



NEJVYŠŠÍ SPRÁVNÍ SOUD



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Provide or Protect? Administrative courts between Scylla of freedom of information and Charybdis of protection of privacy.

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Answers to Questionnaire: Finland



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**Provide or Protect?
Administrative courts between Scylla of freedom of information and Charybdis of
protection of privacy**

FINLAND

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Part I

1. Is the central administrative supervision over providing information and protection of personal data carried out by one administrative authority or are there specialized authorities for each of these fields or is there an absence of such an authority in any of these areas? Does the chosen model cause any application problems?

In Finland, there is no central administrative authority supervising provision of information. Hence, there is no authority under which both areas would fall. Information requests are addressed directly to the obliged authority. Naturally, the decision of the authority can be appealed in the regional administrative court and in last instance, the Supreme Administrative Court (hereinafter SAC).

In the field of personal data protection Finland has two data protection authorities: the Data Protection Ombudsman and the Data Protection Board, both regulated by the Personal Data Act (523/1999) and the Act on Data Protection Ombudsman and Data Protection Board (389/1994).

The Data Protection Ombudsman provides direction and guidance on the processing of personal data, supervises the processing in order to achieve the objectives of the Personal Data Act, as well as makes decisions concerning right of access and rectification of registered data.

The Data Protection Board deals with questions of principle relating to the processing of personal data, where these are significant to the application of the Personal Data Act. The Board has also the power to grant permissions and issue orders concerning processing of personal data.

The Data Protection Board may grant a permission for the processing of personal data, if the processing is necessary, otherwise than in an individual case, in order to protect vital interests of the data subject, or to use the public authority of the controller or a third person to whom the data is to be disclosed. The permission may be granted also in order to realise a legitimate interest of the controller or the recipient of the data, provided that

such processing does not compromise the protection of the privacy of the individual or his/her rights.

The Board may grant a permission for the processing of sensitive data, for reason pertaining to an important public interest.

The permission, that may be granted for a fixed period or for the time being, shall contain the rules necessary for the protection of the privacy of the data subject. The rules may be amended or supplemented at the request of the Data Protection Ombudsman or the data subject, if this is necessary owing to a change in circumstances.

At the request of the Data Protection Ombudsman, The Data Protection Board may:

- prohibit processing of personal data which is contrary to the provisions of the Personal Data Act or the rules and regulations issued on the basis of the Act;
- in matters other than those concerning right of access or rectification, compel the person concerned to remedy an instance of unlawful conduct or neglect;
- order that the operations pertaining to the file be ceased, if the unlawful conduct or neglect seriously compromise the protection of the privacy of the data subject or his/her interest or rights, provided that the file is not set up under a statutory scheme; and
- revoke a permission granted by the Board, where the prerequisites for the same are not longer fulfilled or the controller acts against the permission or the rules attached to it.

We do not see any specific problems in the system. However, we would like to refer to one interesting case concerning publicity of income taxation data and protection of privacy in the framework of the previous Directive on the Protection of Personal Data (95/46/EC). A news leaflet wanted to publicize information of the annual income of citizens. This information *per se* is public, but the Data Protection Ombudsman wanted to prohibit this kind of a systematic processing of personal data and publication of these data. The Data Protection Board and the regional administrative court disallowed the Ombudsman's application, but the SAC, having referred the case to the European Court of Justice, came to an opposite conclusion (see case C-73/07, Grand Chamber, Satakunnan Markkinapörssi et al.; and SAC 2007:9 and 2009:82). The decision was based on the preliminary ruling of the ECJ and balancing of freedom of press and protection of privacy declared in the Constitution (section 10) and international human rights conventions and documents. It may be emphasized that in Finland information on taxable income of politicians, leading civil servants, company managers, artists, sportsmen etc. can be found in newspapers right after the taxation of the previous year has become final.

2. What types of information are excluded from providing? Is there one regime regarding all exclusions or is there any differentiation – e.g. absolute exclusion and relative exclusion?

Right of access to information is based on section 12 para 2 of the Constitution of Finland where it is stipulated as follows: “Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.”

The principle of right of access to information is further enshrined in the Act on the Openness of Government Activities (621/1999). According to the Act, official documents shall be in the public domain, unless specifically provided otherwise in the said Act or another Act. Each administrative body – be it governmental or municipal or an emanation of such a body – is obliged to give right to access to information in its possession.

