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COMMENTARY ON THE UKRAINIAN LAW ON INFORMATION

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1. Introduction

There are various models for legislation on the principle of public access to official information in different countries. Legislation on this principle is since long spread throughout Scandinavia; The Swedish system is by far the oldest as it dates back to 1766. Finland adopted legislation in this field in 1951, which is in the main accordance with the Swedish rules, and Finland has recently revised their system. Denmark and Norway followed in 1970.

Constitutional provisions or ordinary law relating to a general right of public access to official information exist in several other European countries, such as Netherlands, Spain, Portugal, Austria, Hungary, Estonia, Belgium, Romania, France, Greece, Italy and Ireland. Work in this field - new legislation or revision of existing rules - is in progress in the United Kingdom, Germany, Poland and Russia several other of the new democracies.

Some countries, such as the Scandinavian, for example Sweden and Finland, have laws granting individuals a basic right of access to *documents* held by the authorities, with limitations of that right laid down in law in order to protect information of a sensitive nature or documents which are in a preparatory stage. Other countries, for example the Netherlands, have a slightly different approach in the sense that its system for access deals with informing individuals, independently of whether the information is contained in documents or elsewhere. One could speak about, on the one hand, information- and, on the other, document-based systems for access.

2. The individual right of access to official information in international law

2.1 The European Convention on Human Rights

The fundamental right to freedom of expression under Article 10 of the European Convention for Human Rights includes the right to receive and impart information without interference by public authorities.

The boundaries of the protection afforded by Article 10 as regards the right of access to information have been examined in some cases by the European Court of Human Rights. The Court has distinguished between on the one hand public and media access and on the other hand individual access to information, including the right of access to documents by individuals with a particular interest in obtaining the information.

The Court has stated that it is important that the public be enabled to obtain access to information from the authorities. The protection afforded by Article 10 has not been interpreted as to include a general right of access to information from authorities, but it has indicated that the public has a right to receive information of public interest and significance (e.g. the Observer and Guardian judgement, Series A no. 216, paragraph 59) and that media enjoys a privileged form of freedom of expression and information because of its role to inform about matters of public interest and the public's right to receive such information (e.g. the Sunday Times judgement, Series A no. 30, paragraph 65).

The European Court of Human Rights has interpreted Article 8 of the Convention - the right to respect for privacy - in some cases regarding individual requests for access to information concerning the applicants (the Leander judgement, Series A no. 116, the Gaskin judgement, Series A no. 160 and the Guerra judgement, Reports 1998-1). The Court has stated that the right according to Article 10 to receive information forbids the State to interfere with an individual's right to receive information, but does not impose on the State a positive obligation to collect, impart or disseminate information to individuals. Article 8 however confers a right for individuals to receive from the authorities essential information concerning or affecting them personally.

To conclude, no general right of access to official information follows from the European Human Rights Convention, but the Convention encompasses, through Article 8, a limited right of access to information of personal interest to individuals.

2.2 The UN universal declaration on human rights

Article 19 of the UN universal declaration on human rights could in one respect be said to go one step further compared to the European Convention on Human Rights regarding freedom of information as it is inherent in this right not only the right to disseminate information but also "to seek information".

2.3 European Co-operation

2.3.1 The Council of Europe

The subject of public access to official information is on the agenda in various forums for European co-operation. Before relating current results of co-operation on access to official information should be mentioned the 1981 Council of Europe Recommendation No. R (81) 19 on the Right of Access to Information held by Public Authorities. The recommendation is comprised of a number of principles, for example that everyone within the jurisdiction of a Member State shall have the right to obtain, upon request, information held by public authorities (other than legislative bodies and judicial authorities), effective and proper means shall be provided to ensure access to information and the principles of access should apply subject only to certain limitations and restrictions.

