

# Act on openness in administration

## Chapter 1

### *Purpose and applicability of the Act*

#### *Purpose of the Act*

§ 1. The purpose of the Act is to secure the openness of authorities etc. with a particular emphasis on

- 1) freedom of information and expression
- 2) citizen participation in democracy
- 3) public supervision of the administration
- 4) dissemination of information to the public and
- 5) trust in the administration

*Subsection 2.* Authorities and others covered by the Act must ensure that requirements regarding openness mentioned in subsection 1, as far as possible are effectuated by choosing, establishing, and developing new IT-solutions.

#### *The organizational applicability of the Act*

§ 2. The Act covers all activities undertaken by authorities that are part of the administration.

§ 3. Apart from the provisions of §§ 11-12 and §§ 15-17 the Act covers all activities undertaken by

- 1) independent organizations, associations, funds etc. that have been created by law or with reference to an Act
- 2) independent institutions, associations, funds etc. that are founded on the basis of civil law, and which engage in extensive public activities and are submitted to intensive public regulation, intensive public inspection, and intensive public control, and
- 3) Local Government Denmark and Danish Regions.

*Subsection 2.* Aside from the provisions of §§ 11-12 and §§ 15-17 the Act covers all activities undertaken by

- 1) electricity distribution companies that produce transmit or distribute electricity at a voltage of 500 V or above,
- 2) companies, institutions, associations etc., engaged in the distribution of natural gas, and
- 3) communal heat distribution plants that are covered by the heat distribution Act and have a capacity of more than 10 MJ/s.

§ 4. Aside from the provisions of §§ 11-12 and §§ 15-17 the Act covers all activities undertaken by companies if more than 75 % of the shares of the ownership are the property of a Danish public authority. However, companies not listed on the stock exchange and any subsidiary companies they may own are exempted from this.

*Subsection 2.* If agreed with the minister of justice, the relevant minister may exempt from the Act specific companies covered by subsection 1. To the extent that subsection 1 covers companies owned by municipalities or regions, the rules mentioned in subsection 1 must be agreed with Local Government Denmark and Danish Regions.

§ 5. Aside from the provisions of §§ 11-12 and §§ 15-17 the Act covers companies, institutions, personally owned companies, associations etc. to the extent that they by law or with reference to a law have been given the competence to make decisions on behalf of the state, a region, or a municipality.

*Subsection 2.* If agreed with the minister of justice, the relevant minister may stipulate that the Act in whole or in part will cover specific companies, institutions, associations etc. if the expenses associated with their activities are covered predominantly by state, region, or municipality funds. As an extension of this, the relevant minister may stipulate how documents are archived etc..

§ 6. When a company not covered by §§ 3-5 of the Act is given assignments that, in accordance with the legislation, are the responsibility of public authorities, the relevant administrative authority must ensure that the company supplies the authority with regular information regarding the carrying out of the assignment. The information in question that is kept at the relevant administrative authority is covered by the right of access in accordance with the general stipulations of this Act.

## Chapter 2

*Right of access etc.*

*General stipulations on the right of access*

§ 7. Anyone can demand access to documents that have been submitted to or created by an authority etc. as part of the administrative processing associated with its activities.

*Subsection 2.* Except from the exceptions mentioned in §§ 19-35 the right of access includes

- 1) all documents regarding the case in question, and
- 2) entries in protocols, registers and other catalogues associated with the documents of the case in question.

*Subsection 3.* Right of access in accordance with subsection 2, number 1 to a document posted by the authority etc. takes effect no sooner than the day after the document has been posted.

### *Personal access*

§ 8. A person whose private circumstances are mentioned in a document can, with the exceptions mentioned in §§ 19-29 and § 35, demand access to this information. However, this does not take effect in the instances covered by §§ 31-33, or to the extent that protecting the person in question or others conclusively weighs against it.

### *The identification requirement*

§ 9. A request for right of access in accordance with §§ 7 and 8 must

- 1) contain sufficient information for the identification of the case or documents for which the right of access is requested, and
- 2) state the topic that the case or documents touch upon.