Section 24 of the Act provides a list of documents that shall be kept secret unless specifically provided otherwise:

- (1) the documents of the Government Foreign Affairs Committee, unless otherwise decided by the Committee, as well as the political assessments of the Ministry for Foreign Affairs and the Finnish missions abroad, the documents concerning political or economic negotiations with a foreign state and the coded messages in the field of foreign affairs administration, unless otherwise decided by the Ministry;
- (2) the documents, other than those referred to in paragraph 1, concerning the relationship of Finland with a foreign state or an international organisation; the documents concerning a matter pending before an international court of law, an international investigative body or some other international institution; as well as the documents concerning the relationship of the Republic of Finland, Finnish citizens, Finnish residents or corporations operating in Finland with the authorities, persons or corporations in a foreign state, if access to such documents could damage or compromise Finland’s international relations or its ability to participate in international co-operation;
- (3) the reports of offences made to the police and other criminal investigation authorities, the prosecutor and the authorities charged with responsibility for inspection and supervision; the documents obtained or prepared for purposes of criminal investigations or the consideration of charges, as well as the application for a summons, the summons and the defendant’s response in a criminal case, until the case has been heard in court or the prosecutor has decided to waive prosecution or the case has been withdrawn, unless it is apparent that access to the documents will not compromise the clarification of the offence, the achievement of the objectives of the investigation, or without a pressing reason cause harm or suffering to a party, or compromise the right of the court to order that the documents are to be kept secret on the basis of the Act on the Publicity of Court Proceedings in General Courts (370/2007);
- (4) the registers maintained by the police, and any other authorities carrying out criminal

investigations for purposes of crime prevention and clearing up of the particulars of offences; the reports prepared for the prevention of crime; as well as the photographs and other identifying information taken or obtained in administrative proceedings for the determination or verification of identity and the right to travel, and the special identification codes issued to a person or entered into his or her identity card or travel documents;

(5) the documents containing information on the tactical and technical plans and methods of the police, the frontier guard, the customs authorities and the prison authorities, if access would compromise the prevention of crime, the clearing up of offences or the maintenance of public order or the order of penal institutions;

(6) documents relating to a complaint before a decision has been made on the matter of the complaint, if access would compromise the resolution of the matter or without a pressing reason cause injury or suffering to a party;

(7) documents relating to or affecting the realisation of the security arrangements of persons, buildings, installations, constructions, and data and communications systems, unless it is obvious that access will not compromise the achievement of the objective of the security arrangements;

(8) documents concerning preparations for accidents and emergency conditions, civil defence and the investigation of accidents in accordance with the Safety Investigation Act (525/2011), if access would breach or compromise safety or the promotion of safety, the realisation of civil defence or the preparation for emergency conditions, compromise the safety investigations or the purpose of such investigations, endanger the securing of information for investigation or violate the rights of the victims of an accident, an incident or an exceptional event or the memory of such victims or distress persons closely involved with them;

(9) the documents of the security police and the other authorities concerning the maintenance of State security, unless it is obvious that access will not compromise State security;

(10) documents concerning military intelligence, the supply, formations, locations or operations of the armed forces, the inventions, facilities, installations and systems used in the armed defence of the country or other defence, the other matters significant to the defence of the country, as well as defensive preparations, unless it is obvious that access will not violate or compromise the interests of defence;

(11) documents containing information on decisions, measures or preparations in monetary policy or foreign exchange policy, as well as on the preparation of financial or income policy or research into the need for decisions or measures in the fields of financial policy, income policy, monetary policy or foreign exchange policy, if access

would be contrary to the interests of the state as a social partner or otherwise significantly compromise the achievement of the purpose of the decision or measure or hamper the proper conduct of financial, monetary or foreign exchange policy;

(12) the reports prepared for the performance of the statutory tasks of the authorities supervising the financial markets and insurance operators and the authorities charged with the functioning of the financial markets and the insurance systems, containing information on the functioning of the markets, the financial, insurance or pensions institutions, or their customers, if access would injure or compromise the credibility or functioning of the financial or insurance systems;

(13) statistics on the national economy, a financial policy initiative and operational plan, and other such documents containing information which obviously may influence the capital and financial markets, before they have been publicly disseminated as provided in section 8;

(14) documents containing information on endangered animal or plant species or the protection of important natural habitats, if access would compromise the protection of the species or the habitat;

(15) documents that contain information that, in accordance with the Act on a Candidate's Election Funding (273/2009), contain campaign accounts that are to be submitted to the National Audit Office of Finland, and corresponding other accounts of election campaign financing and the expenses of an electoral campaign, as well as documents containing information in inspections or other statutory supervisory tasks of an authority, if access would compromise the performance of the inspection or its purpose, or without a weighty reason would be conducive to causing harm to a party;

(16) documents provided to the statistical authority for the compilation of statistics as well as documents that have been voluntarily given to an authority for the purpose of research or the compilation of statistics;

(17) documents containing information on any business or professional secret of the State, a municipality, some other public corporation or a corporation, institution or foundation referred to in section 4, subsection 2, as well as documents containing other comparable business information, if access would cause economic loss to the corporations, institutions or foundations referred to above or improve the competitive position of another public corporation or private person pursuing the same or a competing activity, or reduce the opportunities of the public corporation or a corporation, institution or foundation referred to in section 4, subsection 2 for procurement, investment, financing or debt service on favourable terms;

(18) documents containing information compiled or obtained by the State, a municipality or some other public corporation as a labour partner or a party to a labour dispute, if

access would be contrary to the interests of the public corporation as an employer; documents containing information compiled or obtained by the representatives of the State for negotiations on agricultural subsidies, if access would be contrary to the interests of the State as a negotiating party;

