

Act of 19 May 2006 No. 16 relating to the right of access to documents held by public authorities and public undertakings (short title: Freedom of Information Act)

Chapter 1 Introductory provisions

Section 1 *Purpose*

The purpose of this Act is to facilitate an open and transparent public administration, and thereby strengthen freedom of information and expression, democratic participation, legal safeguards for the individual, confidence in the public authorities and control by the public. The Act shall also facilitate the re-use of public information.

Section 2 *Scope of the Act*

This Act applies to

- (a) the state, the county authorities and the municipal authorities,
- (b) any other legal person in cases where it makes individual decisions or issues regulations,
- (c) any independent legal person in which the state, county authority or municipal authority directly or indirectly has an equity share that gives it more than half of the votes in the highest body of that legal person, and
- (d) any independent legal person in which the state, county authority or municipal authority directly or indirectly has the right to elect more than half of the voting members in the highest body of that legal person.

Subparagraphs (c) and (d) above do not apply to legal persons which mainly carry on business in direct competition with and on the same conditions as private legal persons. For entities which after public acquisition or the like come under (c) or (d) above, this Act applies from and including the fourth month-end after the month when the conditions were met.

The King may make regulations providing that this Act shall not apply to independent legal persons or to certain documents in the possession of independent legal persons encompassed by the first paragraph (c) or (d) insofar as such provision must be considered necessary based on consideration of the nature of the entity, the competitive situation or other special factors. The same applies where the great majority of the documents of the entity are exempt from access and particularly weighty considerations so indicate. The King may make regulations providing that this Act shall wholly or in part apply to independent legal persons that are owned by the state or a municipal authority without meeting the conditions of the first paragraph (c) or (d), or that are exempt under the first paragraph, second sentence.

This Act does not apply to the Storting, the Office of the Auditor General, the Storting's Ombudsman for Public Administration or other institutions of the Storting.

This Act does not apply to the functions of courts of law pursuant to the statutes relating to the administration of justice. Nor does this Act apply to the functions of other public agencies pursuant to the statutes relating to the administration of justice

in their capacity as justice administration agencies. Moreover, this Act does not apply to functions exercised by the police or the prosecuting authority pursuant to the Criminal Procedure Act. The King may by regulations make provision in regard to which statutes are to be regarded as statutes relating to the administration of justice, and to the effect that some functions under the statutes relating to the administration of justice shall nonetheless be encompassed by this Act.

This Act applies to Svalbard unless otherwise prescribed by the King.

The provisions of section 6, section 7 second paragraph, section 8 third paragraph second sentence and fourth and fifth paragraphs, and section 30 first paragraph third sentence and second paragraph, apply irrespective of the provisions of this section to all entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Chapter 2 **Main rules on access**

Section 3 *Main rule*

Case documents, journals and similar registers of an administrative agency are public except as otherwise provided by statute or by regulations pursuant thereto. Any person may apply to an administrative agency for access to case documents, journals and similar registers of that administrative agency.

Section 4 *Definitions*

‘Document’ means any logically limited amount of information stored in a medium for subsequent reading, listening, presentation, or transfer or the like.

The case documents of an administrative agency are documents which have been received by or submitted to an administrative agency, or which the administrative agency itself has drawn up, and which relate to that agency’s area of responsibility or activities. A document is considered to be drawn up when it has been dispatched by the agency. If this does not take place, the document shall be considered to have been drawn up when it has been finalised.

The following shall not be regarded as case documents of an administrative agency:

- (a) any document forming part of a library or museum collection,
- (b) any documents which a private legal person has handed over to public archives for safekeeping,
- (c) any document handed over to an administrative agency for disclosure in a periodical journal that is published by that agency,
- (d) any newspaper, journal, advertising matter and the like which an administrative agency receives without being connected to a specific case at that agency, and
- (e) any document which an employee of an administrative agency has received in a capacity other than that of employee of that administrative agency.

In this Act the term ‘administrative agency’ embraces all entities to which this Act applies.

Section 5 *Deferred access*

An administrative agency may determine in a particular case that access to documents shall not be given until a later stage in the preparation of the case than that stipulated in sections 3 and 4, provided there is reason to believe that the documents available give a directly misleading impression of the case and that access to them could therefore be detrimental to obvious public or private interests.

