



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: Estonia



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

(questionnaire)

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?

Administrative supervision over providing information and protection of personal data in Estonia is carried out by the Data Protection Inspectorate¹. The Estonian Data Protection Inspectorate is a supervisory authority referred to in Article 28 of the EU Data Protection Directive 95/46/EC. The Data Protection Inspectorate defends the Constitutional rights to obtain information about the activities of public authorities; to inviolability of private and family life in the use of personal data; and to access data gathered in regard to oneself.

By institutional form, the Data Protection Inspectorate is a governmental authority under the Ministry of Justice. According to Section 32 subsection 2 of the Personal Data Protection Act², the Data Protection Inspectorate is independent and shall act pursuant to this Act, other Acts and legislation established on the basis thereof in the implementation of its obligations arising from this Act. According to Section 34 subsection 3 of the Personal Data Protection Act, the head of the Data Protection Inspectorate shall not participate in the activities of political parties, hold any other remunerative position or office during his/her term of office, except for pedagogic or academic work.

Nevertheless, the chosen model has given ground to some controversy. According to the Estonian Human Rights Centre's annual report "Human Rights in Estonia" 2012³, the independence of the Data Protection Inspectorate might not be in accordance with Directive 95/46/EC and the relevant judgments of European Court of Justice, which demand the opportunity to operate freely, without being dependent on guidelines, and without pressure. Some of the challenges include economic dependency, as the budget of the Data Protection Inspectorate is approved, amended and reviewed by the Minister of Justice; not being a separate organization outside the administrative sphere of the Ministry of Justice; being under the supervisory control of the Minister of Justice according to the Government of the Republic Act, etc.

¹ For more information, visit the Data Protection Inspectorate's web page: <http://www.aki.ee/en>.

² Available online in English: <https://www.riigiteataja.ee/en/eli/507032016001/consolide>.

³ Käsper, K. *Organisational framework of protection of human rights on state level*, available online in English: <http://humanrights.ee/en/annual-human-rights-report/5030-2/organisational-framework-of-protection-of-human-rights-on-state-level/>.

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?

One of the main types of protected information is personal data. The aim of the Personal Data Protection Act is to protect the fundamental rights and freedoms of natural persons upon processing of personal data, above all the right to inviolability of private life. Information excluded from provision also includes specific information concerning the protection of national security, copyrights, business secret, etc. Some areas of exclusion are absolute, whereas in some cases the decision about the classification of information is left upon the agency processing it.

According to the rather specific Section 34 of the Public Information Act⁴, restricted information is information to which access is restricted pursuant to the procedure established by law, and the head of an agency may establish a restriction on access to information and classify information as information intended for internal use. Section 35 lists the compulsory grounds for classification of information as internal:

- information collected in criminal or misdemeanor proceedings, except for the information subject to disclosure under the conditions provided by the Code of Misdemeanor Procedure and the Code of Criminal Procedure;
- information collected in the course of state supervision, administrative supervision and supervisory control proceedings until the entry into force of a decision made thereon;
- information the disclosure of which would damage the foreign relations of the state;
- information concerning the duties and staff of a structural unit and officials and employees and the duties of the officials and employees of a holder of information engaged in ensuring of internal security, development of national defense policy, organization of national defense, including planning, preparation and conduct of national military defense, or organization of the protection of state secrets and classified information of foreign states, if the disclosure of such information would endanger national defense or protection of state secrets and classified information of foreign states;
- information concerning tables reflecting the armament and equipment, and the quantities of armament and equipment of the Defense Forces, unless such information is a state secret or classified foreign information;
- information concerning the state assets to be transferred, in the event of mobilization or increasing of military preparedness, into the possession of the Defense Forces;
- information concerning the methods and tactics utilized by an investigative body in its activities, if the disclosure of such information could hinder detection of criminal offences or facilitate committing thereof;
- information concerning the quantity of armament of the Police, unless such information is a state secret or classified foreign information;
- information concerning national defense duty;

⁴ Available online in English: <https://www.riigiteataja.ee/en/eli/518012016001/consolide>.