(19) documents prepared or obtained by an authority acting as a litigant in a trial for purposes of preparing for the trial, if access would be contrary to the interests of the public corporation or a corporation, institution, foundation or individual referred to in section 4, subsection 2 in the trial;

(20) documents containing information on a private business or professional secret, as well as documents containing other comparable private business information, if access would cause economic loss to the private business, provided that the information is not relevant to the safeguarding of the health of consumers or the conservation of the environment or for the promotion of the interests of those suffering from the pursuit of the business, and that it is not relevant to the duties of the business and the performance of those duties;

(21) documents concerning the basic materials for a dissertation or other scientific study, technological or other development project, or the assessment of the same, unless it is obvious that access will not cause inconvenience to the completion of the dissertation, study or development project or their exploitation, its appropriate assessment or the person carrying out the research, nor to the person commissioning the study or development project;

(22) documents containing information on an entrance examination or other examination or test, if access would compromise the achievement of the objectives of the examination or test, or prevent the future use of the test;

(23) documents containing data on the annual income or net worth of a person, data on the income and assets on which a subsidy or benefit is based, or data that otherwise describes the economic situation of a person, as well as documents of the execution authority in so far as they contain information which, had it been entered into the execution register would be secret on the basis of the Execution Code, as well as information on natural persons as debtors in execution and the minutes of the evaluation of the assets and liquidity of the debtor;

(24) documents concerning a refugee or a person seeking asylum, a residence permit or a visa, unless it is obvious that access will not compromise the safety of the refugee, the applicant or a person closely involved with them;

(25) documents containing information on a recipient of welfare or an individual client of the labour administration and a benefit, support measure, social service or service of the labour administration for individual clients given to him or her, or information on the

state of health or handicap of a person, the medical care or treatment given to him or her, or information on his or her sexual behaviour and preferences;

(26) documents containing sensitive information on the private life of the suspect of an offence, an injured party or another person involved in a criminal matter, as well as documents containing information on the victim of an offence, if access would violate the rights or the memory of the victim or cause distress to those close to him or her, unless the granting of access is necessary for the performance of an official task;

(27) documents containing information on a forensic psychiatric examination of the suspect in an offence, an assessment of the suitable sanction for a young person suspected of an offence, a plan for the term of a juvenile penalty, an assessment of the feasibility of community service or a monitoring sentence as an alternative to a sentence of imprisonment, an assessment of the prerequisites for a monitoring sentence, a plan for the term of a sentence, a plan for release from prison, a plan for supervision, and a statement issued in respect of the release procedure for a long-term prisoner;

(28) administrative documents and registers containing information on convicted persons or on persons who have been imprisoned or otherwise deprived of their liberty, unless it is obvious that access will not compromise the future livelihood of the person, his or her reintegration into society or his or her safety and if there is a justifiable reason for providing access to the information; other secret information is information entered into the criminal records, the register of fines, the national information system for the administration of justice and the register on prohibitions to raise livestock, information contained in the register on witness protection programmes and other information regarding a witness protection programme, as well as information collected by the Institute of Criminology and Legal Policy for research and follow-up purposes;

(29) documents containing information on a psychological test or aptitude test on a person or the results thereof, or on the assessments for the assignment of conscripts, the selection of employees or the establishment of the basis for a salary;

(30) documents on student welfare and exemptions from teaching, the test results of students and candidates and the school diplomas and other documents containing a verbal assessment of the personal characteristics of the student, as well as documents indicating the Matriculation Examination Board's division of moderators among the schools putting forward candidates for the matriculation examination, until one year has passed from the examination round in question;

(31) documents containing information on a secret telephone number given by a person or information on the location of a mobile communications device, and documents containing information on the person's domicile, place of residence or temporary place of residence, telephone number or other contact information, if the person has asked for the information to be kept secret and he or she has a justified reason to believe that his or her

own health or safety or that of his or her family are in jeopardy;

(31)(a) an application for a decision on an anonymous witness and the documents connected with the preparation of the application as well as the documents connected with a case concerning revelation of the identity of an anonymous witness as well as the trial documents that concern these cases, unless provided otherwise in Chapter 5, section 11(d) of the Criminal Procedure Code;

(31)(b) documents containing information on plaintiff's request to be notified in accordance with Chapter 4, section 19 of the Act on Pretrial Investigation when the prisoner or the prisoner on remand is released or has left the prison, or information on above mentioned notifications as well as, in addition to what is stipulated in subparagraph 31 on secret contact information, plaintiff's contact information associated with the above mentioned request in the files of Criminal Sanctions Agency;

(32) documents containing information on the political convictions or the privately expressed views of a person, or information on a person's lifestyle, participation in voluntary associations or leisure-time activities, family life or other comparable personal circumstances of the person; however, documents containing information on the activity of a person in political or other elected office, or his or her seeking such office, as well as the participation of a person in the establishment or registration of a political party, or the establishment of an electoral association are in the public domain.

