



D 2.6 – Open data Slovenia

WP2 – Research and Implementation assessments

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Open data Slovenia

Regulatory sources and aims pursued

In Slovenia, the access to open data which is considered as *information of public nature* is primarily regulated in a separate legal act, the **Public Information Access Act**¹ (henceforth: PIAA). This Act governs proactive transparency as well as the procedure which ensures everyone free access to and re-use of public information held by the *public sector*.

This right to information of public nature is furthermore enshrined in the Slovenian **Constitution**, under Article 39 on the freedom of expression: *Except in such cases as are provided by law, everyone has the right to obtain information of public nature in which he has a well-founded legal interest under law.*

This shows that Slovenia is a young country with a young and modern constitution which explicitly mentions a number of human rights which are absent from some older constitutions or conventions on human rights and have just recently been brought to light in the case law. It is nevertheless obvious that the scope of the right to obtain information of public nature cannot be understood merely by the constitutional provision, but needs to be elaborated upon in a separate legal act. This was done in 2003, when the Slovenian parliament adopted the above mentioned PIAA.

The provisions on the structure, competences and powers of the supervisory body deciding on the appeal against the decision with which the applicant's request for access is refused or dismissed or where the right to access or re-use of public information is violated in some other way is regulated in the **Information Commissioner Act**² (henceforth: ICA).

There are special provisions on the access to information of public nature by mass media in the Article 45 of **The Mass Media Act**³ (henceforth: MMA). This act facilitates the access to information of public nature for mass media. This is important since the dissemination of information in public interest is a vital part of the freedom of media and thereby of the freedom to expression.

There are some further provisions on the access to information of public nature which relates to public procurement. **The Public Procurement Act**⁴ (henceforth: PPA) states in Article 35 that all documents relating to the award of a contract are public after the final decision on the award of public contract *if* they do not contain trade secrets, confidential information or personal information.

The **Integrity and Prevention of Corruption Act**⁵ (henceforth: IPCA) does not regulate the access to open data. It merely *restricts* the access to information of public nature to protect the whistleblower when he or she decides to report corruption to the Commission for the prevention of corruption.

There are many **other sectoral regulations** which contain various provisions on open data. These regulations are mentioned below, in chapters where it is opportune to discuss the meaning of these specific provisions.

Areas of disclosure of public data

PIAA governs the procedure which ensures everyone free access to and re-use of public information held by the *public sector*. This begs the question on how to define the *public sector* and which entities are actually forced to disclose public data. The term *public sector* is not defined in the PIAA itself. Instead specific legal entities which are obligated to grant access to information of public nature are

¹ Zakon o dostopu do informacij javnega značaja – ZDIJZ (Uradni list RS, št. 51/06 – uradno prečiščeno besedilo, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – odl. US, 102/15 in 7/18).

² Zakon o Informacijskem pooblaščenju - ZInfP (Uradni list RS, št. 113/05 in 51/07 – ZUstS-A).

³ Zakon o medijih - ZMed (Uradni list RS, št. 110/06 – uradno prečiščeno besedilo, 36/08 – ZPOMK-1, 77/10 – ZSFCJA, 90/10 – odl. US, 87/11 – ZAVMS, 47/12, 47/15 – ZZSDT, 22/16 in 39/16).

⁴ Zakon o javnem naročanju – ZJN-3 (Uradni list RS, št. 91/15 in 14/18).

⁵ Zakon o integriteti in preprečevanju korupcije – ZIntPK (Uradni list RS, št. 69/11 – uradno prečiščeno besedilo).



listed in Article 2: state bodies, local government bodies, public agencies, public funds and other entities of public law, bearers of public authority and public service contractors. As this list includes even public service contractors (non-governmental business entities which deliver public service) it is fairly broad.

The provisions in PIAA furthermore extend to *business entities subject to prevailing influence of public law entities*. These are defined in Article 1a as companies and other private entities subject to direct or indirect prevailing influence, individually or jointly, of the Republic of Slovenia, self-governing local communities and other public entities. The prevailing influence is ensured when these public entities are either (a) able to exercise prevailing influence on the basis of the majority proportion of the subscribed capital, have (b) the right to supervise the majority, are (c) entitled to appoint more than half of the members of the management body or supervisory authority in a company, directly or indirectly through another company or other private law entities, or (d) act as founders in private law entities other than companies, directly or indirectly through another company or private law entity. There are furthermore special provisions on banks which are considered business entities subject to prevailing influence of public law entities.

PIAA follows a two-tier system to access of information of public nature. All entities in the public sector are obliged to publish a *Catalogue of public information* on their website. Some entities in public sector need to disclose other documents as well. This data always has to be disclosed and readily available. As the rules of creating the catalogue of public information and other documents are standardized we will more closely examine what information has to be disclosed in section 3.

Next to the information which has to be published online in the form of the catalogue of public information, any other existing information has to be disclosed by entities in the public sector if *anyone* decides to demand such data to be handed over. There are, however, some exceptions to this rule. In specific cases the demand to access information of public nature can be declined. These exceptions will be closely examined in section 4.