For case documents drawn up by or for the Office of the Auditor General in cases that the said Office is considering presenting to the Storting as part of the exercise of constitutional control, access will not be given until the case has been received by the Storting or when the Office of the Auditor General has notified the administrative agency concerned of the conclusion of the handling of the case, see section 18 second paragraph of the Act of 7 May 2004 No. 21 relating to the Office of the Auditor General.

Where significant private or public interests so indicate, access to a document may be deferred until it has reached the person whom it concerns, or until the event at which it is to be made public has taken place.

Section 6 *Prohibition of discrimination*

In cases dealt with pursuant to this Act or in other cases where access to information is given, no discrimination may be made between comparable requests for access and no agreement may be made granting any person an exclusive right to information. Where the entity making the request is an administrative agency or an agency owned by the state, this is not a valid basis for discrimination if the purpose of the request is unrelated to the official tasks of the agency.

The prohibition in the first paragraph does not prevent the conclusion of agreements granting exclusive rights where such agreement is necessary for the provision of a service in the public interest. The validity of the reason for concluding such agreements shall be reviewed every three years. Agreements on exclusive rights that are concluded pursuant to this paragraph shall be made public. No agreement may be concluded on exclusive rights to information to which the public have a statutory right of access pursuant to provisions of law or regulations.

Unless otherwise prescribed by the King in regulations, the provisions of this section only apply to entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 7 *Use of public information*

Information to which access is given pursuant to this Act or to other legislation that gives the public right of access to documents in the public administration may be used for any purpose unless this is prevented by other legislation or the rights of a third party.

At entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information, any standard licences for the use of public information shall be available in digital format and it must be possible to process them electronically. The King may by regulations provide that the same shall

apply to entities not encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 8 *Main rule regarding access free of charge*

An administrative agency may only require payment for access under this Act insofar as it is authorised to do so by regulations pursuant to the second or third paragraphs.

The King may make regulations concerning payment for transcripts, printouts or copies. The rates of payment shall be such that the total income does not exceed the actual costs of copying and dispatching documents.

The King may make regulations providing that payment may be demanded for documents where particular aspects of the nature of the documents or the entity make it reasonable to do so. The rates of payment shall be fixed such that the total income does not exceed the actual costs of collecting, producing, reproducing and disseminating information, together with a reasonable return on investment.

In the case of entities that fall outside the scope of this Act, but which are encompassed by other legislation giving the public access to documents in the public administration, or under the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information, the total income in respect of information delivery must not exceed the actual costs of collecting, producing, reproducing and disseminating information, together with a reasonable return on investment.

Entities that require payment for information shall make the rates of payment public electronically if this is possible and expedient. Entities shall on request also provide information on the basis for calculating the rates of payment and, where appropriate, on the factors on which such calculation will be based in particular cases.

Unless otherwise provided by the King in regulations, the provisions of the third paragraph second sentence and of the fourth and fifth paragraphs only apply to entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 9 *Right to request access to a collation of information from databases*

Any person may request access to a collation of information that is electronically stored in the databases of an administrative agency insofar as the collation can be done using simple procedures.

Section 10 *Duty to keep a journal. Making journals and documents available on the Internet*

Administrative agencies shall keep a journal pursuant to the rules of the Archives Act and associated regulations.

The King may make regulations providing that administrative agencies that keep an electronic journal shall make such journal available to the public on the Internet, and providing how this shall be done.

Administrative agencies encompassed by this Act may make documents available to the public on the Internet, except documents which are subject to a duty of confidentiality by or pursuant to law. The King may make regulations concerning the making available of documents on the Internet and to the effect that certain types of personal data, see the Personal Data Act section 2 subsection 1, and documents to which a third party has intellectual property rights, shall not be made available by this means.

Section 11 *Enhanced access to information*

Where there is occasion to exempt information from access, an administrative agency shall nonetheless consider allowing full or partial access. The administrative agency should allow access if the interest of public access outweighs the need for exemption.

Section 12 *Exemption in respect of the remainder of the document*

Where an administrative agency exempts parts of a document from access, it may also exempt the remainder of the document if

- (a) these parts alone would give a clearly misleading picture of the content,
- (b) it would be unreasonably demanding for the agency to separate them, or
- (c) the exempted information constitutes the most essential part of the document.

Chapter 3 **Exemptions from the right of access**

Section 13 *Information subject to a duty of confidentiality*

Information that is subject to a duty of confidentiality by or pursuant to law is exempted from access.