As one can notice above, the wordings of the exclusions vary. Some of the exclusions are strict (i.e. the secrecy obligation is independent of the case-by-case consequences) and some of the exclusions relative: these exclusions are based either on the assumption that the information is public unless access to such information could cause adverse effects (subparagraphs 2, 5, 6, 8, 11, 12, 14, 15, 18, 19 and 22) or on the assumption that the information is secret unless it is apparent that access to the information would not cause any adverse effects (subparagraphs 3, 7, 9, 10, 21, 24 and 28).

There are some specific provisions on secret information also in other acts, such as the Act on the status and rights of a patient in health care (785/1992) and the Act on the status and rights of a client of social welfare (812/2000).

3. Are there any types of subjects governed by private law that have duty to provide information? If the answer is affirmative, what kind of subjects and what kind of information?

The provisions of the Act on the Openness of Government Activities also apply to corporations, institutions, foundations and private individuals appointed for the performance of a public task on the basis of an Act, a Decree or a provision or order issued by virtue of an Act or a Decree, when they exercise public authority. Separate provisions apply to access to the documents of the Evangelical Lutheran Church (section

4, subsection 2 of the Act on the Openness of Government Activities).

The SAC has issued a ruling (SAC 2014:83) on private actors' obligation to give access to information. A private insurance company was regarded to exercise public authority when making decisions on statutory insurances. The identity of the consultant doctors who took part in the decision-making process was therefore not outside the coverage of the Act on the Openness of Government Activities. The information on the doctors' identity and on their assignment was regarded not to be secret according to section 24 subsection 1 subparagraphs 17 or 20 of the Act on the Openness of Government Activities or any other provision.

In addition to the above mentioned situation when a private actor is exercising public authority, there are some other provisions establishing an obligation for a private actor to provide information. For example in the Act on the status and rights of a patient in health care (785/1992) is provided that the patient or his/her legal representative has the right of access to information on his/her condition, different treatment alternatives etc. The Act on the status and rights of a client of social welfare also includes similar provisions on giving access to information.

4. Are the salaries of the employees of the public sector subject to the right to free access to information as well? Does this cause any application problems regarding the personal data protection?

The salaries of the employees of the public sector are subject to the right to free access to information. Based on the Staff Register Act (1010/1989) section 7 and on the Act on the Openness of Government Activities the information on the salaries of the employees of the public sector is public (including information on the basic salary, the experience supplement, incentives etc.).

However, according to section 24, subsection 1, subparagraph 29 of the Act on the Openness of Government Activities, the documents containing information on the establishment of the basis for a salary are secret.

The salaries of the Presidents and members of the Supreme Court and the Supreme Administrative Court in Finland are stipulated in the Act 572/2001. This Act provides the salary of the Presidents and Justices at the date the Act was promulgated and, it goes without saying that the salaries are in the public domain. However, the salaries have undergone regular revisions and also the currency unit has changed over time, and therefore the information in the very Act is far from up to date.

As problems regarding application of the personal data protection can be mentioned that because salary information is usually part of a personal data file, the Act on the Openness of Government Activities and the Personal Data Act (523/1999, by which the directive 95/46/EC of the European Parliament has been implemented) set prerequisites on

granting access to the information. According to section 16, subsection 3 of the Act on the Openness of Government Activities access may be granted to a personal data filing system controlled by an authority in the form of a copy or a printout, or an electronic-format copy of the contents of the system, unless specifically otherwise provided in an Act, if the person requesting access has the right to record and use such data according to the legislation on the protection of personal data. However, access to personal data for purposes of direct marketing, polls or market research shall not be granted unless specifically provided otherwise or unless the data subject has consented to the same. A copy or print containing salary information can thus be handed out only if the receiver meets the prerequisites stipulated in the Personal Data Act or if the receiver's operation is outside the scope of the Personal Data Act (for example private use only or editorial use).

According to section 8 subsection 1 of the Personal Data Act personal data shall be processed only if: (1) the data subject has unambiguously consented to the same; (2) the data subject has given an assignment for the same, or this is necessary in order to perform a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract; (3) processing is necessary, in an individual case, in order to protect the vital interests of the data subject; (4) processing is based on the provisions of an Act or it is necessary for compliance with a task or obligation to which the controller is bound by virtue of an Act or an order issued on the basis of an Act; (5) there is a relevant connection between the data subject and the operations of the controller, based on the data subject being a client or member of, or in the service of, the controller or on a comparable relationship between the two (connection requirement); (6) the data relate to the clients or employees of a group of companies or another comparable economic grouping, and they are processed within the said grouping, (7) processing is necessary for purposes of payment traffic, computing or other comparable tasks undertaken on the assignment of the controller; (8) the matter concerns generally available data on the status, duties or performance of a person in a public corporation or business, and the data is processed in order to safeguard the rights and interests of the controller or a third party receiving the data; or (9) the Data Protection Board has issued a permission for the same, as provided in section 43(1). The Act also contains provisions on the processing of sensitive personal data and personal identity numbers and provisions on processing of personal data for special purposes such as research, statistic or genealogical research.