Within the Council of Europe the issue of public access has recently been discussed in the Group of Specialists on Access to Official Information (DH-S-AC) under the remit of the Steering Committee for Human Rights (CDDH). The CDDH recently decided to pass a draft Recommendation on Public Access to Official Documents elaborated by the DH-S-AC to the Committee of Ministers for adoption. The draft contains a number of principles that can be seen as a revision and development of the 1981 recommendation, mainly the following.

- Member states should guarantee a right of access, on request, to official documents held by public authorities, without discrimination on any ground, including national origin. (Principle III)

- Possible limitations (for the protection of national security, defence and international relations; public safety; prevention, investigation and prosecution of criminal activities; privacy and other legitimate private interests; commercial and other economic interests, be they private or public; equality of parties concerning court proceedings; nature; inspection, control and supervision by public authorities; economic, monetary and exchange rate policies of the state; confidentiality of deliberations within or between public authorities for an authority's internal preparation of a matter) should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting the listed interests. Access may be refused if disclosure of the information would be likely to harm such an interest, unless there is an overriding public interest in disclosure. (Principle IV)

- Applicants should not be obliged to specify any reason for their requests. (Principle V. 1)

- Formalities for requests should be kept to a minimum. (Principle V. 2)

- Requests should be dealt with by any authority holding the document. (Principle VI. 1)

- Requests should be dealt with on an equal basis. (Principle VI. 2)

- Requests should be dealt with promptly. (Principle VI. 3)

- Access should be allowed in the form of inspection of original documents or copies, taking into account, within reasonable limits, the preference by the applicant. (Principle VII. 1)

- Partial access to documents should be allowed if only part of the document is secret. (Principle VII. 2)

- Access to original documents on the premises of an authority should be free of charge, although a self-cost fee may be charged for supplying copies. (Principle VIII)

- Refusals should be possible to appeal before a court or another independent and impartial body established by law. (Principle IX)

2.3.2 The European Union

Within the EU the latest Treaty revisions led to the inclusion of a provision in the EC Treaty (Article 255) that states that the three most important EU-institutions have to adopt rules on access to their documents. This has been done through a legal act adopted by the European Parliament and the Council in May 2001: The Regulation (1049/2001) on public access to European Parliament, Council and Commission documents. The EU regulation includes the following main features.

- All documents held by one of the three institutions, including both documents produced by the institutions and documents handed in by third parties, are covered by the scope of the rules. However some documents, *inter alia* documents from a member state that the member state has requested should not be released without permission from that state and documents classified for the protection of vital interests such as defence matters, are subject to special treatment. (Articles 3 and 4)

- Exceptions to the main rule of access shall be made in order to protect certain interests: public security, defence and military matters, international relations, the financial, monetary or economic policy of the union or one of its member states, physical or legal persons' economic interests, judicial proceedings and legal advice, the purpose of inspections, investigations and audits, privacy and personal integrity and preliminary internal deliberations. All these exceptions are conditioned by a harm-test. Some of them do not apply even if a specific harm can be established as a consequence of the release of the document in question if there is an overriding public in disclosure. (Article 4.1-3)

- If only part of a document is covered by a secrecy exemption the remaining parts shall be released. (Article 4.6)

- Each institution shall set up a public register of its documents. (Article 11)

- Documents shall be provided in the form requested by the applicant, either as a copy, including electronic copies if the documents exists in such a form, or in the original form at the premises of the institution. (Article 10)

- Applications for access to a document must be made in writing and specify to a certain degree what document is requested. The written applications can be made through e-mail or fax. (Article 6)

- Final decisions by the institutions refusing access can be appealed to the EC Court. (Article 8)

2.3.3 The Aarhus Convention

In 1998 in Aarhus, Denmark, the UN European Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted. The Aarhus convention is different from the Council of Europe and EU instruments on access to information as the latter deal with access in a general sense but the Aarhus convention is concentrated to the environmental field. It also deals with several aspects of increasing public debate and participation in environmental matters apart from access to information. The usual essential elements of a regulation in the access to information field are also found in the Aarhus convention.