The provisions of the Public Administration Act concerning the duty of confidentiality give independent legal persons as mentioned in section 2 first paragraph (c) or (d) of this Act the right to make exemptions in respect of documents and information to the same extent as they give administrative agencies such right.

Where a request for access concerns a document containing information that is subject to a duty of confidentiality, and this duty of confidentiality ceases when the consent of the person entitled to confidentiality has been obtained, the request for access together with any reasons given shall on request be submitted to the person concerned allowing a suitable period for reply. Failure by the person concerned to reply shall be considered a denial of consent.

Section 14 *Documents drawn up for an administrative agency's internal preparation of a case (internal documents)*

An administrative agency may exempt from access any document which it has drawn up for its internal preparation of a case.

The first paragraph does not apply to:

- (a) any document or part of a document containing the final decision of the administrative agency in a case,
- (b) general guidelines for the administrative agency's case processing,
- (c) reasons for proposals that have been decided by the King in Council, and

- (d) brief descriptions of the content of documents and the like, but not if such a description reproduces internal assessments.

The King may make regulations providing that exemptions may not be made pursuant to the first paragraph of this section in respect of specific documents in specific state or state-owned agencies.

Section 15 *Documents obtained externally for internal preparation of a case*

Where it is necessary in order to ensure proper internal decision processes, an administrative agency may exempt from access any document that the agency has obtained from a subordinate agency for use in its internal preparation of a case. The same applies to documents which a ministry has obtained from another ministry for use in its internal preparation of a case.

Moreover, exemptions may be made in respect of parts of any document containing advice on and assessments of how an administrative agency should stand on a case, and which the agency has obtained for use in its internal preparation of the case, where this is required in the interest of satisfactory protection of the government's interests in that case.

The exemptions in this section apply correspondingly to documents concerning the acquisition of a document as mentioned in the first and second paragraphs, and to notices of and minutes from meetings between a superior and subordinate agency, between ministries and between an administrative agency and any person who gives advice or assessments as mentioned in the second paragraph.

This section does not apply to documents obtained as part of the general procedure of consultation on a matter.

Section 16 *Access to internal documents of the municipal authorities and county authorities*

The exemptions in sections 14 and 15 do not apply to:

- (a) case documents with enclosures presented to a publicly elected municipal or county body,
- (b) the agenda for any meeting of a publicly elected municipal or county body,
- (c) documents from or to any municipal or county control committee, audit body or appeals board, and
- (d) documents in cases where a municipal or county entity acts as an external party in relation to another such entity.

Section 14 nonetheless applies to documents that are exchanged between any municipal and county control committee and the secretariat to such committee.

The exemption in section 14 does not apply to documents from or to a municipal or county body established by special statute or a municipal or county undertaking pursuant to Chapter 11 of the Local Government Act.

Nor does the exemption in section 14 apply to documents from or to any municipal or county entity in areas where such entities have independent power of decision. The

exemption in section 14 nonetheless applies to documents in cases where the chief executive or the municipal executive board implements control measures vis-a-vis an entity, and to draft decisions and recommendations put before the chief executive or the municipal executive board before a decision is made, or before a recommendation is put before a publicly elected body. The exemption in section 14 also applies to comments from the chief executive or the municipal executive board on such draft as mentioned in the preceding sentence.

Section 17 *Exemptions in respect of certain documents relating to the Royal Court*
Exemptions from access may be made in respect of documents concerning speeches which members of the Royal Family shall hold or have held, and in respect of documents relating to travel itineraries for members of the Royal Family. However this does not apply to a final speech after it has been officially delivered, or to any document relating to travel itineraries, after the tour has been carried out or the travel itinerary has been made public.

Section 18 *Exemptions in respect of court documents*
Exemptions from access may be made in respect of documents which an administrative agency has drawn up or received as a party in legal proceedings in a Norwegian court of law.

Section 19 *Exemptions in respect of documents that are exchanged during consultations with the Sami Parliament etc*
Exemptions from access may be made in respect of documents that are exchanged between state agencies and the Sami Parliament and Sami organisations as part of consultations in accordance with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Article 6. This does not apply to documents which are exchanged as part of the general procedure of consultation on any matter.

Section 20 *Exemptions out of regard for Norway's foreign policy interests*
Exemptions from access may be made in respect of information when this is required out of regard for Norway's foreign policy interests where:

- (a) Norway is obliged under rules of international law to deny access to the information,
- (b) the information has been received on condition that, or it follows from established practice that, the information shall not be made public, or
- (c) the information relates to Norwegian negotiating positions, negotiating strategies or the like and such negotiations have not been concluded. After conclusion of negotiations, exemptions may still be made in respect of such information where there is reason to believe that negotiations on the same matter will be resumed.

