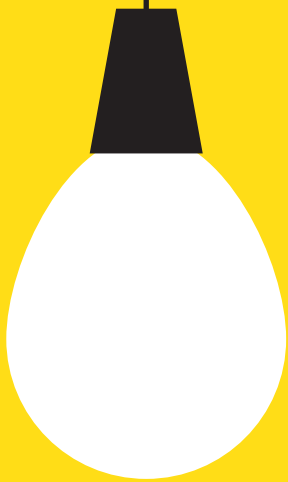


Promoting effective  
anti-corruption  
framework  
in the CEE countries.



# THE FREE ACCESS TO INFOR MATION



# ANALYSIS OF FREE ACCESS TO INFORMATION IN COUNTRIES OF THE EUROPEAN UNION

– Slovenia, the United Kingdom, Estonia and Croatia

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Civic association Oživení is a non-profit non-governmental organization founded in 1997. Oživení endeavours to increase the transparency of decision-making processes and financial management at public institutions in the Czech Republic, as well as the personal liability of public officials, and thereby boost the active participation of citizens. The main areas of interest include the right to information, public procurement and management of public property. Last but not least, Oživení is involved in spreading anti-corruption know-how and educating and networking anti-corruption and civic activists.

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TIS belongs to the global movement which leads the fight against corruption and brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. The mission of TIS is to create change towards a world free of corruption. TIS works together with other national branches and exchanges experiences associated with finding system solutions on how to curb corruption and increase transparency.

## **TRANSPARENCY INTERNATIONAL ESTONIA /**

### **TRANSPARENCY INTERNATIONAL KORRUPTSIOONIVABA EESTI (TI)**

Transparency International Estonia is a leading civil society organization in the fight against corruption in Estonia. TI Estonia is an accredited national chapter of Transparency International. TI Estonia's main fields of activity are analysing and highlighting the risks of corruption, awareness raising and strengthening cooperation between public institutions and private persons in the fight against corruption.

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# 1. INTRODUCTION AND EXECUTIVE SUMMARY

Information means power. If we do not have enough information on the activity of public institutions, it is difficult to call them to account. The space for bad management of public funds, neglecting legal obligations or corruption opens.

The law on free access to information is one of the main tools for the public to check responsible entities. However, the public in countries, in which laws guarantee wide access to information, often face defiant institutions that ignore or deny their obligation to provide information. The only possibility of gaining the right to information is often a lengthy or costly trial in many countries. In many countries, however, the court has no right to order the release of information; responsible institutions for misconduct often poses no sanctions. The control of public authorities also complicates the lack of awareness of the right to access information.

The answer for a heavily enforceable law is a supervisory body with the power to assess whether requested information shall be released or not by law, in case of misconduct to order the remedy or to punish those who have failed. The institution responsible for improving information access can also help educate the public and public institutions about the right to information.

The Information Commissioner as an independent supervisory body actively increases law enforcement, technical support of officials as well as their training. Citizens do not have to wait for the decision of the court for years and to submit suggestions and complaints to various state authorities. The length of judicial proceedings providing the required information is out of date. The regime for making information available needs a quicker and more unifying approach for both offices and citizens. The institution of the Information Commissioner enables this and relieves the work of other institutions at the same time.

The Information Commissioner is also responsible for the collection of information on the functioning of the right of access to information. The knowledge of the number of applications, of information provided or refusals, of the observation of time deadlines or problems are an important part of law reflection, of its shortcomings and potential improvements. The statistical data on the utilisation of the law on access to information collected by the Information Commissioner are an inevitable part of the law itself as they ensure its protection against abuse.

This study introduces the supervisory bodies (Information Commissioners and Data Protection Inspectorate) of four European Union countries that belong to the strongest ones: Slovenian, British, Estonian and Croatian. The objective is to briefly present the institutional set-up, competences and costs of the operating supervisory bodies.

## 1.2 OVERVIEW OF THE SUPERVISORY BODIES IN THE EU COUNTRIES, SANCTIONS, AND SUPPORT MEASURES

When selecting countries for our research, we were inspired by the position of the countries global rating list evaluating access to information in 97 countries of the world, in which the organisations, such as the Center for Law and Democracy or Access Info participate. The rating list is regularly updated on the basis of six groups of indicators, evaluating, especially, the legislative framework laws on access to information. The indicators connected with appeal processes, sanctions and support mechanisms were of great importance to us.

The intention was to show case studies, especially, with reference to the adequate competences of an independent supervisory body. In summary, 14 countries from a total number of 25 EU countries (the rating does not include Cyprus and Luxembourg) have these bodies and 4 partially have these bodies. For example, an independent supervisory body regarding access to information is represented by an ombudsman in Scandinavian countries, in Greece, Lithuania and Bulgaria, and by various commissions in France, Belgium and Portugal. In other countries, this role is played by inspectors and commissioners either for data protection, access to information or for both. The countries that do not have such a body include the Czech Republic, the Netherlands, Latvia, Poland, Austria, Romania and the Slovak Republic.