Publication requirements and data standardization. Personal data protection

Catalogue of public information

Each entity in public sector is obliged to regularly maintain and make public in an appropriate manner (official bulletin of the body, World Wide Web, etc.) a catalogue of public information. These have to be divided into the following content blocks which are specified in the Decree on provision and re-use of public information⁶ (henceforth: DPRPI):

1. general data relating to the catalogue (name of the entity who published the catalogue; name of the responsible public official who adopted the catalogue; date of the adoption of the catalogue; date of the latest change of the catalogue);
2. general data on the public entity and public information that which contains:
 - a) an organigram and data on the structure of the entity with contact data for different sectors within the entity;
 - b) contact data for public officials responsible for the provision of public information;
 - c) a list of main regulations relating to the field of work of the entity, equipped with links to the state register of regulations on the Web;
 - d) ministries and governmental departments as well as local governments furthermore maintain a list of legislative proposals;

⁶ Uredba o posredovanju in ponovni uporabi informacij javnega značaja (Uradni list RS, št. 24/16).



- e) adopted strategies and programme documents as well as its proposals and important reports, opinions, analysis related to the field of work of the entity;
 - f) a catalogue of administrative procedures, court procedures and legislative procedures performed by the entity;
 - g) a list of catalogues sustained by the entity;
 - h) a list of other electronic databases which the entity is obliged to sustained in line with sectoral legislation;
- 3) a description of how to request public information in the entity;
 - 4) a detailed statement of costs related to the access of public data;
 - 5) a list of most commonly requested information of public nature.

Proactive transparency of data in public sector

Each entity in public sector *except business entities subject to prevailing influence of public law* is furthermore obliged to regularly maintain and make public on the World Wide Web a list of other documents:

1. consolidated texts of regulations relating to the field of work of the entity, equipped with links to the state register of regulations on the Web;
2. programmes strategies, views, opinions and instructions of a general nature or importance for the interaction of the body with natural and legal persons as well as for deciding on their rights or obligations;
3. studies, and other similar documents relating to the field of work of the body;
4. proposals for regulations, programmes, strategies, and other similar documents relating to the field of work of the body;
5. documents relating to public procurement and calls for tenders for allocating funds, subsidies and for granting loans and other forms of financing from state or municipal budgets;
6. information on their activities as well as information on administrative, judicial and other services provided by the entity;
7. all public information requested by the applicants at least three times;
8. other public information, such as a) news related to the functioning of the entity, b) annual reports on the implementation of legislation, c) information on subventions, loans and other forms of aid from public funds, etc.

Proactive transparency of data related to public finances

PIAA furthermore contains special provisions on proactive transparency of data related to public finances. These provisions can be found in Article 10a which was added to the PIAA with the amendment PIAA-C, adopted in 2014. It proved to be quite controversial and was therefore already amended twice, first with the amendment PIAA-D (adopted in 2014, about 3 months after PIAA-C) and then again with the amendment PIAA-E (adopted in 2015, after the Constitutional court partly annulled this particular Article).

The core idea is that for the purpose of strengthening transparency and responsible management of financial resources of certain entities, **information on the balance on the account and payment transactions** executed is collected by the Public Payments Administration (henceforth: PPA) which then makes this data available to the public⁷. The obligation to forward data to PPA falls to the payment service providers. This obligation does however not extend to the whole public sector, but only to all

⁷ This database is available on the World Wide Web: <https://www.ujp.gov.si/RPU/zdijz/Search.aspx>.



direct or indirect public budget users⁸, public utility institutes, public companies and business entities subject to a 100 % participating interest of public law entities⁹. Data on entities which do not fall under this category is not collected or published.

Data which is published by the PAA relates to all transactions made by the above mentioned public entities, with the exception of subaccount credit or debit transactions intended for the payment and distribution of taxes, contributions and other compulsory charges. The following data is disclosed:

- date of the transaction;
- the currency and the amount of the transaction;
- account, name or corporate name and registered office of the credit recipient, except natural persons¹⁰;
- if the payment purpose code indicates that the payment relates to a donor, sponsorship, consulting and/or other copyright or other intellectual services and if the beneficiary is a natural person, the details of the payment transaction indicated in the box recipient's name and place of residence;
- the purpose of the payment.

Procurement contracts, concessions and public-private partnerships

What is more, PIAA establishes in Article 10.a further obligations aiming at financial transparency of *all* the public sector entities which act in the capacity of **public procurement** contractors, **grantors of concessions** or public partners in a **public-private partnership**. They have to publish the generally accessible public information from the contract on public procurement, concession or public-private partnership within 48 days from the award of the contract, granting of concession or selection of a contractor in a public-private partnership. The place of publication as well as the scope and format of the publication are more precisely regulated in the Regulation on publishing of contracts on public procurements, concessions and public-private partnerships¹¹. All three types of contracts need to be published in the national procurement portal *E-Naročanje*¹².

More on proactive transparency in public procurement procedure

The Regulation on publishing of contracts on public procurements, concessions and public-private partnerships stipulates the following:

- (a) Contracts need to be published in the public portal E-naročanje (translation: E-procurement).
- (b) Once every 3 months this information is furthermore automatically published in an open format, in machine readable form.
- (c) An electronic copy of the contract needs to be published. Before it is published all the data which is considered an exception according to the law on access of data has to be removed from the contract.

⁸ According to the **Act on the provision of payment services for budget users** - Zakon o opravljanju plačilnih storitev za proračunske uporabnike (Uradni list RS, št. 77/16).

⁹ According to Article 10a of the PIAA.

¹⁰ This exception does however not apply to natural persons registered as economic entities in the Slovenian Business Register. Some authors emphasize that this solution is contrary to the Constitution and the **Personal Data Protection Act** - Zakon o varstvu osebnih podatkov (Uradni list RS, št. 94/07 – uradno prečiščeno besedilo). See N. Pirc Musar and T. Kraigher Mišič, Zakon o dostopu do informacij javnega značaja (ZDIJZ) s komentarjem, Uradni list Republike Slovenije: Ljubljana 2017, str. 273-274.

