

## 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	Inquiry report – Section 18
Result of inquiry	Errors found
Relevant Czech legislation	106/1999 Coll., Section 2 (3), Section 14 (2), Section 16a (4) 128/2000 Coll., Section 16 (2), Section 82
Relevant EU legislation	
Date of issue	23 November 2015
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:

Brno, 23 November 2015  
File No.: 3208/2015/VOP/PL

**Inquiry report in the matter of the procedure of the Regional Authority of the Ústí Region in resolving a complaint pursuant to Act No. 106/1999 Coll., Coll., on free access to information, as amended**

Mr X. Y. (hereinafter the “Complainant”), residing at XXXXX submitted a complaint to the Public Defender of Rights. The Complainant claims 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”.

### A – Subject of inquiry

I focused the inquiry on the Regional Authority’s procedure in resolving the Complainant’s appeal and complaint. I inquired whether the Regional Authority correctly concluded that it did not have the subject-matter jurisdiction to make

decisions on remedies (complaints), with justification that the Complainant submitted the request for information pursuant to the Act on Municipalities. [1]

I will not evaluate the practices of Roudnice nad Labem as the Complainant requested information related to the independent competence of a municipality and the Municipal Authority made the decision on the provision of information within its independent competence, which is excluded from the competences of the Public Defender of Rights.[2]The procedure of the Regional Authority in resolving remedies lodged by the Complainant constitutes an exercise of the State administration, which falls within the Defender's competence.

## **B – Findings of fact**

Statements of both the Complainant and the Regional Authority revealed the following facts.

By application of 12 March 2015, the Complainant requested that the Roudnice nad Labem Municipal Authority (hereinafter the "Municipal Authority") send all resolutions by which the municipal bodies decided to accept all donations to the retirement home in 2014. The Secretary of the Municipal Authority informed him[3] 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. The statement of the Regional Authority[4] reveals that it evaluated the matter in that the Complainant did not submit the request for information pursuant to the Information Act[5], therefore the Municipal Authority resolved it within the regime of the Act on Municipalities. Similarly, the Complainant's appeal and complaint of 26 March 2015 were deemed submitted pursuant to the Act on Municipalities. Regarding the case, the Regional Authority thus concluded 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.

On 7 July 2015, the Complainant proved that the Municipal Authority had previously proceeded differently by submitting his request for information of 25 February 2014 (concerning the years 2012 and 2013) along with the Municipal Authority's answer[6] with attached copies of the relevant resolutions of the Roudnice nad Labem municipal council.

On 26 October 2015, I received a statement from the director of the Regional Authority.[7] The director states that the wording of Complainant's request did not indicate that he demanded the provision of information pursuant to the Information Act, as required by Section 14 (2) of the Information Act. Instead of referring to the Information Act, the Complainant stated that "as a citizen of the town, he requested all resolutions of municipal bodies whereby a decision was adopted to be sent to

him”. The Regional Authority also 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, and that is, among other reasons, why the Regional Authority believed this was not a request made pursuant to the Information Act. Furthermore, the Regional Authority pointed out that the Complainant’s complaint was not submitted to it and the Municipal Authority, when asked by 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 the exercise of independent competence of the municipality and did not make any decision regarding the complaint.

### **C - Evaluation of the matter by the Deputy Public Defender of Rights**

Under the Public Defender of Rights Act[8], I have a duty to work to defend persons against the conduct of authorities and other institutions listed in this Act where such conduct is at variance with the law or does not comply with the principles of a democratic State governed by the rule of law and good administration, as well as against their inaction, thereby contributing to the defence of rights and freedoms. In this section of the inquiry report, I will thus evaluate the Regional Authority’s procedure in terms of compliance with legal regulations and principles of good governance.

After evaluating the case, I came to conclusion that it is irrelevant for the Regional Authority whether the Complainant requested the information, and whether the Municipal Authority provided it, within the regime of the Act on Municipalities or within the regime of the information Act; the Complainant clearly lodged a complaint against the procedure in resolving a request for information and demanded the Regional Authority ensure a resolution.[9]

I base this conclusion chiefly on the rulings of the Supreme Administrative Court included in the following judgements, which I consider to be fundamental for assessment of the Regional Authority’s procedure.

These include the judgement of the Supreme Administrative Court of 15 October 2010, Ref. No. 2 Ans 7/2010 - 175, No. 2165/2011 Coll. SAC, [www.nssoud.cz](http://www.nssoud.cz), where the Court stated that “It is necessary to agree with the Complainant in that the provision of information by the Defendant shall be governed by the Free Access to Information Act both with respect to information pursuant to the Free Access to Information Act and information pursuant to the Atomic Act; in other words, a complete set of information to be provided by the defendant. Once an entity becomes the obliged entity pursuant to Act No. 106/1999 Coll., all information it provides to the public are, as a rule, provided within the regime of said Act. This is reflected by the fact that pursuant to said Act, the nature of the obliged entity allows it to comply with all relevant procedural obligations. It would be illogical for the entity to provide the Applicants with all the procedural comfort guaranteed by Act No. 106/1999 Coll. in case of requests for one type of information, but not provide the same comfort in case of a request for information under the Atomic Act.” “At the same time, it follows

from the above that it was not material for the procedure of provision of information whether this was information within the meaning of Section 17 (1)(k) of the Atomic Act or information within the meaning of Section 2 of the Free Access to Information Act. In both cases, a decision should have been made on provision or non-provision of the information and, in the case of non-provision of the information and the subsequent lodging of an appeal (as it happened), on the appeal as well, pursuant to Section 16 of Act No. 106/1999 Coll. Therefore, the Municipal Court erred if it stated that the defendant was not obliged to make a decision on Complainant's appeal."