## OVERVIEW OF INDEPENDENT SUPERVISORY BODIES IN THE AREA OF ACCESS TO INFORMATION IN THE EU COUNTRIES

Independent supervisory body / appeal body	The applicants are entitled to file an (external) appeal to an independent supervisory body	Supervisory body
Belgium	partially	Commission d'accès aux documents administratifs
Bulgaria	partially	Ombudsman
Czech Republic	no	
Denmark	yes	Ombudsman
Estonia	yes	Data protection Inspectorate
Finland	yes	Ombudsman
France	yes	Commission d'accès aux documents administratifs
Greece	partially	The Office of the Greek Ombudsman
The Netherlands	no	
Croatia*	yes	Information Commissioner
Ireland	yes	Office of the Information Commissioner
Lithuania	yes	Ombudsman
Latvia	no	
Hungary	yes	Parliamentary Commissioner for Data Protection and Freedom of Information
Malta	yes	Information and Data Protection Commissioner
Germany	yes	Federal Commissioner for Data Protection and Freedom of Information
Poland	no	
Portugal	yes	Commission for Access to Administrative Documents
Austria	no	
Romania	no	
Slovak Republic	no	
Slovenia	yes	Information Commissioner of the Republic of Slovenia
Sweden	yes	Parliamentary Ombudsmen
Italy	partially	Commissione per l'accesso ai documenti amministrativi
The United Kingdom	yes	Information Commissioner

Our research includes the key independent supervisory bodies and mechanisms to meet the 3 most significant criterias: binding regulations, the possibility to punish petty offences and supporting measures related to raising public awareness as well as the education of employees from public institutions about the right of access to information. The first criterion was met, in principle, by 6 countries. In addition to our selected countries, Ireland and Hungary were included as well. However, taking into account other criteria we decided for Slovenia, the United Kingdom, Estonia, and, on the basis of the most recent Information Act establishing the institute of Information Commissioner, Croatia.

## OVERVIEW POWERS OF SUPERVISORY BODIES (OR COURTS) IN THE AREA OF APPEAL PROCESSES

(according to RTI ratings, \* Croatia evaluated by TIS) (!! = yes, X = no, • = partially)

	Procedure for appointing the head of the supervisory body does not allow political interference or arbitrary dismissal	The independent supervisory body shall submit reports, and its budget is approved by parliament or any other effective mechanisms protecting its financial independence	Preventing conflict of interests or conditions for the appointment of the head of the independent supervisory body	The independent supervisory body has the necessary mandate and power to perform its functions, including the review of classified documents and viewing premises of public authorities (inspection)	Decisions of the independent supervisory body are binding	The independent supervisory body has the power to order remedial measures and disclosure of information	The claimants have the right to appeal to the court	The appeal to the independent supervisory body (or to the court) is free of charge and does not require legal assistance	The appeal is possible not only against dismissal, but also against the required form answers, "no answer", breach of deadline, charges, etc.	Clear procedures, including deadlines (independent supervisory body / court) are enshrined in law	An external appeal body has the right to order structural measures (e.g. to order trainings, greater focussing on results, etc.)
Belgium	X	X	X	X	X	X	!!	X	!!	•	•
Bulgaria	X	X	X	X	X	X	!!	X	X	X	X
Czech Republic	X	X	X	X	X	X	!!	!!	!!	!!	X
Danemark	!!	!!	!!	!!	X	•	X	!!	!!	•	•
Estonia	X	•	X	!!	!!	•	!!	X	!!	X	X
Finland	•	!!	!!	X	X	!!	!!	!!	!!	!!	•
France	!!	X	X	X	X	X	!!	!!	!!	!!	X
Greece	!!	!!	•	!!	X	X	X	!!	!!	•	•
The Netherlands	X	X	X	X	X	X	!!	!!	!!	!!	X
Croatia*	!!	!!	!!	!!	!!	!!	!!	!!	!!	!!	•
Ireland	!!	!!	•	!!	!!	!!	!!	•	!!	!!	X
Lithuania	X	X	X	X	X	X	X	X	X	X	X
Latvia	X	X	X	X	X	X	!!	X	X	X	X
Hungary	X	X	X	!!	!!	•	!!	!!	!!	!!	•
Malta	X	!!	!!	X	•	•	X	X	X	X	!!
Germany	!!	•	X	X	X	X	!!	!!	!!	X	X
Poland	X	X	X	X	X	X	!!	•	X	X	X
Portugal	!!	!!	X	X	X	X	!!	X	!!	!!	X
Austria	X	X	X	X	X	X	X	!!	X	X	X
Romania	X	X	X	X	X	X	!!	X	X	X	X
Slovak Republic	X	X	X	X	X	X	!!	X	X	X	X
Slovenia	!!	!!	!!	!!	!!	!!	!!	!!	!!	!!	X
Sweden	X	X	X	!!	X	•	•	X	!!	!!	X
Italy	!!	!!	!!	X	X	!!	!!	X	X	X	!!
The United Kingdom	•	•	X	!!	!!	!!	!!	!!	•	•	!!



## OVERVIEW OF POSSIBILITIES TO SANCTION MISDEMEANOURS

(according to RTI ratings, \* Croatia evaluated by TIS)  
 (!! = yes, X = no, • = partially)

Sanctions may be imposed on those who knowingly violate the right to information, including destruction of information

A system of redress of public bodies that systematically fail to disclose information (including incomplete information) is available, namely by imposing sanctions or asking for remedial measure

Belgium	X	X
Bulgaria	!!	!!
Czech Republic	X	X
Dane-mark	X	X
Estonia	•	X
Finland	!!	•
France	X	X
Greece	X	X
The Neth-erlands	!!	X
Croatia*	•	•
Ireland	•	X
Lithuania	X	X
Latvia	!!	X
Hungary	X	X
Malta	!!	X
Germany	X	X
Poland	•	X
Portugal	X	X
Austria	X	X
Romania	!!	X
Slovak Republic	!!	X
Slovenia	!!	!!
Sweden	!!	X
Italy	!!	X
The United Kingdom	!!	!!