- information the disclosure of which would endanger a national defense object or facilitate carrying out an attack against such object;
- information concerning the amount of stocks and resources necessary for the performance of national defense tasks and for mitigating the consequences of an emergency, and the extent of and conditions for utilization of such stocks;
- information the disclosure of which would endanger objects protected under heritage conservation or museum objects belonging to a museum collection;
- information the disclosure of which would endanger the protected areas or the preservation of protected species and their habitats;
- information including a description of security systems, security organizations or security measures;
- information on technological solutions if disclosure of such information would damage the interests of the holder of information or if classification of such information as internal is prescribed in a contract entered into with a person in private law;
- information which contains sensitive personal data;
- information which contains personal data if enabling access to such information significantly breaches the inviolability of private life of the data subject;
- information which contains data revealing details of family life;
- information concerning application for social assistance or social services;
- information revealing mental or physical suffering endured by a person;
- data collected on a person during the process of taxation, except data concerning tax arrears;
- information whose disclosure may violate a business secret;
- reports of an internal audit before approval thereof by the head of the agency;
- the risk assessment of vitally important services and information concerning the operational continuity plan;
- any other information provided by law.

What is more, according to the same Section, the head of a state or local government agency or a legal person in public law may classify the following as information intended for internal use:

- draft legislation of general application before it is sent for approval or submitted for passage;
- draft documents and accompanying documents before receipt or signature thereof;
- in justified cases, documents addressed to persons within the agency which are not registered in the document register (opinions, notices, memoranda, certificates, advice, etc.);
- information which may damage the interests of the state acting as a participant in the proceedings in a civil proceeding, until the court decision is made;
- information related to the formation of stocks and provision of resources necessary for the performance of national defense tasks and for mitigating the consequences of an emergency, if the disclosure of such information could affect the formation of stocks and provision of resources.

Restrictions can also arise from *lex specialis*, e.g. according to Section 24 subsection 5 of the General Part of the Environmental Code Act⁵, the possessor of information has the right to designate environmental information as information for internal use, if:

- the disclosure of the information may adversely affect intellectual property rights;
- the information has been supplied to the administrative authority on a voluntary basis without being under a legal obligation to do so and that person who supplied the information has not consented to the release of the environmental information.

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?

According to the Public Information Act Section 5 subsection 1 p 3, legal persons in private law and natural persons under the conditions provided for in subsection 2 are holders of information. According to subsection 2, the obligations of holders of information extend to legal persons in private law and natural persons if the persons perform public duties pursuant to law, administrative legislation or contracts, including the provision of educational, health care, social or other public services, – with regard to information concerning the performance of their duties.

Also, according to the Public Information Act Section 5 subsection 3, the following are deemed to be equal to holders of information:

- undertakings which have a dominant position in the market or special or exclusive rights or which are natural monopolies – with regard to information concerning the conditions and prices of the supply of goods and services and changes thereto;
- sole proprietors, non-profit associations, foundations and companies – with regard to information concerning the use of funds allocated from the state or a local government budget for the performance of public duties or as support.

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?

Since the entry into force of the new Civil Service Act⁶ on 1st April 2013, there are two types of people working for the public sector – officials and employees.

The salaries of officials are subject to the right to free access to information, according to the Public Information Act, Section 28 subsection 1 p 25. In current practice, the Ministry of Finance publishes the information about salary of each person who works as an official in public sector yearly in the Internet (with names of the officials).⁷

⁵ Available online in English: <https://www.riigiteataja.ee/en/eli/517062015001/consolide>.

⁶ Available online in English: <https://www.riigiteataja.ee/en/eli/509072014003/consolide>.

⁷ The webpage with the public information about salaries is <http://avalikteenistus.ee/index.php?id=41596>.

The public access to information about salaries of employees of public sector is currently under dispute. Despite the lack of a clear provision in law, the Estonian Data Protection Inspectorate is of the opinion that since the information about remuneration and compensation paid from the public budget shall not be classified (Section 36 subsection 1 p 9 of the Public Information Act), the salaries of employees of the public sector need to be published with names of the employees.⁸

The practice where the salaries are published with names of persons clearly creates an infringement of the right to privacy. The justification for such an infringement has been transparency, and the avoidance of corruption. However, the Chancellor of Justice has recently raised the issue of the access to the information about salaries of officials as well as employees of the public sector. She finds that the legislator's will to create public access to information about salaries is not clear, and that the question, whether the salary of (for example) a cleaning worker in a municipal kindergarten really needs to be published with the name of the employee, requires a wider debate in the society.⁹ Since the competence of the Chancellor of Justice is limited, it is not clear what the outcome of the current discussion could be. Even if she takes a stand in this question, it is not directly imperative for the relevant authorities (e.g. Data Protection Inspectorate) to fulfill her recommendations. However, the discussion itself, and the various positions that the authorities and non-governmental organizations have already expressed, prove that the problems exist.