¹¹ Pravilnik o objavah pogodb s področja javnega naročanja, koncesij in javno-zasebnih partnerstev (Uradni list RS, št. 5/15).

¹² This database is available on the World Wide Web: <https://www.enarocanje.si>.



- (d) In addition to the electronic copy of the contract, additional information of public nature needs to be added: information on the contracting authority; information on the subject-matter of the public contract; information on the contract itself (contract value including VAT, contract date, contract duration in months or information on one-off supply, an indication of whether it is a framework agreement or not); information on the tenderer to whom the contract is awarded.

Regarding the outlay of portal E-naročanje see *Annex 1: E-naročanje search engine; Annex 2: E-naročanje contract sheet* (in this annex it is visible how mentioned data is displayed for each contract). It should furthermore be noted that according to PPA not only the public procurement contracts itself, but as a general rule also **documents relating to the award of the contract** are published on the E-naročanje portal.

In the E-naročanje portal users can browse through notices (types, form and manner of publication of these notices is very precisely regulated). These for example include notices on the selection of the tenderer. Other types of notifications include: 1. preliminary or periodic indicative notice; 2. notice on the establishment of the qualification system; 3. contract notices or project contest notices, 4. voluntary ex ante transparency notices, 5. notice of an award of a public contract or organized project contest; 6. notices for additional information, information on incomplete procedure or corrigendum; 7. notice amending the contract on the implementation of the contract during its validity.

In short: as a rule, the public procurement procedure is done through the E-naročanje portal which ensures maximal (proactive) transparency.

Proactive transparency of data held by business entities subject to prevailing influence of public law

We can conclude that business entities subject to prevailing influence of public law which are not subject to a 100 % participating interest of public law entities have rather limited obligations of proactive transparency. PIAA does, however, contain some special provisions aimed just at these business entities in public sector.

Business entities in public sector have to publish on the World Wide Web data related to donors, sponsorship, consulting, contractual and/or other intellectual services within five days of the conclusion of a transaction.

Business entities in public sector furthermore have to publish on the World Wide Web public information concerning their representatives, members of the administrative or the management body, or members of the supervisory body. This data relates to the type of representative or statement of membership in the management body, managing authority or supervisory body, and information on the amount of remuneration and other bonuses of this person.

Data accessibility

Not all information of public nature is published on the World Wide Web or in publically accessible databases. The majority of public information is not disclosed if a legitimate request to access to information is not filed. It is therefore of vital importance to address the contours of administrative transparency and the procedure for requesting access to public information as it is enshrined in the PIAA.

To understand the scope of accessibility of public data, we shall firstly examine how the PIAA defines the term *information of public nature*. This crucial since entities do not have to disclose data if it is not considered to have public nature.



Information of public nature is defined as information originating from the field of work of the entity and occurring in the form of a document, a case, a dossier, a register, a record or other documentary material.

Field of work of the entity

The information firstly needs to originate from the *field of work* of the entity. This part of the definition was elaborated upon by the Supreme court in judicial decisions I Up 122/2006, adopted on 25.4.2007, and X Ips 96/2011, adopted on 4.7.2012. The Supreme court ruled that it is crucial that the information relates to a fact or circumstance which affects or could affect the entity's execution of *public tasks*. This means that entities are forced to disclose documents which are connected to activities performed to support the execution of administrative tasks which have to be performed by every entity to ensure a smooth operation and fulfilment of its mission. For most entities, this means that they have to disclose information on salaries of public officials and public employees, public procurement, cooperation of public entities of public sector, travels on official duty performed by public employees etc.

However, regarding the public service contractors one should point out the case law of the Supreme court as well as the case law of the Information Commissioner which both limit the scope of information which is considered to have public nature. In judicial decision I Up 122/2006-3 issued on the 25.4.2007 the Supreme court ruled that PIAA cannot extend to information which is held by public service contractors and is not connected to performance of specific tasks or activities regulated by statutes of public law. These statutes of public law need to define obligations of the contractor which are connected to his tasks of governmental function or other function of public law. They furthermore need to define certain rights, duties or at least legal benefits for individual persons.

The far-reaching implications of this decision are best explained by providing an example from the case law of the Information Commissioner. In commissioner decision 090-52/2013/6 issued on the 05. 04. 2013 she had to decide if the national postal service provider, Pošta Slovenije d.o.o., is entitled to decline handing over documents relating to employment of new staff. The commissioner decided that even if a private company such as the postal service provider is active as a public service contractor, the obligation to disclose data was limited to the exercise of public tasks. Hence, the private postal service provider would be obliged to disclose data on how it handles the postal service. It is, however, not obliged to disclose data related to its commercial activity which is being pursued next to its exercise of public tasks. This is why the postal service provider did not have to hand over the data related to employment of new staff.

Form of an existing document

The second (somewhat controversial) condition is to consider certain data as information of public nature only if it already exists in the form of the data possessed by the entity. PIAA stipulates that public information has to *previously exist in the form of a document*, a case, a dossier, a register, a record or other documentary material (hereinafter: the document) drawn up by the body, by the body in cooperation with another body, or acquired from other persons.