Even though the salary information is not secret, the authority is obliged to ensure that the above mentioned prerequisites prevail before access may be granted. Access may be granted only to information that is needed for the requested purpose.

The SAC has issued a decision on the access to salary information of university professors, then being civil servants of the state (SAC 2012:55). A newspaper had requested information on the salaries of professors for editorial purposes. The requested information was public according to section 7 in the Staff Register Act. The newspaper had requested the information in electronic format or, if that was not possible, as a paper

copy. For processing personal data for editorial purpose only certain provisions of the Personal Data Act were applied. Even though the prerequisites for granting access to such data were met, the newspaper was obliged to clarify that the processing of the personal data requested would be organized according to the provisions of section 32, subsection 1 of the Personal Data Act. According to that provision the controller shall carry out the technical and organizational measures necessary for securing personal data against unauthorized access, against accidental or unlawful destruction, manipulation, disclosure and transfer and against other unlawful processing. The techniques available, the associated costs, the quality, quantity and age of the data, as well as the significance of the processing to the protection of privacy shall be taken into account when carrying out the measures. According to subsection 2 of the above mentioned section the newspaper should, before starting the processing of data, provide the controller with appropriate commitments and other adequate guarantees of the security of the data as provided in subsection 1. The university should not have rejected the newspaper's request.

In the private sector information on salaries is secret. In SAC's decision 8.1.2007 nr 5 the court ruled that information of salaries of employees of an airline as well as details of individual employment contracts were secret according to section 24, subsection 1, subparagraph 20 of Act on the Openness of Government Activities. On the access to taxable income data, see end of 1. above.

5. Is the trade secret excluded from the free access to information?

Trade secrets are unconditionally excluded from the free access to information (see subparagraph 20 of section 24 subsection 1 of the Act on the Openness of Government Activities above; see also subparagraph 17).

Of course, there is a large margin of interpretation of what type of information is covered by the above mentioned provisions.

The SAC has interpreted the dimensions of the concept of trade secret in several cases. In the rulings 23.3.2016 nr 976 and 977 the SAC evaluated the publicity of funding applications and decisions of the Finnish Funding Agency for Technology and Innovation. The court ruled that the information on the names of the companies that had applied for the funding, irrespective of whether their applications were accepted or rejected and the amount of funding they applied for or received, was not secret according to section 24, subsection 1, subparagraph 20 of Act on the Openness of Government Activities. However the target of the funding, even when described at general level can be regarded secret according to the aforementioned provision.

Decision SAC 7.12.2015 nr 3536 was about the Finnish Medicines Agency's (Fimea) documents related to a decision on whether a dietary supplement product was to be considered as a medicinal product in accordance with section 6 of the Medicines Act (395/1987). A company had requested a list of products containing glucosamine in the

market. The list contained information on the producer and the name of the products and detailed information on the composition of the products. The SAC confirmed that based on the Act on the Openness of Government Activities and on the legislation related to dietary supplement products information on the producers and the names of dietary supplement products as well as information on the ingredients is not secret. However, the information on the exact quantities of ingredients was secret according to the section 24, subsection 1, subparagraph 20 of Act on the Openness of Government Activities, apart from the information on the amount of the ingredient characteristic for a dietary supplement product. That information is public according to the legislation on dietary supplement products.

In the case SAC 2014:58 a private person had requested information on rock mining project from the municipal environmental authority. The information on the size of the controlled explosions in the mine was regarded to carry information on the mining process and capacity of the mining company. However it was regarded not to be such technical, economical or know-how information that should be considered as a trade secret. On the requested information it was not possible to make such conclusions on the company's business that could cause damage to the company. The requested information was considered not to be private business or professional secret or other comparable private business information, access to which would cause economic loss to the private business according to section 24, subsection 1, subparagraph 20 of the Act on the Openness of Government Activities. It was also noted by the SAC that based on the environmental permit the company was obliged to inform the environmental authority on i.a. the size of the explosions. Therefore the information on the sizes of the explosions was also part of the environmental monitoring data which was public according to the Environmental Protection Act.

It is quite common that questions about trade secrets emerge in relation to cases related to public procurement.

6. Are documents that are subject of intellectual property excluded from the free access to information?

Not as such, but if they fall within the category of documents described in section 24, subsection 1, subparagraph 20 of the Act on the Openness of Government Activities (i.e. trade secrets, or some other category in the above mentioned section).

7. Does the right to free access to information cover as well the parts of an administrative file that contain data related to individuals or are these data protected? In which areas of public administration does this cause problems ?

According to section 10, subsection 1 of the Constitution of Finland everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act.

According to section 3, subparagraph 3 of the Personal Data Act, a personal data file means a set of personal data, connected by a common use and processed fully or partially automatically or sorted into a card index, directory or other manually accessible form so that the data pertaining to a given person can be retrieved easily and at reasonable cost.

If an administrative file constitutes a personal data file according to the Personal Data Act, access to information is limited on the basis of the Act on the Openness of Government Activities or the Personal Data Act. As described above (question 4), section 16, subsection 3 of the Act on the Openness of Government Activities sets prerequisites on free access to information in cases where the requested information is part of a personal data filing system controlled by an authority.