*Subsection 2.* Processing the request for right of access in accordance with § 7 may, whether or not the conditions in subsection 1 are fulfilled, be denied to the extent that

- 1) processing the request would require unreasonable resources, or
- 2) the request clearly serves an unlawful purpose or the suchlike.

### *Access to databases*

§ 10. The right of access does not cover databases, including registers or other systematic catalogues dependent on electronic information processing, excepting catalogues as mentioned in § 7, subsection 2, number 2.

*Subsection 2.* The relevant minister may stipulate rules that govern the access of a juristic personality to information about the person in question in the databases etc. mentioned in subsection 1.

### *Right of database information compilation (ExtrAction of data)*

§ 11. Anyone can demand that an administrative authority undertakes and supplies a compilation of available information from authority databases if the compilation can be compiled through limited and simple commands. In the event that the information is covered by §§ 19-35, the right of compilation only applies if the considerations mentioned in these provisions can be taken into account through depersonalization or the like if this can be completed through limited and simple commands. The right of compilation does not apply if the information has been published previously in a suitable form or format.

*Subsection 2.* The provisions of subsection 1 do not apply to personal information covered by § 10 of the personal data Act.

### *Right of access to metadata*

§ 12. With the few exceptions mentioned in §§ 31-33, anyone can demand access to a description of the types of information included in a database, the basis of the information, as well as information regarding the formats employed by a database (metadata). This right applies to databases that are used by administrative authorities in connection with concrete case processing or in connection with the preparation of public analyses, calculations or the like.

*Subsection 2.* If agreed with the minister of justice, the relevant minister may stipulate that ministerial departments and specified agencies and directorates must prepare metadata as mentioned in subsection 1 to the extent that these are not already readily available at the authority in question. If agreed with the relevant municipality or region the minister of economic and interior affairs may stipulate that the central administration in the municipality or region must prepare metadata in accordance with subsection 1 to the extent that these are not already readily available at the authority in question.

*Subsection 3.* With regard to the types of databases mentioned in subsection 1 and established or developed after this Act comes into effect, the administrative authorities must ensure that metadata is prepared in order to ensure that the right of access stipulated in subsection 1 can be granted. However, this does not apply if the preparation of the metadata requires a considerable amount of resources.

### *Memorandum requirement*

§ 13. In cases where an authority etc. has to supply a ruling and the authority etc. in question either orally or in another way is made aware of the Actual basis of a case or of an external specialist assessment relevant to the ruling, the authority etc. in question must as soon as possible note the content of the information or assessment. However, this does not apply if the information or assessment is part of the documents relevant to the case.

*Subsection 2.* Furthermore, in cases where an authority etc. has to supply a ruling, the authority etc. must note the substantial processing stages that are not apparent from the documents as soon as possible.

*Subsection 3.* The memorandum requirement as stipulated in subsection 1 and 2 does not apply in the case processing associated with the rules of criminal procedure.

### *The principle of increased public access*

§ 14. As part of the processing of a right of access request, it must be considered whether access can be granted to documents and information beyond the requirements of §§ 23-35. A higher degree of access can be granted unless this conflicts with other legislation, including confidentiality rules and the rules of the personal data Act.

*Subsection 2.* Subsection 1 also applies in the processing of an access request in documents and information associated with cases exempted from right of access in accordance with §§ 19-21.

## Chapter 3

### *Electronic records, mailing lists and active information*

#### *Electronic records*

**§15.** Documents, which have been received or sent by an authority in context of an administrative case processing in connection with its operation, must be recorded electronically to the extent that the document has relevance in the case or the case processing in general. The same applies to internal documents in final form.

*Subsection 2.* A document covered by subsection 1, which the authority has received or sent, must be recorded electronically, as soon as possible after receiving or sending it.

*Subsection 3.* The electronic record system must be organised in a way that it contains the following information on the documents, which have been recorded electronically:

- 1) A date of receiving or sending the document.
- 2) A short, thematic declaration of the content of the document.