3. Essential elements in a system of access to official information

In the following will be discussed the structures of general systems for access to official information. This does not include the information policies of authorities nor any other form of active supply of information to the public, but the individual right of citizens to request information of their own choice from the authorities. The individual's right to obtain information because of his or her personal status as a party to or otherwise involved in proceedings within an authority is also excluded from the presentation.

In order for national legislation to provide a complete set of rules in the field of access to official information, certain elements need to be included in the structure of such a system. A pattern of such elements can be found in all existing well functioning legislations on access to official information. These elements are presented in the following.

3.1 The scope of the rules

The basic framework of the rules should deal with the general scope of the rights of the beneficiaries and obligations of the authorities, including stating who is obliged to provide information, the beneficiaries of the right, what kind of information is covered and in what way and for which purposes the basic presumption for access to information may be restricted. It is also important that legislation in a field of this kind, which sets out rights for individuals and obligations or the authorities, is comprehensive and easy to apply and survey.

3.2 Applications for access and the handling of such applications

As regards applications for access to official information questions arise such as whether the applications have to be formalised and what information the applicant must submit in order to have the application considered. The more formal the requirements regarding applications for access the greater the risk of lack of efficiency and speed in the handling of such applications.

The applicant should not need to state the reasons for the request, unless in exceptional circumstances when this would lead to the release of information which would otherwise be withheld on grounds of secrecy. In those cases it should be up to the applicant to decide whether he or she wishes to state the reasons. (C.f. Principle V.1 of the draft CoE recommendation, Article 6.1 of the EU regulation and Article 4.1 (a) of the Aarhus convention)

Of course this also relates to the formalities that apply to the decision-making process in these matters. If applications are normally dealt with by the official in charge of the information or the document in question there is usually no need for extensive rules regulating the initial applications for access. If, on the other hand, the applications have to be processed within a bureaucratic and hierarchical organisation there is normally more rules on formalities surrounding the applications. (C.f. Principle V.2 draft CoE rec.)

The process of handling applications also need to be considered, including *inter alia* if maximum time-

limits for dealing with requests should apply. It is of fundamental importance that applications for access are dealt with rapidly. This is of particular importance to media but private citizens often have the same need for immediate information. Maximum time-limits should therefore generally be looked upon in a positive way, but one must not forget the risk it entails in the sense that a maximum time-limit may set the standard time for handling applications. To avoid this risk a basic rule on rapid handling of applications can be set out in combination with the maximum time limit. (C.f. Principle VI.3 draft CoE rec., Articles 7 and 8 of the EU regulation and Article 4.2 of the Aarhus convention)

Another important aspect that should be considered is the significance of classification of confidential information. The various systems take different approaches. In some systems classification is binding unless it is changed or revoked in formal manner and/or within certain fixed time-periods. In other systems classification is merely a warning that the document in question contains sensitive information but in connection with each request the official handling the request must assess independently whether or not the classification should prevail. In my opinion the latter is preferable in order to guarantee access unless it is assessed that secrecy is necessary for the particular information at the time of the request.

An issue in this context, which also has to do with the forms of access, is the scope of classification; In some systems the classification covers the *document* as such whilst others take the approach that it is the *information* contained in the document which is sensitive and therefore parts of a classified document, i.e. the non-sensitive parts, should be handed out. This is technically done by handing out the document with the secret parts blanked out. (C.f. Principle VII.2 draft CoE rec., Article 4.6 of the EU regulation and Article 4.6 of the Aarhus convention)

3.3 Forms of access

Under the issue of forms of access should be considered to what extent the applicants´ wishes regarding the form for access should be fulfilled, i.a. inspection of documents on the authorities´ premises, copies, translation etc. (C.f. Principle VII.1 and 3 draft CoE rec., Article 10 of the EU regulation and Articles 4 (b) (ii), 4.8, 5.2 and 5.3 of the Aarhus convention)

The question of translation is not an issue that is normally dealt with within the legislation on the individual right of access, at least not in countries with a single official language, but rather in the more general legislation on administrative procedures. In countries where there are more than one official language or minority languages the question of translation is more closely linked to fundamental principles on access to information.