This condition is known as the *criterion of materialized form*. This means that only information which already exists in either a physical or digital form needs to be disclosed by entities. This criterion is fulfilled if the materialized data enables its retrieval. The entity is therefore not obliged to design, collect or acquire documents which it does not already possess. It should however be noted that in the judicial decision IU 630/2016-24, adopted on the 7.9.2016, the Administrative court ruled that the *potential or floating documents* do count as previously existing documents. A retrieval of a (technically



non-existing) document from a database should therefore be understood as a retrieval of an existing document. As the information commissioner explained in the commissioner decision 090-269/13 adopted on 12.10.2016, the criteria for a legitimate request to provide a floating document are the ease and swiftness of retrieval and minimal effort to create the document.

It is however quite controversial in Slovene theory of constitutional law and media law if this means that the public sector does not have a positive obligation to create *new* documents and provide them to the public. It is argued that some data is of such importance that it simply has to be collected and available to the public, even if this is not clear from the provisions of the PIAA or sectorial legislation. A narrower interpretation of the constitution would instead allow public entities to purposely omit collecting potentially sensitive data, thereby avoiding their responsibility to publish or disclose it¹³. The case law of the information commissioner is however clear: PIAA cannot be interpreted as an instrument which provides information outside of the scope of its provisions, which merely enables requests for documents that already exist in a physical or digital form and are in possession of the entity¹⁴.

Public information held by business entities subject to the prevailing influence of public law entities

As explained above, any information which is held by a public law entity and is connected to its field of work (providing a public service) potentially has to be disclosed if this is requested. This definition however does not make sense when it comes to business entities who are obliged to disclose information of public nature (*entities subject to the prevailing influence of public law entities*). Because of that PIAA provides a separate definition of public information for these specific cases. There are two groups of data which have to be disclosed upon request:

- (a) information on a concluded legal transaction relating to the obtaining, using or managing of physical assets of a business entity or expenditures of a business entity on a contract on supply, works, or agency, consulting or other services, as well as sponsorship, donor and copyright agreements and other legal transactions with equal effect;
- (b) information on the type of representative or membership in an administrative, management or supervisory body; information on the amount of agreed or paid remuneration or credit to a member of a management or administrative body, or other representative of a business entity, member or supervisory board; information on employment or designation of the entities listed which indicates compliance with the conditions and criteria to be met for employment or designation.

Archived data

Archives held by the competent archival institution within the frame of public archive service are not public information according to PIAA. Instead, access to archives is regulated by the provisions of the Act on the Protection of Documents and Archives and Archival Institutions (henceforth: APDAAI)¹⁵. Public archival material in archival institutions and in private storage is accessible to anyone either via a request for usage or via a publication on the World Wide Web. APDAAI furthermore contains provisions on periods of inaccessibility of classified information according to the Classified Information

¹³ A. Teršek, Doktrinarno preozka razlaga ZDIJZ!, Pravna praksa, 25 (2006), 19/20, p. 21.

¹⁴ See for example commissioner decision 090-92/2010/6 adopted on the 21. 5. 2010. See also S. Pličanič, Komentar Zakona o dostopu do informacij javnega značaja: s pravom EU in primerjalnopravno prakso, Inštitut za javno upravo pri pravni fakulteti: Ljubljana 2005, p. 83.

¹⁵ Zakon o varstvu dokumentarnega in arhivskega gradiva ter arhivih – ZVDAGA (Uradni list RS, št. 30/06 in 51/14).



Act (henceforth: CIA)¹⁶, personal data, information on being a victim or perpetrator of certain crimes, information in religious beliefs, health, sex life and ethnicity.

Access to public information related to public procurement

There are some sectoral provisions in PPA that define which data counts as *public information* in a public procurement procedure and which does not. This is crucial since the contracting authority (which is a public entity) can acquire sensitive information when tenders are submitted¹⁷. Hence, the PPA declares that the contracting authority needs to ensure the protection of personal data in accordance with the PDPA and protection of confidential information in accordance with the CIA. This rule does however not apply to data relating to a) specifications of the goods, services or construction, b) the amounts provided in those specifications, c) price per unit, d) the value of each item, e) the total value of the tender, f) other data which affected the ranking of the tender in the context of additional criteria. This data can therefore be considered as public information even when it contains personal data or confidential information.

There is, however, an additional restriction: all documents relating to the award of a contract are public only after the final decision on the award of public contract *if* they do not contain trade secrets, confidential information or personal information. Before this date the provisions of PIAA on access to information of public nature do not apply. It is important to prevent premature transparency and leaked information to provide for a fair competition in a public procurement procedure.

This clause however does not primarily aim at proactive transparency (information which need to be published in portal E-naročanje). Instead it limits the scope of what is considered an information of public nature. This means that even if certain documents do not have to be proactively disclosed, they also cannot be disclosed if competitors ask for this information to be disclosed *via* the PIAA procedure. The PPA explicitly states that this rule applies to “all documents relating to the award of a contract.” Not only the contract, but also all other documents. What is more, the contract is not yet signed at this stage of the public procurement procedure. It would make no sense if this rule would only apply to the contract itself.

Grounds for refusal to disclose information

Next to archived data which falls completely outside of the scope of PIAA, there is a range of exceptions according to which the applicant's request to access information can be denied.

This can be done by the public entity if the request relates to:

1. *classified information* according to the CIA;
2. *trade secrets* according to the Companies Act (henceforth: CA)¹⁸;
3. *personal data* where its disclosure could constitute a breach of the protection of personal data in accordance with the PPA;
4. Information related to *national statistics* where its disclosure could constitute a breach of the confidentiality of individual information on reporting units in accordance with the National Statistics Act¹⁹ (henceforth: NSA);

¹⁶ Zakon o tajnih podatkih – ZTP (Uradni list RS, št. 50/06 – uradno prečiščeno besedilo, 9/10 in 60/11).

