IN THE EUROPEAN COURT OF HUMAN RIGHTS **APP NO. 62676/11**
BETWEEN:-

MAGYAR HELSINKI BIZOTTSÁG **Applicant**

- v -

HUNGARY **Respondent Government**

THIRD-PARTY INTERVENTION SUBMISSIONS BY ARTICLE 19 AND THE ACCESS TO INFORMATION PROGRAMME

INTRODUCTION

1. This third-party intervention is submitted on behalf of ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) and the Access to Information Programme (AIP) by the leave of the President of the Court granted on 1 June 2015 pursuant to Rule 44 §3 of the Rules of Court.

2. ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression and the right to freedom of information. ARTICLE 19 monitors threats to freedom of expression in different regions of the world, as well as national and global trends and develops long-term strategies to address them and advocates for the implementation of the highest standards of freedom of expression, nationally and globally. The Access to Information Programme is a Bulgarian NGO established in 1996 with the mission to promote and enhance the exercise of the constitutional right of access to information. AIP also operates in the fields of freedom of expression and personal data protection. To achieve its goals, AIP provides legal help, legal analysis, trainings, and monitors the implementation of the access to information law in Bulgaria.

3. In ARTICLE 19 and AIP's view, the core issue raised by the present case is the fundamental right of the public to obtain information held by public bodies and the justifiable limits that can be placed on that access. We argue that the right of access to information is a fundamental human right, and thus any restrictions on it must be necessary and proportionate with any data protection interests. Absolute exemptions do not meet this test. Further, information about the enforcement of justice in a country, including those that are providing legal representation, is a strong public interest that calls for the release of personal information.

I. ARTICLE 10, INTERNATIONAL LAW AND DOMESTIC PRACTICE INCLUDES THE RIGHT TO OBTAIN INFORMATION FROM PUBLIC BODIES

4. The right to information is now generally accepted in international law, in the recent case law of the ECHR, as well as by the European Union, the UN Economic Commission for Europe (UNECE), the overwhelming majority of member states, and by other important regional human rights bodies.

A. The Case Law of the European Court of Human Rights Recognizes the Right of Information Under Article 10

5. The interveners recognize that in the past, the Court did not recognize the right of access to information held by public authorities as being within the scope of Article 10. In particular, the Court observed that the right to freedom to receive information essentially prohibited a Government from restricting a person from receiving information that others wish or may be willing to impart to him, but that Article 10 did not confer on the individual a right of access to information, nor does it embody an obligation on the Government to impart such information to the individual (*Leander v. Sweden*, (9248/81) (1987), § 74). That approach was upheld also in *Gaskin v. UK* (10454/83) (1989) § 57. In both cases the Court dealt with the issue cautiously, noting the conclusions were made "in circumstances such as those of the present case". In *Guerra v. Italy* (14967/89) (1998) a right to access information was seen again as falling under the obligation of the State under Article 8, although it had little to do with circumstances from the applicant's personal life.

6. We note that these cases were decided in a substantially different era than from today. There were only 23 member states in the Council of Europe as the Cold War drew to a close. The right to information had only limited recognition at the international law and only a handful of countries worldwide had adopted comprehensive laws on access to information. The internet only existed as a research and educational network limited to a few users.

7. In 2009, the Court clearly took the opinion that the right to access information held by public authorities is an issue to be considered within the ambit of Article 10 in *Társaság a Szabadságjogokért v. Hungary* (37374/05). It found that in the circumstances of a public debate, withholding valuable information by the State authorities amounts to an information monopoly as a form of censorship. In debates on matters of general interest, non-governmental orgaisations (NGOs) appear in a role similar to journalists and the media. Consequently the Court extended the scope of the notion "public watchdog" used so far in the case-law under Article 10 of the Convention in relation to journalists and the media by adding the concept of a "social watchdog". That approach was further confirmed in *Youth Initiative for Human Rights v Serbia* (48135/06) (2013) and *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v Austria* (39534/07) (2014), where the applicants were NGOs seeking information in relation with their watchdog (*Youth Initiative*) or monitoring (*Österreichische Vereinigung*) role.

