

Public Access to Information and Secrecy with Swedish Authorities



*Information
concerning
secrecy
legislation, etc*



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This brochure is produced by
the Ministry of Justice.
Additional copies can be
ordered from the Ministry of Justice,
SE-10333 Stockholm Sweden,
Fax: 46 8 20 27 34.

ISBN 91-38-31559-9

Foreword

The Secrecy Act, which entered into force on 1 January 1981, contains provisions on what is to be kept secret in state and municipal activities.

One way of expressing the matter is to say that the secrecy legislation states what exceptions apply to the so-called principle of public access to information.

The Secrecy Act also contains provisions concerning registration, marking as secret, the authorities' obligation to provide information to the public and to each other, appeals against decisions of authorities, etc. The Act also contains regulations on what rules on confidentiality shall prevail over the fundamental principle of the Freedom of Press Act that everybody is entitled to provide information for publication in printed matter.

The Secrecy Act is described briefly in this brochure. If you wish to know more, you are referred to the preparatory works of the Act, primarily the Government Bill 1979/80:2 and the report of the Parliamentary Standing Committee on the Constitution – KU 1979/80:37. The latest reprint of the wording of the Act is available in Swedish Code of Statutes – SFS 1992:1474.

The brochure also contains a report on the rules of the Freedom of Press Act concerning official documents.

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1

The principle of public access to information

1.1 The various forms of the principle of public access to information

The principle of public access to information means that the public and the mass media – newspapers, radio and television – are entitled to receive information about state and municipal activities. The principle of public access to information is expressed in various ways:

- anybody whosoever may read the documents of authorities: *access to official documents*;
- civil servants and others who work for the state or municipalities are entitled to say what they know to outsiders: *freedom of expression for civil servants and others*;
- civil servants and others in the service of the state or municipalities have special powers to disclose information to newspapers, radio and television: *communication freedom for civil servants and others*;
- the public and the mass media are entitled to attend trials: *access to court hearings*;
- the public and the mass media may attend when the chamber of the Riksdag (the Swedish Parliament), the municipal assembly, county council and other such entities meet: *access to meetings of decision-making assemblies*.

1.2 Public access to official documents

In principle, all Swedish citizens and aliens are entitled to read the documents held by public authorities. However, this right is restricted in two ways.

Firstly, the public only enjoy the right to read such documents that are regarded as *official documents*. Not all documents of a public authority are in fact considered to be official documents. Thus, for example, a draft of a decision, a written communication or the like in a matter is not an official document if the draft is not used when the matter is finally determined.

Secondly, a number of official documents are *secret*. This means that the public is not entitled to read the documents and the public authorities are forbidden to make them public.

The fundamental rules on public access to official documents are found in **Part 2**. The extent to which secrecy applies to official documents is stated in the *Secrecy Act*. (See Part 3.2).

1.3 Freedom of expression for civil servants, etc.

According to our primary constitutional law, the *Instrument of Government* passed in 1974, all Swedish citizens and aliens in Sweden enjoy certain fundamental rights and freedoms. One of the most important of these rights and freedoms is the freedom of expression. This is defined by the Instrument of Government as the freedom to communicate by word, in writing or images or in other ways communicate information and express ideas, opinions and feelings.

According to the Constitution, the freedom of expression may be restricted by statutes enacted by the Riksdag. One form of restriction on the freedom of expression consists of the legislation concerning the *duty of confidentiality* on the part of civil servants engaged by the state and municipalities. The provisions are consolidated in the *Secrecy Act* (see Part 3.2).

1.4 Communication freedom for civil servants, etc.

The freedom to communicate information applies to everybody but it is of particularly great importance for civil servants and others engaged by the state and municipalities. The rules concerning the right to communicate information are contained as a component of the *Freedom of Press Act's* provisions on freedom of the press.

By "*freedom of the press*" is meant the right enjoyed by everyone to freely express themselves in printed matter, e.g. books and newspapers. If a printed matter contains something criminal there is only one person who may be penalised. This is normally the author. In the case of newspapers it is, however, the person responsible for publication who can be held liable. All others who contribute to a printed matter containing something criminal are therefore, in principle, free from liability. This also applies to a person who provides information which is published in the printed matter. This is said to involve a *right to communicate information* on the part of the person providing the information.

However, the right to provide information for publication in written publications does not always apply. There are *exceptions to the right to communicate information* in the following three cases:

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- it is not permitted to provide information for publication in a book or newspaper if the person providing the information thereby commits a serious crime against national security, e.g. espionage;
 - it is not permitted to intentionally provide an official document whose publication is secret;
 - it is not permitted to intentionally breach certain duties of secrecy (which can consequently be said to supersede the right to communicate information).

