

Record Card

File number	3208/2015/VOP
Area of law	Right to Information
Subject	Access to information pursuant to Act No. 106/1999
Type of finding	Final statement – Section 19
Result of inquiry	Errors found
Relevant Czech legislation	106/1999 Coll., Section 16a 128/2000 Coll., Section 16 (2)(e)
Relevant EU legislation	
Date of issue	9 May 2016
Date of filing	18 May 2015

Headnote

(I) The Act on Municipalities is not a “special regulation” within the meaning of Section 2 (3) of the Free Access to Information Act that could exclude application thereof and, therefore, the Free Access to information Act must be applied in provision of information pursuant to the Act on Municipalities as a general procedural instrument.

(II) Should the Applicant disagree with the manner in which the information requested pursuant to Section 16 (2) of the Act on Municipalities was provided to him or her, it is, in view of Section 2 (3) of the Free Access to Information Act, necessary to apply the Free Access to Information Act to the process of resolving complaints filed by Applicants for information.

Note: The headnote is not necessarily included in the Defender’s opinion.

Document:

Deputy of the Public Defender of Rights
JUDr. Stanislav Křeček

Brno, 9 May 2016
File No.: 3208/2015/VOP/PL
Your Ref.: 687/KON/2015

Dear Sir,

I am responding to your statement^[1] regarding my report on inquiry in the case of Mr X. Y. (hereinafter the “Complainant”) who complains that the Regional Authority of the Ústí Region (hereinafter the “Regional Authority”) has not made any decision regarding his “appeal and complaint against the failure to provide information”.

To begin with, let me summarise the basic facts. By application of 12 March 2015, the Complainant requested the Roudnice nad Labem Municipal Authority (hereinafter the “Municipal Authority”) to “send all resolutions by which the municipal bodies decided to consent to acceptance of all donations to the retirement home in 2014”. The Secretary of the Municipal Authority informed him^[2] that the request was aimed at disclosure of published information, stating that all resolutions of the municipal council and assembly were published on the town’s website. By Letter of 26 March

2015, the Complainant lodged “an appeal and a complaint against the failure to provide information”. The Complainant argued, *inter alia*, that the information concerning the periods of 2012 and 2013 was provided to him in full, unabridged scope. On 23 April 2015, the Complainant approached the Municipal Authority to lodge a complaint, where he claimed that his appeal and complaint were not resolved. Regarding the case, the Regional Authority concluded[3] that it was not competent to conduct an inquiry based on the complaint and that appeal was inadmissible as no decision had been made in the matter.

In your statement of 26 October 2015[4], you stated that the Regional Authority based its assessment of the matter on the fact that the provided information was not published on the website of Roudnice nad Labem within the meaning of Section 5 (3) of the Information Act[5], and that is, among other reasons, why you believed this was not a request made pursuant to the Information Act. Furthermore, you pointed out that the complaint lodged by the Complainant was not submitted to the Regional Authority when the Municipal Authority, on request of the Regional Authority, explicitly referred to the fact that it resolved the request within the regime of the Act on Municipalities and not within the regime of the Information Act. Based on these facts, the Regional Authority inferred that it was not competent to inspect and supervise enforcement of the independent competence of a municipality and has not made any decision regarding the complaint.

In your statement[6] on the inquiry report, you dismissed my conclusions stating that the Municipal Authority made a decision on the provision of information within its independent competence, which the Regional Authority is not competent to interfere with. Regional Authority is competent to make decisions only on appeals and complaints against the procedure in resolving a request for information pursuant to Sections 16 and 16a of the Information Act. You noted that, because the Municipal Authority did not submit the file to the Regional Authority (referring to its independent competence), there was no statutory duty for the Regional Authority to decide on the complaint. You informed me that you did not adopt any remedial measures.

With regard to the contents of your statement, I issue my final statement pursuant to Section 18 (2) of the Public Defender of Rights Act[7]. The final statement also includes proposed remedial measures.

Final statement

Where an Applicant requests provision of resolutions of municipal bodies, i.e. information related to the independent competence of a municipality, the Municipal Authority shall always make the decision within its independent competence regardless of whether the information is provided to the Applicant pursuant to the Act on Municipalities [8] or the Information Act.

Independent competence of local and regional governments is excluded from the competences of the Public Defender of Rights, therefore the Municipal Authority's procedure (as opposed to the procedure of the Regional Authority) is not the subject of my inquiry. However, I cannot avoid taking the Municipal Authority's procedure into account in order to reliably assess the procedure of Regional Authority. In the case at

hand, the Municipal Authority clearly did provide the information (within its independent competence) pursuant to the information Act. Addressing the complaint against the procedure in resolving a request for information constitutes an exercise of the State administration; the subject of my inquiry is thus the procedure of the Regional Authority, not the Municipal Authority's procedure.

The claim that the Municipal Authority did not make it known that the information of 16 March 2015 was published on its website in the sense of Section 5 (3) of the Information Act does not correspond to reality. On the website, I found the opposite to be true. The reply from the Secretary of the Roudnice nad Labem Municipal Authority [9] is undoubtedly published on the town's website, in the section related to submitting requests for information pursuant to the information Act and, at the same time, publishing "answers to citizens" pursuant to the Information Act. [10]

Therefore, it is clear that the Municipal Authority provided the Complainant with information pursuant to the Information Act and made the provision of information public, as required by the law (albeit with a delay, similarly to requests for information No. I-16 2015 and I-4 2015). The fact that the Municipal Authority did resolve the Complainant's request pursuant to the Information Act is further demonstrated by the fact that the request was recorded in the numbering system (as the "request for information No. I-8 2015) pursuant to the Information Act, same as the other requests for information.

