

Proper management of access to public information, as a realization of the needs and rights of citizens

Paweł Romaniuk

Faculty of Law and Administration

University of Warmia and Mazury in Olsztyn

Abstract

The right man to the right of access to public information on the activities of the public administration has become a fundamental right which, in accordance with applicable regulations, is assigned to every citizen. Such an approach clearly indicates that the right of access to public information has also become a sign of increasingly pursued social control over the functioning of the public administration. With the possibilities for realization of the right to information, public use for many years both institutions of civil society and individual citizens. There is a growing awareness associated with the use of citizen control over all activities that take public sector institutions.

Keywords: *management, public management, public information, public administration, civil rights.*

Introduction

The right of access to public information on the activities of the public administration is a fundamental right enjoyed by every citizen. With such an approach, the right of access to public information is a manifestation of social control over the functioning of the public finance sector. The right to public information for many years to appreciate and actively use it both organized civil society institutions, and individual citizens.

The study analyzed area is to identify the essence of the management of public information in public institutions from scratch the legal changes in this topic in the context of the tasks executed by them. The right of access to public information is subject to ongoing development, the development of this action affects more and more all the values of social life, in particular, it includes the construction of an effective democratic system once the civil society.

The article indicates the methods and ways to manage system access to public information, which is also the realization of the rights of citizens. Modern methods of access to public information enjoy, the more it grows more and more awareness of citizens in the range of new possibilities for use of the provisions of the law on access to public information.

The essence of public information in international law and polish

Access to public information is one of the fundamental principles of modern democracy and a thriving civil society. Hence, one can notice that the right to public information, it has become one of the fundamental human rights, which was adopted by the international community. You have pointed out that the obligation to provide all citizens with public information stems from a number of regulations for global coverage.

It is worth mentioning at this point of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which is also called the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms). Extremely important article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that “everyone has the right to freedom of expression. This right includes freedom (...) receive information and ideas without interference by public authority and regardless of frontiers. “It is a basic principle related to the right to express their own opinion and the opinion which found its reflection in the Polish Constitution of 2 April 1997, which in its article 54, paragraph 1 indicates that guarantees everyone the freedom to express opinions and to acquire and disseminate information (article 54, paragraph 1 of the Polish Constitution). You should also mention Article 19 of the International Covenant on Civil and Political Rights, signed on 19 December 1966, which gives every person the right to “(...) the freedom to seek, receive and disseminate any information and ideas, regardless of frontiers, orally, in writing or in print, in the form of art, or through any other media of his choice “(International Covenant on Civil and Political Rights).

In the new united Europe, issues related to the wider access to public information is governed by two major pieces of legislation in this area. The first normative act is the Green Paper of the Commission of the

European Communities of 20 January 1999. This document indicates the possibility of access to information, which is held by the public sector visible in the information society called *the Green Paper on Public Sector Information in the Information Society*. It also sets out guidelines for the legislative bodies of the Member States of the European Union regarding access to data held by public administration bodies. The second document is a Recommendation No. R / 81/19 of the Committee of Ministers to Member States on access to information held by public authorities (Jasudowicz, 1997, p. 99). The recommendation is non-binding tightly. It contains only recommendations which must adapt Member States of the Council of Europe. The recommendation defines the basic principles relating to the provision of information, which were held by public authorities. Extremely important was the application of the principle, visible also in Polish law regulating access to public information, where the entity requesting public information may not be claimed to justify their interest. Furthermore, each request associated with granting the information can be submitted directly to all public authorities. The exception here is the legislative and judicial power. Any award of public information, in accordance with the recommendation – should take place within a reasonable period of time. However, the refusal to provide public information must be fully justified certain factors, which can include among other issues of national security, public safety and order, protection of private life or other legitimate private interests.

Currently in the European Union the right to public information is identified as an individual right of every human being, a citizen of both the European Union and natural or legal person that resides or is domiciled in one of the 28 countries concerned (Przyborowska-Klimczak, Tefelskawiog, 2004, p. 295–296). This law also include wide access to information that is in the possession of the Union and to the information that is in the possession of the whole public sector European Union. In this sense, the meaning of “public sector” are all public entities that carry out broad public tasks. It was also very detailed guidance on access to public information. The aim of these procedures is to ensure the transparency of decision-making process, which is undertaken in all countries of the European Community. Hence, it guarantees an extremely large access to documents held by the

European Union and national, regional and local governments. Access to such information is entirely free of charge and based on the principle of equality and non-discrimination.

