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REPUBLIC OF SLOVENIA

# Slovenian experience: Data protection and public access to information collected by the police



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# Constitutional framework of data protection and public access to information

- Article 38: The protection of personal data (PD) is guaranteed. The use of PD contrary to the purpose for which it was collected is prohibited. The collection, processing, designated use, supervision and protection of the confidentiality of PD shall be provided by law. Everyone has the right of access to the collected PD that relates to him and the right to judicial protection in the event of any abuse of such data.
  - Personal Data Protection Act (PDPA).
- Article 39: Everyone has the right to obtain public information in which he has a well founded legal interest under law, except in such cases as are provided by law.
  - Access to Public Information Act (APIA).





- Competencies for enforcing both constitutional rights – "the right to privacy" and "the right to know" are now in the hands of a single body.
- Information Commissioner Act (Official gazette, no. 113/2005 dated 16.12.2005, valid from 30.12.2005, ICA) merged the two bodies:
  - 1) Commissioner for Access to Public Information,
  - 2) Inspectorate for Protection of Personal Data.
- The transposition of the Directive 95/46/EC of the European parliament, dated 24.10.1995 on the protection of individuals when processing personal data and the free flow of PD in the legal system of the Republic of Slovenia.
- The Information Commissioner is an autonomous and independent body as well as a violations and inspections body for the PDPA and the APIA.



## Public Information

Public information - three cumulative criteria:

- 1) is subject to the field of work of the body (state bodies, self-governing bodies, public agencies, public institutions, public powers holders, providers of public services and other public law bodies);
- 2) is found in a form of a document (case, dossier, register, record or other documentary records) - principle of materialized form;
- 3) was created by the body, in cooperation with another body or was obtained from other persons – principle of possession.





# Denial of access – exceptions according to APIA

- 1) Classified data (Classified Data Act):
    - 4,9%.
  - 2) Business secret (Companies Act).
  - 3) Protected PD (PDPA):
    - is the only exception that is also constitutional right;
    - Is the most common exception in the previous years (29,4%).
  - 4) Data being processed by the Slovene Statistical Office.
  - 5) Confidentiality of the tax procedure or a tax secret.
  - 6) Data relating to prosecution for criminal offences, violations:
    - 2,5%.
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## Denial of access – exceptions according to APIA

- 7) Data relating to administrative procedure.
- 8) Data relating to judicial procedure, in case the disclosure would harm its enforcement.
- 9) Data from a document not yet finished, the disclosure of which would cause an incorrect interpretation of its contents.
- 10) Data on a natural or cultural value.
- 11) Body's internal document, the disclosure of which would cause a disturbance in its operation.





## Exception from APIA – Classified data

- Governed by the Classified Data Act (CDA), which regulates the common framework for a uniform protection of and access to classified data from the fields of work of government bodies pertaining to **public safety, defence, foreign affairs or intelligence and security activities** of the government as well as procedures for revoking of secrecy of such data.
- Notwithstanding the provisions of the Act governing classified data, the access to view classified data is also given to the Information Commissioner.





## Exception from APIA – Classified data

- If the applicant deems the data is marked classified unlawfully, he can request the classification mark to be removed.
  - **Case:** Mirko Bandelj, attorney at law vs. Ministry of finance (selected study on Gambling in Slovenian market).
  - **Case:** Amnesty International vs. Government of the Republic of Slovenia (electric pistols – paralisers).







## Exception from APIA – Personal data

- Governed by the PDPA which stipulates the rights, obligations, principles and measures which prevent unconstitutional, illegal and unjustified intrusions into privacy and dignity of an individual when processing PD.
- PD is any data relating to an individual, regardless of the form which it takes. An individual is a defined or a definable (can be identified directly or indirectly) natural person.
- Processing of PD means any processing or a sequence of procedures performed with regard to PD, particularly collecting, gathering, entry, editing, storing, adapting, altering, review, use, disclosing with transferring, notifying, disseminating or other disposition, sorting, connecting, blocking, anonymizing, deletion or destroying, while the processing can be either manual or automated.





## PDPA

- Principles of PD processing:
  - lawfulness and fairness,
  - proportionality,
  - prohibition of discrimination,
  - accuracy and up-datedness.
- Sensitive PD: indicating racial / national / ethnicity, political - religious - philosophical belief, syndicate membership, health status, sexual life, entry/erasure from the *criminal or violations record, biometry*:
  - must, when being processed, be accordingly marked and secured, to prevent access to unauthorized persons.





## PDPA

- PD can be processed only when the processing of PD and the PD being processed (specifically which) as well as the intention of the processing are stipulated by the law. An additional requirement in public sector is also that only the law can stipulate the processing of certain PD based on the individual's personal consent.
- As an exception the processing of PD in public sector can be performed without being specified in the law when:
  - 1) an individual concludes a contract with the public sector or has entered negotiations for concluding a contract based on its own request;
  - 2) only in scope necessary for performing lawful competencies of the public sector, when such competencies do not encroach on the individual's justified interest.





