2 October 2007

To:

Group of Specialists on Access to Official Documents

Ms. Helena Jäderblom, Chair
c/o Council of Europe
67075 Strasbourg
France
cc:

Steering Committee on Human Rights (CDDH)

Mr. Roeland Böcker, Chair
Madame Chair, Sirs:

As the Commissioner of Data Protection and Freedom of Information of Hungary, I welcome the Draft European Convention on Access to Official Documents of the Council of Europe considering that transparency of public matters is a pre-requisite and also an indicator of democracy.

Setting minimum standards might facilitate the adoption of Freedom of Information Acts in countries that have not regulated the right of access to official documents yet. The adoption of the Convention, however, has great importance for other reasons as well. Most members of the Council of Europe (hereinafter 'COE') are countries with advanced freedom of information regimes. Regulations at national levels, however, show a number of differences. I believe that harmonization of national laws of COE member states and non-member countries as well has increasing importance in the age of globalization. Therefore, it is essential to share our experiences with each other.

The right to freedom of information as a fundamental right was included in the Constitution of Hungary in 1989, and the Parliament adopted the Act on Public Access to Data of Public Interest in 1992. The right to freedom of information has been safeguarded not only by the courts of law but by an independent parliamentary commissioner as well since 1995. In my experience, access to information laws can not be merely political declarations and the direct translation of a well-tried foreign law is not sufficient either. Freedom of information can not become a real right unless it is clear for the legislator that:

- this is one of the most expensive rights,

- its proper operation requires the extensive preparation of public servants and a change in their general approach, and

- introduction of effective guarantees (appeals bodies, monitoring system) is indispensable.

The COE should take these into consideration not only when finalizing the text of the Convention but also when it examines the practice of the signatory states.

We welcome the fact that the draft prepared by the Group of Specialists on Access to Official Documents sets forth a number of significant provisions (nobody is obliged to demonstrate his/her reasons for the data request, limitations of the right of access must be set down precisely by an Act, it includes the public interest test, processing of requests are almost free of charge, etc.). At the same time it has some shortcomings as well, which might undermine the purpose of the Convention. Therefore, my proposals based on the Hungarian experience can be summarized as follows:

1. It is justified that the right of access should extend to all data related to the public functions of every public authority on national and local level as well.

2. Laying down exceptions is a key point of access to information laws everywhere. If there are too many exceptions or they are too generally drafted, they might turn freedom of information into an "exhibition object". In my opinion, the exceptions listed in the draft should be narrowed down in three areas:

Article 3. 1. f . provides for the protection of privacy and other legitimate private interest. The privacy of persons performing public functions, who exercise public authority and operate with public funds, however, can not receive the same level of protection as the privacy of citizens. Therefore, this limitation should be drafted more narrowly. In Hungary, the Act on Data Protection and Freedom of Information provides that personal data relating to the sphere of tasks of a person performing public function shall be regarded as data public on grounds of public interest.

Article 3. 1. g. lays down that it is possible to limit the right of access if necessary for the protection of commercial and other economic interests. This limitation should not apply to the right of access to data related to public funds (public procurement, concession, PPP-constructions, subsidies, tax relieves, financing of political parties, etc.).

Article 3. 1. j. allows the limitation of the right of access to environmental data. The scope of this limitation should extend to the least amount of data possible. Most COE member states are parties to the Aarhus Convention. The Convention on Access to Official Documents can not grant fewer rights than the Aarhus Convention in relation to access to environmental data.

3. A reasonable maximum time limit should be introduced within which requests must be processed (15-30 days).

4. Only an effective review procedure can ensure the access to information, therefore, the courts of law or the ombudsman should have the authority to review the decision of the data controller and their decisions should be binding on the data controller.

5. A provision should be introduced that requires public authorities to proactively - if possible in electronic format - publish the most important public information.

Finally, I would like to express my recognition for the number of positive aspects of the draft as well. I hope that my remarks will contribute to the improvement of the Convention.

Yours sincerely,

Dr. Attila Peterfalvi
Parliamentary Commissioner for

Data Protection and Freedom of Information

Hungary