The essence of public information in polish law

Referring to the access to public information in Polish law, indicate the already cited provision of article 54, paragraph 1 of the Polish Constitution, which granted because everyone has the freedom to express their views, obtain and disseminate information. The instruction contained in article 61, paragraph 1 of the Polish Constitution guaranteed citizens the right to obtain information on the activities of public authorities, as well as persons performing managerial public functions.

The case involving regulation of mutual respect article 61 of the Polish Constitution and article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms – was the subject of a Supreme Court judgment of 1 June 2000 (Judgments of the Supreme Court dated 1 June 2000). In the present judgment, the Supreme Court categorically stated that the Polish Constitution establishes a relatively higher standards of protection of freedom of expression than those provided for in the said Convention. The law also allows you to obtain information on the activities of self-governing economic and professional. It allows you to get information about the activities of organizational units in the field in which they perform the duties of public authorities and manage communal assets or property belonging to the Treasury. The right to obtain information covers a very important opportunity, which allows access to documents and entry to sittings of collective organs of public authority formed by universal elections, with sound and visual recordings (article 61, paragraph 2 of the Polish Constitution).

However, the right of access to public information is defined in the Polish Constitution too broadly. Therefore, there was a need to address these issues in the act normal. This took place under the adoption of the Act of 6 September 2001 on access to public information, which for the most part entered into force on 1 January 2002 (act on access to public information). The Law on Access to Public Information was to be in its original assumption of an Act of the political system. She had to focus on a clear indication of

the constitutional right of a citizen to free access to public information. But it did not happen. The Act is the largest but not the only legal act that expresses and expression to the principle of transparency of activity of public authorities. Unequivocal declaration of transparency – in relation to the scope of normalization – you can find, among other things:

- act of 27 August 2009 on public finance, where he implemented the principle of transparency of public finances;
- act of 27 March 2003 on spatial planning and development, in this case, implies a right of access to the local zoning plan and paid for obtaining extracts;
- act of 3 October 2008 on provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments, which allows for active participation of the people in control of civic environmental protection.

Cited examples of the act clearly shows that assigned the right to public information is realized on many levels of law. And it can be the start of a discussion on the wider freedom of giving it easy access to public information.

Implementation of the principle of openness in terms of access to public information

The principle of openness is an extremely important principle of a democratic state of law, which is to ensure transparency and transparency of public administration. In the European Union, this rule has many years of experience and is a very serious consideration and respected (Górzyńska, 2005, p. 102). Noteworthy is also the view quoting B. Kudrycka, which even before the adoption of the current functioning of the Polish Constitution considered that: „Publicity activities, open dialogue, free and efficient flow of information between citizens and public officials are a sine qua non of public administration in many democratic countries. This method also reduces the biased and unethical conduct within the administrative bodies “(Kudrycka, 1995, p. 93). The principle of openness should be visible and implemented at all levels of the administration, that citizens have the right and ability to make their own assessment related to

the functioning of public sector institutions. In particular, the principle of clarity is particularly noticeable at the level of functioning of local administration bodies. Proximity linking public institutions with citizens, results in much greater opportunity to influence inhabitants in decision-making processes, which are taken every day. The direct influence residents on public affairs makes it quite an important and increasingly used tool to diagnose the correctness of decisions in local government is the use of a local referendum and civic control. Openness is therefore a constant attempt to limit arbitrariness and discretion of public administration (Koniuszewska, 2009, p. 124–126).

The principle of openness has therefore become an important area of the activities of all public authorities. However, it must be strongly emphasized that transparency in the functioning of government institutions as entities closest to the citizens, still remains extremely sensitive. Hence, the principle of transparency in the context of the functioning of local governments – should be regulated so wide, and extremely precisely, to the applicability of this principle in practice was very real and satisfied the basic needs of the residents in the area of free access to public information.

Discussed and repeatedly stressed the principle of openness, and in particular the right to public information in Poland is a constitutional principle. In accordance with the provisions of article 61 paragraph 1 of the Constitution of the Republic of Polish, where “A citizen has the right to obtain information about the activities of public authorities and persons holding public office” (the Polish Constitution). The location of the law giving the opportunity to obtain public information, a group of freedom and political rights shows clearly that this right is closely linked to the participation of citizens in the intermediate model of the exercise of power. Invoked permission would not have been possible to use it were not ensured a real possibility of obtaining public information. The reference to it in article 61, paragraph 4 of the Constitution of the Republic of Polish laws to characterize the mode of access to information, can really take advantage of the right to information, which, like the principle of openness – is also a constitutional law. The Polish Constitution indicates, however, limit the right of access to public information. This can be done only in exceptional circumstances so warrant. In its article 61, paragraph

3, clearly indicates that the limitation of the right of access to public information, may be only due to set out in the laws protecting the rights and freedoms of other persons and economic subjects, public order, security or important economic interests of the state (article 61, paragraph 3 of the Polish Constitution).