¹⁷ S. Matas, Zakon o javnem naročanju (ZJN-3) s komentarjem, Uradni list Republike Slovenije: Ljubljana 2016, p. 181.

¹⁸ Zakon o gospodarskih družbah – ZGD-1 (Uradni list RS, št. 65/09 – uradno prečiščeno besedilo, 33/11, 91/11, 32/12, 57/12, 44/13 – odl. US, 82/13, 55/15, 15/17 in 22/19 – ZPosS).

¹⁹ Zakon o državni statistiki – ZDSta (Uradni list RS, št. 45/95 in 9/01).



5. Information related to *taxation* where its disclosure could constitute a breach of the tax procedure confidentiality or a breach of tax secrecy in accordance with the Tax Procedure Act²⁰ (henceforth: TPA);
6. Information acquired or compiled for the purposes of criminal prosecution or in relation to it, or minor offence procedure, administrative procedure, civil proceedings or other *court proceeding* of which disclosure could prejudice the implementation of such procedure;
7. Information from the document which is being drawn up and is still subject to *consultation by the body*, of which disclosure could lead to misunderstanding of its contents;
8. Information on *natural or cultural value* which, in accordance with the Nature Conservation Act²¹ (henceforth: NCA) and Act on Protection of Cultural Heritage Act²² (henceforth: PCHA), is not accessible to the public for the purpose of protecting such natural or cultural value;
9. Information from the document compiled in connection with *internal operations or activities* of bodies, of which disclosure could cause disturbances in the body's operations or activities.

Nonetheless, access to the requested information has to be granted if the *public interest for disclosure* prevails over the public interest or interest of other persons not to disclose the requested information, *except* in the following cases:

- for information which, pursuant to CIA, is assigned one of the two highest levels of secrecy;
- for information which contains or is prepared on the basis of classified information of other another country or an international organisation, with which the Republic of Slovenia concluded an international agreement on the exchange or transmission of classified information;
- for information which contains or is prepared on the basis of tax information, transmitted to the bodies of the Republic of Slovenia by a body of a foreign country;
- for the above mentioned information related to national statistics;
- for the above mentioned information related to *taxation*, unless the tax procedure is final or the taxable person disclosed the liability in the tax return and failed to pay the tax within the required time limit.

There are also instances when the requested information *always* has to be granted:

- when information relates to the use of *public funds* or to the exercise of *public functions* or the *employment relationship of a public employee*, except when the request refers to classified information according to the CIA or the above mentioned information on taxation, court proceedings and in cases where the legislation governing public finance or legislation governing public procurement provides otherwise;
- if information relates to environmental emissions, waste, dangerous substances in a factory or information contained in a safety report as well as other information if the Environmental Protection Act²³ (henceforth: EPA) so requires.

²⁰ Zakon o davčnem postopku – ZdavP-2 (Uradni list RS, št. 13/11 – uradno prečiščeno besedilo, 32/12, 94/12, 101/13 – ZDavNepr, 111/13, 22/14 – odl. US, 25/14 – ZFU, 40/14 – ZIN-B, 90/14, 91/15, 63/16, 69/17 in 13/18 – ZJF-H).

²¹ Zakon o ohranjanju narave – ZON (Uradni list RS, št. 96/04 – uradno prečiščeno besedilo, 61/06 – ZDru-1, 8/10 – ZSKZ-B, 46/14, 21/18 – ZNOrg in 31/18).

²² Zakon o varstvu kulturne dediščine – ZVKD-1 (Uradni list RS, št. 16/08, 123/08, 8/11 – ORZVKD39, 90/12, 111/13, 32/16 in 21/18 – ZNOrg).

²³ Zakon o varstvu okolja – ZVO-1 (Uradni list RS, št. 39/06 – uradno prečiščeno besedilo, 49/06 – ZMetD, 66/06 – odl. US, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108/09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15, 30/16, 61/17 – GZ, 21/18 – ZNOrg in 84/18 – ZIURKOE).



Furthermore, access to requested public information on *business entities which are subject to the prevailing influence of public law entities* has to be granted if it relates to the basic information on the concluded legal transactions in all cases, except if they can demonstrate that such disclosure could considerably harm their competitive position in the market, unless the information concerns a donor or donors, sponsorship, consulting, contractual or other intellectual services or other legal transactions with equal.

What is more, the business entity always has to disclose information on the type of representative or membership in an administrative, management or supervisory body; information on the amount of agreed or paid remuneration or credit to a member of a management or administrative body, or other representative of a business entity, member or supervisory board; information on employment or designation of the entities listed which indicates compliance with the conditions and criteria to be met for employment or designation.

Exceptions relating to proceedings and protection of confidential source

The entity has to deny the applicant's access to the requested information if the request refers to the information for which the legislation requires the protection of a confidential source. This special provision of the PIAA was introduced with the amendment PAIA-C from 2013 to provide special protection for whistleblowers, people who might report to the police, the supervision authorities etc. Furthermore, request which refers to information to which access is forbidden or restricted to parties, participants or injured persons in legal or administrative proceedings or in a supervisory procedure, have to be denied. The rationale behind this rule follows the *argumentum a minori ad maius* – why should ordinary citizens have access to information which is forbidden even to parties in legal and administrative proceedings?