SAC's decisions are subject to free access to information even when they include data related to individuals, unless the information is for some reason provided secret in the Act on the Openness of Government Activities or other Act. However, the decisions that are published on-line, are anonymized (see answer to question 10.1 below).

According to section 10 of the the Openness of Government Activities when only a part of a document is secret, access shall be granted to the public part of the document if this is possible without disclosing the secret part.

8. Are data related to criminal proceedings or administrative delict proceedings or any data of quasi-criminal nature (typically files of secret police departments from the times of anti-democratic past) excluded from the right to free access to information?

Data related to criminal proceedings is secret based on the section 24, subsection 1, subparagraph 3 of the Act on the Openness of Government Activities (see above). Also subparagraphs 4, 9, 19, 26, 27, 28, 31 a and 31 b can limit the access to documents related to criminal proceedings.

Data related to administrative delict proceedings is not secret as such, unless it is provided secret in legislation (section 24, subsection 1 of the Act on the Openness of Government Activities). For example according to section 7 of the Staff Register Act (which is an act applied to processing of personal data related to public servants) information on convictions is secret.

Data of quasi-criminal nature can be secret if it falls under some of the above mentioned categories. As an example can be mentioned the case "Tiitinen list" (Mr. Seppo Tiitinen was formerly chief of the Finnish Security Intelligence Service), which was about a list of names of 18 Finnish persons who had been subject to special interest of the secret police agency of the German Democratic Republic (East Germany). The Finnish Security Intelligence Service got the list in 1990. In 2007 a journalist asked for a copy of that list.

The Finnish Security Intelligence Service rejected the request. The SAC issued a ruling on the case (SAC 2010:31). The court declared that it was not clear that the list did not have any longer significance for the Finnish Security Intelligence Service. The Finnish Security Intelligence Service had pointed out that granting of access to the confidential information it had received from its cooperator could deteriorate the cooperators' willingness to grant access to such information in the future. If the Finnish Security Intelligence Service would not get access to such information, its ability to perform its tasks concerning the maintenance of State security could be deteriorated and, hence, State security could be compromised. The court stated that it was not obvious that access to the list would not compromise State security as referred in the section 24, subsection 1, subparagraph 9 of the Act on the Openness of Government Activities.

Part II

9. Public availability of decisions

9.1 Are there any sorts of decisions in your jurisdiction that are not published at all (e.g. decisions with classified status or other decisions with restricted access)? If so, please describe typical cases and give indicative statistic that can illustrate the frequency and relevance of such cases.

According to the Act on Openness of Legal Proceedings in Administrative Courts (381/2007) the proceeding and documents related to proceedings in administrative courts are public unless otherwise provided in the mentioned Act. According to section 8 of the Act, the Act on the Openness of Government Activities is applied when deciding whether documents related to proceedings are public or secret. According to section 9 of the 2007 Act a party may have right to access to documents under certain conditions. However, the right to access does not cover e.g. information on the SAC's deliberations, including main parts of the referendary's memo. Administrative courts' deliberations are held with no audience nor the parties present and the negotiation is secret according to section 15 of the Act.

According to section 16 of the Act on Openness of Legal Proceedings in Administrative Courts the document containing court's judgment is subject to free access to information unless it contains information that is secret according to Act on the Openness of Government Activities or other Act. The outcome of the judgment and the legal provisions applied are always subject to free access to information. When necessary because of important public or private interest related to the case, the court can, however, decide that the decision is public despite secrecy provisions.

There are certain "secret" categories of cases in the Supreme Administrative Court. These include cases concerning for example immigration, child welfare and other social issues, health care and taxation. Documents and decisions in these cases are *per se* regarded as secret in the court's case management system. Naturally also in these categories the

access to these documents is in the end decided according to the the above mentioned provisions. In other categories of cases the documents and decisions are regarded public in the case management system.

Even in these secret categories summaries of decisions are published. Published decisions are edited in a way that no secret information will be revealed.

9.2 If a third person (not a party of respective case) wants to obtain your decision, what is the procedure? On-line availability of decisions is to be discussed below, so kindly describe here only other options (e.g. whether it is possible to ask for a decision by snail-mail, whether any fee apply etc.)

Normally a person who wants to obtain a decision turns to the registrar of SAC or to the referendary of the decision. If the decision is not secret it will be sent to the person by mail or by email.

If the requested decision is not secret and is already available in electronic format, no fee is charged. If the decision is only in paper format, the fee is 0,60 euro/page. However, if there are secret parts in the decision that need to be removed, the fee is 3,50 euro/page. If the amount of requested documents is really large, a flexible fee will be charged.

The prices are provided in Decree 1558/2015 of the Ministry of Justice.