The duties of secrecy which supersede the right to communicate information are listed in the *Secrecy Act*. The other exceptions to this right are given directly by the Freedom of Press Act.

The protection for freedom of expression in radio, TV, films, video and sound recordings, etc., is regulated as of 1 January 1992 by the *Fundamental Law on Freedom of Expression*. This new constitutional law is based on the same principles as the Freedom of Press Act.

1.5 Public access to court hearings

It is laid down by the *Instrument of Government* that court hearings shall be public, i.e. that the public and the mass media may attend trials. The Riksdag may make exceptions to this main rule by enacting statutes providing that court hearings may be held behind closed doors (*in camera*). In such hearings it is only the court and the parties who may be present in the courtroom.

Provisions concerning when court hearings may be held *in camera* are given by the *Code of Judicial Procedure* and *other acts* concerning judicial proceedings (see Part 4).

1.6 Public access to the meetings of decision-making assemblies

The principle that the meetings of decision-making assemblies shall be open to public attendance is not laid down in the constitutional laws. In the case of the Riksdag, there are provisions contained in the Riksdag Act relating to access to meetings in the chamber. Corresponding rules concerning municipal assemblies and county councils are provided by the Local Government Act. In exceptional cases these decision-making assemblies may meet *in camera*.

2

Official documents

Chapter 2 of the Freedom of Press Act states what is meant by the term ‘official document’. This chapter also includes fundamental rules concerning which official documents may be kept secret. Furthermore, the chapter contains provisions on how the public gains access to official documents that are not secret.

An outline description of these rules in the Freedom of Press Act is given here.

2.1 What is an official document?

A *document* is a presentation in writing or images but also a recording that one can read, listen to or comprehend in another way only by means of technical aids. The word ‘document’ consequently refers not only to paper and writing or images but also, for example, to a tape recording or data stored electronically. One can say that a document is an object which contains information of some kind.

A document is *official* if it is

1. held by a public authority, and
2. according to special rules is regarded as having been received or drawn up by a public authority.

Public authority

The Freedom of Press Act does not state what is meant by public authority. One may say that public authorities are those entities included in the state and municipal administration. The Government, the central public authorities, the commercial public agencies, the courts and the municipal boards are examples of such public authorities. However, companies, associations and foundations are not public authorities even if the state or a municipality wholly owns or controls them. Nor are the Riksdag, the county council or municipal assemblies public authorities but the Freedom of Press Act expressly equates these decision-making assemblies with public authorities. Moreover, the Secrecy Act also prescribes that the

provisions of the Freedom of the Press Act regarding the right of access to documents also applies to other entities, for example a company over which a municipality or county council exercises legal powers of control. (See Part 3.2.2).

Held by a public authority

It is often easy to conclude that a document consisting of paper with writing is 'held' by a certain public authority. In other instances it is more difficult to say where a document is held. This applies for example to information stored on a computer. The computer itself with the data stored electronically may be found at one public authority, while another public authority has access to the information on its own computer screens or may obtain printouts from the recording directly on its own equipment.

According to the Freedom of the Press Act, recordings shall be deemed to be held by the authority if the authority can read, listen to or in another way comprehend them with technical aids that the authority uses itself. However, according to a special restriction contained in the same section of the Freedom of the Press Act, a compilation of information stored on a computer is not deemed to be held by the authority unless the authority can extract it by means of some routine kind of measure. The authority is for instance not obliged to write new computer programmes in order to be able to satisfy a request to gain access to a particular compilation of information stored on a computer that has not already been compiled by the authority. There is a further limitation, namely that such compilations of information stored on computers are not deemed to be held by the authority if they contain personal data and the authority does not have the power according to law or ordinance to make the compilation available. The underlying purpose of this provision is to ensure that the public cannot, by referring to the principle of public access to information, request compilations of personal data that the authority cannot even itself produce having regard to the protection of personal privacy.

If a public authority has the sole function of technically processing or storing electronic recordings on behalf of another public authority or on behalf of an individual, such a recording is not considered to be an official document held by the public authority that only has technical functions in this respect.

Received by a public authority

A document has been received by a public authority when the document has arrived at the authority or is in the hands of a competent official, for example, the civil servant dealing with the matter to which the document refers. The document need not be registered in order to be an official document.

The Freedom of Press Act also contains special rules concerning letters and other messages which are not addressed to the public authority directly but to one of the officers of the authority. If such a message relates to the authorities activities, it is an official document even though it has been addressed to a specific person at the authority. There is one exception to this rule. For example, a municipal councillor or a trade union representative on the board of an authority can receive letters concerning issues that the municipality or authority is engaged with but without the letter becoming an official document, provided he/she received the letter exclusively in his/her capacity as a politician or union representative.