The possibility to inspect documents on the premises of the authority holding them is of great importance, this is often a privilege for those who live in the vicinity of the authority in question. Therefore an important issue which has to be dealt with is the cost of access; who should bear it and according to what principles. In the existing European systems there are normally no charges for letting the public inspect documents and other forms of information on the premises of an authority. On the other hand a fee is often taken out for photocopying and other kinds of copying and that fee is usually based on a self-cost principle, generally estimated on basis of the average overall costs for the copying.

The new technologies will make it possible for the authorities to disseminate and for the public to receive documents at low costs. The possibilities for electronic processing of data is a very welcome addition to the various forms of access to official information, but it must be borne in mind that it also poses risks to disseminate sensitive data this way. Also the additional risk of infringements on copy-right must not be forgotten.

Some legal systems limit the duty for the authorities to copy documents or present them at the premises when the documents are easily accessible by other means, such as widely published material that can be accessed by libraries or book stores to which the authority can refer the applicant.

3.4 Review

Refusals to grant access to information should be subject to review. In Europe national systems for rights of access to official information normally provide for a right to judicial review of refusals to grant access to information. It is also common to allow review on a higher level in the hierarchy within the particular authority dealing with the request and for recourse to complaint as regards procedural questions to independent bodies such as Parliamentary Ombudsmen. In some European systems, such as the UK and Irish legislations, special bodies, Information Commissioners, have been set up to handle appeals against refusals to have access to documents. (C.f. Principle IX draft CoE rec., Articles 7.4 and 8.3 of the EU regulation and Article 9 of the Aarhus Convention)

3.5 Supporting rules and measures

In order for a right of access to information to become effective it is necessary that the legal system provides for measures that help realise this right, for instance rules obliging the information holder to document and file the information, official registers containing lists of records of official information - both secret and public information - and duties to keep them in accessible archives. (C.f. Principle X draft CoE rec., Articles 11, 14 and 15 of the EU regulation and Article 5.2(b) of the Aarhus convention)

It is also important to have guarantees that official documents are not disposed of or destroyed prematurely. The registers, however, form an especially important element in a system of access to documents and they are not only essential for the applications for information in the individual cases but also help make the administration more efficient.

Aside from supporting legislation it is necessary to train the public officials in applying the provisions on access and to have an attitude of service in their relations with the citizens; The Swedish experience is that this must be an ongoing project in the sense that all newly recruited staff as well as those with longer experience in the administration must be given education on the legislation and on the judicial praxis in this field. It is also important that the public is being informed of their rights by the administration.

4. Access to official information according to the Ukrainian Law on Information

4.1 General comments

The Ukrainian Law on Information (LOI) deals with many aspects in all areas of the information field. To my view this has resulted in a confusing mixture of citizens' and authorities rights and duties. This is not least the case as regards the provisions pertaining to access to official information. As regards access to official information the LOI lacks a proper definition of the concept of official information and it is therefore difficult to properly understand the exact scope of this right. The secrecy provisions are not detailed enough, which is serious as it leaves room for discretionary interpretation. The LOI contains some positive elements as well. In the following the LOI will be examined more in detail as regards the public right of access to official information held by the Ukrainian authorities.

4.2 Scope

The LOI asserts the rights of the citizens of Ukraine to information in setting forth the legal principles of activities in the information sphere, according to its preamble. The LOI deals with rights of citizens in the information field as well as their obligations, authorities' duties as regards information policies, government control over the application of the law, professional training, statistics, definitions etc. The LOI thus cover a wide scope of activities in the information field. This is not necessarily a problem, but the structure of the law is complicated. It is very difficult to have an overview of the exact framework for citizens' rights and duties and the obligations of the authorities. No obvious advantages in collecting all these provisions into the same context are evident.
In the following the specific area of the individual right to request official information will be dealt with. Generally speaking it is difficult to get a comprehensive picture of the conditions and limits of this right and the LOI would benefit from a clearer distinction between the various subjects regulated in the law and more detailed rules defining this right.