8. In *Kenedi v Hungary* (31475/05) (2009) *and Guseva v Bulgaria* (6987/07) (2015), the Court found a violation in cases of limits on access to information brought by private individuals. The former was a historian, while the latter was an activist on defense of animals rights. In both cases, the issue was about failure to enforce court decisions in favour of the applicants granting them access to information. Again, the Court demonstrated its attitude for a broader interpretion of the social watchdog" concept.

Conclusions from the case law

9. The following propositions can be outlined from the case law discussed:

(1) The Court now explicitly recognizes the right of access to information under Article 10 separately from the more narrow right of access under Article 8 of the Convention.
(2) The scope of the right of access to information is understood as linked to the contribution to a public debate by exchanging opinions and ideas.
(3) The gathering of information is an essential part of the function of both journalists and social watchdogs.
(4) As long as the right to information is secured under Article 10 of the Convention, any interference with its exercise needs to be justified under the conditions of paragraph two therein, that means it should be provided by law, proportionate to the aim to protect one or more of the interests listed and be "necessary in a democratic society". The last test implies checking on case by case basis the consistence with the principle of "sufficiency and relevance" of the interference and a mandatory balancing of interests exercise.

B. International Law and the Right to Information

10. There is now widespread acceptance that the right to information is an essential part of free expression. This is been found in the context of Article 19 of the International Covenant on Civil and Political Rights, as well as by the regional human rights treaties in Africa and the Americas.[1]

11. The UN Human Rights Committee, in General Comment 34 on Article 19 found that:

> Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output.…

12. In addition, the Committee has further recognized this in *Toktakunov v Kyrgystan,* Communication No. 1470/2006, where it stated that, "the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State."

13. The right has also been recognized by other UN bodies including the Human Rights Commission[2], Human Rights Council,[3] several Special Rapporteurs on Freedom of Opinion and Expression,[4] and the Special Rapporteurs on Health,[5] Water,[6] and Environment,[7] as well as in

[1] See Maeve McDonagh, The Right to Information in International Human Rights Law, HR L Rev (2013) 13 (1).
[2] Human Rights Commission, Democracy and the rule of law, Resolution 2005/32;
[3] Resolution 22/6. Protecting human rights defenders, A/HRC/RES/22/6, 12 April 2013. §11; Resolution 25/8. The role of good governance in the promotion and protection of human rights, A/HRC/RES/25/8, 11 April 2014; Resolution 25/21. Human rights and the environment, A/HRC/RES/25/21, 15 April 2014.
[4] See Report of the Special Rapporteur, Mr. Abid Hussain, 1993/45, E/CN.4/1995/32, 14 December 1994; Report E/CN.4/1998/40, 28 January 1998; Report E/CN.4/2000/63, 18 January 2000; Report E/CN.4/2004/62, 12 December 2003; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank LaRue, A/68/362, 4 September 2013.
[5] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Addendum, Mission to Japan, A/HRC/23/41/Add.3, 31 July 2013.
[6] Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/15/31, 29 June 2010; and Report A/HRC/18/33, 4 July 2011.
[7] Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe,

joint declarations by the international freedom of expression rapporteurs from the UN, OAS, AU and OSCE.[8]

14. Further, other major regional international bodies have also recognized the right of information as a key aspect of freedom of expression:

    - The Inter-American Court of Human rights in two cases, *Reyes v Chile*[9], and *Lund v Brazil*[10] has ruled that the right of access to information is a fundamental part of the right of free expression under Article 13 of the American Convention on Human Rights. In Reyes, the Court stated "by expressly stipulating the right to "seek" and "receive" "information," Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention."

    - The African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression states that "everyone has the right to access information held by public bodies; everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right".[11] The Commission sitting as a complaints body in *Good v Botswana*, Communication 313/05 (2010) stated that "[t]he right to information, which also forms part of freedom of expression, is a widely recognised right in international and regional human rights law".