## PDPA

- An individual's rights :
  - 1) review of a PD register;
  - 2) review and transcript of PD, all information regarding the records containing the data (such as transmitting of the list of users to which the data has been given, when, on which legal basis and for what purpose, information on sources, entries are based on, information on purpose and method of processing);
  - 3) right to amendment, correction, blocking, erasing, objection;
  - 4) lawsuit, interdiction.





## PDPA

- Only as an exception and only when so defined by law a limitation of an individual's rights is possible, when this is absolutely necessary for achieving the purpose of the set limitation:
  - protection of sovereignty and national defence,
  - protection of national security and the country's constitutional order, security, political and commercial interests of the country, performing of police duties,
  - prevention, investigating, proving and prosecuting criminal offences and violations,
  - investigating and punishing of violations of ethical norms for certain professions,
  - for monetary, budget and tax reasons,
  - in cases on exercising control over police and security of an individual to which PD pertain, or of rights and privileges of others.





## PDPA

- Prohibition of linking of records of PD from:
  - criminal offences and violations records with other PD records;
  - criminal offences and violations records.



## Exception from APIA – Personal data

The exception is relative (access is granted even if the data is a PD):

- 1) when the data in question relates to:
  - use of public funds;
  - is related to performing a public function;
  - is related to performing a public employee's function.
- **Case:** Zdravko Melanšek, chair of the Police and Employment Union vs. Ministry of Interior (supervision report – Police Academy).
- **Case:** Borut Mekina, journalist of the Newspaper Večer vs. Ministry of Interior (undertaking contracts).
- **Case:** Applicant vs. Ministry of Interior (similar document).





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## Izjema po ZDIJZ - Osebni podatek

- 2) with public interest test:
- when the public interest for disclosure is stronger than the public interest or interest of other people for limiting access.
- **Case:** Siniša Gaičič, journalist of the Newspaper Mladina vs. Ministry of Interior, Police (a copy from a Central Population Register)



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## Exception from APIA - data relating to prosecution for criminal offences or violations

Three cumulative criteria:

- data was gathered because of a criminal prosecution or in relation to it, or in relation to a violations procedure,
  - the procedure is current,
  - the disclosure could harm the procedure's completion – harm test.
- **Case:** Applicant vs. Ministry of Interior, Police (dog assault; violations of applicants rights).
  - **Case:** Amnesty International vs. Ministry of Interior, Police (use of forced means).





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## Exception from APIA - data relating to prosecution for criminal offences or violations

- A relative exception - with public interest test:  
when the public interest for disclosure is stronger than the public interest or interest of other people for limiting access.
- **Case:** Vukelič Majda, journalist of the Newspaper Delo vs. Government of the Republic of Slovenia (criminal charges).



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## Iščite odločbe po letu, kategoriji in vsebini!

Nov iskalnik po odločbah

### PREDSTAVITEV POOBlašČENCA



#### Kdaj informacijski pooblaščenec lahko pomaga?

- Na področju dostopa do informacij javnega značaja:
- ko vam organ v 20-ih delovnih dnevih na vašo zahtevo ne odgovori,
  - ko vam zavrne dostop do določene informacije,
  - ko vam zavrne ponovno uporabo informacij.

#### Na področju varstva osebnih podatkov za fizične osebe:

- ko menite, da je nekdo kršil vaše osebne podatke,
- ko vam upravljavec zbirke osebnih podatkov ne dovoli vpogleda v vaše osebne podatke,

Obveznosti po ZVOP za pravne osebe zasebnega in javnega prava

Več o pristojnostih informacijskega pooblaščenca

### AKTUALNO

- (29.12.05) Združitve organov v informacij...
- (28.12.05) Sejitev Inšpektorata za varstv...
- (30.11.05) Osebnih podatki ravnatelj in...
- (14.11.05) Slovenska pooblaščen...
- (14.11.05) Zaradi Zakona o dostopu v Brit...

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### 5 NAJBOLJ OBISKANIH

- [Odločbe - Informacije javnega značaja](#)
- [Odločbe](#)
- [Varstvo osebnih podatkov](#)
- [O uradu](#)
- [Dostop do informacij](#)

### INFORMACIJE JAVNEGA ZNAČAJA

**Spremembe ZbiljZ** - Vlada je na seji 7.12.2005 določila besedilo Zakona o spremembah in dopolnitvah ZbiljZ. Spremembe vsebujejo zoženje kroga povezanih organov za oddajo letnega poročila, ukinitve obveznosti obravnave skupnega letnega poročila v Državnem zboru RS in novo prečiščno določbo, za zagotovitev izvajanja posredovanja letnih poročil.

**Zakon o informacijskem pooblaščenju** - Zakon je bil objavljen v Uradnem listu RS, 11/3/2005, **veljati pa začne 31. 12. 2005**. Zakon predvideva učinkovitejšo in racionalnejše delovanje dveh organov; Pooblaščenca ter Inšpektorata za varstvo osebnih podatkov v novem, združenem informacijskem pooblaščenju, ki bo opravljal pristojnosti na obeh področjih.

Katalog zavezancev - kdo so organi javnega sektorja, za katere velja Zakon o dostopu do informacij javnega značaja

Katalog informacij javnega značaja Pooblaščenca