4.2.1 Basic rule on access

The Constitution of Ukraine states in Article 34 that every person shall have the right to freely acquire, store, use and disseminate information and exercising these rights may be restricted by law to protect certain listed interests, which correspond to those listed in Article 10 of the European Convention on Human Rights. The basic legal framework for access to official information is set out in the LOI. According to Article 2 of the LOI the objective of the law is to establish the general legal principles of receiving, using, disseminating and storing information. None of these basic provisions expressly sets out any obligation for Ukrainian authorities to hand out information on request from citizens or a corresponding right for citizens to request information from the authorities. This right of the citizens and corresponding duties for the authorities are understood more or less explicit from other provisions in the LOI.

I suggest that an introductory provision is inserted in the LOI that explicitly formulates that every person has a basic right of access to information (or documents) held by the Ukrainian authorities. (C.f.

Principle III draft CoE rec. and Article 2.1 of the EU regulation)

The LOI provides for a right of individual access to various types of information. The information can either be in the form of official documents (Article 21) or as written or oral information relating to the activities of the authorities (Article 32). There are definitions of "official documentary information" in Articles 19 and 21. According to Article 19 statistical information shall be understood as official documentary information. Article 21 contains a list of a number of types of information in central state organs and local and regional self-government authorities, such as legislative acts, acts of the president of Ukraine and non-normative acts.

I assume that the definitions in Articles 19 and 21 are not exhaustive and that many other documents drawn up by the authorities or submitted to them are included in the definition. If not, there ought to be a review of the law in this respect, taking account of the following. Normally the definition official documents encompasses documents drawn up or produced by an authority and documents submitted to the authority. There are various models for the definition of documents (c.f. Principle I draft CoE rec., Article 3 (a) of the EU regulation). A document is usually considered official when it has been finalised or at least when there is a decision in the matter it pertains to. The definition of a drawn up document often depends on how the secrecy provisions are formulated. A broad definition sometimes corresponds to a secrecy provision protecting the internal work of an authority (c.f. Principle IV.1 (x) draft CoE rec. and Article 4.3). If the definition is more narrow secrecy protection may be unnecessary.

The accessibility can also depend on how widely spread the documents are. If they have been handed out externally already before they are requested or are widely spread within the authority there is usually no reason for exempting the from public access, unless of course they contain sensitive information *per se*. Incoming documents are usually easier to deal with; They are normally encompassed by the definition and any sensitive information in them can be dealt with by the usual secrecy exemptions.

4.2.2 Beneficiaries of the rights

The beneficiaries of the rights stated in the LOI, including the right of access to official information, are according to the Preamble and Articles 9 and 32 of the LOI, the citizens and legal persons of Ukraine. This may be natural as regards certain other rights and obligations in the LOI, but not as regards access to official information. To a large extent many other persons who are affected by decisions and policies of a state may have a legitimate interest in receiving information from the authorities, such as residents of a state who has not yet acquired citizenship. Another factor is that it is usually of no importance to the authority handing out the information who and for what purpose the information is requested. A requirement for citizenship is therefore usually be an unnecessary bureaucratic element and I would suggest an overview of the law in this respect.

The duty to hand out official information pertains to legislative, executive and judicial authorities and the information can be either oral or written (Article 32). The inclusion of so many different kinds of authorities is recommendable. (C.f. Principle II draft CoE rec.)

4.2.3 Possible restrictions of the right of access

The basic framework for restricting access to information is found in the Constitution of Ukraine. According to Article 34 of the constitution the exercise of the right of freedom of expression and information may be restricted by law in the interests of national security, territorial integrity or public order with the aim of preventing disturbances or crimes, protecting people's health, other persons' reputation or rights, preventing disclosure of confidentially obtained information or maintaining the authority and impartiality of justice. Article 32 of the constitution protects the right of protection for personal integrity by stating that "Acquisition, storage, use and dissemination of confidential information about a person without his/her consent shall not be allowed, except in cases determined by law and only in the interest of national security, economic welfare and human rights.".