9.3 Is there any official collection of selected decisions of you instance (apart on-line publication of decisions – see below)? If so, please describe in detail the procedure of its issue. In particular, please focus on the selection process of decisions that are to be published, the frequency of publication and the form of publication. Indicate, whether the collection is published directly by your instance, by some other public body or by an independent publisher. If the collection is published by an independent publisher, please describe the form of cooperation (i.e. whether the publisher has exclusive rights to publish the collection, whether the publisher does any editing of published decisions etc.) Are decisions that are chosen for the publication regarded more relevant by your instance or by general public?

The SAC does not anymore publish a paper copy of the Yearbook. The decisions are published on-line, see answer to question 11 below.

10. Editing and anonymization of decisions

10.1 Do you anonymize published decisions? If so, please describe in detail the procedure. In particular, please describe who is in charge of anonymization, whether there are any particular statutory or other rules governing anonymization (apart general privacy/data protection rules) and what data are anonymized.

The decisions that are published, are anonymized. Anonymization concerns only names of private persons: if they would not be anonymized, the decisions would constitute a personal data file according to section 3 of the Personal Data Act, and there is no basis in the law for that! The names of authorities, companies, NGOs etc. can be found in the published decisions. In some cases, anonymization is also necessary in order to protect secret information.

The referendary of the case is in charge of anonymization. The referendary marks on the documents, how the anonymization is to be done and checks it before the decision is published. The names of persons are replaced by letters A, B, C etc. The names of companies can also be replaced by letters, if it is necessary in order to protect privacy of persons or secret information.

The anonymization is based on the provisions of the Personal Data Act. The SAC does have its own guidebook on publishing decisions. The basic principles of anonymization are described in the guidebook. New guidance is currently being prepared, but the principles of anonymization will remain as described above.

According to the guidebook a decision in a secret case type that is published shall not include names of persons or other such information that might reveal, whom the case concerns. Even when the case is not secret the names of parties are not published unless it is necessary in order to make the decision understandable (for example minister's identity in a case that has received a lot of public attention). Other names, for example name of a private person who has performed as a consultant in the case, can be mentioned, as well as company names.

10.2 If anonymization practice changes, does it affect already published decisions (i.e. are past decisions subsequently anonymized/de-anonymized with every change of anonymization rules)?

If the SAC would change its practice of anonymization, the new practice would affect only future decisions unless, of course, the change of practice would be based on a change in legislation that the court is obliged to follow.

10.3 Describe any subsequent problematic issues that you noted in your jurisdiction regarding the anonymization (e.g. different practices of different supreme instances, strong public debates, impact of de-anonymization of decisions by media etc.)

No significant problems related to anonymization have occurred. However, from SAC's point of view the process of anonymization and managing of the different versions of decisions causes a considerable administrative burden.

10.4 Do you edit published decisions? If so, please describe in detail the procedure.

In particular, please describe who is in charge of editing, what information is added/removed in the process of editing (incl. Metadata).

For the yearbook decisions a short headline is written, including the date and number of the decision, a short description of the main legal question, keywords and the provisions applied in the case. Sometimes the headline also includes references to domestic precedents and relevant decisions of the European Human Rights Court and the European Court of Justice. References to legal literature are not common but sometimes included. Usually the full text of the decision is then attached under the headline, including also the possible voting statement and referendary's dissenting opinion. In addition to the SAC's judgment the text of the decision includes description of earlier decisions concerning the case as well as the essential contents of the appeal and the submissions of parties and authorities.

The published summary of the decision shall also contain description of the claims submitted in earlier stages of the case as well as potential voting statements. The summary shall also contain names of the judges who have made the decision under appeal as well as the name of the referendary.

The referendary of the case in SAC is in charge of editing the summary. Editing is normally done by a secretary and the summary is checked by the referendary before publishing.

Here is a link to a Yearbook decision summary in a case where there was a voting in SAC (7-2). <http://finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201502253>

10.5 Has the development of the right to be forgotten affected in any way the anonymization or publication of your decisions? If not, is it a topic that is being considered in your jurisdiction with regards to the publication of court decisions?

This topic has not been considered in the SAC. The SAC is aware of the CJEU's ruling on the issue but so far no cases on the issue have been raised in SAC.

As the published decisions are mostly anonymized, the development will probably not affect the publication of court decisions.

11. On-line publication of decisions

11.1 Are decisions of your instance available on-line? If so, please indicate whether on-line all or only selected decisions are published on-line (if only selected decisions are published, please describe the procedure of their selection).

SAC does not publish all its decisions. Summaries of decisions of the SAC having value as precedents have been published in the Court's yearbook since 1918. Nowadays the

yearbook decisions are published only on-line. Only decisions having relevance as precedents (for the application of law in identical or similar cases) or are otherwise of public interest are included in the yearbook.

On the court's web site, also brief summaries of cases having relevance for application of law in lower courts and authorities are published. A brief summary includes only a short description of the legal question and the outcome of the decision as well as a headline comparable to the one in a yearbook decision.

Guidelines for publishing yearbook decisions and brief summaries are found in the Supreme Administrative Court's guidebook for publishing.

In addition, other decisions can be published on court's web site especially in cases which may raise national, regional or local interest.

The summary is published on-line the same day when the decision is handed down.