It should be noted that despite the frequent use by the legislator notion of transparency – there is no official definition of the term. Transparency can be understood as a certain idea or a certain state of affairs, which tend to public institutions but not always fully understand it and thus realizing. In this sense the notion of transparency is the opposite of secrecy (Piskorz-Ryń, 2003, p. 487-489). It is reasonable to say that the principle of openness is linked to the right to access to information, which is used to its full implementation. However, it is possible to realize the principles of transparency, without the realization of the right of access to information. Such action is linked to the obligation to provide public information (Koniuszewska, 2009, p. 125-126). You will notice that transparency is the aim, which easily can be achieved by well-defined right to information. These activities can be put in another way, where citizens enjoyed the right to public information is a kind of tool for the implementation of the principle of transparency. In the studied literature often it specifies that the transparency in public administration makes it necessary to share information, both from the office and at the request of the person concerned (Lang, 1996, p. 159). As defined transparency of public administration, which coincides with the scope of the scope of the concept of access to information that can be found in the Law on Access to Public Information. From here you can define that access to information is somehow part of the principle of transparency, which is a manifestation of the functioning of the institutions of the public sector on the basis of transparency and clarity.

Method of managing rights to public information

The right to public information is a right of every individual to apply for any available information. This right is linked to the obligation to provide information by entities that are required to provision of article 61, paragraph 1 of the Polish Constitution to information concerning:

- activities of public authorities;

- activities of self and professional, as well as other persons and organizational units in the field in which they perform tasks in the field of public administration and manage communal assets or property of the State Treasury;
- activities of public officials (the Polish Constitution).

You also need to refer to the definition of public information, which was formulated in the provision of Article 1, paragraph 1 of the law on access to public information. This definition came into force on 16 June 2016. In accordance with this disposition – any information about public affairs is public information within the meaning of the Act and available subject to the terms and procedures set forth in the law on access to public information. It should also be noted that this is how the legislator pointed to the concept of public information – in literature quite often criticized, where some see it as a concept that is flawed *ignotum per ignotum* (Bąkiewicz, 2008, p. 92). They are also in the literature position significantly. According to some legislator defining the concept of public information it received that transparency of access to public information is of a general nature. This increases the definition of information, including the sphere of information and facts (Sitniewski, 2006, p. 544–546).

According to M. Jaśkowski, “the concept of public information but can not be considered only on the background of article 1 paragraph 1 law on access to public information without considering the content of article 61, paragraph 1 of the Polish Constitution. Applied a literal interpretation could because then lead to a too narrow understanding of the term. This would result in that as a public information would be treated any message relating to the things the public, that is the case concerning a certain community. Not so subscribed to this concept of information relating to individual cases resolved, for example, an administrative decision, unless it would occur in the public elements of the circle of parties. It would define too narrow, contrary to article 5, paragraph 2 of the law on access to public information, which allows access to data contained in the records of proceedings of individuals, if they contain information on persons performing public functions associated with performing these functions” (Jaśkowska, 2002, p. 25–28).

The right to public information has therefore been defined in the act on access to public information very widely. On the one hand, it often creates doubts as to interpretation in terms of what can be made available as public information, on the other hand, it allows for the fullest realization of the principle of openness. Interesting decision pointed to the Constitutional Court in its judgment of 20 March 2006. The Court pointed out that the right to public information is primarily a subjective constitutional right referred to in article 61 of the Polish Constitution, where the part of the citizen has the right to obtain information about the functioning of public institutions and all institutions of public authority (judgment of the Constitutional Court).

Everyone has the right of access to public information, hereinafter referred to as “the right to public information”. It should also be borne in mind that the person exercising the right to public information must not be required to reveal the legal or factual. However, the right to public information is restricted to the extent and on the terms specified in the regulations on the protection of classified information and the protection of other secrets protected by law. The right to public information is subject to limitation due to the privacy of an individual or a trade secret. This restriction does not apply to information on persons performing public functions associated with the performance of these functions, including the conditions of entrusting and performing these functions, and if the natural person or entrepreneur give up their right (article 5, paragraph 2 of the law on access to public information).