C. National Practices on the Right to Information

15. The right of information is now widely recognized globally as a fundamental human right. As of the writing of this brief, 108 countries have adopted comprehensive national laws or regulations which sets out a right of access to information held by public bodies. In all of those countries, individuals are given a right to demand information from public bodies and the bodies are obliged to respond within a limited time frame and provide that information unless it fits within a specific limited exception. All of the laws provide for an external appeal to an ombudsman, independent commission, or court. In addition, over 100 countries have been identified as having constitutional provisions which either specifically recognize the right to information or include it through case law as a fundamental aspect of freedom of expression.[12]

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clean, healthy and sustainable environment, John H. Knox, A/HRC/22/43, 24 December 2012; and report A/HRC/25/53, 30 December 2013.

[8] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 1999; Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2004.

[9] *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Judgment of September 19, 2006. Series C No. 151.

[10] *Case of Gomes Lund et al. ("Guerrilha Do Araguaia") v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219.

[11] Declaration of Principles on Freedom of Expression in Africa; See also Adopted by The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17th to 23rd October 2002. Also see Activity Report of Adv. Pansy Tlakula, as the Special Rapporteur on Freedom of Expression and Access to Information in Africa, Presented during the 54th Ordinary Session of the African Commission on Human and Peoples' Rights, 22 October – 5 November 2013.

[12] See Roy Peled and Yoram Rabin, The Constitutional Right to Information, Columbia HR L Rev, Vol. 42, No. 2 (Winter 2011).

16. The recognition of the right is even more overwhelming in Europe. Of the 47 member states in the Council of Europe, only five: Andorra, Cyprus, Luxembourg, Monaco and San Marino have not adopted comprehensive legislation. Further, the Council of Europe has adopted a new convention to harmonize this legislation – CETS 205, the Convention on Access to Official Documents which is currently in the process of being signed and ratified by member states. It was signed and ratified by Hungary in 2010.

17. In addition, 42 of the COE member states have also signed the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) which provides for public access to information on environmental matters and requires that the member states adopt specific legislation and rules to ensure access to the information. The Convention has also been incorporated into EU law (Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC).

II. THE RELATIONSHIP OF THE RIGHT TO INFORMATION AND THE PROTECTION OF PERSONAL INFORMATION

A. The Two Rights are Complimentary and Equal

18. The right to information and privacy often play complementary roles. They both are focused on ensuing accountability of powerful institutions to individuals in information age. The Council of Europe stated in a 1986 Resolution that they are "not mutually distinct but form part of the overall information policy in society."[13]

19. As both the right to privacy and the right to information are fundamental human rights, it is necessary to consider how to balance the two interests. This is a new issue to the court, which has not yet addressed the relationship of the two. According to the Court case-law, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 46; and *Axel Springer AG v. Germany [GC], no. 39954/08*, § 90).

B. The Public Interest in Transparency of the Justice System and its Actors

20. Issues related to the judicial system and the proper administration of justice have been recognized as matters of public interest. Remarks for the functioning of the judiciary fall under the scope of Article 10 § 1 of the Convention, even in the context of proceedings (see summary in *Morice v France*, Grand Chamber judgment, § 125).

21. In its case-law the Court has found different categories of persons as "public figures" such as politicians (*Lingens, Oberschlick v Austria*), civil servants (*Janowski v Poland, Kasabova v. Bulgaria*), judges (*Morice v France*), big business directors (*Fressoz and Roire v France*), sportsmen (*Mosley v. UK*) etc. The overview of the Strasbourg authorities practice with that

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[13] Council of Europe Recommendation 1037 On Data Protection and Freedom of Information (1986).

respect supports a view that the list is not exhaustive. Of course, the role they play in the society determines diversity in the degree of openness (see *Janowski*, § 33).