Drawn up by a public authority

The Freedom of Press Act contains many rules relating to when a document is considered to have been drawn up by a public authority. The principle may be said to be that a document, which is created at a public authority, is an official document when it obtains its final form. A document is considered to be drawn up when an authority sends it out (dispatches it). A document which is not dispatched is drawn up when the matter to which it relates is finally settled by the authority. If the document does not belong to any specific matter, it is drawn up when it has been finally checked or has otherwise received its final form.

For certain kinds of documents other rules apply concerning when they are drawn up. Thus, for example, a diary, a journal or similar document that are kept on a continuing basis, are considered to be drawn up as soon as the document is completed so as to be ready for use. Judgments and other decisions, with associated records, are drawn up when the ruling or decision has been pronounced or dispatched. Other records and similar documents are generally drawn up when the authority has finally checked them or approved them by other means.

Preliminary outlines and drafts (for example, of a decision of an authority) and memoranda (notes) are not official documents if they have not been retained for filing. By 'memorandum' is meant an *aide-mémoire* or other notation made for the preparation of a case or matter and which has not introduced any new factual information.

2.2 What official documents may be kept secret?

The Freedom of Press Act lists the interests that may be protected by keeping official documents secret:

1. national security or Sweden's relations with a foreign state or an international organisation;

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2. the central financial policy, the monetary policy, or the national foreign exchange policy of Sweden;
 3. the inspection, control or other supervisory activities of a public authority;
 4. the interest of preventing or prosecuting crime;
 5. the public economic interest;
 6. the protection of the personal integrity or economic circumstances of private subjects; or
 7. the preservation of animal or plant species.

Official documents may not be kept secret in order to protect interests other than those listed above. Which documents are secret shall be carefully stated in a special statute, that is, the Secrecy Act. However, it is permitted to include provisions concerning secrecy in other enactments provided that the Secrecy Act makes reference to them. In other words, the Secrecy Act shall indicate all the instances when official documents are secret. The Government may not decide on which documents are secret; this is an exclusive right of the Riksdag. However, in a number of provisions of the Secrecy Act, the Government is given the right to make supplementary regulations. The Government's regulations are contained in the *Secrecy Ordinance* (Swedish Code of Statutes 1980:657 reprinted in 1998:1333).

2.3 How can the public gain access to official documents?

A person who wishes to obtain an official document should refer to the public authority keeping the document. The person has the right to read the document at that place (provided the document is not secret). If the document cannot be read or be comprehended in any way without using technical aids, the authority shall make such equipment available, for example, a tape-recorder in the case of a tape-recording. A document may also be transcribed, photographed or recorded. If a document is secret in part, those parts of the document that are not secret shall be made available in transcript or by a copy. Exceptions to the rules described here regarding having sight of the document at the place have, *inter alia*, been made where this "causes serious difficulty".

Those wishing to obtain official documents are also entitled to obtain a transcript or a copy of the document for a fixed fee. However, the authority is not obliged to provide a document comprising electronic data for computer processing except as a printout, unless otherwise prescribed by law.

Those who wish to obtain official documents need not describe the

document precisely, for example, state its date or registration number. But on the other hand, authorities are not liable to make extensive inquiries in order to obtain the document for the applicant when he or she cannot provide the authority with further details of the document.

A request to obtain an official document shall be dealt with speedily by the authority. A civil servant currently working with the document need not release it immediately but unnecessary delay is not permitted.

One reason for some delay in the provision of an official document may be that the authority must consider whether the information contained in the document is secret or not, according to one of the provisions of the Secrecy Act. Sometimes it is an authority other than the one where the document is held that must determine the issue of secrecy. In that event, the request for the provision of the document should be submitted at once to the authority that will decide on the matter.

An authority may not demand a person who wishes to obtain an official document to identify himself or herself or state what the document will be used for. However, if it relates to a document falling under one of the provisions of the Secrecy Act, the authority must sometimes know who wishes to obtain it and what it will be used for. Otherwise, the authority might not be able to make a decision concerning whether the document may be made available. In that event the applicant may either say who he or she is and state what the document will be used for (for example, research) or relinquish any possibility of obtaining it.

An authority has, under certain circumstances, the possibility of providing a document subject to conditions, so-called *reservations*, restricting the applicant's right to use the information contained within the document. The authority may, for example, forbid the applicant to publish the information or to use it for purposes other than research.

If an authority has rejected a request to obtain a document or if it has supplied an official document subject to reservations, the applicant is, under the Freedom of Press Act, generally entitled to request that the matter be reviewed by a court. The Secrecy Act contains provisions concerning when reservations may be imposed and the court to which appeals should be addressed.