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

According to the Public Information Act Section 3¹ subsection 3, upon giving information for public use, protection of trade secret must be ensured. Before giving information for public use, the holder of information shall assess the need to establish restrictions on the public use of the information. According to the Public Information Act Section 35 subsection 1 p 17, a holder of information is required to classify information whose disclosure may violate a trade secret for internal use.

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

According to the Public Information Act Section 3¹ subsection 3, upon giving information for public use, protection of copyrights must be ensured. Before giving information for public use, the holder of information shall assess the need to establish restrictions on the public use of the information.

⁸ The General Guidelines of Data Protection Inspectorate to the Public Information Act, Chapter 6. Available online (in Estonian only):

http://www.aki.ee/sites/www.aki.ee/files/elfinder/article_files/Avalku%20teabe%20seaduse%20%C3%BCldjuhe%20%2822.10.2014%29_2.pdf.

⁹ The letter of Chancellor of Justice from 26th January 2016 to Auditor General, Association of the Estonian Cities, Association of Municipalities of Estonia, The Centre for Etichs (University of Tartu) and Estonian Institute of Human Rights and Transparency International Estonia. Available online (Estonian only):

<http://adr.rik.ee/okk/dokument/4617542>

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?

The right to free access to information is limited by the need for the protection of privacy. The Public Information Act (Section 3¹ subsection 7) establishes a rule that even in case the information disclosed pursuant to law contains personal data, the public use of such information may be restricted if giving such information for public use would significantly breach the inviolability of the private life of the person.

Section 28 of the Public Information Act provides a list of information that the holder of information is required to disclose. According to Section 35 subsection 1 p 11 and 12, holder of information is required to classify the following as information intended for internal use: information which contains sensitive personal data and information which contains personal data if enabling access to such information significantly breaches the inviolability of private life of the data subject. The list of types of information that may not be classified in any case is provided in Section 36 of the Public Information Act (including information about supervision or supervisory control or disciplinary procedure).

The problematic situations might arise with relation to data that contain personal information, but are also in the list of the information required to be disclosed – e.g. salaries of public officials, information about disciplinary proceedings.

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?

Yes, in certain cases data related to criminal proceedings or misdemeanor proceedings (administrative delict proceedings) are excluded from the right to free access to information.

For example, during pre-trial, extra-judicial and court proceedings, data related to criminal or misdemeanor proceedings are excluded, although not entirely, from the right to free access to information. This is justifiable with the need to ensure a fair trial and the protection of personal data.

In criminal matters, data gathered during pre-trial procedure are included in a criminal file and examination of this file is governed by the Code of Criminal Procedure¹⁰ (hereinafter CCP). In addition, all personal data is protected by the Personal Data Protection Act. According to the CCP, as a rule, only the participants in the proceedings are allowed to access these files during the proceedings. The principal regulations regarding access to criminal files are set forth in Sections 224 and 224¹ of the CCP (Submission of the criminal file to the criminal defense counsel, victim and civil defendant for examination; Submission of the file to a suspect or an accused).

¹⁰ Available online in English: <https://www.riigiteataja.ee/en/eli/527012016001/consolide>.

However, according to Section 214 of the CCP, disclosure of information concerning pre-trial proceedings during the proceedings is permitted if certain requirements are met. According to Section 214 subsection 1, information concerning pre-trial proceedings is disclosed only with the permission of and to the extent specified by the prosecutor's office and only if the requirements set forth in subsection 2 are met. According to subsection 2 disclosure of information concerning pre-trial proceedings is permitted in the interests of criminal proceedings, the public or the data subject if this, in avoidance of excess:

- 1) does not induce crime or prejudice the detection of a criminal offence;
- 2) does not damage the interests of the Republic of Estonia or the criminal matter;
- 3) does not endanger a business secret or violate the activities of a legal person;
- 4) does not violate the rights of the data subject or third parties, particularly in the case of disclosure of sensitive personal data.