22. In the view of the Court, the notion of public figures extends to the players in the sphere of justice. It held that as far as judges form part of a fundamental institution of the State and they may as such be subject to personal criticism within the permissible limits, and not only in a theoretical and general manner. When acting in their official capacity they may thus be subject to wider limits of acceptable criticism than ordinary citizens (see *July and SARL Libération*, § 74, *Morice* § 131).

23. As to the status of lawyers the Court has accepted so far that the specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts (*Morice* judgment § 132). As noted in the concurring judgment in *Bljakaj and Others v. Croatia*, "Judges, prosecutors, attorneys and lawyers, judicial clerks and other judicial officials perform a public function in so far as they all collaborate in the administration of justice."

24. That special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with regard to their conduct (ibidem § 133; see also *Van der Mussele v. Belgium*, *Casado Coca v. Spain*). And also, for the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (*Kyprianou v. Cyprus*, Grand Chamber judgment, § 175).

25. As concerns the responsibilities of the State to provide a system to secure the rights under Article 6 (also in civil cases), it is found as essential for the legal aid system to offer individuals substantial guarantees to protect those having recourse to it from arbitrariness (*Gnahoré v. France*, no. 40031/98, § 38).

26. The Council of Europe Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings state in part that, "In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly."

27. Based on the above, we believe the denial to provide information about the names and obligations of lawyers working for the legal aid mechanism as established by the State appears an disproportionate interference with the right to information.

C. Proportional Limits on Free Expression and Data Protection

28. As stated above, the Court requires that any limitations should be provided by law, proportionate to the aim to protect one or more of the interests listed and be "necessary in a democratic society". The last test implies checking on case by case basis the consistence with the principle of "sufficiency and relevance" of the interference and a mandatory balancing of interests exercise.

29. The identification of information as being personal identification should not stop the analysis of the public interest in its release. As noted by the European Court of Justice, "The right to the

protection of personal data is not, however, an absolute right, but must be considered in relation to its function in society."[14]

1. Limits in European Law

30. There are two major instruments in European law on data protection: the COE Convention on Data Protection (CETS 108), and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (EU Data Protection Directive). Both of these include requirements that the balance of interests relating to freedom of expression and protection of privacy be considered when implementing data protection law.

31. The COE Convention on Data Protection requires that data protection interests must be reconciled against other rights. The preamble states:

    - Reaffirming at the same time their commitment to freedom of information regardless of frontiers;
    - Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples

32. Similarly, the EU Data Protection Directive, in Recital 72 states: "Whereas this Directive allows the principle of public access to official documents to be taken into account when implementing the principles set out in this Directive". This is elaborated in the Directive in Article 9, which states:

> Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression.

33. Currently, there are significant developments in the field of data protection at both the Council of Europe and the European Union. Both bodies are significantly revising their data protection instruments. In both jurisdictions, the proposed revised texts reflect the stronger recognition of the need to clearly explain the balance needed for data protection interests with those of public access to information held by public bodies.

34. The revised COE Directive text states in its recitals that "Considering that this Convention permits account to be taken, in the implementation of the rules laid down therein, of the principle of the right of access to official documents". Article 9(b) allows for exemptions that are necessary and proportionate to allow for "the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression. [15]

35. The revised EU Data Protection, which was recently approved by the Council of Ministers in June 2015, further extends this recognition.[16] Recital 121a states that:

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[14] Case C-112/00, *Schmidberger* [2003] ECR I-5659, paragraph 80

[15] COE Council of Ministers Ad hoc Committee on Data Protection (CAHDATA). CM(2015)40 3 March 2015. http://www.coe.int/t/dghl/standardsetting/dataprotection/TPD_documents/CAHDATA%203_Report_CM(2015)40_En.pdf

[16] Presidency of the Council of the European Union, Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), Doc 9565/15, 11 June 2015. http://data.consilium.europa.eu/doc/document/ST-9565-2015-INIT/en/pdf

> This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Public access to official documents may be considered as a public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by this authority or body if the disclosure is provided for by Union law or Member State law to which the public authority or public body is subject. Such laws should reconcile public access to official documents and the reuse of public sector information with the right to the protection of personal data and may therefore provide for the necessary derogations from the rules of this regulation. The reference to public authorities and bodies should in this context include all authorities or other bodies covered by Member State law on public access to documents.