As regards information in official documents which are exchanged between Norway and an international organisation in matters relating to the international development of standards which may have effect for Norwegian law, exemptions pursuant to the first paragraph (b) may only be made if this is required out of regard for weighty foreign policy interests. The same applies to information about Norwegian negotiating positions after such positions have been presented at the negotiations.

In cases other than those mentioned in the first and second paragraphs, exemptions from access may be made in respect of information when this is required by particularly weighty foreign policy interests.

Section 21 *Exemptions out of regard for national defence and security interests*
Exemptions from access may be made in respect of documents when this is required by national security interests or the defence of the country.

Section 22 *Exemptions in certain budget matters*
Exemptions from access may be made in respect of documents drawn up by a ministry, and which relate to government budget matters. The same applies to information about preliminary budget allocations established by the government or a ministry in documents from subordinate bodies and agencies, and from The Royal Court, the National Courts Administration and the Sami Parliament.

Section 23 *Exemptions out of regard for the government's negotiating position, etc.*
Exemptions from access may be made in respect of information where this is required in the interests of proper execution of the financial, pay or personnel management of the agency concerned.

Exemptions from access may be made in respect of information relating to negotiations on framework agreements with agriculture, fishery or reindeer husbandry organisations where this is required in the interest of proper execution of the negotiations.

Exemptions from access may be made in respect of tenders/quotes and minutes under rules made in pursuance of the Act of 16 July 1999 No. 69 relating to Public Procurement, until a choice of supplier has been made.

Exemptions from access may be made in respect of documents relating to companies in which the state or a municipal authority or county authority has owner interests, and which are treated by the agency concerned as the owner, unless the company falls within the scope of this Act.

Section 24 *Exemptions in respect of regulatory or control measures, documents relating to offences and information liable to facilitate the commission of an offence, etc.*

Exemptions from access may be made in respect of information when this is required because access would counteract public regulatory or control measures or other administrative orders or prohibitions, or endanger their implementation.

Exemptions from access may be made in respect of reports, tip-offs or similar documents relating to offences by private individuals. Other documents relating to offences, including reports and tip-offs from public agencies, may be exempted from access until the case has been decided.

Exemptions from access may be made in respect of information when this is required because access would facilitate the commission of criminal acts. The same applies to information where exemption is required because access would jeopardise

individuals, or facilitate the commission of acts that may harm parts of the environment that are particularly vulnerable, or which are threatened with extinction.

Section 25 *Exemptions in respect of cases concerning appointments, etc.*

Exemptions from access may be made in respect of documents in cases concerning appointments or promotions in the civil service.

The exemption in the first paragraph does not apply to lists of applicants. The agency concerned shall as soon as possible after the final date for submitting applications draw up a list of applicants which shall contain the name, age, position or professional title and municipality of residence or employment of each applicant. Exemption from access may nonetheless be made in respect of information concerning an applicant if the applicant himself or herself so requests. In the assessment of whether such a request should be complied with, importance shall be attached to whether the position is of particular public interest. The vacancy announcement shall point out that information about the applicant may be made public even if the applicant has requested not to have his or her name entered on the list. If the request is not complied with, the applicant shall be notified thereof. The list of applicants shall state how many persons have applied for the post and their sex.

The exemption in the first paragraph does not apply to nomination decisions or results of voting in connection with the appointment of bishops.

Section 26 *Exemptions in respect of examination papers and grades, etc.*

Exemptions from access may be made in respect of answers to examinations or similar tests and entries submitted in connection with competitions and the like. The same applies to appurtenant tasks until the examination or test concerned has been held or the competition concerned has been announced. Exemptions from access may also be made in respect of grades and certificates of educational qualifications.

Exemptions from access may be made in respect of information about someone who is to receive a prize, a mark of honour or the like until the award has been made. Where information about someone who has been considered for a prize, a mark of honour or the like is concerned, exemption from access also applies after the award is made.

Exemptions from access may be made in respect of photographs of persons entered in a personal data register. The same applies to information obtained by continual or regularly repeated personal surveillance.

Exemptions from access may be made in respect of information about research ideas and research projects in cases concerning financial support or counselling from the government in connection with research projects.