The decision of an authority to provide an official document cannot be appealed against.

3

The Secrecy Act

3.1 An outline of the contents of the Act

The Secrecy Act is divided into 16 chapters. The first chapter contains general provisions about what issues are governed by the Act, what is meant by secrecy, who should observe secrecy, etc.

Chapters 2–10 contain the real secrecy provisions, that is, the provisions prescribing what information shall be kept secret. The chapters are arranged in the same manner as the rules of the Freedom of Press Act concerning which interests may be protected by official documents being kept secret (see Part 2.2). The secrecy provisions of Chapter 2 protect national security and Sweden's relations with other states and international organisations, Chapter 3, Sweden's central financial policy, monetary policy and foreign exchange policy, etc. The provisions that protect the personal and financial circumstances of individuals have been divided into three chapters. Chapter 7 protects the personal circumstances of the individual (for example, within health care and social welfare). Chapter 8 contains provisions to protect the financial circumstances of individuals (for example, in Government supervision of trade and industry. The circumstances of individuals of both a personal and financial nature (for example, within the tax system) are protected by Chapter 9.

Chapters 11–13 govern secrecy at such authorities as the Government, the courts or those authorities that supervise or audit other authorities.

Chapter 14 contains provisions that to some extent limit the secrecy that would otherwise apply. Among other things, authorities are given powers to provide each other with information to a greater extent than that allowed in relation to individuals. Furthermore, there are provisions restricting secrecy in relation to individual persons, for example, parties in cases and matters and the trade union representatives of civil servants. Chapter 14 also contains rules concerning conditions and reservations that may be imposed when information is provided to individuals.

The provisions included in Chapter 15 concern keeping registers, marking as secret, the duty of authorities to provide information and appeals. The chapter also contains a section with special provisions concerning ADP recordings.

The final chapter of the Secrecy Act lays down what duties of confidentiality prevail over the right of communication (see Part 1.4). This chapter has only one paragraph, which contains a list in “catalogue form” of these duties of confidentiality.

3.2 Certain fundamental features of the Act – the general provisions of Chapter 1

3.2.1 What issues are governed by the act?

The Secrecy Act governs, in principle, all *secrecy in public activities*. The Act replaces both the former Secrecy Act from 1937 and virtually all previous regulations relating to the duty of confidentiality for those who are active within the state and municipalities. The provisions concerning when courts may hold hearings *in camera* are included in the Code of Judicial Procedure and other acts governing judicial proceedings (see more on this in Part 4).

3.2.2 Who should observe secrecy?

To begin with the *public authorities* must observe secrecy. Rather like the Freedom of Press Act, the Secrecy Act is silent concerning any definition of the concept of public authority. The words have the same meaning in constitutional law (See Part 2.1). As in the Freedom of Press Act, the state and municipal decision-making assemblies are equated with authorities i.e. primarily the Riksdag, county councils and municipal assemblies. As of 1 January 1998 (and to some extent already as of 1 January 1995) companies, profit-making associations and foundations in which the municipalities or county councils exercise legal decision-making powers are also equated with authorities as regards the right of access to official documents from public authorities and the application of the Secrecy Act.

However, a state-owned share company, profit-making association or foundation or a private entity is only liable to apply the principle of public access to information and the Secrecy Act if the entity in question has been listed in the Appendix to the Secrecy Act and in such cases only in the operation that is listed in the Appendix. One reason for including a state-owned company or a private entity in the Appendix to the Secrecy Act may be that the entity in question engages in the exercise of official powers in relation to individuals.

Besides authorities and the above-mentioned entities, persons in public service or who are undertaking public service duties (for example,

compulsory military service) must observe secrecy. The Act describes this category of persons as those who by reason of employment or an assignment with an authority, by reason of service obligations or other similar grounds participate or have participated, on behalf of the public, in the operations of the authority. It follows from this that secrecy shall also be observed after the employment, assignment, etc. has ceased. A composite designation for such persons, which is often used, is '*public functionaries*'. A prerequisite for a public functionary to be bound to observe secrecy concerning something is that he or she has learned of it in his/her activities on behalf of the public. What functionaries may have learned in other quarters is consequently not subject to secrecy under the Secrecy Act.

Special rules apply to clergymen within the Church of Sweden in relation to their duty of confidentiality.

There are duties of professional secrecy under other enactments than the Secrecy Act regarding persons who are not public officials (for example, attorneys and physicians in private practice).