## OVERVIEW OF SUPPORT MEASURES FOR THE EDUCATION OF EMPLOYEES IN PUBLIC INSTITUTIONS AND RAISING PUBLIC AWARENESS

(according to RTI ratings, \* Croatia evaluated by TIS)  
 (!! = yes, X = no, • = partially)

Liabe persons appoint specialised employees (information com-missioners) or establish a department with the responsibility and agenda for the disclosure of information

The central body, such as the Information Commissioner or the Ministry, is responsible for the promotion of the right of access to information

The central body, such as the Information Commissioner or the Ministry, is responsible for raising awareness of the right of access to information

Minimum standards for keeping records

Liabe persons compile and update the lists or registers of docu-ments in their possession and make them public

Training programmes for employees of the liabe persons

The obligation to publish annual reports on the activities of the liabe person, including statistics on received appeals and decisions

The obligation to submit a summary report to parliament or any other legislative body on implementing the right of access to information

X	X	X	X	X	X	X	X	X	X
!!	X	X	X	!!	!!	!!	!!	!!	X
X	X	X	X	!!	X	!!	!!	X	X
X	X	X	X	X	X	X	X	X	X
!!	•	X	•	X	X	X	X	X	!!
!!	X	!!	!!	!!	!!	!!	X	X	X
!!	X	X	X	X	X	X	X	X	X
X	X	X	!!	X	X	X	X	X	•
X	X	X	!!	X	X	X	X	X	X
!!	!!	!!	!!	!!	!!	!!	!!	!!	!!
!!	!!	!!	!!	!!	!!	!!	!!	!!	!!
X	X	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X	X
X	!!	!!	!!	X	!!	!!	X	•	!!
!!	!!	X	!!	!!	!!	!!	!!	!!	!!
X	X	X	X	X	X	X	X	X	X
!!	X	X	X	X	X	X	X	X	X
!!	!!	•	!!	!!	!!	X	!!	!!	!!
!!	!!	•	!!	!!	!!	!!	!!	!!	!!
!!	•	X	X	X	X	X	!!	!!	!!
X	!!	!!	!!	!!	!!	X	X	X	!!

## 2. SLOVENIA

Slovenia belongs to countries that have a strong independent supervisory body in the field of access to information. Within EU countries it is currently in first place and third place<sup>1</sup> worldwide within the global rating evaluating the access to information RTI<sup>2</sup>, namely thanks to the supervisory body that ensures a sufficiently high enforceability of law<sup>3</sup>. The Slovenian supervisory body, the Information Commissioner<sup>4</sup>, is an autonomous and independent institution dealing not only with the agenda of the right to access to information, but also with the agenda of data protection.

### 2.1 INDEPENDENCE OF THE SUPERVISORY BODY

#### 2.1.1 APPOINTMENT AND DISMISSAL OF THE COMMISSIONER

The Information Commissioner is elected by Parliament on a proposal from the President for a period of 5 years. He/she may be re-elected once, and must meet the following criteria:

- Slovenian citizenship
- university level degree
- 5 years of relevant experience
- has not been sentenced to any unconditional imprisonment

The Information Commissioner may be dismissed on a proposal from the President, namely if he/she:

- resigns of his/her own will
- no longer fulfils the above mentioned conditions
- becomes unable to perform his/her functions for a long period
- or neglects his/her obligations pursuant to the law and constitution

#### 2.1.2 FINANCIAL INDEPENDENCE

The office of the Information Commissioner is financed from the state budget that is approved by Parliament on a proposal from the Information Commissioner.

Every year, the Information Commissioner produces and submits a report on his/her activities<sup>5</sup> to Parliament and publishes it on a website. The report contains activities from the previous year as well as estimates and recommendations in the field of access to information.

<sup>1</sup> Serbia is in the first place, India is in the second place.

<sup>2</sup> Global Right of Information Rating: [http://www.rti-rating.org/country\\_data.php](http://www.rti-rating.org/country_data.php)

<sup>3</sup> Available from: <https://www.ip-rs.si/index.php?id=324>

<sup>4</sup> Available from: <https://www.ip-rs.si/?id=195>

<sup>5</sup> Available from: <https://www.ip-rs.si/index.php?id=388>

## 2.2 COMPETENCES OF THE COMMISSIONER

The Information Commissioner performs the function<sup>6</sup> of the body of appeal under Slovenian law on the access to information. The claimant is entitled to appeal against the inactivity of the office or against the dismissal of the request, but even if that information provided to him/her is not in the required form. The law allows an appeal without charge. The Commissioner decides on the process of appeal within 20 days. Decisions of the Commissioner are binding. The Commissioner has the right to order a remedial measure, including disclosure of information.

If the Information Commissioner suspects that the person liable withholds requested information, he/she is entitled to perform an inspection of the person liable. He/she is entitled to confiscate documents or enter the information system, if he/she is not allowed to enter the premises, he/she may contact the police, he/she is also entitled to invite an eyewitness.