*Subsection 4.* In accordance with subsections 1-3, the duty to record electronically applies to authorities covered by subsection 2 of this Act as well as municipal and regional units referred by the central administration of the municipality or region.

*Subsection 5.* If agreed with the minister of justice, the relevant minister may stipulate to exempt the administrative authorities covered by subsection 4 in whole or in part from this duty.

*Subsection 6.* If agreed with the minister of justice, the relevant minister may stipulate that the duty to record electronically must cover municipal and regional units in accordance with subsections 1 and 2 as well as companies not covered by subsection 4.

#### *Mailing lists*

**§16.** If agreed with the relevant minister, the minister of justice may stipulate that government departments and specific subjacent agencies and departments must issue a list of documents that have been received or sent by the authority on the day in question. If agreed with the municipality or region in question, the minister of economic and interior affairs may stipulate that the central administration of the municipality or the region must issue a list of documents that have been received or sent by the central administration on the day in question.

*Section 2.* In the case of stipulations in accordance with subsection 1, the mailing list must be published on the homepage of the authority. The mailing list must include the following information regarding the documents that are included:

- 1) The date of receiving or sending the document.
- 2) The name or nature of the recipient or sender of the document.
- 3) A short, thematic declaration of the content of the document.
- 4) A reference number or a different type of identification.

#### *Active information*

**§17.** An authority must provide information to the citizens regarding its operations on its homepage.

*Subsection 2.* An authority must stipulate the guidelines regarding the duty to provide information that derives from subsection 1.

*Subsection 3.* The stipulations in subsection 1 and 2 apply to government departments and specific subagent agencies and departments, neutral committees and councils and the central administration in the municipalities and regions.

#### *Openness portal*

**§18.** On the internet, a portal containing Acts, administrative directions, draft legislations and statements regarding the right of access by the ombudsman of the Danish Parliament must be established.

## Chapter 4

### *Exemption to the right of access.*

#### *Cases exempted from the right of access*

**§19.** The right of access does not cover cases covered by the rules of criminal procedure, however, cf. subsection 2.

*Subsection 2.* A fine that a legal person has adopted is covered by the rights of access in accordance with normal legislation.

*Subsection 3.* Subsection 2 does not apply to fines in the police or the prosecuting authority.

**§20.** The right of access does not apply to cases regarding legislation, including authorization laws, until a bill has been introduced in the Danish Parliament.

**§21.** The right of access does not apply to cases regarding appointments or promotions in the public sector.

*Subsection 2.* Except for the stipulation in section §8, the right of access does not apply to other cases regarding the appointment of individuals in the public sector, however, cf. subsection 3 and 4.

*Subsection 3.* In cases mentioned in subsection 2, access to information regarding the name, position, education, work tasks, salary, or business trips of the employee must be reported in accordance with the normal legislation. With regard to employees in top positions, the normal

legislation applies to information regarding disciplinary reactions such as warnings or the like. This only applies in a period of two years after the final stipulation has been made.

*Subsection 4.* In cases such as those mentioned in subsection 2, information regarding the top management contract regarding the overall priorities for the authority in question must be reported, aside from the information mentioned in subsection 3.

*Subsection 5.* The minister of justice may stipulate that the right of access in cases covered by subsection 2, must also apply to other types of information than those mentioned in subsections 3 and 4.

*Subsection 6.* Subsections 1-5 also apply to institutions etc. that are covered by the Act in pursuance of §§3 and 4.

**§22.** The right of access does not apply to cases regarding the use of a calendar.

#### *Exemption of internal documents*

**§23.** The right of access does not extend to internal documents. Internal documents include

- 1) documents, which have not been submitted to third parties,
- 2) documents, which, under §24, subsection 1, have been exchanged at a time when there is concrete evidence to assume that a minister has required or will require the counsel or aid of the civil service, and
- 3) documents, which, under §24, have been exchanged in connection with economic or political negotiations or in connection with discussions regarding joint municipal and regional political initiatives.