Section 27 *Basis in regulations*

The King may by regulations provide for exemption from access in respect of journals and all documents in types of cases where exemption from access may or shall be made in respect of the great majority of the documents. Such regulations may only be made where there are particularly weighty reasons for doing so.

The King may by regulations provide for exemption from access in respect of documents in archival repositories when this is necessary on conservation grounds.

Chapter 4 Procedure and appeal

Section 28 *Request for access*

Requests for access may be made orally or in writing.

A request for access must relate to a specific case or within reasonable limits to cases of a specific type. This does not apply where access is requested to a journal or similar register.

Section 29 *Administrative agency responsible for deciding a request for access, etc.*

An administrative agency that receives a request for access shall consider the request on a concrete and independent basis. The request shall be decided without undue delay.

The King may by regulations make rules in regard to which administrative agency shall make decisions in the various types of cases pursuant to this section.

Section 30 *How an administrative agency shall provide access*

An administrative agency shall, with due regard for the proper procedure, decide how a document is to be made public. A paper copy or electronic copy of the document may be requested. At entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information, and at other entities where it is prescribed by the King in regulations, the right to a copy applies to all existing formats and language versions. The right to a copy does not apply to formats or versions of a document that are publicly available. The King may make regulations providing that the right to an electronic copy shall not apply to documents to which a third party has intellectual property rights, and to documents where this is required on conservation grounds.

Where entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information provide access to information to which intellectual property rights attach, the administrative agency shall, if it knows, disclose the owner of the rights, or the licence holder from whom the agency has obtained the information. However, this does not apply where it is clearly unnecessary to provide such information. The King may by regulations prescribe that the provisions of this paragraph shall also apply to entities not encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 31 *Refusal and justification for the same*

Refusal of a request for access shall be in writing. An administrative agency shall always indicate the section on which the refusal was based, and any further subdivision of that section that has been applied. Where refusal is based on section 13, the agency shall also refer to the section imposing a duty of confidentiality. Where refusal is based on regulations, the agency must state this and indicate the item in the

regulations on which the refusal is based. The refusal notice shall also inform the applicant of the right of appeal and the time limit for lodging an appeal.

Any person whose request for access has been refused may, within three weeks of receiving the refusal notice, request further justification for the refusal in which the main considerations that were decisive for the refusal shall be mentioned. The administrative agency shall provide such justification in writing at the earliest opportunity and not later than ten working days after receiving the request.

Section 32 *Appeal*

Decisions made pursuant to this Act may be appealed to the administrative agency that is immediately superior to the administrative agency that has made the decision. However, decisions to provide access may not be appealed. Where the refusal is made by a municipal or county agency, the County Governor shall be the appellate instance. The King may make regulations prescribing which body shall be the appellate instance in respect of decisions made by central government agencies. The King may also make regulations prescribing which agency shall be the appellate instance in respect of decisions by legal persons encompassed by section 2 first paragraph (b) to (d). Where an appeal is lodged against a decision made by a ministry, the ministry shall inform the appellant that the right to appeal to the Parliamentary Ombudsman for Public Administration does not apply to decisions made by the King in Council.

If the person who requested access has not received a reply within five working days after the administrative agency received the request, this shall be regarded as a refusal which may be appealed against under the first paragraph. However, this does not apply where the King in Council is the appellate instance. Nor does the rule in the first sentence apply to cases falling within the scope of section 13 third paragraph or where the question of declassification must be put before another agency.

An appeal shall be prepared and decided without undue delay. Otherwise, the provisions of chapter VI of the Public Administration Act shall apply insofar as they are appropriate.

Decisions of the appellate instance constitute special grounds for enforcement under the Enforcement Act chapter 13 in regard to municipal and county authorities and legal persons encompassed by section 2 first paragraph (b) to (d).

Chapter 5 **Concluding provisions**

Section 33 *Commencement and transitional rules*

This Act enters into force on the date prescribed by the King. The Act of 19 June 1970 No. 69 relating to public access to documents in the public administration will be repealed on the same date.

In the case of legal persons coming under section 2 first paragraph (c) or (d) of this Act, the right of access and the duty to keep a journal only apply to documents which are received or drawn up by such legal person after this Act came into force.

Any agreement on an exclusive right to information that exists when this Act comes into force, and which does not satisfy the conditions of section 6 second paragraph,

shall cease to apply when the agreement expires, but not later than 31 December 2008.