There is no definition in the constitution of the term "confidential information". If information about a person is classed as confidential in this respect, however that is done, the balancing test laid down in Article 32 is means that certain information about a person can still be released if it is motivated by an outweighing interest as listed in the provision. No further definition of these interests is given in the constitution. The interpretation of what is meant by the listed interests must then be sought elsewhere.

According to Article 37 of the LOI requests for access to documents containing certain information shall be denied. In order to be complete a system of restrictions need to define the scope of the sensitive information, e.g. the kind of information that may be sensitive. Furthermore must be laid down the conditions for the restrictions. They should be considered in two steps. Firstly in the form of a harm test; Information should only be possible to withhold if its release would lead to some specified harm. Secondly, there are usually situations when a balancing between the possible harm and the public interest in disclosure is motivated (c.f. Principle IV.2 draft CoE rec. and Article 4.1-3 of the EU-regulation). As a practical example could be mentioned a situation when information about unhygienic circumstances in a restaurant is handed out from a health authority to possible customers because the public interest in giving the public a possibility to refrain from eating dangerous food outweighs the economic damage to the restaurant.

There are various models for constructing these both kinds of tests. If a provision is specific enough as regards the type of information covered it may be satisfactory to leave out measures for carrying out the tests in connection with requests; certain specific information may be of a nature that precludes any overriding public interest or the necessity of performing a harm test. An example could be extremely sensitive medical information about a person, which information could then be withheld unconditionally. What qualifies as secret information according to Article 37 is commented below in the same order as they are listed in the respective article.

Information duly qualified as a state secret

The definition of state secrets is not given in the LOI, but in a special law. This law is referred to in Article 30. For the sake of comprehensiveness and overview the relevant provisions restricting access to what may qualify as state secrets and thereby be restricted ought to be laid down in the LOI. Obviously the abovementioned requirements of harm-tests and public interest balancing tests also applies to secrecy provisions protecting any public interests.

Confidential information

The definition of "confidential information" is found in Article 30: "Confidential information shall be understood as data being processed, enjoyed or managed by certain physical or legal persons, to be disclosed at their discretion, subject to conditions established by these persons."

The notion of "originator control", i.e. the possibility for a third party who hands in information to an authority to have final influence over the release of the information is a concept that slowly seems to be on its way out in European law. In my opinion such originator control should be counteracted. The democratic element in granting access to official information is undermined by allowing third parties a veto over the release of information submitted by them. It is a different thing to weigh in a third party's opinion in the ordinary assessment of harm to a protected interest; that is a normal part of the procedures when handling a request for access. The public interest, however, in having access to information held by the authorities is not diminished by the fact that the information was supplied by a third party, especially if the information has any influence over the decision-making of the authority. I suggest that the concept of "confidential information" is reviewed. The lack of harm-tests and public interest balancing test is especially serious.

Data relating to law enforcement authorities in cases when such disclosure may harm the investigation or citizens' right to a fair trial or threaten life or health

This provision could be elaborated further. The first protected interests are only valid as long as the investigation or trial is ongoing. Usually this type of provision adds to "investigation" other phases of the proceedings such as the prevention and prosecuting of crimes.

Information relating to private life

There is no closer definition of the concept of "private life". Article 23 lists what kind of information is defined as information about a person. Possibly this is what is meant by the concept in Article 37, but then it should be stated more clearly. Furthermore the provision lacks a harm-test and a public interest balancing test; Not all information about a person ought to be withheld at all times by all authorities, especially information about officials of the authorities, their qualifications etc.