*Subsection 2.* Documents covered by subsection 1, which have been surrendered to third parties, lose their internal classification, unless the submission has occurred due to legal, scientific or other similar reasons.

*Subsection 3.* If agreed with the Local Government in Denmark and Danish Regions, the minister of economic and interior affairs may establish the scale of which the right of access extends to internal documents held by municipalities and regions.

**§24.** The right of access does not extend to internal documents and information exchanged at a time when there is reason to assume that a minister has required or will require the counsel or aid of the civil service, between:

- 1) a department of the ministry and its subordinate authorities.
- 2) individual ministries.

*Subsection 2.* Information about the Actual basis of the matter etc. is, under §§ 28 and 29, covered by the right of access under normal rules regardless of subsection 1.

*Subsection 3.* Even though a minister has required or will require the counsel or aid of the civil service in connection with the relevant matter, subsection 1 does not cover:

- 1) cases, in which a concrete decision has or will be made by an administrative authority,

- 2) cases regarding the closing of contract terms and
- 3) the execution of inspection or administrative tasks by a ministry.

**§25.** The right of access does not cover internal documents and information exchanged between Local Government Denmark, the Danish Regions and members of these organisations in connection with economic or political negotiations with the state or in connection with discussions regarding joint municipal and regional political initiatives.

**§26.** Regardless of §, subsection 1, the right of access covers documents, which are available in final form, when:

- 1) the documents alone reproduce the content of the final verdict regarding the decision in a case,
- 2) the documents alone contain a reproduction of information, which have been duly noted in accordance with §13,
- 3) the documents are neutral documents, which have been prepared to procure evidence or an equivalent hereof with regard to the Actual circumstances of a case,
- 4) the documents contain general guidelines for the treatment of certain types of cases, or
- 5) the documents contain a systematic reproduction of certain areas of practice.

#### *Exemption of other documents*

#### **§27**

- 1) Protocols for meetings of the state parties
- 2) Documents, which have been prepared and exchanged between ministers and members of the Danish Parliament in connection with cases regarding legislation and other equivalent political processes.
- 3) Documents, which have been exchanged in connection with the execution of tasks by one ministry for another ministry.
- 4) Correspondence with advisers for use in court cases or when considering whether a court case should take place.
- 5) Material, which has been provided as a basis for the preparation of public statistics or scientific research.

#### *Declaration of actual information and external expert assessments*

**§28.** The right of access in documents covered by §23; §24, subsection 1; §25; and §27, subsections 1-4, covers, despite these regulations, information regarding the Actual basis of a case to the extent that the information is relevant to the case. The same applies to information regarding external expert assessment, which are found in documents, which are covered by §23; §24, subsection 1; §25; and §27, subsections 1-3.

*Subsection 2.* Subsection 1 does not apply to the extent that

- 1) it will require a disproportionate expenditure.
- 2) the relevant information is evident in other documents, which have been submitted in connection with the right of access to documents, or
- 3) the information is publicly available.

#### *Declaration of internal expert assessments*

**§29.** The right of access in documents, which are covered by §23; §24, subsection 1; §25; and §27, subsections 1-3, covers, despite these regulations, information regarding internal expert assessments in final form to the extent that the information are included in a case about a proposed bill or a public statement, a plan of Action or derivatives hereof. However, this does not cover information regarding internal expert assessments, which are found in documents that have been prepared for consultancy of ministers or consultancy of the presidency in Local Government and Danish Regions.

*Subsection 2.* §28, subsection 2, is applied similarly.

*Exemption of information regarding private affairs and operation and business conditions etc.*

**§30.** The right of access does not cover information regarding

- 1) individual private, including financial, affairs and
- 2) the technical organisation or procedures or operation and business conditions or derivatives thereof, provided that the information is of such considerable economic importance for the person or company, which the information concerns, that the request cannot be met.

*Exemption of information in the interest of national security or the defence of the realm*

**§31.** The right of access may be limited to the extent that it is of considerable importance to the national security or the defence of the realm.