The most obvious *absolute* restrictions that come to mind are restrictions of parties to access the judicial proceedings files during certain phases of criminal legal proceedings. It is obvious that such information cannot be accessed either by the party or by other natural or legal persons.

Request of publically available information

Entities can furthermore choose not to provide the applicant with the requested information if the latter is available from freely accessible public registers or is otherwise publicly accessible (publication in the official gazette, publications by the body, media, professional publications, the World Wide Web, etc.) and can merely issue instructions about the site where information can be found.

Partial access to public information

There are cases where a document contains sensitive data which cannot be released to the public, but where the sensitive data can nonetheless be excluded from the document without jeopardizing its confidentiality. Where this is possible an authorised person of the entity excludes such information from the document and refers the modified content to the applicant. This rule enables for a much greater transparency of public sector and is especially important in connection with protection of personal data.

Misuse of the right to access to public information

The public entity may, in exceptional cases, deny the applicant's access to the requested information if the applicant with one or more functionally connected requests manifestly misuses his right to access public information or it is clear that the request or requests are of disreputable character.



Drafting techniques

Opacity due to confusion is largely avoided by rules regarding proactive transparency. As shown above, the PIAA thoroughly regulates the drafting techniques that need to be followed by the entities when they create the catalogue of public information. Other documents that need to be uploaded to the World Wide Web are usually created in accordance with sectorial regulation which governs how they need to be drafted (at least in some instances). The issue of opacity due to confusion is even less pronounced if the data is gathered and published in a public database accessible to any natural or legal person.

However, as argued above, some important information of public nature does not have to be disclosed if a person does not explicitly request access to it. Data of public nature in documents which have to be handed over to such person are, however, not always comprehensible. Disclosed documents may include raw data which is intelligible only to experts. The documents provided may not make sense if read without a further document which the person did not ask for. Documents may be written in a foreign language and may not be understood by the person which requested access to them. The question then arises – does the document need to be explained, amended, translated or otherwise modified by the public entity to avoid opacity due to confusion? Does the public entity need to help to find specific information within the provided documents? There is a consensus amongst Slovene media law experts as well as the case law of the information commissioner that by providing unmodified documents, sometimes described as *raw data*, the public entity fulfils its obligations according to the PIAA. It is argued that if the public entity would be obliged to make additional modifications to the disclosed document, the costs for disclosing documents might skyrocket. This constitutes an even bigger concern when private entities are bound by the PIAA. While these are legitimate concerns, opacity due to confusion remains a problem if the provided documents are not comprehensible to the person who requested their disclosure.

Benchmarking

Benchmarking can be defined as comparative evaluation, predominantly within certain activity or sector²⁴. Benchmarking aimed at the control of public spending can be performed by the state (for example in the scope provided for in the above mentioned regulation on public statistics) or by independent experts and institutions. The regulation on open data should first and foremost enable the latter.

Benchmarking by independent experts is most efficient and easily achieved in cases where the information is already gathered in a publically accessible database. This is, for example, the case in databases on information on the balance on the account and payment transactions of public entities, as well as the database on public procurement. Both enable a more efficient comparability of public data and control over public spending.

Analysis of data which is published online by public entities on their websites is harder to achieve especially if one is set to establish automated benchmarking systems. However, this issue was tackled in the amendment PIAA-E from 2015. At least on paper, the PIAA now establishes that as a general rule, entities should enable the *re-use of public information and open databases* by publishing it on the world wide web in open formats that comply with the formal open standards, in machine readable form, including metadata, except when this would involve a disproportionate effort beyond a standard procedure.

²⁴ <https://fran.si/131/snb-slovar-novejsega-besedja/3619773/benchmarking> (accessed 22. 4. 2019).



Benchmarking is furthermore simplified by OPSI, a *national open data portal of the public sector*.²⁵ This portal contains a list of all databases within competence of public entities, including metadata, and open databases or links to the websites on which open databases are published. The portal currently contains information on 3406 entries, although not in all of them contain databases or links. This means that Slovenia is still coping to reach the standard of providing a complete national open data portal.²⁶ Many databases can however be accessed online, mostly in machine readable form.

It was however already noted that not all public information can be accessed online. This is why for some forms of benchmarking, one needs to access public information via a request. As described above, when requesting a document from a public entity, only unmodified documents or *raw data* is disclosed. This can significantly hamper an efficient benchmarking analysis. What is more, the case law of the information commissioner shows that public entities do not have to enable real-time access to *original* databases. This means that in cases where data is not proactively disclosed by the public entity, it can only be accessed piece by piece, provided by the public entity primarily via email.²⁷ In the commissioner decision 090-252/2014 adopted on the 11. 2. 2015, she argued that the national laboratory for health, environment and food does not have an obligation to enable access to a real-time database which contains information on the quality of drinking water. Instead, the laboratory has to send it to the person who wants to access this information each day via email, free of charge.

Control authorities

The supervisory body in proceedings concerning the access to information of public nature is the *Information Commissioner*. Her powers and responsibilities are regulated in the above mentioned ICA.

The Information Commissioner is an *independent state entity* responsible for deciding on an appeal against a decision by which the public entity dismissed or refused the request or otherwise violated the right to access or re-use of public information and in the context of the second stage of the proceedings for supervising the implementation of the PIAA, and on regulations issued pursuant thereto. She furthermore has competences and powers in the context of PDA which regulates protection of personal data.