It seems that the term „everyone “should be understood as individuals who have legal capacity, legal persons or organizational units without legal personality. These are the entities that can obtain information about the activities of bodies working in the public sector. This was confirmed by the Regional Administrative Court in Warsaw in its judgment of 11 February 2004. He stated that „in accordance with article 61 paragraph 1 of the Constitution of the Republic of Polish – citizen has the right to obtain information about the activities of public authorities and persons holding public office. On the basis of the law on access to public information, the right information is available to any. This means, therefore widening the circle of entities authorized in relation to article 61 of the Constitution. Accordingly,

the concept „everyone” means both natural persons, legal persons and organizational units without legal personality, and social organizations”.

In accordance with article 6, paragraph 2 of the law on access to public information, an official document within the meaning of the Act it is the content of a declaration of intent or knowledge, preserved and signed in any form by a public official. While the local government act, or the act on local government, district and province indicate only generally on access to documents, but not all, and the only resulting from the exercise of public tasks. It seems that the official documents is a broader concept than documents resulting from the exercise of public duties. However, this has meaning to the extent that disclosure of any document on the basis of the law on access to public information, rather than government laws, which means that the significance will have an access to official documents specified in this act.

In a democratic country such as Poland, all major policy decisions are taken by elected bodies. But you have to remember public institutions can't have a monopoly on decision-making. In this regard a large role begin to play the inhabitants of a given local community, who are permanently associated with a given unit of local government (Zaremba, 2009, p. 74–77). When given a public authority operates explicitly and openly – publishes documentation of meetings, conducts open meetings of its bodies, organizes a public consultation and invites the participation of all who may be interested in the problem. Only in such situations, in which citizens can participate in the implementation of social control, we can talk about a true and effectively functioning democratic system.

Based on article 8, paragraph 1 of the law on access to public information, created Public Information Bulletin. This is a newsletter that was created to universal access to public information, in the form of a unified system in the telecommunication net. Public entities are obliged to make available in the Public Information Bulletin information about how to access public information, which are in their possession and are not made available in the Public Information Bulletin. Any public information that was not available in the Public Information Bulletin, or the central repository is available at the request of the entity concerned. With this privilege is using more and more people are trying to get as

much information about the activities of public administration bodies. Also, public information, which can be made available immediately, is available in oral or written form without written application. It should also be noted that public information can be made available in two respects:

- 1) by lining or out in public places accessible;
- 2) installed by a device that can read the public information.

Public sector entities must remember that the information provided must be marked the data that define the entity providing the information, which should indicate the particulars of the person who produced the information or is responsible for the content of the information, the particulars of the person who provided the information, and the date of release of such information. It is incumbent on sharing public information is to provide:

- copy the public information or its printout;
- send public information or transfer it to the appropriate, commonly used information carrier (article 10–12 of the law on access to public information).

Unit (citizen), due to membership in a self-governing community, has, as evidenced E. Olejniczak-Szałowska, numerous privileges, which could include:

- the right to participate (participation) in the management of the affairs of a public institution, which is a fundamental right and a general, which includes the right to participate in decision-making;
- the right to information on matters of community self-government;
- the right to social control activities undertaken by the public sector;
- the right to direct and exclusive settlement of matters of a local government (election of representatives to the executive bodies and accounting), dismissing them prior to expiration of the term and to decide on the most important issues for the community through a referendum);
- the right to articulate and promote their interests both in the way of individual action and group activities;
- the right to judicial protection of those interests against violations by government bodies;
- the right to social benefits (Olejniczak-Szałowska 1996, p. 9–10).

And what is extremely valuable discourse on freedom of access to public information, as rightly pointed Z. Niewiadomski, the guardian of the public interest is not only the administration, “but the initiative to protect that interest may occur individual or specific community. Public administration loses as the only initiator defend the public interest. Sometimes it becomes contractor initiatives in this regard” (Niewiadomski, 2010).

Summary

The right of every human right of access to information on the activities of the public administration, became the primary power which in accordance with applicable regulations, has become a pillar of democratic rule of law. In most of the solutions adopted normative principle of access to information is respected, allowing you to provide a guarantee of individual rights of the individual. The biggest concern still can raise some provisions of the Law on Access to Public Information. This applies particularly to the legal definition of the term „public information”, the question of access to information processed, the security model of access to information. Let us hope that the legislature will decide in the near future, however, to take into consideration raised by theorists and practitioners of concerns for fuller access to public information, which is the guarantee of individual rights of the individual.