Judgments that have entered into force are made public online on the State Gazette's website (<https://www.riigiteataja.ee/index.html>), although some exceptions apply here (e.g. the need to protect the interests of a minor, witnesses *etc.*).

When the proceedings have ended, the right to access all other data related to criminal or misdemeanor proceedings is governed by the Public Information Act¹¹ in conjunction with the Personal Data Protection Act. The same applies to files of secret police departments from the times of anti-democratic past.

According to Section 35 subsection 1 p 1 of the Public Information Act, a holder of information is required to classify the information collected in criminal or misdemeanor proceedings, except for the information subject to disclosure under the conditions provided by the Code of Misdemeanor Procedure and the Code of Criminal Procedure, as information intended for internal use. Section 40 sets forth the terms of restrictions on access. For example, according to Section 40 subsection 3, a restriction on access to information classified as internal which contains private personal data applies for 75 years as of the receipt or documentation thereof or for 30 years as of the death of the person or, if it is impossible to establish death, for 110 years as of the birth of the person. However, this does not mean that these documents are entirely excluded from the right to free access to information. According to Section 38 subsection 4, the head of an agency holding this information may decide to grant access to information classified as internal to persons outside the agency if this does not damage the interests of the state or a local government. Access to information concerning personal data must be granted in accordance with the restrictions set forth in the Public Information Act.

Part II

9. Public availability of decisions

¹¹ Available online in English: <https://www.riigiteataja.ee/en/eli/518012016001/consolide>

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 a general rule court decisions are published online (Section 175 subsection 1 of the Code of Administrative Court Procedure¹², the same principle is also found in the Code of Civil Procedure¹³). However, the codes of procedure (also the Code of Administrative Court Procedure) provide some leeway to courts. For example, Section 175 subsections 4 and 5 state the following:

"(4) Where a judgment contains sensitive personal data or other data whose publication may significantly harm the right to privacy of the person concerned, and where it is impossible to avoid the harm to the person's right to privacy by observing, amongst other things, the provision of subsection 3 of this section, the court, on the basis of an application of the data subject, or on its own initiative, publishes the judgment without the particulars which risk harm to the right to privacy, publishes solely the operative part of the judgment, or does not publish the judgment.

(5) If a judgment contains information which is subject to other limitation of access provided in the law, the court, on the basis of an application of the interested person, or on its own initiative, only publishes the operative part of the judgment, or does not publish the judgment."

Therefore, in certain cases the court can decide not to publish a court decision. The decision of partial publication or non-publication is made by court ruling (which can be contested at the court of higher instance). Typical cases would include, for example, adoption cases, cases concerning trade secret. No official statistics are collected nor published on the non-publication of court decisions.

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.)

In General, all decisions of the Supreme Court (judgments and rulings concluding the matter as well as rulings by which the court accepts or refuses the action) are published on the website of the Supreme Court. Only Supreme Court rulings concerning procedural questions are not published on the website of the court.

In case the third party is interested in obtaining a ruling concerning a procedural question that is not published on the website of the Supreme Court, the rules set out in Section 89 of the Code of Administrative Court Procedure apply (Inspection of the file by persons not participating in proceedings). Section 89 of the Code of Administrative Court Procedure

¹² Available online in English: <https://www.riigiteataja.ee/en/eli/513042016001/consolide>.

¹³ Available online in English: <https://www.riigiteataja.ee/en/eli/514032016001/consolide>.

allows third parties access to the file in two cases: 1) with the parties' agreement; 2) if the person has a legitimate interest, with the permission of the court. In the latter case, that person's interest to peruse the file and obtain a copy of a procedural document must outweigh the interest of a party or third party to protect the information. Perusal of the file is prohibited if the proceedings were conducted as *in camera* proceedings. In the case that a procedural document contains particulars which are subject to a limitation of access, the third person may only be permitted to peruse the part of the document which does not contain such particulars, or access the document in a format in which it is not possible to peruse the particulars.