36. This is further elaborated in Article 80a which states:

> Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union law or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

37. Under the Council of Europe Convention on Access to Official Documents (CETS 205), there are no absolute exemptions. Article 3(1)(f) allows for the limitation on access to documents to protect "privacy and other legitimate private interests" but only if the restrictions are "set down precisely in law, be necessary in a democratic society and be proportionate to the aim."

2. Domestic Law on Balancing Privacy and Data Protection

38. The need to reconcile data protection and freedom of expression interests has wide recognition in the practice of member states. There is both widespread acknowledgement that personally identifiable information which relates to an individuals' public function should not be exempt from release and the need for a public interest evaluation. Some examples:

- In Ireland, the Freedom of Information Act expressly excludes from the definition of personal information certain information relating to individuals who are public servants or contractors to public authorities, including the name of the individual, information relating to the position held by the individual or its functions and the terms on which the individual holds the position or performs the contract. This exclusion has been applied to the names and work addresses of public servants, the names of staff members who had attended particular meetings and the names of a project team which had successfully competed for a tender.[17] To ensure that there is no conflict between the Data Protection Act and the FOIA, the DPA provides a specific exemption for release of personal information under the FOIA, subject to constitutional protections and international obligations.[18] The personal information exemption is subject to a public interest test which allows for the release of the information if "the public interest that the request should be granted outweighs the public interest that the right to privacy of the individual to whom the information relates should be upheld" or it benefits the individual. Other information that has been ordered released under the public interest test includes payments of agricultural subsidies, politicians' expenses, the salary of a former public servant, and the names of persons from whom a public body leased property.[19]
- In Slovenia, Article 6(1)(6) of the Access to Public Information Act (AIA) requires the withholding of personal information, when its disclosure would violate the Personal Data Protection Act. However, under Article 6(1)(3), access to information must be provided if it is "related to the use of public funds or information related to the execution of public functions or employment relationship of the civil servant". There is also a public interest test which provides that information shall be released, "if public interest for disclosure prevails over

[17] Maeve McDonagh, *Freedom of Information Law* 3rd ed., 2015, 14-56 – 14-67.
[18] DPA §1(5)(a).
[19] Maeve McDonagh, *Freedom of Information Law* 3rd ed., 14-186.

public interest or interest of other persons not to disclose the requested information". In Decision No. 090-25/2015 of 29 May 2015, the Information Commissioner stated that the identity of the lawyer, representing and consulting a client, which was a public entity, shall not be withheld from the public because the information is related to the use of public funds and therefore personal data would not be protected. In Decision No. 090-104/2014 of 10 November 2014, the Commissioner ordered that the public body reveal the majority of employment and consultancy contracts despite the personal data and business secrets exemptions because of the use of public funds. The consultancy contracts were concluded with law firms and individual experts. Thus, the names of individuals who received public funds from the state on the basis of consultancy contracts are not protected personal information.