Due to the undoubtedly important importance for every human being has access to information at the level of local government, we should also note that increasing public awareness of their rights. The right to public information has been the subject of much debate purely developmental. You have to have hope that the ongoing work on the amendment of the provisions on access to public information will be the nucleus for the development of civil society, where the involvement of people in the functioning of public sector institutions, will be a good step in the development of mutual cooperation.

References

- Bąkiewicz M. (2008), *Prawo do informacji w jednostkach samorządu terytorialnego* [w:] *Obywatelskie prawo do informacji*, T. Gardocka (red.), Warszawa
- Górzyńska T. (2005), *Dostęp do informacji publicznej w Europie – rozwój czy stagnacja?*, [w:] *Dostęp obywateli do europejskiego wymiaru sprawiedliwości*, H. Izdebski H., Machińska H. (red.), Warszawa: Biuro Informacji Rady Europy
- Jaśkowska M. (2002), *Dostęp do informacji publicznych w świetle orzecznictwa Naczelnego Sądu Administracyjnego*, Toruń
- Jasudowicz T. (1997), *Administracja wobec praw człowieka*, Toruń, Wydawnictwo „Dom Organizatora” TNOiK
- Koniuszewska E. (2009), *Środki ograniczające nadużycia władzy w jednostkach samorządu terytorialnego w ustrojowym prawie administracyjnym*, Warszawa: Wolters Kluwer
- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997r.* (Dz. U. z 1997 r. Nr 78, poz. 483 ze zmianami)
- Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności* sporządzona w Rzymie dnia 4 listopada 1950 roku, zmieniona następnie Protokołami nr 3, 5 i 8 oraz uzupełniona Protokołem nr 2 (Dziennik Ustaw z 1993 r. Nr 61, poz. 284 z późniejszymi zmianami)
- Kudrycka B. (1995), *Dylematy urzędników administracji publicznej*, Białystok: Wydawnictwo Temida 2
- Lang J. (1996), *Zasada jawności w prawie administracyjnym*, St. lur. nr 32
- Międzynarodowy Pakt Praw Obywatelskich i Politycznych z 19 grudnia 1966r.* (Dz. U. z 1977 r. Nr 38, poz. 167)
- Niewiadomski Z. (2010), *Pojęcie administracji publicznej*, [w:] *System Prawa Administracyjnego*, T. 1, Warszawa
- Olejniczak-Szałowska E (1996), *Członkostwo wspólnoty samorządowej*, Samorząd Terytorialny, nr 5
- Orzeczenia Sądu Najwyższego z dnia 1 czerwca 2000 roku (sygnatura akt: III RN, 64/00, OSNAP 2001, nr 6, poz. 183)
- Piskorz-Ryń A. (2003), *Jawność działania administracji publicznej*, [w:] *Prawo do dobrej administracji*, H. Machińska (red.), Warszawa
- Przyborowska-Klimczak A., Tefelska-Skrzydło E. (red.), *Dokumenty europejskie*, Tom V, Oficyna Wydawnicza VERBA, Lublin 2004-2006

- Sitniewski P. (2006), *Bezpłatność, czyli bezkosztowość udostępniania informacji publicznej*, [w:] *Sprawność działania administracji samorządowej*, E. Ura (red.), Rzeszów
- Ustawa z 6 września 2001 roku *o dostępie do informacji publicznej* (Dz. U. t.j. Dz. U. z 2015 r. poz. 2058 ze zmianami).
- Ustawa z dnia 27 marca 2003 r. *o planowaniu i zagospodarowaniu przestrzennym* (Dz. U. z 2015r., poz. 199 ze zmianami)
- Ustawa z dnia 27 sierpnia 2009 r. *o finansach publicznych* (Dz. U. z 2013 roku, poz. 885 ze zmianami).
- Ustawa z dnia 3 października 2008 r. *o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko* (t.j. Dz. U. z 2013 r., poz. 1235 ze zmianami)
- Wyrok Trybunału Konstytucyjnego z dnia 20 marca 2006 roku w sprawie prawa do informacji publicznej (K 17/05, OTK-A 2006, numer 3, pozycja 30)
- Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 11 lutego 2004 roku (II SAB 391/03, Wspólnota 2004, numer 19, strona 55)
- Zaremba M. (2009), *Prawo dostępu do informacji. Zagadnienia praktyczne*, Warszawa