3.2.3 What does secrecy mean?

The concept of secrecy is defined in the Act. The word means a *prohibition* on disclosing information whether orally or by making an official document available or in any other way (e.g. by the disclosure of a document, which is not an official document, or production of an article). Secrecy simultaneously entails a *restriction on the right of the public* to obtain an official document. Secrecy thus expresses two different aspects of the same matter: if the public are not entitled to obtain an official document, the authorities and the public officials are consequently forbidden from making the document available or disclosing its contents in another way. One can say that a secret document's contents are protected by the duty to observe secrecy. Further, information held by a public authority that is not an official document may be subject to secrecy.

In order to indicate in the Act that information is subject to secrecy, the term 'secrecy shall apply to this information' is used. The Act's provisions more closely describe what information is subject to secrecy, (see Part 3.3).

Should secrecy apply to information, this means that the information may not be made available to *individual* persons, corporations, associations, etc. except in those cases stated in the Secrecy Act or in an enactment or ordinance, which the Secrecy Act refers to.

Furthermore, secrecy also means that information may not be made available to *other authorities in cases other* than those stated in the Secrecy Act or in an enactment or an ordinance to which the Secrecy Act refers.

To a certain extent, secrecy also applies within an authority, namely between various operational branches within an authority (for example, between a county administrative board's tax department and its planning department). However, there are special rules limiting secrecy between authorities (operational branches), see Part 3.5.1.

Secrecy also means that information may not be used outside the activity where it is subject to secrecy (for example, for stock exchange speculation).

Secrecy does not prevent information being made available if it is necessary in order for the authority to perform its own functions. Thus, if it is necessary, an authority may, for example, consult an independent expert, even if this should involve providing information to the expert that is subject to secrecy.

The provisions imposing penalties for offences against secrecy are not contained in the Secrecy Act but in the Penal Code, more particularly in Chapter 20, Section 3 (breach of professional secrecy). In a case of intentional commission of a breach of professional secrecy the penalty is a fine or imprisonment for a maximum of one year and in the case of a breach committed by carelessness a fine. Petty cases of carelessness are not subject to any penalty.

3.3 The scope of secrecy and dissemination – the real secrecy provisions (Chapters 2–10)

3.3.1 The scope of secrecy

The operative secrecy provisions are made up of various component parts, elements. They are introduced with the expression 'Secrecy shall apply' in combination with the words 'to information'. The information is always described in detail. The information is of some definite kind (for example, 'Sweden's relations with another state' or 'the personal circumstances of an individual'). Secrecy is usually stated to apply to information found in some special context, for example, in certain matters, in certain operations or at certain authorities that are described in some in detail by the provisions.

3.3.2 Absolute and conditional secrecy

A number of secrecy provisions do not lay down any special conditions for the applicability of secrecy to information mentioned in that context. However, the majority of secrecy provisions are subject to prerequisites regarding their applicability, which require that certain special conditions

are met. The condition is usually formulated as a so-called *requirement of damage*. Such a requirement means that secrecy applies provided that some stated risk of damage arises if the information is disclosed. There are two main types of requirement of damage: “straight” and “reverse”.

The form of the *straight requirement of damage* is indicated by the following examples: “Secrecy shall apply to matters concerning occupational injury insurance or partial pension insurance for information concerning an individual’s business or operational circumstances, *if it can be assumed that disclosure of the information would cause damage to the individual*”. The straight requirement of damage indicates the main rule to be that secrecy does not apply and that the information may be disclosed.

The *reversed requirement of damage* assumes secrecy to be the main rule. An example of this type of requirement of damage is as follows: “Secrecy applies within the social services to information concerning an individual’s personal circumstances, *unless it is manifestly evident that the information may be disclosed without the individual or a person closely related to him being harmed*”.

As indicated by these two examples, the words ‘damage’ and ‘harm’ are used for the requirement of damage. The word ‘*damage*’ refers to economic damage that someone may suffer because the information about his/her financial circumstances has been disclosed, e.g. to a business competitor. The word ‘*harm*’ primarily designates various kinds of violations of integrity that may arise because information about someone’s personal circumstances is disclosed. (A legal person, e.g. a corporation, cannot suffer ‘harm’ within the meaning of the Secrecy Act). ‘Harm’ includes both physical injury and mental distress. The disclosure of information that is not normally sensitive (e.g. a person’s address) may also sometimes involve harm, for example, if it may be assumed that the person who receives the information will use it to expose the other to violence or harassment. To some extent, ‘harm’ also includes the consequences of a person’s private financial situation being disclosed.

3.3.3 Time limits on secrecy

One of the possible ways that has often been employed in the Secrecy Act for restricting the extent of secrecy are rules concerning time limits. Such rules only relate to information in official documents and thus not to information found in other forms. The secrecy period is usually formulated as a maximum period stating the longest period that the information in an official document may be kept secret. As most secrecy provisions contain a requirement of damage, one may expect that the risk of damage has often ceased before the secrecy period expires.