Interdepartmental correspondence, provided such documents relate to a given institution's policy, decision-making or precede the making of decisions

The method used in Article 37 is one of two alternatives. Internal information is always protected to certain extent and this can be done either by using a restriction on access or by exempting these kind of documents from the scope of application of the law. The Ukrainian LOI has chosen the first alternative. The question is what is meant by "interdepartmental": is this to be interpreted in a strict fashion or is it possible that documents can be spread to wide circle of officials at different levels and areas of competition and still not be accessible? If the latter is the case the provision ought to be reconsidered and be formulated in way that diminishes the authorities possibilities to withhold the documents.

The provision also ought to explain what happens to the documents after a decision has been taken. Are they to any extent accessible then? It is one thing to be able to hold internal discussions in peace and quiet, to have a "space to think", but the democratic element of access to information requires that the public has a possibility to take part in the debate that precede decision making on a policy level or if the decision is of general interest.

"information not to be disclosed … and the institution receiving the request has no right to disclose this information at its own discretion"

This provision is not clear. It is problematic if it means that the authority which receives the request for a document handed in to it from another authority or body where the document is secret, is not allowed to release the document even if, after applying the law, it assesses that the document is not secret.

Firstly, the basic principle, which is also related to democratic legitimacy, that the holder of information should decide upon its release, is undermined if not each authority holding a document may independently assess its sensitivity. Therefore such restrictions should be used very sparingly. Secondly, the provision lacks any direction on how to handle such requests. Should they be referred to the original authority or is the original authority merely consulted and given the right of a veto? Pre-classification is not regulated in the LOI and is a measure that should not preclude an authority from assessing whether secrecy or not applies in connection with each individual request for access.

I suggest that the provision is reformulated, allowing the holder of a document to determine the question of its release, possibly after after consulting the originator (c.f. Article 4.4 of the EU regulation).

Financial institutions' information prepared for controlling fiscal authorities

This provision also lacks the harm test and the public interest balancing test.

In my opinion the protection information of private subjects economic circumstances should be added to the list of exemptions.

4.3 Applications and handling of requests

Requests for access to information from the authorities can be made either for official documents or for written or oral information. Formalities as regards requests for access to official information are regulated in Article 32 of the LOI. A request for access to an official document must be made in writing and the request shall contain the applicant's name, address and which document is requested.

The LOI does not explain how applicants are given the opportunity to identify the documents they may want to request. The most efficient measure would be to have publicly available registers over all documents falling under the scope of the legislation. Failing that the authorities should have a far-reaching duty to assist the applicants in identifying the documents. This ought to be expressed in the LOI. The service duty in general towards applicants should be dealt with, either in the LOI or in the legislation on administrative procedures.

Article 32, second paragraph, is formulated in a way that might be improved, unless it is a translation mistake. It states that a citizen has a right to request access to a document except in cases where access is restricted. More correct would be to state that a person has no right to have access to restricted documents but surely they have a right to request them, even though access may be denied.

Article 32 does not stipulate any duty for applicants to give reasons for their requests. This is very positive and in line with all modern public access legislations. A complication is however present in this context by the provision in Article 29.

According to Article 29 of the LOI "The right of priority in receiving in formation shall be vested in citizens requiring such information in the line of duty.". A basic principle as regards handling of applications should be the equal treatment of applicants. One of the features of the LOI is that it regulates all areas of information supply in Ukrainian society. As far as Article 29 is applied in situations where a party to proceedings is in need of information, and thus does not affect the general right of the public to have access to official information, the provision may be acceptable to a certain extent. However, as regards general public access to documents this provision is not in line with the principle of equal treatment.

Even privileges for journalists in this respect are difficult to motivate. It is true that they play an important role as disseminators of official information often being the most valuable link in this respect between the authorities and the public. Still, in my opinion, service towards journalists should be handled differently, through regular contacts, press briefings etc.

In order to uphold the important principle that reasons are not necessary for requests I suggest that the privilege in Article 29 is revoked as regards requests for access to official information in the general sense. Apart from the principal objections it is difficult to understand how the privilege should be dealt with in practice without complicating the process for the authorities and the applicants.