According to Section 61 of the State Fees Act¹⁴, a state fee of 0.30 euros per each issued page starting from the 21st page shall be paid for the issue of a duplicate transcript of a court judgment or court ruling, a procedural document of pre-trial procedure or extra-judicial proceedings or other document in judicial proceedings, and for the issue of a printout of an electronic document.

9.3 Is there any official collection of selected decisions of you instance (apart on-line publication of decisions – see below)?

There are no official collections published as books of selected decisions of the Administrative Law Chamber of the Supreme Court of Estonia. However, three times per year, the Supreme Court publishes overviews of each chamber's case-law of the previous period. This publication generally contains summaries of decisions that contain new positions on the application of the law, and the primary purpose is practical – to draw attention to these decisions and to make it easier to follow the case-law of the Supreme Court. The collections are published by the Court itself.

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 legal basis for the anonymization of administrative court decisions is in the Code of Administrative Court Procedure. Section 175 subsection 3 of the Code provides: "On the basis of an application of the data subject, or on the court's initiative, the name of the data subject in the judgment to be published is replaced by initials or a sequence of letters, and the publication of his or her personal identification code, date of birth, registration number, address or other particulars which would permit specific identification of the data subject. The particulars of an agency of the government or of a local authority, of a legal person in public law or other person vested with public authority are not concealed in a court decision." Section 175 subsection 4 of the Code adds: "Where a judgment contains sensitive personal data or other data whose publication may significantly harm the right to privacy of the person concerned, and where it is impossible to avoid the harm to the person's right to privacy by

¹⁴ Available online in English: <https://www.riigiteataja.ee/en/eli/519022016005/consolide>.

observing, amongst other things, the provision of subsection 3 of this section, the court, on the basis of an application of the data subject, or on its own initiative, publishes the judgment without the particulars which risk harm to the right to privacy, publishes solely the operative part of the judgment, or does not publish the judgment." In addition, Section 175 subsection 5 of the Code provides: "If a judgment contains information which is subject to a other limitation of access provided in the law, the court, on the basis of an application of the interested person, or on its own initiative, only publishes the operative part of the judgment, or does not publish the judgment." According to Section 175 subsection 6 of the Code, a court ruling must be made on these questions, if there is an application by a data subject or an interested person. That ruling may be contested in a higher instance.

As seen above, the Code provisions give the court a wide margin of discretion in deciding which decisions to anonymize. The application of subsections 4 or 5 is very rare, but the use of initials instead of names is quite common. In those cases, the anonymization is decided by the panel of justices hearing the matter. Often, the basis of anonymization is simply included in the decision being anonymized.

According to the Supreme Court's case-law, the provision also applies if a decision has already been published and, later, the data subject applies for anonymization. The Supreme Court *en banc* has stated that section 175 of the Code of Administrative Court Procedure is *lex specialis* replacing the provisions of the Personal Data Protection Act in relation to administrative court procedure.¹⁵

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)?

Since the anonymization of decisions (especially without the data subject's application) is a discretionary decision of the court, practice changes have not automatically affected already published decisions. However, the data subject always has a right to apply for anonymization – there is no deadline.

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.)

There was an interesting case recently in the Supreme Court where a person contested the publication by a newspaper of the person's name along with the value of their investments in a TOP 50 list. The Court found the publication legal because there was a strong enough public interest and the invasion into the right to privacy of the person was not disproportionate. However, the Court considered that the re-publication of the data was not justified and therefore anonymized its judgment.¹⁶ Nonetheless, the newspaper in question published an article about the judgment mentioning the person's name and referring to the previous article

¹⁵ Ruling of the Supreme Court *en banc* in case no. 3-3-1-15-10, 26.03.2012.

¹⁶ Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-85-15, 23.03.2016.

that was the object of the court case. It is questionable whether there was any sense in anonymizing the judgment of the Supreme Court.

Other than that, the author of the response is not aware of any current problematic issues regarding the anonymization.

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).

Section 447 subsection 1 of the Code of Civil Procedure (applied in administrative court procedure on the basis of Section 156 subsection 2 of the Code of Administrative Court Procedure) provides that a judgment cannot be annulled or amended after it is made public unless otherwise provided by law.

However, as written in response to question 10.1, when necessary, published decisions are also anonymized. In that case, the so-called title of the case (a general description of the subject matter of the dispute, for example "A's application for compensation against X") that is shown in the search engine on the Court's website must also be changed. In addition, the same changes need to be made on the web site of the State Gazette where the decisions of the Supreme Court are also published.