The appeal proceedings against the decision of the public entity are partly regulated in PIAA and partly in the General Administrative Procedure Act²⁸ (henceforth: GAPA).

If the information commissioner denies access to requested public information, *judicial control* over conduct of public bodies can be demanded. This means that special administrative proceedings can take place which are partly regulated in PIAA and partly in the Administrative Dispute Act²⁹ (henceforth: ADA).

²⁵ This portal is publically accessible at <https://podatki.gov.si/>.

²⁶ N. Pirc Musar and T. Kraigher Mišič, *Zakon o dostopu do informacij javnega značaja (ZDIJZ) s komentarjem*, Uradni list Republike Slovenije: Ljubljana 2017, str. 283.

²⁷ 090-152/2017 19.07.2017

²⁸ *Zakon o splošnem upravnem postopku – ZUP* (Uradni list RS, št. 24/06 – uradno prečiščeno besedilo, 105/06 – ZUS-1, 126/07, 65/08, 8/10 in 82/13).

²⁹ *Zakon o upravnem sporu – ZUS-1* (Uradni list RS, št. 105/06, 107/09 – odl. US, 62/10, 98/11 – odl. US, 109/12 in 10/17 – ZPP-E).



Sanctions

There are no *criminal offences* in Slovene Criminal Code (henceforth: CC) aimed specifically at the conduct relating to access to information of public nature. There are, however, some offences which could be committed by public officials who would not want to disclose public information on purpose or would change the document before they would disclose it, for example:

- a) 257 CC – Abuse of Office or Official Duties;
- b) 258 CC – Misfeasance in Office;
- c) 251 CC – Forging Documents;
- d) 259 CC – Forgery or Destruction of an Official Paper, Book, File or Historical Archives.

Next to criminal offences, there are many *minor offences* on conduct related to information of public nature:

Minor offences according to PIAA:

1. An individual is fined for offences of destroying, concealing, or of making in any other way inaccessible a document, a case, a dossier, a register, a record or documents containing public information, with a view to making such information inaccessible to the public.
2. The responsible person in the entity is fined for unduly failing to provide the public information requested within the time limit.
3. The responsible person is fined for failing to publish or update the catalogue of public information or failing to publish public information or the contact data on-line.
4. The responsible person of the state or local government bodies are fined for failing to submit the annual report on implementation of PIAA within the time limit.
5. Individuals as well as legal entities are fined for the offences of re-using public information for commercial purposes, for which the body charges a price or lays down other conditions and the body did not allow such re-use.
6. A payment service provider as well as the responsible person are fined for the offence of failing to provide the information to the authority responsible for public payments, or for the offence of providing it with false or incomplete information.

Minor offences according to ICA:

1. The responsible person is fined if it does not enable the information commissioner to access the disputed document in the appeal proceedings.
2. The responsible person is fined if despite a commissioner's decision in appeal proceedings she does not send the document to the person who requested it.

Minor offences according to MMA:

1. Responsible body, responsible person in the body or a natural person are fined if they fail to give a written response as to whether they intend to provide an answer or refuse the request of the media to be granted access to a press release or;
2. if they fail to give the media truthful and complete information within the set deadline or no later than within seven days of the receipt of the request which they are obliged to provide;
3. if they fail to immediately send to the media an additional explanation of the reasons for refusal.



Annex 1: E-naročanje search engine



REPUBLIKA SLOVENIJA
MINISTRSTVO ZA JAVNO UPRAVO



PREGLED OBJAVLJENIH POGODB

za četrtletne/letne podatke v strojno berljivi obliki CSV kliknite tukaj! (Izvozi.aspx)

Področje pogodbe

Matična številka naročnika Izberi iz poslovnega registra

Naziv naročnika (kot je vnesen v objavljenih pogodbah)