### 2.2.1 SANCTIONS

The Information Commissioner may not only require the correction of failures, but also impose sanctions. The objective is a better functioning of the institutions that systematically fail in providing information. The sanctions constitute the revenue side of the state budget.

The Commissioner may impose penalties:

Misdemeanour	Person (e. g. a clerk)	Responsible person (e. g. a head)	Manager	Natural person	Legal person
Jeopardising access to information, damaging the information	EUR 420 - 1,050				
Deliberate destruction of documents	from EUR 1,050	from EUR 1,470			
Exceeding deadline or non-disclosure of information			EUR 630 - 1,250		
Unauthorised use of information				EUR 630 - 1,250	EUR 1,250 - 12,520

In 2012, one sanction was imposed in one case, namely to the amount of EUR 800 for jeopardising the right to information.

### 2.2.2 APPEAL AGAINST THE INFORMATION COMMISSIONER

In case of dissatisfaction the claimant may appeal against the Information Commissioner decision by opening an administrative dispute. The Administrative Court must issue a decision within 2 months of receipt of the appeal. No charges are paid for the appeal to the Administrative Court.

<sup>6</sup> Competences of the Information Commissioner available from: [https://www.ip-rs.si/fileadmin/user\\_upload/Pdf/brosure/zlozenka\\_pristojnosti\\_ang2.pdf](https://www.ip-rs.si/fileadmin/user_upload/Pdf/brosure/zlozenka_pristojnosti_ang2.pdf)

## 2.3 BUDGET

In the fiscal year 2012, according to the annual report the Slovenian Commissioner had a budget to the amount of EUR 1.67 million<sup>7</sup>. According to an unofficial estimate of the Commissioner the area of access to information amounts to about one third of the expenditures, the remaining two thirds involve the area of data protection. In 2012, the Commissioner's Office had 33 employees, of which three were temporary staff.

The office recorded 519 application requests representing approximately 25 complaints per 100,000 inhabitants. A decision was made in 256 cases, of which 161 were allowed and 95 were rejected.

## 2.4 CONSULTANCY, EDUCATION, RAISING AWARENESS

Support and development measures in the field of providing public information is performed by the Ministry of Interior in Slovenia, namely, especially, providing information to the public about the means and conditions for the access to public information, providing advice on the application of this law and other support and development activities, The Information Commissioner offers guides and instructions on the access to information and data protection on his/her website.

The website contains the publications of the Slovenian Commissioner, e.g. presenting competences of the Information Commissioner as well as links to publications of other Information Commissioners in various areas of the right to information. Through FAQ and other tools on the website the Commissioner provides guidelines explaining appeal processes, fees, deadlines, etc. as well as information on the rights of citizens, repeated use of information, access to EU documents, specification of public information, Information Commissioner office statistics<sup>8</sup>, references to legislation as well as a summary of the most important cases<sup>9</sup> (precedents). The Slovenian Commissioner also publishes articles<sup>10</sup> describing current events in the field of the access to information.

The Slovenian Information Commissioner participates in the organisation of workshops in order to raise awareness of the obligations of persons liable not only in public institutions, but also with suppliers of public services, public authorities or in other public institutions.

<sup>7</sup> Available from: [https://www.ip-rs.si/fileadmin/user\\_upload/Pdf/porocila/Annual\\_Report\\_2012.pdf](https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Annual_Report_2012.pdf)

<sup>8</sup> Available from: <https://www.ip-rs.si/index.php?id=323>

<sup>9</sup> Available from: <https://www.ip-rs.si/index.php?id=384>

<sup>10</sup> Illustrative examples of the articles published by the Slovenian Commissioner:

- Where are the boundaries of the right to access public information?
- Transparency of public administration in the Republic of Slovenia
- System of access to classified information in the Republic of Slovenia
- The Guantanimisation of Data, Dnevnik - Saturday Edition Objektiv, 2008
- The Information Commissioner's competencies in decision procedure under FOIA
- Access to court records and FOIA as a legal basis - experience of Slovenia
- New Principles of the Amended Act on Access to Public Information in Slovenia Commissioner or Ombudsman
- Weighing tests with emphasis on public interest test in accessing information of public character
- New Principles of the Amended Act on Access to Public Information

## 3. THE UNITED KINGDOM

The United Kingdom is not among the most open countries with regard to the extent of information provided. However, it is an excellent example of a strong independent supervisory body<sup>11</sup>. As in Slovenia, the Information Commissioner is the supervisory body. Together his/her office is responsible for the agenda of access to information and for the agenda of personal data protection.

### 3.1 INDEPENDENCE OF THE SUPERVISORY BODY

#### 3.1.1 APPOINTMENT AND REMOVAL OF THE COMMISSIONER

The Commissioner is selected by a classic selection process covered by the Ministry of Justice. The successful candidate appears before a Parliamentary committee that formulates recommendations and decides on his/her nomination. Then he/she is appointed by the Queen for a period of 5 years and should not stay in his/her post for more than 15 years, that is more than 3 consecutive terms. Both chambers of Parliament together with the Queen can remove the Commissioner from his/her post in case of serious misconduct.