The conclusion that the Municipal Authority did provide information pursuant to the Information Act is further documented by the formulation of the Secretary's answer of 16 March 2015 in which the Secretary confirms to the Complainant that "the request was delivered to the obliged entity" and, at the same time, refers to "published information" which corresponds to the procedure pursuant to Section 6 of the Information Act.

The information was already published by the time your statement of 26 October 2015 was sent, which fact you apparently did not verify. In this respect, I cannot consider justified the grounds on which you base your opinion that there was no statutory duty for the Regional Authority to decide on the complaint.

Even the Complainant's former request for information, request No. I-3 2014[11] concerning the same matter (sending all resolutions by which the municipal bodies decided to accept all donations to the retirement home in 2012 and 2013) was answered pursuant to the Information Act, as confirmed by the town's website. The wording of all the relevant resolutions was attached to the answer. The Complainant thus expected to receive a similar answer regarding the period of 2014. However, he received only a link to the town's website containing a collection of all the resolutions of the municipal council and assembly, not only to the specific resolutions he requested. This different procedure of the Municipal Authority then led him to lodge an appeal and a complaint.

For the sake of completeness, I would like to note the Complainant's similarly formulated request No. I-10/2016[12], by which he, as a citizen of the town, requested information related to decision of the municipal assembly of Roudnice nad Labem. That means information he was entitled to pursuant to the Act on

Municipalities which is provided by the Municipal Authority within its independent competence. The Municipal Authority also provided him with this information entirely within the regime of the Information Act without there being any reference to the Information Act present in the Complainant's request, as can be seen from the reply of 28 April 2016.

The same applies to the request No. I-5 2014[13] by which he, as a citizen of the town, requested to be sent the minutes of meetings of the Roudnice nad Labem municipal council and the resolutions thereof for the year 2013, in which the Municipal Authority notified him of the amount of fee for the provision of information pursuant to Section 17 of the Information Act.

Therefore, I conclude that there can be no doubt that the Municipal Authority declared that on 16 March 2015 it did provide the information to the Complainant pursuant to the Information Act. For this reason alone, the Municipal Authority was supposed to submit the complaint against the procedure in resolving this request for information to the Regional Authority, together with the relevant file. If the Municipal Authority failed to do so, the Regional Authority was authorised to request that the Municipal Authority submit the file, having regard to the publication of the information. Pursuant to Section 16a (4) of the Information Act, the task of the Regional Authority was to review the obliged entity's procedure and to make decision on the complaint.

Based on the provision of Section 19 (b) of the Public Defender of Rights Act, I recommend that the Regional Authority makes a decision on the complaint of 26 March 2015 to remedy the situation.

Pursuant Section 20 (1) of the Public Defender of Rights Act[14], I expect to be informed of the remedial measures you adopted within 30 days of receipt of this final statement.

Yours sincerely,

JUDr. Stanislav Křeček, signed
(this letter bears electronic signature)

Mr
Ing. Milan Zemaník
Director
Regional Authority of the Ústí Region
Velká Hradební 3118/48
400 02 Ústí nad Labem

[1] Letter Ref. No. 687/KON/2015 of 21 December 2015

[2] Letter Ref. No. 8624/I-8/2015/Ča of 16 March 2015

[3] Letter Ref. No. 66/KH/2015 of 7 May 2015

[4] Letter Ref. No. 687/KON/2015 of 26 October 2015

[5] Act No. 106/1999 Coll., on free access to information, as amended

[6] Letter Ref. No. 687/KON/2015 of 21 December 2015

[7] Act No. 349/1999 Coll., on the Public Defender of Rights, as amended

[8] Act No. 128/2000 Coll., on municipalities (the municipal order), as amended

[9] Provision of information Ref. No. 8624/I-8/2015/Ča of 16 March 2015

[10] Available at: <http://www.roudnicenl.cz/samosprava/dotazy-verejnosti>; <http://www.roudnicenl.cz/dokumenty/151020093954.pdf>; see “request for information No. I-8 2015”

[11] Available at: <http://www.roudnicenl.cz/samosprava/dotazy-verejnosti>; <http://www.roudnicenl.cz/dokumenty/140311144455.pdf>

[12] Available at: <http://www.roudnicenl.cz/dokumenty/160428133954.pdf>

[13] Available at: <http://www.roudnicenl.cz/dokumenty/140311144455.pdf>

[14] Section 20:

(1) The authority shall inform the Defender within 30 days of receipt of the final statement of the remedial measures that have been adopted.

(2) If the authority fails to comply with the duty under paragraph 1 above, or if the remedial measures are insufficient in the Defender’s opinion, the Defender

(a) shall inform the superior authority or, if there is no such authority, the Government;

(b) may inform the public of his or her findings, including disclosure of the names and surnames of persons authorised to act on behalf of the authority.

(3) The Defender may also proceed in the manner set forth in paragraph 2 above if the authority fails to comply with a duty arising from Sections 15 and 16.