*Exemption of information in the interest of foreign interests of the realm*

**§32.** The right of access may, in the interest of foreign interest of the realm etc., including the relationship to other nations or international organisations, be limited to the extent that confidentiality results from obligations towards EU law or international law.

*Subsection 2.* Furthermore, the right of access may be limited to the extent that it is necessary to protect foreign interests of the realm etc., including the relationship to other nations or international organisations.

*Exemption of certain types of information.*

**§33.** The right of access may be limited to the extent that it is necessary for the protection of substantial considerations to:

- 1) the prevention, investigation and prosecution with regard to law violations, executions of a sentence or derivatives hereof as well as the protection of the accused, witnesses and others in cases regarding criminal or disciplinary prosecution.
- 2) the effectuation of government control, regulation or planning activities or the measures to be introduced in accordance with tax legislation.
- 3) the public economic interests, including the effectuation of the business operations of the public sector.
- 4) the original ideas of scientists and artists as well as the preliminary scientific results and manuscripts.
- 5) private and public interests, where secrecy is necessary due to the special nature of the circumstances.

### *Declaration of right of access into parts of document*

**§34.** If the considerations mentioned in §§ 30-33 only refer to parts of a document, access into the remaining content of the document must be reported. This does not apply if

- 1) it will result in the abandonment of the consideration or considerations mentioned in §§ 30-33,
- 2) it will result in distinctly misleading information, or
- 3) the remaining content of the document does not have a comprehensible or coherent meaning.

### *The relation to confidentiality*

**§35.** The duty to report information is limited by special provisions regarding confidentiality, which are stipulated by the law or under the authority of persons working in the public sector.

## Chapter 5

### *The processing and settlement of requests for public access*

**§36.** A request for public access regarding documents, which are included in a case, in which there is or will be a decision by an authority etc., is decided by this authority whether it can be met. In other matters, cases regarding public access are decided by the authority etc., that is in possession of the document.

*Subsection 2.* The relevant authority etc. must as soon as possible decide whether a request for public access can be met. A request for public access must be processed within seven working days after receiving it, unless this is an exception due to the nature of the case or due to its complexity. The person, who has requested public access, must be notified of the reason why the deadline has been exceeded and of when the request can be finalized.

*Subsection 3.* Subsection 2 may be used in a similar fashion in connection with the processing of a request for a compilation of information, cf. §11, and for access to metadata, cf. §12.

*Subsection 4.* The relevant minister may establish provisions that deviate from subsection 1.

### *Complaints against decisions regarding the right of access*

**§37.** Decisions regarding the right of access may be contested distinctly and directly to the authority, which is the top supreme complaint board concerning the decision or processing of the case related to the request for public access.

*Subsection 2.* The complaint is submitted to the authority, whose decision is the matter of contention. The authority must as soon as possible forward the case and its documents to the complaint board within seven working days after receiving the complaint.

*Subsection 3.* Within 20 working days after receiving a complaint, with the decision as the matter of contention, finalize the complaint, unless this is an exception due to the nature of the case or due to its complexity. The plaintiff must be notified of the reason why the deadline has been exceeded and when a decision is to be expected.

*Subsection 4.* If agreed with the minister of justice, the relevant minister may stipulate that another authority than the one mentioned in subsection 1 will take on the role of the complaint board.

*Subsection 5.* Subsections 2-4 may be used in a similar fashion in connection with complaints against the decision regarding a compilation of information, cf. §11, or for access to metadata, cf. §12.

*Subsection 6.* The relevant minister may stipulate whether decisions regarding the right of access made by institutions etc., which are covered by §§3-5, can be contested.

**§38.** A decision regarding a rejection of access made by a municipality, a region or a municipal community in cases with no administrative complaint board must be accompanied with instructions on how to present the case to a municipal or regional authority as well as the procedure mentioned in §2. An appeal to bring in the case to a municipal and regional authority must be directed to the relevant municipality or region etc. in accordance with agreement in §37, subsection 2.