#### 3.1.2 FINANCIAL INDEPENDENCE

The Commissioner negotiates the budget with the Ministry of Justice. The Commissioner and his/her office are financed from the state budget that is approved by Parliament. He/she submits annual reports<sup>12</sup> on his/her activities to Parliament each year, or any other reports, if appropriate.

### 3.2 COMPETENCES OF THE COMMISSIONER

Unlike Slovenia, first instance appeals for non-disclosure of information or dissatisfaction with published information are directed against the person liable from which the information was requested. After the conclusion of the first instance appeal it is possible to appeal externally to the office of the Information Commissioner. It is possible to appeal against the inactivity of the person liable, decision on non-disclosure of information as well as against the delay, charges, unclear justification or in case of failure in providing assistance or consultancy. The deadlines for the settlement of requests by the Commissioner are, however, not officially determined in the United Kingdom. Decisions of the Commissioner are binding. He/she may, for example, order persons liable to correct decisions on disclosure of information and to determine the deadline within which they must remove discrepancies. He/she may ask the persons liable for completion of information.

If the Commissioner thinks the activities of the person liable as inconsistent with the Code of Good Practice<sup>13</sup>, he/she may recommend to the person liable, how they can achieve good practices.

He/she may also order other specific steps for compliance with the Information Act, e.g. compliance with a so-called publication scheme<sup>14</sup>.

If the Commissioner suspects failure or non-compliance with regulations, he/she can order an inspection after authorisation by a judge, i.e. he/she may enter premises, inspect, seize documents or other records in order to examine them.

<sup>11</sup> Freedom of information act 2000 available from: <http://www.legislation.gov.uk/ukpga/2000/36/contents>

<sup>12</sup> Available from: [http://ico.org.uk/about\\_us/performance/annual\\_reports](http://ico.org.uk/about_us/performance/annual_reports)

<sup>13</sup> The Code of Good Practice consists of recommendations of the Commissioner for implementation of the law for particular fields within the access to information and data protection. The task of the persons liable is to behave pursuant to the Code.

<sup>14</sup> The publication scheme specifies the rules for information classification and the method of its disclosure, or charges for the access to information. If needed, the Commissioner issues it in order to guide the activity of the persons liable within providing of information, and they are obliged to follow it.

### 3.2.1 SANCTIONS

The British Information Commissioner may not impose sanctions, the sanctions are imposed by the court. The Information Commissioner collects evidence that he/she then submits to the crime prosecution service, that initiate the judicial proceedings. The crime prosecution service is not obliged to commence the judicial proceedings in a given case.

Misdemeanour	Responsible person
Non-provision of information or limited provision of information	up to EUR 6,000

If the person liable does not act in accordance with the law, it is understood as a contempt of court. This issue is then returned to the tribunal or the court and may result in a fine for the person liable. To date, the Commissioner has not formally commenced such proceedings, as the implementation level is high.

### 3.2.2 APPEAL AGAINST THE INFORMATION COMMISSIONER

It is possible to file an appeal free of charge against the decision of the Information Commissioner to the Information Tribunal<sup>15</sup>. An appeal to the tribunal of the first instance must be made within 28 days. If the tribunal accepts the failure, it may reverse the decision of the Commissioner and will issue a new decision. The case is, mostly, passed over to a higher tribunal in the case of more comprehensive appeals. The Court of Appeal deals with appeals against the higher tribunal. Deadlines are not specified, they depend on the complexity of a case. Appeals to the tribunal are free of charge, court fees are paid at the Court of Appeal, unless the parties agree otherwise.

### 3.3 BUDGET

The Commissioner is financed from the state budget approved by Parliament. According to the annual report, the subsidies for the Commissioner amounted to cca. 5 M EUR<sup>16</sup>. He/she received more than 4,600 complaints last year, representing about 10 complaints per 100,000 citizens. The Commissioner upheld 1,126 (24%) complaints, rejected 939 (20%) complaints, and 751 (16%) complaints were solved informally. The remaining ones were filed either before they ended the first instance process, or the claimant lost his/her interest.

### 3.4 CONSULTANCY, EDUCATION, RAISING AWARENESS

The publication scheme and the Code of Practice of the Commissioner serve to educate clerks and other responsible staff pursuant to this law. For example (in so-called Good Practice Reports) the Commissioner recommends how the public bodies should behave during assistance, consultancy or in relation to other bodies. The Commissioner's website contains a large number of publications not only for employees, but also for the general public.

The guides on the website for persons liable are very detailed and cover many areas from the codes of practice through fees, sanctions, exceptions, decisions up to more complicated issues such as the tests of public interest or awkward or repetitive requests (complainers). The British Information Commissioner also offers a special portal for consultancy and assistance for experts in the field of access to information<sup>17</sup> under individual politics, and deals with individual questions from cases that occurred during appeal processes to the tribunal (ICO knowledge base). The general public can search for instructions according to particular topics or clearly arranged schemes answering the questions how and against which it is possible to appeal, etc. This year the Commissioner's Office finished "Advisory Visit Programme" aimed at assisting and educating organisations, charities and non-profit sector services. In the field of data protection the Information Commissioner prepared video tutorials and cards on the principles of data protection. The area of information freedom is explained in detail in the guide on a free access to information that is on the website of the Information Commissioner.

<sup>15</sup> The Information Tribunal is a quasi judicial body that is responsible for the field of the access to information within the administrative courts of first instance in the United Kingdom.