JN številka

CPV koda Izberi CPV

Vrsta predmeta

Datum sklenitve pogodbe od do

Datum objave pogodbe od do

Datum zadnje spremembe od do

Zadnjih 50 objav

Naročnik	Pogodba	Področje	Predmet naročila
OBČINA LOG - DRAGOMER	GRADBENO POGODBO ŠT. 430-2/2019 SPREMEMBA NAMEMBNOSTI, REKONSTRUKCIJA IN ENERGETSKA SANACIJA STAVBE STARA ŠOLA LOG, preostanek del (PogodbaDetajli.aspx?IDPogodbeZaceten=129628)	Javno naročilo	Gradnje
MINISTRSTVO ZA OBRAMBO REPUBLIKE SLOVENIJE	Pogodba 4300-230/2019-1; Zakup omrežnih storitev (PogodbaDetajli.aspx?IDPogodbeZaceten=129987)	Javno naročilo	Storitve
OBČINA TOLMIN	Gradbena pogodba (PogodbaDetajli.aspx?IDPogodbeZaceten=129986)	Javno naročilo	Gradnje
SPLOŠNA BOLNIŠNICA DR. JOŽETA POTRČA PTUJ	Kupoprodajna pogodba (PogodbaDetajli.aspx?IDPogodbeZaceten=129982)	Javno naročilo	Blago
Arriva Alpetour, družba za prevoz potnikov, d.o.o.	Pogodba za dobavo goriva na interne črpalke Kranj, Jesenice, Maribor (PogodbaDetajli.aspx?IDPogodbeZaceten=129984)	Javno naročilo	Blago
OBČINA LITUA	Asfaltiranje cest v Občini Litija v letu 2019 – 1. faza (PogodbaDetajli.aspx?IDPogodbeZaceten=129983)	Javno naročilo	Gradnje
STANOVANJSKI SKLAD REPUBLIKE SLOVENIJE, javni sklad	Pogodba št. JN 16/2019 - Izvedba BIM nadzora pri gradnji stanovanjske soseske Novo Brdo, E2 in E3 (PogodbaDetajli.aspx?IDPogodbeZaceten=129981)	Javno naročilo	Storitve
Arriva Alpetour, družba za prevoz potnikov, d.o.o.	Okvirni sporazum za dobavo goriva na bencinskih servisih JN2019-6-1 (PogodbaDetajli.aspx?IDPogodbeZaceten=129980)	Javno naročilo	Blago
Arriva Alpetour, družba za prevoz potnikov, d.o.o.	Okvirni sporazum za dobavo goriva na bencinskih servisih JN2019-6-1 (PogodbaDetajli.aspx?IDPogodbeZaceten=129979)	Javno naročilo	Blago
SPLOŠNA BOLNIŠNICA DR. JOŽETA POTRČA PTUJ	Kupoprodajna pogodba (PogodbaDetajli.aspx?IDPogodbeZaceten=129974)	Javno naročilo	Blago
OBČINA LITUA	GRADBENA POGODBA ZA ASFALTIRANJE CEST V OBČINI LITUA LETU 2019 – 1. FAZA (SKLOPA ŠT. 1 in 2) Številka: 430-23/2019 (PogodbaDetajli.aspx?IDPogodbeZaceten=129146)	Javno naročilo	Gradnje
OBČINA AJDOVŠČINA	Aneks št. 1 k pogodbi št. 4301-27/2018 Ureditev površin za pešce in kolesarje v mestu Ajdovščina - odsek 2 (PogodbaDetajli.aspx?IDPogodbeZaceten=129973&detailed=true)	Javno naročilo	Gradnje
Slovenski državni gozdovi, d. o. o.	Aneks št. SEC_2019-LJ_00150-A1 (PogodbaDetajli.aspx?IDPogodbeZaceten=129972&detailed=true)	Javno naročilo	Storitve
ELEKTRO MARIBOR, podjetje za distribucijo električne energije, d.d.	SEJANA ZEMLJA - ZAHOD (Maribor, Ptuj, Slovenska Bistrica) (PogodbaDetajli.aspx?IDPogodbeZaceten=129971)	Javno naročilo	Blago
Slovenski državni gozdovi, d. o. o.	Aneks št. SEC 2019-MB_00107-A1 (PogodbaDetajli.aspx?IDPogodbeZaceten=129970&detailed=true)	Javno naročilo	Storitve
ELEKTRO MARIBOR, podjetje za distribucijo električne energije, d.d.	SEJANA ZEMLJA - VZHOD (Ljutomer, Murska Sobota, Gornja Radgona) (PogodbaDetajli.aspx?IDPogodbeZaceten=129969)	Javno naročilo	Blago
ZDRAVSTVENI DOM LJUBLJANA	Pogodba št. NMV-9/2019-2 Aparati za okulistiko (PogodbaDetajli.aspx?IDPogodbeZaceten=129968)	Javno naročilo	Blago



Annex 2: E-naročanje contract sheet

eNAROČANJE
(/)



REPUBLIKA SLOVENIJA
MINISTRSTVO ZA JAVNO UPRAVO



Javno naročilo

JN002880/2019-C01

Datum objave: 04.06.2019
Datum zadnje spremembe: 04.06.2019

Naročnik
MESTNA OBČINA MARIBOR, Ulica heroja Staneta 1, 2000 Maribor
Naročilo je bilo oddano na podlagi skupnega javnega naročila: Ne.

Predmet naročila
Vrsta predmeta: Storitve
Glavna oznaka po enotnem besednjaku javnih naročil (CPV): 72200000: Storitve programiranja programske opreme in svetovanja pri programski opremi

Podatki o pogodbi
Naziv pogodbe: Pogodba o vzdrževanju in najemu informacijskega sistema
Pogodbena vrednost: 51.649,92 EUR z DDV
Datum sklenitve pogodbe: 31.05.2019
Trajanje pogodbe: 12 mesecev
Pogodba se nanaša na sklenitev okvirnega sporazuma: Ne.

Ponudnik
iPiramida, računalniški inženiring d.o.o., Strossmayerjeva ulica 26, SI-2000 Maribor

Pogodba in dodatki k pogodbi
Pogodba o vzdrževanju in najemu informacijskega sistema (sklenitev: 31.05.2019, zadnja spr.: 04.06.2019) prenos datoteke (/ObjavaPogodb/GetPogodba.aspx?IDPogodbeZaceten=127775) podrobni podatki (PogodbaDetajli.aspx?IDPogodbeZaceten=127775&detailed=true)

Uradni list RS
Dunajska cesta 167
1000 Ljubljana

info@uradni-list.si (mailto:info@uradni-list.si)
www.uradni-list.si (http://www.uradni-list.si/)

Uradni list
• O podjetju (<http://www.uradni-list.si/7>)
• Izobraževanje (<https://www.uradni-list.si/izobrazevanja>)
• Založba (<http://www.uradni-list.si/3>)
• Oglaševanje (<https://www.uradni-list.si/podjetje/oglasovanje>)
• Dvorana (<https://www.uradni-list.si/izobrazevanja/moznost-najema-dvorane/o-dvorani>)
• Piškotki (/piskotki)

Uradni list d.o.o. (c) Vse pravice pridržane.

mojdenar IT