- In the UK, there is an absolute exemption in the Freedom of Information Act 2000 for personal data, thus any decisions on the release of personal data must analyze the potential disclosure using the Data Protection Act principles. The key issues are whether the release of the information would be fair and lawful under the principles. This focuses on how the information was collected in the first place, the reasonable expectation of the person about its disclosure, any adverse effect on the person, whether consent to release the information was obtained, and the public interest in releasing the information.[20] The Information Rights Tribunal has ruled several times on the identity of senior officials, establishing that they will not normally have a reasonable expectation of anonymity even where the contents is sensitive unless, for example, they would be likely to be targeted for harassment. Junior officials are likely to have an expectation of anonymity unless they act as spokespersons for the authority or are carrying out the responsibilities of more senior officials.[21]
- In Bulgaria, personal information is exempt from the Access to Public Information Act. However, the information can be released under Article 37 if there is an overwhelming public interest. The Constitutional Court has ruled that the protection of persons occupying public position or performing public functions in terms of transparency and openness is much smaller than the one of the private citizens (Decision No 4 of 26 March 2012). The Supreme Administrative Court has applied this in access to information cases when deciding the balances of interests test under the Access to Public Information Act. Names of lawyers, judges and civil servants usually are easily available in the relevant public registers on the internet. Even names of lawyers assisting public prosecutors are also public, according to court practice (2014). The court practice also states that the public interest to know overrides the personal data protection as regards the following information relating to public officials including judges and public prosecutors: education and qualifications (2006), professional experience (2012), travel expenses (2006), basic salary (2014), membership in quasi-public bodies (2012), conflict of interests declarations; gifts (2013), number of decided cases by judges, public prosecutors, public investigators (2015), and names of judges with delayed court cases (2014).
- In Serbia, under the Law on Free Access to Information of Public Importance, Article 14(2) allows the release of information that "relates to a person, event or occurrence of public interest, especially in case of holder of public office or political figures, insofar as the information bears relevance on the duties performed by that person."

[20] For a detailed analysis, see Information Commissioner's Office, 'Requests for personal data about public authority employees, Freedom of Information Act Environmental Information Regulations', Version 1.2, 20130522, https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

[21] Department for Business, Enterprise and Regulatory Reform & Information Commissioner & Friends of the Earth (EA/2007/0072); Robin Makin & IC & MOJ (EA/2008/0048); Creekside Forum v Information Commissioner & DCMS (EA/2008/0065); Alasdair Roberts v IC and Department for Business, Innovation & Skills (EA/2009/0035); Department of Health & Information Commissioner & Rt Hon John Healey MP & Nicholas Cecil (EA/2011/0286 & 0287).

- In Germany, under Section 5 of the Federal Act Governing Access to Information held by the Federal Government (BGBl. I S. 3154), the "applicant's interest in accessing information shall generally outweigh the third party's interests warranting exclusion of access to the information where the information is limited to the third party's name, title, university degree, designation of profession and function, official address and official telecommunications number and the third party has submitted a statement in proceedings in the capacity of a consultant or expert or in a comparable capacity." This would likely include the names of lawyers in public court cases. In other cases, it can be granted "where the applicant's interest in obtaining the information outweighs the third party's interests.
- In Poland, under Article 5 (2), the privacy exemption does not apply to "information on persons performing public functions, being connected with performing these functions, including the conditions of entrusting and performing these functions and in the event when a natural person or entrepreneur resigns from the right to which he was entitled to."
- In Turkey, under Article 21 of the Turkish Law on the Right to Information, "information and documents that will unjustly interfere with the health records, private and family life, honour and dignity, and the economical and professional interests of an individual, are out of the scope of the right to information". However, that information can be released for public interest considerations.
- Under Article 19(1bis) of the Swiss Federal Act on Data Protection (FADP), "Federal bodies may also disclose personal data within the terms of the official information disclosed to the general public, either ex officio or based on the Freedom of Information Act of 17 December 2004 if…the personal data concerned is connected with the fulfillment of public duties; and there is an overriding public interest in its disclosure."

CONCLUSION

39. The right of access to information held by public bodies is a fundamental human right under decisions of the Court, as well as recognized by the United Nations, other prominent international human rights bodies and by an overwhelming number of member states.

40. Any limitation on the right must meet the standard tests of being elaborated in law, and being proportionate and necessary. Any privacy exemptions must meet those tests.

41. There is strong practice and case law across the Member States that the personal information of public officials relating to their public activities is not generally exempt from right to information legislation. In addition, the public interest must be considered.

42. Information relating to the administration of justice and the actors including lawyers is of a strong public interest.

David Banisar
ARTICLE 19

Alexander Kashumov, attorney-at-law
Access to Information Programme