<sup>16</sup> Available from: [http://ico.org.uk/about\\_us/performance/~/\\_media/documents/library/Corporate/Research\\_and\\_reports/ico-annual-report-201213.ashx](http://ico.org.uk/about_us/performance/~/_media/documents/library/Corporate/Research_and_reports/ico-annual-report-201213.ashx)

<sup>17</sup> Available from: <http://ico.org.uk/foikb/index.htm>

## 4. ESTONIA

The supervision of implementing the legislation on information freedom in Estonia is performed by the Data Protection Inspectorate<sup>18</sup>. Any person who has been denied access to the requested information may submit a complaint to the Data Protection Inspectorate or to the Administrative Court. Both bodies may order disclosure of information without more significant differences. It is up to the claimant to choose one of these alternatives (he/she may omit the Inspectorate and appeal directly to the Court).

### 4.1 INDEPENDENCE OF THE SUPERVISORY BODY

#### 4.1.1 APPOINTMENT AND DISMISSAL OF THE INSPECTORATE`S DIRECTOR GENERAL

The appointment and the dismissal of the Director General of the Personal Data Protection Inspectorate is performed by the government on a proposal from the Minister of Justice after hearing the opinion of the Constitutional Committee of the Estonian Parliament. He/she is appointed for a period of 5 years and may not be appointed twice consecutively.

Requirements for the Inspectorate`s Director General:

- university level degree, including sufficient education in the field of law, management and IT administration
- experience in audit
- he/she can not be convicted of a crime
- he/she may not be dismissed from a previous working position for inadequacy for given working position
- he/she may not occupy any other paid position except for teaching or research

The Director General of the Data Protection Inspectorate may be dismissed from his/her function only:

- at his/her own request
- due to the expiration of term of office
- for a disciplinary offence<sup>19</sup>
- due to a long-lasting inability to work
- in case of a criminal prosecution
- if he/she does not meet the requirements established by law for performing this function

#### 4.1.2 FINANCIAL INDEPENDENCE

The budget of the Estonian Inspectorate is not directly approved by Parliament as in Slovenia or the United Kingdom. The Inspectorate negotiates the budget with the Ministry of Justice that approves it<sup>20</sup>. It is financed from the state budget. Every year, the Inspectorate submits a report<sup>21</sup> on compliance with the law on access to information to the Constitutional Committee and the Chancellor of Justice (a government official supervising the legitimacy of state activities). The report must be published on the website of the Inspector. He/she may submit any other reports as well regarding important issues.

<sup>18</sup> Available from: <http://www.aki.ee/en>

<sup>19</sup> According to the Public Service Act, §84, it is a non-fulfillment of obligations, intoxication in the workplace, unlawful handling the property of the office, violation of moral, ethical standards.

<sup>20</sup> Statutes and Composition of Data Protection Inspectorate 2012

<sup>21</sup> Available from: [https://www.huntonprivacyblog.com/wp-content/files/2013/05/2012\\_aastaettekanne\\_eng.pdf](https://www.huntonprivacyblog.com/wp-content/files/2013/05/2012_aastaettekanne_eng.pdf)



## 4.2 COMPETENCES OF THE INSPECTORATE

The claimant for information who has been denied access to information or dissatisfied with the information provided may appeal to the Administrative Court or to the Data Protection Inspectorate. It is possible to appeal free of charge within 30 working days after receipt of the application is rejected. The Inspectorate handles appeals and may, from its own initiative, supervise persons liable. It examines whether:

- request for information is registered pursuant to law
- request for information is provided within the term and in the manner prescribed by law
- refusal or limitation of access to given information is in accordance with law
- the person liable publishes information, keeps the website pursuant to law

If the Inspectorate determines a failure, it will order a remedy. The person liable must adopt the remedial measures within 5 working days from receipt of the order. The results of the supervision are published by the Inspectorate on its website.

### 4.2.1 SANCTIONS

The Inspectorate imposes fines on representatives of the persons liable. The sanctions constitute the revenue side of the state budget.

Misdemeanour	Responsible person
Deliberate issue of wrong information, conscious disclosure or publishing information intended for internal use, failure to act pursuant to the regulations of the Inspectorate	up to EUR 1,200

### 4.2.2 APPEAL AGAINST THE INSPECTORATE

It is possible to file an appeal against the decision of the Inspectorate to the court which will decide within 30 days. The appeal to the court requires a fee of 15 EUR.

## 4.3 BUDGET

In 2012, Estonia with a population of 1.3 million financed the Commissioner with a budget of EUR 595,403. The Commissioner's Office presently has 18 employees.

In 2012, it received 877 requests and proposals which is about 67 complaints per 100,000 inhabitants. Complaints and appeals amounted to 404, initiated inspections amounted to 414, of which 61 were initiated by the office. The Commissioner issued 48 orders and more than 190 recommendations. The Commissioner performed 56 verbal consultations and imposed 39 penalties for misdemeanours.

## 4.4 CONSULTANCY, EDUCATION, RAISING AWARENESS

The Inspectorate deals with raising awareness in the field of access to information. The websites of the Inspectorate contain many guides and instructions on how to gain access to information. Each public institution itself is responsible for the education of employees in the field of access to information.