Time limits for dealing with requests are set out in Article 32. They seem reasonable, but the following

should be considered. Firstly, even though maximum time limits are positive as they strengthen the right of access in putting pressure on the authorities to deal with requests they have a tendency to become "normal time limits", that is an applicant often has to wait the entire allowed period for his or her request. This is a natural tendency as the administration has to prioritise its activities and given the possibility to handle requests within a certain time period may use that opportunity to the full. In order to counteract this the maximum time limits should be kept but be supplemented with a basic requirement in the LOI to handle applications rapidly.

Secondly, the time limits must take account of all possible situations. Nothing is stated in the LOI about situations when the authorities need to deal with more difficult matters such as requests for large quantities of documents or when the secrecy assessments are complicated.

Nothing is said in the LOI about positive decision, i.e. decisions to grant access to information. Assumingly positive decisions are automatically followed by release of the information requested. Negative decisions shall be motivated and explain how the decision shall be appealed (Article 32). The main requirements as regards the contents of a negative decision is thereby fulfilled.

The LOI does not explain how the decisions are taken within an authority. Presumably the competence to take decisions on behalf of an authority follows from the relevant rules of procedure.

4.4 Forms of access

The forms of access to official documents are described in Article 35 of the LOI. Applicants who have been granted access to a document have "the right to make notes using official documents thus provided, as well as to photograph them, record the text on magnetic tape, etc. The owner of the documents shall have the right to make duplicates in return for a fee". Included in the different forms for access are various types of copies of documents, and implicitly, the right to inspect the documents. There is no provision describing how the latter shall be done in practice. If the idea is to let applicants inspect documents at the premises of the authority holding them, which would be a positive feature of the right of the applicants, this should be prescribed in more detail in the LOI. As regards copies I suggest that the possibility of electronic copies is considered as the usage of e-mail becomes more common. Transfer of copies by e-mail has many advantages, although it must be remembered that it can entail complications as regards personal data protection and copy-right.

I cannot understand why the provision on copying and other forms for access is placed in the same article as the provisions on appeals against negative decisions.

Fees for access to documents are regulated in Articles 35 and 36. A self-cost principle has been laid down. The only problem is that Article 36 stipulates the right to charge a fee for the location of written information at the same time as Article 35 states that "no fees shall be collected when locating official documents". As I understand it written information is not the same thing as official documents, but material that is produced on request of an applicant. That difference may in itself motivate a different approach as regards charges. If I have understood the definition correctly it seems odd that there is a

charge for the location of written material. It should not have to be located as it is produced on demand. On the other hand, if written documents are kept after they have handed out to the applicant they ought to qualify as official documents and fall under the scope of the special rules pertaining to such documents.

Situations when only part of a document is secret are not regulated, which means that there is uncertainty as how to deal with requests for documents where only some of the information needs protection. This should be delat with and I suggest it is made clear that partial access shall be granted to documents that are only partially secret.

4.5 Review

Appeals against refusals to grant access are regulated in Articles 25 and 48 of the LOI. A two-step procedure is set out. Review should first take place in a higher state authority level and that decision may be appealed to a court. The court shall consider disciplinary measures towards the officials concerned in the same context as the ruling regarding the request. Article 47 lists the various violations of the law that may entail responsibility for officials.

A two-step procedure as described in the LOI is usually positive for the applicants as it gives them the chance of review without the more cumbersome process at a court, although of course the ultimate recourse to a court is of great importance.

4.6 Support

Certain measures are prescribed in the LOI which support the right of public access to official information. An example is the professional training described in Article 15. It cannot be underlined enough how important the training of officials is in this field as regards procedures and attitude. It is therefore recommendable to take this issue seriously, as is done in the LOI.

Another important measure which ought to be considered in order to facilitate the public's possibilities to exercise its rights would be the introduction of public registers of official documents. This is recommended not only to make the right more effective but also to make the work of the authorities more efficient in general.

Other measures to make the right complete are the duty in the context of administrative procedures to document all relevant material and to keep archives in good order with strict rules on the conditions for the preservation and possible destruction of documents.