16 UrhG.

The collector appealed to the VG Köln against this decision.

The VG explained that the film constituted official information. Furthermore, the plaintiff had a right of access to the information under Article 1(1)(1) IFG because the classified film was stored by the BPjM for official purposes. Any classification carried out by the BPjM was dependent on the latter having access to the film concerned, in order to assess its content. In addition, the BPjM was in possession of the film not for entertainment reasons, but for official purposes.

The VG also said that the requested film was clearly a copyright-protected work. However, the plaintiff could make use of the exemption rule in Article 53 UrhG, under which reproduction was admissible if the work had been discontinued for at least two years and exclusively analogue use took place.

It ruled that rules on the protection of minors were irrelevant because the copy was being made for an adult.

The VG therefore rejected all of BPjM's arguments and upheld the private collector's complaint.

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***Urteil des Verwaltungsgericht Köln, 13 K 4674/13, 22. September 2014***

http://www.justiz.nrw.de/nrwe/ovgs/vg_koeln/j2014/13_K_4674_13_Urteil_20140922.html

*Ruling of the Cologne Administrative Court, 13 K 4674/13, 22 September 2014*

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