## 5. CROATIA

Within EU countries, Croatia with its Information Act since 2003 was in second place in the global rating evaluating the access to information<sup>22</sup> after Slovenia. Recently, it adopted a new law in the context of accessing the EU. It introduces a new supervisory body - an Information Commissioner.

### 5.2 INDEPENDENCE OF THE SUPERVISORY BODY

#### 5.2.1 APPOINTMENT AND DISMISSAL OF THE COMMISSIONER

The Commissioner is elected by Parliament for a period of 5 years with the possibility of re-election. Pursuant to law, the Commissioner must be independent in his/her work and be responsible to Parliament and must meet the following requirements:

- Croatian citizenship and permanent residence in the Republic of Croatia
- university level degree and Master` degree or integrated university degree and a postgraduate university programme in law or social sciences
- at least 10 years of relevant experience
- he/she should be a respected expert with a good reputation and experience in the field of human rights protection, media freedom and democracy development
- without prior criminal activity or criminal activity for which proceedings is initiated ex officio
- without membership to a political party

The Commissioner is dismissed by Parliament, if he/she:

- requests it
- does not meet requirements
- was not able to perform his/her obligations for more than 6 months
- does not fulfill his/her obligations pursuant to the Information Act

#### 5.2.2 FINANCIAL INDEPENDENCE

The Commissioner is entitled to a remuneration to the amount of the remuneration received by the Vice-Presidents of the Parliamentary Committees. The institution of the Information Commissioner is financed from the state budget that is approved by Parliament.

### 5.2 COMPETENCES OF THE COMMISSIONER

If the claimant for information is not satisfied with the information provided , he/she may ask the person liable to supply additional information. It must be done within 15 days. If the claimant is not satisfied, he/she may appeal to the Information Commissioner free of charge. The Commissioner is obliged to issue a decision according to the nature of the appeal within 30, 60 or 90 days.

<sup>22</sup> RTI rating available from: <http://www.rti-rating.org/home.php>

The Croatian Information Commissioner has significant responsibilities in the areas of inspection. He/she supervises on the basis of complaints, whether the person liable:

- appoints a person responsible for the agenda of provision or disclosure of information, and whether this person performs his/her obligations pursuant to law
- maintains a register of requests, procedures and decisions on law implementation
- publishes the amount of fees for the access to information
- publishes information pursuant to law, issues an annual report and performs his/her activities pursuant to law

On the basis of inspection the Inspector provides suggestions and recommendations for improving performance or removal of shortcomings. He/she may forbid performing activities that are inconsistent with law. The persons liable may appeal against the decisions of the inspection. The person liable must inform the Inspector of the implementation. If he/she fails in the implementation, the Commissioner is required to inform the government or other central bodies supervising the person liable of this fact.

The Commissioner also proposes measures for professional education and development of the Information Commissioners (persons responsible for providing information at individual offices and organisations). He/she may propose new legislation or its amendment for better access to information. He/she also submits a report on the implementation of this law to Parliament.

## 5.2.1 SANCTIONS

The Croatian Commissioner, like a Slovakian one, imposes sanctions on institutions that have made a mistake as well as their responsible representatives. Failure to disclose information is subject to a fine as well as non-performance on the basis of the decision of the Commissioner. The Commissioner imposes sanctions on representatives of up to EUR 650 and to institutions of up to EUR 1,300. Higher fines are for damage, destruction or concealing information. The Commissioner imposes them on the institutions, responsible employees as well as individual persons.

In the case of more serious misconduct, the court may intervene as well and it may impose fines on individuals of up to EUR 2,600 and to institutions of up to EUR 13,000.

The Commissioner may also punish individual and legal persons for unauthorised use of received information. The sanctions constitute the revenue side of the state budget.

Misdemeanour	Responsible person	Person liable	Natural person	Legal person
Non-disclosure of information, non-appointment of a responsible person	EUR 130 - 260	EUR 260 - 520		
Failure in acting on the basis of the decision of the Commissioner, obstructing inspections, failure in correction of faults	EUR 390-650	EUR 650 - 1,300		
Limited access to information or repeated use of information*	EUR 650 - 2,600	EUR 2,600 - 13,000		
Damage, destruction or concealing information.	EUR 2,600 - 6,500	EUR 2,600 - 6,500	EUR 2,600 - 6,500	
Unauthorised use of information			up to EUR 6,500	up to EUR 13,000

\*it is imposed by the court

As the Commissioner's Office in Croatia has only been working for a few months, only one case is known, in which a state company was sanctioned by the court on a proposal from the Commissioner, namely twice in succession to the amount of EUR 2,600, and the responsible person EUR 650.

## **5.2.2 APPEAL AGAINST THE INFORMATION COMMISSIONER**

It is not possible to appeal against the decision of the Commissioner, however, it is possible to commence an administrative dispute before the Supreme Administrative Court of the Republic of Croatia that must issue a decision on a complaint within 90 days. The administrative dispute may also be initiated by a public body that issued the decision in the first instance. The appeal is free of charge.

## **5.3 BUDGET**

The Croatians have had their Information Commissioner since October 2013. Currently, the Commissioner's Office is working with an annual budget of less than 240 T EUR, it has five employees including the Commissioner. Over the coming months, an increase in the number of employees is planned,

## **5.4 CONSULTANCY, EDUCATION, RAISING AWARENESS**

The Commissioner proposes measures for professional education and development of the Information Commissioners (persons responsible for providing information at individual offices). Raising public awareness of the right to access to information is the task of the Protection Data Office; this agenda, especially in the field of access to information, shall be adopted by the Information Commissioner in the near future.