In 2015, in total 189 yearbook decisions, 32 brief summaries and and about 150 other decisions were published on-line (the total amount on decisions made in 2015 was around 4 000).

11.2 Describe the form of on-line publication of your decisions. In particular, indicate whether your decisions are published through your own website or whether it is done through some different on-line service (e.g. through a common platform operated by a ministry of justice, by a judicial council etc.) Kindly add also sample screenshot(s) or link(s).

Both the summaries that are included in the yearbook and the brief summaries are published on two internet services www.finlex.fi and www.edilex.fi. Finlex is an Internet service on legal information, administered by the Finnish Ministry of Justice. It is a public service, available free of charge. Edilex is similar but more extensive and chargeable Internet service on legal information. Finlex and Edilex are produced and maintained by a private company Edita Publishing Ltd.

Link to decisions on SAC's website:

<http://kho.fi/fi/index/paatoksia.html>

Link to SAC's decisions on the free Internet service Finlex:

<http://www.finlex.fi/fi/oikeus/kho/>

11.3 What are available file formats in which your decisions are available on-line? Apart enumerating particular file formats, kindly indicate whether your instance systematically sticks to any commonly accepted open data policy. Also, please indicate whether your instance publishes on-line only individual decisions or

whether whole datasets are available to the public for further re-use. If datasets are available for further re-use but not publically, please describe to whom and under what conditions such datasets are made available.

The decisions are published in html-format on SAC's website. Only individual decisions are published and no datasets are available.

On SAC's website it is not possible to search the decision database by keywords or other factors, but in the internet services Finlex and Edilex it is possible.

Open data service in Finlex was launched in March 2016.

12. Public availability of other documents

12.1 Are there published on-line personal information about members of your instance? In particular, please describe whether there are CVs available, in which length and form (e.g. on a court website) and eventually what information is regularly published (e.g. education, memberships, political beliefs, marital status etc.) Also, please indicate whether the publication of information about members of your instance is compulsory, whether the members of your instance are free to decide about the structure and content of such information and whether you noted any issues in that regards (e.g. there was a big debate in the Czech Republic over the publication of past membership of the judges in the communist party). Please add a sample link or a screenshot of how such personal information about a member of your instance looks like.

SAC's President's and Justices' CVs are published on SAC's website in Finnish. The CVs are based on a recommendation of the topics to be included, but all the judges were to provide the information as they wished. The CVs include information on judges' education, previous positions and workplaces, memberships in organizations and publications and academic achievements. No information on marital status, family or political views is published.

The decision not to publish photos was discussed in the plenary session and based on a vast majority. Only the President's photograph is published.

Example:

<http://kho.fi/fi/index/korkeinhallinto-oikeus/henkilosto/khonjasenet/karikuusiniemi.html>

12.2 Which case-related documents other than decisions of your instance are published on-line (e.g. dissenting opinions, advocate general submissions, submissions of parties, records of chamber deliberations etc.)? Please, describe how these documents are published, i.e. where and in which format (e.g. on a website through a search form, in open data formats, etc.). If your instance publishes these

documents in open formats, kindly provide a sample link to a particular dataset.

SAC does not publish other case-related documents. In case of yearbook decisions the voting statements and dissenting opinions are published.

Submissions of parties are included to relevant extent in the decision. Chamber deliberations are secret.

12.3 Are the members of your instance allowed to publically comment or annotate on their own decisions or other decisions of your instance? If so, please describe common forms in which this is done (e.g. in law journal articles, in public debates on case-law organized by the respective instance etc.)

There are no formal rules on commenting court's decisions, but it seems to be common practice that members of the court do not generally and systematically comment the decisions of the SAC. However, it is generally acceptable to introduce court's decisions in professional training events and seminars etc. In these events it is regarded appropriate to describe the case and for example to emphasize some points in court's reasoning. It goes without saying that is strictly excluded to go beyond what is said in the decision or reveal information based on the court's secret deliberations.

Part III

13. What trends, threats and challenges do you foresee to come in the field of freedom of information and protection of privacy during the next decade? What should be the role of supreme administrative jurisdictions in facing these trends, threats and challenges?

This kind of question seems to be too broad for answering it with concrete data. Therefore our aim is not to pursue you to fill it with some concrete and clear statement but what we intend is to know your opinion on what trends could or will influence this scope of decision-making of your jurisdiction. Your answer will serve as the basics for further discussion during the third part of the Colloquium and we hope that this "look into the future" will be pleasant and useful ending of the meeting.

We would very appreciate if the presidents of the Supreme Administrative Courts/Councils of States could provide us with answers to this question.

In the recent years openness of government activities and publicity of documents has gathered lot of public attention. This can, to some extent, be seen in the number of appeals in the SAC. Also issues related to protection of privacy have emerged in the public discussion.

It can be presumed that the trend will continue. It is possible that it will lead to more culminated public discussion and increase the requirements for justification of SAC's

decisions. The significance of CJEU's and ECHR's decisions will probably increase. EU's General Data Protection Regulation will certainly affect also SAC's decision-making.