

[AT] The end of official secrecy (*Amtsgeheimnis*) and a new right to freedom of information

IRIS 2024-3:1/16

Krisztina Rozgonyi
Institute for Comparative Media and Communication Studies (CMC) of the Austrian Academy of Sciences (ÖAW) and the University of Klagenfurt (AAU)

On 12 February 2024, Austrian legislators took the last remaining step to remove a historic and blatant obstacle to freedom of information. From September 2025, Austria will have a constitutionally guaranteed right to information for citizens vis-à-vis the state, together with the necessary rules for its enforcement. Both the National Council and the Federal Council of the Austrian Parliament gave the green light for a corresponding amendment to the Constitution and an accompanying Freedom of Information Act with the required two-thirds majority. The new legal regime is to end the decades-long era of official secrecy (*Amtsgeheimnis*), which was detrimental to the enjoyment of fundamental freedoms by Austrian citizens and left Austria languishing in the bottom 10 countries in global rankings assessing the quality of access to information.

The legislative process was extraordinarily long and took about 11 years from the first initiative. Up until now, all federal, provincial and municipal administrative bodies were subject to the constitutional duty of confidentiality with regard to all kinds of information they may have obtained while undertaking their administrative tasks (so-called *Amtsverschwiegenheit* – official secrecy). Now, with the amendment to the Federal Constitution Act (B-VG) and the enactment of a new federal law on access to information (Freedom of Information Act – IFG), this principle of official secrecy as a rule has been abolished, and the obligation to provide information introduced. (Other types of information held in the possession of administrative organs, such as commissioned research reports, expertise, etc., did not fall under this category even before the new legislation.)

The exception under the general principle of freedom of and access to information is "secrecy for compelling reasons", such as, *inter alia*, foreign policy reasons, national security, the protection of public order and security. Also, preparatory materials for decisions should be kept confidential together with information necessary for avoiding significant economic or financial losses or damage to public organs.

Public access to information (online)

After the entry into force and the period for preparation, all kinds of "information of general interest" will have to be (proactively) published on the Internet – under a central metadata Information Register – and kept available free of charge by the bodies of:

- the federal legislature (the National Council and the Federal Council);
- the federal and provincial administration (federal ministries, provincial governments, etc.), and local municipalities with at least 5 000 inhabitants;
- the judiciary (including the regular and administrative courts, the Supreme Administrative Court and the Constitutional Court);
- the Court of Auditors (*Rechnungshof*); and
- the Ombudsman Board (*Volksanwaltschaft*).

Obligation to provide access to information

The new rules also guarantee access to information held by several bodies, both public and private. Public bodies at the federal level (*Bund*), the provinces (*Länder*), municipalities (*Gemeinden*) and associations of municipalities (*Gemeindeverbände*), self-governing organisations established by law (*Organe der gesetzlich eingerichteten Selbstverwaltungskörper*), and other legal entities and natural persons, insofar as they are entrusted with the management of federal or state administrative tasks are obliged to provide access to information. Private bodies – subject to the control of the Federal Court of Audit or a provincial court of audit – are also required to meet the legal obligation of information provision. This category includes foundations, funds and institutions as well as companies under direct or indirect state control or ownership (minimum 50% share of capital/stock/equity).

While the new legislative package was hailed as a historic and fundamental milestone for the democratic accessibility of the Austrian public sphere, criticism remained about some further problematic details. Freedom of information civil society and advocacy NGOs – Epicenter.works, Forum Informationsfreiheit and Saubere Hände – referred to issues with the potential for subordination of the new rules to other laws "cancelling freedom of information" and the insufficient judicial oversight of the information provision process (only the procedural file is to be sent to the court, but not the requested information). In the coming years, it remains to be seen how Austrian journalists, the media and civil society actors will take advantage of the new rights and freedoms to the benefit of the Austrian public.

Bundesgesetz, mit dem das Bundes-Verfassungsgesetz geändert und ein Informationsfreiheitsgesetz erlassen wird

<https://www.parlament.gv.at/gegenstand/XXVII/I/2238>

Federal Act amending the Federal Constitutional Act and enacting a Freedom of Information Act

Informationsfreiheit - Expert:innen warnen vor Fehlern auf letzten Metern

<https://www.informationsfreiheit.at/2024/01/18/informationsfreiheit-expertinnen-warnen-vor-fehlern-auf-letzten-metern/>

Freedom of information - experts warn of mistakes in the final metres