In addition, Section 447 subsection 1 of the Code of Civil Procedure states that the court corrects at all times any spelling or calculation mistakes or obvious inaccuracies in a judgment if such corrections do not affect the content of the judgment. The court corrects mistakes by a ruling and may hear the participants in the proceeding prior to making the ruling. This ruling is normally made by the same panel of judges who heard the matter and may be contested in a higher instance.

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?

The right to be forgotten has been considered in the Estonian court system. Recently, the topic has been debated because of a person's application to the Chancellor of Justice regarding the fact that even after a previously published court decision has been anonymized, the earlier version may still be available on the web sites of private publishers who have published the same decision, as well as via www.google.com. To the knowledge of the author of this response, the Ministry of Justice as well as the Estonian Data Protection Inspectorate are working on a solution to this problem.

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).

Decisions of the Administrative Law Chamber of the Supreme Court are available online. In general, all decisions are published online (the only exceptions are the cases described in p 9.1 of the questionnaire and the rulings concerning procedural questions).

11.2 Describe the form of on-line publication of you 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).

Decisions of the Supreme Court are published in two locations: 1) the website of the Supreme Court (www.riigikohus.ee; the official publication) and 2) on the website of the State Gazette (www.riigiteataja.ee).

Screenshot of the website of the Supreme Court of Estonia



Screenshot of the website of the State Gazette

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.

On the website of the Supreme Court the decisions are available in the HTML format; on the website of the State Gazette the decisions are available in pdf format. Due to the fact that court decisions may contain personal information they are not classified as open data in Estonia (and do not therefore require handling according to open data rules).

The Supreme Court only publishes individual decisions and not whole datasets. To date the Supreme Court has accepted the fact that the website of the Supreme Court is been crawled to download the decisions of the Court in bulk. So far this practice has so far not caused any incidents related to breach of personal data and/or the operability of the website of the Supreme Court (persons responsible for crawling have agreed to do so at the interval that does not affect the operability of the website). The Supreme Court has presently no agreed policy for providing datasets for re-use for those not interested in crawling of the website of the Court.

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.

Section 28 subsection 1 p 6 of the Public Information Act states that a holder of information is obliged to disclose: “composition of state and local government agencies, and the given names, surnames, education, areas of specialisation, telephone numbers and electronic mail addresses of officials filling the positions prescribed in such agencies”

The information published on the justices of the Supreme Court is rather brief (the minimum required by law). The website provides individual photos of justices and information on their education. CV-s of the justices of the Supreme Court are not published on the website of the Court.

Screenshot of the website of the Supreme Court

The screenshot shows the website of the Estonian Supreme Court (Riigikohus). The main heading is "RIIGIKOHTU LIIKMETE JA TÖÖTAJATE HARIDUS". Below the heading, there is a paragraph of text explaining the purpose of the list. A table follows, listing court members and judges with their names and education details.

Ametikoha nimetus	Nimi	Haridus ja eriala
Riigikohtu esimees	Priit Pikamäe	kõrgharidus, õigusteaduse doktor
Riigikohtu liige	Tõnu Anton	kõrgharidus, õigusteadus *
Riigikohtu liige	Jüri Pöld	kõrgharidus, õigusteaduse kandidaat
Riigikohtu liige	Lea Kivi	kõrgharidus, õigusteadus*
Riigikohtu liige	Eerik Kergandberg	kõrgharidus, õigusteaduse kandidaat
Riigikohtu liige	Tambet Tampuu	kõrgharidus, õigusteaduse (teadus)magister
Riigikohtu liige	Henn Jöks	kõrgharidus, õigusteadus*
Riigikohtu liige	Jaak Luik	kõrgharidus, õigusteadus*
Riigikohtu liige	Ants Kull	kõrgharidus, õigusteadus*

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.)?

Other than decisions, only dissenting opinions of the justices are published online. They are published along with the decision, in html format. They can be reached via the search form on the Supreme Court's web site www.riigikohus.ee.

12.3 Are the members of your instance allowed to publically comment or annotate on their own decisions or other decisions of your instance?