The secrecy period varies from 2 to 70 years, depending on the interest to be protected. For the protection of an individual's personal affairs, the secrecy period is usually 50 or 70 years while, as regards public or private individuals' financial circumstances, it is often 20 years.

One main rule concerning the point of departure in the computation of the secrecy period is stated in one of the introductory provisions of the Act. For most documents the starting point is with the date the document was made. As regards diaries, journals, registers and other notes kept continuously, the time is counted from when the information was entered into the document. Some secrecy provisions also contain other deviations from the main rule.

3.3.4 Transfer of secrecy

Secrecy is usually expressed to apply in relation to certain matters, for certain operations and regarding certain public authorities. In that case, secrecy does not attach to the information disclosed to another authority in the absence of further provisions. The Secrecy Act does not contain any general rule concerning the transfer of secrecy between public authorities. As a rule, the need for secrecy by the recipient authority is satisfied by that authority having its own secrecy rule applicable to the information. However, this does not apply comprehensively. Instead there are rules providing that secrecy accompanies information to another authority in special situations.

Such rules concerning transfer of secrecy are contained in a number of sections in Chapters 2–10. However, the most important rules are contained in Chapters 11–13.

3.4 Special secrecy provisions for particular authorities (Chapters 11–13)

3.4.1 Secrecy for the government, the riksdag and others (Chapter 11)

Sometimes the real secrecy provisions of Chapters 2–10 are applicable to the Government and Government Offices (the ministries). Furthermore, there is a provision that is directly aimed at the Government. This provision means that secrecy that applies to an item of information is transferred to the Government, when the Government shall decide whether the information may be provided. This may, for example, involve an issue about

the Government granting a waiver from secrecy in a particular case (see more about waivers in Part 3.5.3). By a special waiver rule, the Government has been given power to decide itself whether secrecy shall apply to information in a matter that it decides on.

That stated here, concerning the Government, also largely applies to the Riksdag. The powers of the Riksdag to grant waivers apply only to information regarding the Riksdag itself and the authorities that report to the Riksdag (for example, the Riksbank, Swedish Central Bank). Secrecy within the Riksdag is limited to a particularly stringent level as regards such matters as have been discussed in the Chamber and to issues concerning information in records, commission and committee reports and similar documents.

Secrecy is also limited to a particularly stringent extent regarding the Parliamentary Ombudsman (JO) and the Office of the Chancellor of Justice (JK). This particularly applies to information that an individual has provided. The decisions of the JO are, in practice, always public.

3.4.2 Secrecy for the courts (Chapter 12)

The special secrecy provisions for the courts mean that the secrecy that applies to information is transferred to a court, if the information is provided to the court. There are exceptions to this main rule. For instance, there are secrecy provisions in Chapters 2–10 that are directly aimed at the courts in particular and which should be applied instead.

If a court hearing in a case is held in public, the secrecy that has applied to the information that has been provided or adduced at the hearing ceases. If the hearing is held behind closed doors (*in camera*) (see Part 4), the main rule is that secrecy is preserved. When the court then determines the case, the secrecy ceases, unless the court specially decides that secrecy shall continue.

Secrecy does not apply to an item of information that is included in a judgement or a decision made by a court, unless the court specially decides that secrecy shall continue. The final judgment and corresponding part of a decision may only be marked as secret in rare exceptional cases.

3.4.3 Transfer of secrecy to certain authorities (Chapter 13)

Secrecy is transferred to:

- authorities that have supervision of other authorities or which conduct audits at other authorities;

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- authorities that deal with matters concerning disciplinary issues and the like;
 - authorities that have research activities;
 - authorities that deal with archiving;
 - authorities that attend to trade union negotiations.

A precondition for secrecy being transferred is that the information is intended for the activity as stated above. There are a couple of exceptions to the main rule concerning transfer of secrecy.

3.5 Special limits on secrecy. Reservations (Chapter 14)

3.5.1 Secrecy between authorities

In principle, secrecy also applies between authorities. However, there are special provisions whereby it is possible for authorities to provide information to each other to a greater extent than to individuals. The most important of these provisions have the following effect.

Secrecy does not prevent information from being provided to another authority, as long as there is a provision in a statute or ordinance that the information shall be provided to the authority. One example of such an obligation to provide information is the obligation to testify.

Secrecy does not prevent information being provided to another authority that needs the information:

- for example, for a trial of a civil servant for an offence in office;
- for reconsideration of a decision or a measure by the authority that has the information;
- for supervision of the authority that has the information or for auditing the authority.