*Subsection 2.* Subsection 1 may be used in a similar fashion in connection with decisions regarding a compilation of information, cf. §11, or for access to metadata, cf. §12,

#### *Complaint against the processing time*

**§39.** If an authority has failed to finalize a request for right of access within two weeks after receiving it, the processing time may be contested distinctly and directly to the authority, which is the supreme complaint board concerning the decision or processing of the relevant case.

*Subsection 2.* The complaint is forwarded to the authority, whose processing time is being contested. If the authority has not finalized the request for public access within seven working days after receiving the case, it must forward the complaint to the complaint board with the justification for the processing time. In case of delays without any satisfactory justification, the complaint board may stipulate on the right of access.

*Subsection 3.* Within 20 working days after receiving a complaint regarding the processing time, the complaint board must finalize the complaint, unless this is an exception due to the nature of the case or due to its complexity. If so, the plaintiff must be notified of the reason why the deadline has been exceeded, and of when the complaint will be finalized.

*Subsection 4.* If agreed with the minister of justice, the relevant minister may stipulate that another authority than the one mentioned in subsection 1 may take on the role of the complaint board.

*Subsection 5.* If an authority has failed to finalize a request for a compilation of information, cf. §11, or for access to metadata, cf. §12, within two weeks after receiving it, the processing time may be contested separately. In such cases, subsections 2-4 may be used in a similar fashion.

#### *Gaining access etc.*

**§40.** Documents must be delivered in the same shape as demanded by the person requesting access. This does not apply,

1) if it is impossible or very difficult, or if considerations against it exist, or

2) if the material is publicly available.

*Subsection 2.* Subsection 1 may be used in a similar fashion in connection with the treatment of requests for a compilation of information or access to metadata.

*Subsection 3.* The minister of justice may establish rules for the payment of the submission of documents and for the submission of information or metadata.

#### *Notification duty*

If a request for access is submitted in cases as mentioned in §21, subsection 2, the authority will notify the employee of this with a specification of the person responsible for the request. When a decision regarding the access is made, the authority will notify the employee of the information surrendered in the case.

## Chapter 6

### *Commencement and interim provision, etc.*

**§42.** The Act becomes effective as of 1 January 2014.

*Subsection 2.* Requests for access submitted before the commencement of the Act will be decided in accordance with this Act.

*Subsection 3.* Act no. 572 from 19 December 1985 regarding public administration and its additional changes will be abolished.

*Subsection 4.* Subsection 3 will not affect cases processed in according with the Act of right of access to environmental information.

*Subsection 5.* Order no. 1145 from 22 December 1993 regarding the commencement of the public records Act regarding the administration on the Faroe Islands, which was changed by order no. 120 on 2 March 1999 as well as law no. 1187 on 27 December 1994 regarding the commencement of the public records Act regarding the administration in Greenland remain in force, until they are abolished or replaced by regulations by virtue of this Act.

*Subsection 6.* The right of access in accordance with §3, subsection 1, no. 3, §4, subsection 1, and §5, subsection 1, does not apply to documents agreed to or established by the companies, institutions, unions, etc. mentioned in the provisions before 1 January 1987.

*Subsection 7.* In accordance with §6, the duty to ensure information regarding the fulfilment of the tasks handled by a company etc. applies in relation to the tasks handled after the commencement of the Act.

*Subsection 8.* In accordance with §15, the duty to provide electronic records applies to documents surrendered to or prepared by an authority after the commencement of the Act.

*Subsection 9.* In accordance with §21, section 4, the right of access does not apply to management contracts issued before the commencement of the Act. In accordance with §29, the right of access does not apply to documents issued before the commencement of the Act.

**§43.** The Act does not apply to cases regarding Faroese or Greenland affairs. By royal decree, the Act may commence for such cases with the changes that the Faroese and Greenland conditions dictate. However, this only applies to cases that are being or have been treated by Danish authorities.

**§44.** The minister of justice will submit a proposal to revise §16 of the Act in parliamentary year 2016-2017.