## 6. MAIN FINDINGS

The Information Commissioner is, generally, an independent institution that is responsible for personal data protection in addition to the agenda of access to information. The Slovenian and British Commissioner as well as the Estonian Data Protection Inspectorate protect personal data in addition to ensuring access to information.

### Independence of the Commissioner

The Commissioner is regularly selected by the government or Parliament. His/her independence is supported by clearly defined conditions under which he/she may be dismissed. **In Slovenia, Croatia and Estonia the Commissioner may be dismissed only if he/she does not fulfill the conditions of the appointment, he/she can no longer perform his/her function or makes a significant misjudgement.** The independence of the Commissioners in these countries is strengthened by the length of their term of office. While the Commissioners are appointed for five years, governments have power for 4 years. **The financial independence of the Commissioners in all four countries is supported by the fact** that they are financed from the state budget that is approved by Parliament.

### Competences

**The task of all Commissioners is to act as an appeal body for claimants for information** who received a negative or non-complete answer from persons liable, or did not receive any answer. In Britain, there is the possibility to appeal also in cases of delay of information or unjustified charges. The Commissioners are entitled to order that any information is accessible. Their decisions are binding.

	Slovenia	Great Britain	Estonia	Croatia
<b>Decision</b>	Binding	Binding	Binding	Binding
<b>Deadline for decision</b>	20 days	Are not determined	Are not determined	30, 60 or 90 days according to the nature of the appeal
<b>Inspection Right</b>	Yes	Yes, after the decision of the court	Yes	Yes

The British and Croatian Commissioner may recommend to the persons liable how to move towards an example of good practice, or prescribe specific actions. The Croatian Commissioner is responsible for the education and development of employees who are responsible for the access to information. All Commissioners impose fines for violations of law.

### Requests and Budget <sup>23</sup>

The number of received requests per 100,000 inhabitants in 2012 in the area of access to information amounted to 25 in Slovenia and 10 in the United Kingdom. However, although it appears that this number is much more higher in Estonia, this number involves the requests in the area of data protection as well access to information. The budget of the Estonian and Slovenian Commissioner includes the data protection agenda as well. The budget of the Croatian Commissioner and the subsidy of the British Commissioner from the Ministry of Justice relates only to access of information.

<sup>23</sup> On the basis of information from annual reports.

	Slovenia	Great Britain	Estonia	Croatia
Complaints in total	519	4,600	877	181*
Complaints/100 thousand inhabitants	25	10	67	4
Decisions	256 <sup>24</sup>	4693	43	179
Rejected or denied	96 <sup>***</sup>	1,866 <sup>**</sup>	25	N/A
Annual budget in EUR	1,670,000	5,380,000	595,403	240,000

\*The office has only operated since October 2013. In 2013 the Office of Info Commissioner received 172 requests for information, 9 requests were transferred from the previous year.

\*\* it involves 40% from the total number of complaints that the Commissioner did not solve due to non-conclusion of the first instance process.

\*\*\* 1 case was rejected and 95 cases were not admitted<sup>25</sup>

The individual Commissioners have different statistics. For example, the Information Commissioner in Slovenia recorded since 2003 when he/she issued 6 decisions a significant increase, In 2006 it was 110, and in 2012, he/she decided in 256 cases. In 2012, almost 40% concerned central bodies of the public administrative, and 36% was related to the decisions of public funds, institutions, agencies and other public authorities and providers of public services, 17% of the decisions related to municipalities. The rest were court cases, prosecution services, etc. Appeal against the Information Commissioner was used in 10.5% of the decisions. For example, the British Commissioner is currently drawing attention to speeding-up decision processes. The statistics from last year show that the requests settled within 30 days amounted to 22%, within 90 days 68%, within 6 months 88%, and only a 1% was not settled within one year. He/she also has the statistics of the most complaints within the persons liable. 45% of requests concerned the local government, 24% central government bodies, 9% health services, 8% police and criminal court with education and 1% state authorities.

## Education of the Public and Public Institutions

The support and development measures in the field of providing public information is performed by the Ministry of the Interior in Slovenia; in Estonia, the public institution itself is responsible for the education of the staff. In \*Britain, these obligations belong to the Information Commissioner or to the Data Protection Inspectorate. In Croatia, there is now a transition of these competences from the Data Protection Agency to the Information Commissioner in the near future.

The Information Commissioners (except for the Croatian Commissioner who is preparing the website now) publish various guides and publications on the access to information and data protection, including detailed procedures and recommendations on their websites. They also have so-called "hot lines" providing information and consultancy.

## Sanctions

There are not a lot of the cases imposing sanctions, on the contrary, they are rare. The Slovenian Commissioner said that they serve as an effective prevention, if they are established in law. The sanctions constitute the revenue side of the state budget.

<sup>24</sup> Available from: <https://www.ip-rs.si/index.php?id=384>

<sup>25</sup> Available from the annual report 2012 of the Slovenian Commissioner from: [https://www.ip-rs.si/fileadmin/user\\_upload/Pdf/porocila/Annual\\_Report\\_2012.pdf](https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Annual_Report_2012.pdf)

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