Secrecy does not prevent information being provided to another authority, if on balancing between the interest of providing the information and the interest of preserving secrecy, it is manifest that the first-mentioned interest is greater. This rule (the so-called *general clause*) is not applicable in all cases. Among other things, it may not be applied when there is an issue of secrecy within the health and medical services and within the social welfare services. Such provisions in other statutes and ordinances, which state the case in which information of a particular kind may be provided to other authorities, may also exclude the application of the general clause.

3.5.2 Special limits on secrecy in relation to individuals

Secrecy to protect an individual person does not apply in relation to that person. He or she can furthermore waive secrecy, completely or partially, so that the information may be provided to other individuals or to an authority. In a couple of exceptional cases, the individual does not have any such right to control secrecy that protects him/her. Thus, for example, a hospital file may be kept secret from the patient, if the patient's condition would deteriorate seriously if he/she were allowed to read the file.

A person who waives secrecy for an item of information can require that the authority imposes a reservation when the information is provided to another individual (see Part 3.5.4).

A party in a case or matter before a court or other authority is, in principle, entitled to see all information in the case or matter. It is only in exceptional cases that something can be kept secret from a party. Judgements and decisions must always be provided to the parties. If information that is subject to secrecy is provided to a party, a reservation may be imposed (see Part 3.5.4).

A person who is suspected of or charged with an offence in office may provide information subject to secrecy to his defence counsel, if this is necessary in order to be able to protect his/her rights. A corresponding restriction of secrecy applies to such legal proceedings as matters concerning disciplinary measures.

Secrecy in accordance with some of the provisions of Chapters 2–10 does not prevent an authority from providing information to the trade union representatives of public employees, if the authority has a statutory duty to provide the information (as is the case, for example, under the Employment (Co-determination at the Workplace) Act (MBL) and the Work Environment Act). If the person who receives information is employed by an authority, he or she shall observe the secrecy provision applicable to the authority. If the trade union representative is employed there, the authority can impose upon him/her a duty of confidentiality by imposing a reservation (see Part 3.5.4).

A trade union representative may, independently of his/her duty of confidentiality, pass information on to a member of the board of his/her trade union organisation. The trade union representative shall then inform the member of the board about the duty of confidentiality, and the member of the board in his/her turn becomes bound by the same duty of confidentiality. A trade union representative may also use information, for example, to stop the operation at a dangerous workplace, provided that he/she does not disclose the information.

3.5.3 Waiver

In several secrecy provisions of Chapters 2–10, the Government has been given the right, in special cases, to make exceptions to (grant a waiver from) the secrecy that applies according to the provisions. There is also a rule that provides the Government with an opportunity, in exceptional cases, to provide a waiver from secrecy in accordance with any secrecy provision whatsoever. If the matter involves secrecy for an item of information held by the Riksdag or some other authority reporting to the Riksdag, it is instead the Riksdag that is entitled to grant a waiver. A waiver may be combined with conditions, reservations (see following Part).

3.5.4 Reservations

A reservation that is imposed when information is provided to an individual means that the individual cannot freely use the information. For example, he/she may be prohibited from publishing the information or using it for anything other than research purposes. Four special situations when reservations may be imposed, if information is provided to an individual have been mentioned in parts 3.5.2 and 3.5.3.

There is also a more general rule that makes it possible for an authority to impose a reservation when information is provided to an individual. However, a reservation may never be imposed when information is provided to an authority. A precondition for the general rule on reservations being applicable is that the matter relates to information that is subject to secrecy in accordance with some secrecy provision that contains a requirement of damage (see Part 3.3.2). If those conditions that are imposed by the reservation eliminate the risk of damage that prevents the information from being provided, the authority shall provide the information and impose the reservation.

An individual who makes use of information in violation of a reservation may be subject to punishment for breach of professional confidentiality (Chapter 20, Section 3, Penal Code).

A person who requests part of an official document need not be satisfied with receiving the document subject to a reservation, but can appeal and have the reservation considered by a superior instance (see Parts 2.3 and 3.6.5).

3.6 Special rules for official documents (Chapter 15)

3.6.1 Registration of official documents

In order to facilitate the public's exercise of the right of access to official documents, it is important for it to be allowed to know which documents are held by the public authorities. Consequently, official documents received by an authority or drawn up there must be registered. There are four exceptions to this rule. The following documents need not be registered:

- documents that are obviously of little importance to the authorities' activities (for example, press cuttings, circulars and advertising material);
- documents that are not secret and are kept in such a manner that it can easily be ascertained whether they have been received or drawn up by the authority;
- documents that are found in large numbers at authorities and which the Government has exempted from the registration requirement by special provisions (in the Secrecy Ordinance);
- ADP recordings available at the authority by reason of another authority registering them in a common ADP register.