Members of the Supreme Court, as well as the advisors are allowed to publically comment on decisions of the Court. This is normally done in law journal articles. Since many members of the Court and advisors also give lectures at the universities or for the training of judges or other lawyers, they may also comment on the case-law there.

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?

One set of challenges is related to the fact that the development of technology has made the collection and processing of (personal) data very easy. This relative ease of collecting and processing of data has in some instances perhaps encouraged the state and private service providers to require personal data that they do not necessarily need for fulfilling certain functions or providing certain services. For example, the questionnaire required to fill in to apply for a certain permit may contain questions that do not appear to be relevant for receiving the permit or may be so detailed/sensitive that the applicant may wish to leave them unanswered. However, the law does not appear to provide quick and clear solutions for challenging the excessive collection of data. For example, the person wishing to challenge the collection/processing of certain data may find it difficult to receive an administrative act that they could challenge in court – for example, today's technological solutions may make it impossible to submit an application without having to fill in all the fields. Without filling in the form (and providing all the required information) the person may be unable to submit their application and therefore unable to receive a negative/recusant administrative act that could be challenged in court. In addition, the person filling in the questionnaire may indeed be of the opinion that excessive information is being collected but the wish to have the permit/license etc without a delay and further complications may be the incentive to provide the required information and not to challenge the collection/processing of certain personal data.

Another set of challenges could spring in case the current rules for contesting the processing of personal data of affiliated groups acting in different states are changed so that the complaint can only be filed with the supervisory authority where the affiliated group is registered. For example, an Estonian citizen and a client of a Swedish bank operating in Estonia may wish to challenge the processing of personal data by the bank. At the moment the processing of personal data can be challenged at the Estonian supervisory body. However, if the rules are changed and the processing of data can only be challenged at the supervisory body located in Sweden, the protection of one's rights may in the end be illusory. In addition, to contest the decision of the Swedish supervisory body, the person would need to turn to the Swedish court system. On the other hand, it would also be a challenge for our own administrative and court system to ensure the protection of the rights of a foreigner turning to Estonian authorities with a similar problem.

In recent years, there have been three court cases in Estonia concerning the Annual Reviews published by Estonian Internal Security Service.¹⁷ In these reviews, the Service gives general overviews on the main issues concerning internal security (terrorism, extremism, cyber security, Russian influence, corruption etc) and the Service's recent activities, but also calls out by name many specific individuals or groups who have come under the Service's attention. The Service has stated two purposes for these Reviews: firstly, openness about its activities to gain support and public trust, and secondly, informing the public of possible security risks and threats. In these court cases, persons have protested their inclusion in the Reviews and/or the allegations about their activities. There is no Supreme Court judgment in any of those cases. However, the courts based their judgments, *inter alia*, on an earlier judgment by the Supreme Court¹⁸ where the Court found that the publication of personal data by state authorities needs a legal basis and that the state authorities cannot rely on the freedom of expression or the freedom of the press when publishing these data. The legal basis for the publication of data in the Annual Reviews was found in Section 14 subsection 1 p 1 of the Personal Data Protection Act, stating that the processing of personal data is permitted without the consent of a data subject if the personal data are to be processed on the basis of law, in conjunction with Section 3 subsection 1 of the Security Authorities Act¹⁹ which allows security authorities to process information, including personal data, insofar as this is necessary for performing its functions, and Section 6 p 1 of the same Act which names as one of the functions of the Estonian Internal Security Service the prevention and combating of changing the constitutional order or territorial integrity of the state by force, and collection and processing of information necessary for such purpose.²⁰ Section 3 subsection 2 of the Security Authorities Act limits the Service to only using measures necessary for performing its functions and to choosing the least restrictive measure possible. From this provision, the courts deduced the need for a test of proportionality. With the current security situation in Europe, it is likely that similar cases will become more frequent.

For another challenge, see p 10.5 of the questionnaire (the right to be forgotten).

¹⁷ The Annual Reviews are available online in English: <https://kapo.ee/en/content/annual-reviews.html>.

¹⁸ Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-3-12, 12.06.2012.

¹⁹ Available online in English: <https://www.riigiteataja.ee/en/eli/504022016001/consolide>.

²⁰ Most recently, see judgment of the Tallinn Circuit Court in case no. 3-12-925, 16.07.2015.