In order to permit the public ready access to read the registers of authorities, such registers should, in principle, not contain any information subject to secrecy. The authorities may, however, to a certain degree, keep registers with secret information, either as a complement to the public registers or with the permission of the Government (in the Secrecy Ordinance).

3.6.2 Marking as secret

An official document containing information subject to secrecy may be marked secret. It is, however, generally not necessary to make such a mark indicating secrecy. Notation other than the word "secret" may not be used. Thus, expressions such as "in confidence", "confidential" or "for official use only" must *not* be used.

If a person requests to see a document, marked secret, the issue of providing the document should be considered in the normal manner. Thus, a mark denoting secrecy does not release the authority from the obligation to consider the request. Consequently, a notation or mark of secrecy only operates as a "warning signal".

Those official documents that are of great importance to national security

shall be provided with a so-called qualified notation of secrecy. Such a notation has binding force as regards which authority is empowered to determine whether the document may be disclosed.

3.6.3 The duty of authorities to provide information

On the request of a private person, the authorities shall provide information from the official documents held by the authority that are not secret. This duty is in addition to the duty to provide the document itself (see Part 2 regarding the latter obligation). The authorities must also assist private persons with the special information needed in order to obtain information from ADP recordings.

The authorities must on request also provide each other with such information at their disposal that is not subject to secrecy.

A prerequisite for the duty to provide information is that it may be done without impeding the usual functioning of the authority.

3.6.4 Who considers whether an official document may be disclosed?

The matter is considered in the first instance by the *official* responsible for the care of the document, for example, a registrar or a person reporting on a matter. In doubtful cases, the official should refer the matter to the *authority* if this would not delay determination of the matter. Further, if the official refuses to provide the document or supplies it subject to a reservation (see Part 3.5.4), the matter must be referred to the authority on the request of the applicant. The applicant shall be advised that he may make such a request and that a decision by the authority must be made in order for it to be possible to appeal against a decision. ‘The Authority’ can be a more senior official or, for example, the authority’s board.

3.6.5 Appeals

If an authority has rejected a request to obtain a document or if it has supplied an official document subject to a reservation (see Part 3.5.4), the applicant is generally entitled to appeal against the decision. Appeals are usually presented to an administrative court of appeal. A decision of such a court may be appealed against to the Supreme Administrative Court. If the party whose application has been rejected is a state authority, the appeal is presented to the Government instead of to an administrative court of appeal.

3.6.6 Special rules concerning ADP recordings

The Secrecy Act contains an explicit reminder that the authorities should bear in mind the principle of public access to information when they establish new or alter existing ADP systems. Furthermore, the Secrecy Act gives individuals the right, to a limited extent, to themselves use the computer terminals of the authorities in order to view ADP recordings. The authorities are also under a duty to keep an explanation of their ADP use available for the public.

3.7 Duties of confidentiality prevailing over freedom of communication (Chapter 16)

The right of communication means that a person who provides information for publication in printed matter or on radio or television is free from liability, even if the information otherwise may not be provided. These secrecy provisions do not always provide sufficient scope for public officials to the extent that is desirable in order to be able to provide a basis for public debate and to be able to participate in it. By the freedom to communicate being available, the opportunities are improved for irregularities and wrongs in society becoming publicly exposed and discussed. The freedom to communicate does not mean that public officials are *liable* to provide information to the mass media but only that they have an *opportunity* to do so, if they consider that the interest of public access to the authorities' operations weighs more heavy than the interest to be protected by the secrecy.

As indicated in Part 1.4, there is an exception to the right of communication. One of the exceptions relates to such duties of confidentiality that prevail over the freedom of communication. The last chapter of the Secrecy Act states which these duties of confidentiality are by listing a number of sections of the Secrecy Act and other statutes. Two examples that may be mentioned of public officials who cannot freely provide information to the mass media are attorneys and physicians employed by the public health service.

Most of the duties of confidentiality that prevail over the freedom of communication are those that are imposed on public officials. In some cases the freedom of communication is also limited for individual persons by the duty of confidentiality (among others, attorneys and physicians in private practice).

4

Court hearings *in camera*

If information subject to secrecy is to be provided or adduced at a court hearing, the court may generally hold a hearing behind closed doors (*in camera*). In the general courts (district/city courts, courts of appeal and the Supreme Court) particularly strong reasons are usually required to be able to exclude the public from a hearing at which information subject to secrecy is involved. The possibilities for holding hearings *in camera* are greater in administrative courts (county administrative courts, courts of administrative appeal and the Supreme Administrative Court) than in the general courts.

If a court hearing has been held *in camera*, the court may impose a duty of confidentiality on those who have been in attendance.



REGERINGSKANSLIET

Ministry of Justice, Sweden