In the judgement of the Supreme Administrative Court of 19 February 2013, Ref No. 8 Aps 5/2012 - 47, No. 2844/2013 Coll. SAC, [www.nssoud.cz](http://www.nssoud.cz), the court "agreed with the Complainant that the Information Act shall apply to the provision of information pursuant to Section 82 of the Act on Municipalities". At the same time, the Court referred to its previous judgement stating that "if a duty to provide certain information pursuant to the Information Act is imposed on the obliged entity, then the duty to provide other information, imposed thereon by another legal regulation which does not provide for the process of provision of information, shall be fulfilled pursuant to the same procedural rule. The nature of obliged entity pursuant to the Information Act allows it to fulfil all of its procedural obligations following from this Act". Supreme Administrative Court again pointed out the "illogicality of the state of affairs where a procedural comfort would exist with respect to providing information within the regime of one Act, but not within the regime of another Act." "The Supreme Administrative Court has found no reason to depart from said case-law, not even in terms of the fact that pursuant to the Section 82 of the Act on Municipalities, the scope of authorised parties is limited to the members of municipal assembly".

According to the Supreme Administrative Court, "the nature of the Defendant brings about the obligation to provide information within the regime of the Information Act, whether the request for information was submitted pursuant to the Information Act or another legal regulation which does not provide for the process of provision of information (cf. Section 2 (3) of the Information Act)".

Furthermore, the Supreme Administrative Court added that "the Applicant for information is not obliged to indicate the legal regulation pursuant to which he or she requests information from the obliged entity. To the contrary, the obliged subject is required to assess what information was requested and pursuant to which legal regulation it shall proceed in its potential provision or refusal (for more details see judgement No. 2 Ans 7/2010 - 175, paragraphs 47 and 48)". Supreme Administrative Court thus emphasised that "it was the task of the Defendant to assess, taking into account the contents of the request, pursuant to which legal regulation and under which related applicable limitations the request should have been addressed".

In the aforementioned decision, the Supreme Administrative Court concluded that the provision of information shall be governed by the information Act not only in the case of information pursuant to the Information Act, but also with respect to information pursuant to the Atomic Act,[10] and information pursuant to the Act on Municipalities (for the authorised entities pursuant to Section 82 of the Act on Municipalities, i.e. the municipal assembly). It is known to me from experience that the Regional Authorities subsidiarily apply the Information Act on regular basis if they make decisions on remedies sought by members of municipal assemblies in cases where the

assemblies disagree with the manner of provision of the information requested pursuant to Section 82 of the Act on Municipalities. Applicability of the Information Act reached the stage where its “procedural comfort” is available even to the representatives of local and regional governments requesting information pursuant to the Act on Municipalities. I am convinced that, in this context, there is no reason for this “procedural comfort” to be denied to the citizens (over 18 years of age) of the municipality who, same as the representatives, base their appeals on the claim that they request the information pursuant to the Act on Municipalities. If the representative’s right to information can be considered part of his mandate, i.e. the manifestation of a political right, the same should apply to citizens of a municipality.

My conviction that the Information Act can be applied subsidiarily also where the citizens of a municipality request information pursuant to the Act on Municipalities is based on the above-cited rulings of the Supreme Administrative Court, which state that the obliged entity has the duty to provide information pursuant to the procedure included in the Information Act even where the duty is imposed thereon by another legal regulation which does not provide for the process of provision of information.

Pursuant to Section 2 (3) of the Information Act, this Act is not applicable to the provision of information if a special law regulates the provision of information, especially processing of the application including all requisites and the manner of submission of the request, deadlines, remedies and the manner of provision of information. Although the Act on Municipalities grants the right to information (to citizens and representatives), it does not provide for the “process of provision thereof” in a comprehensive manner, i.e. at least to the extent stipulated by Section 2 (3) of the Information Act. Therefore, the Act on Municipalities is not a “special regulation” within the meaning of Section 2 (3) of the Information Act that can exclude application thereof, from which I conclude that the information Act must be applied in provision of information pursuant to the Act on Municipalities as a general procedural instrument.

Section 16 (2) of the Act on Municipalities<sup>[11]</sup> guarantees the citizens of a municipality exclusive (direct) access to specified information on activities of the territorial self-governing unit, i.e. without restrictions, which must be applied to regular applicants under the Information Act. However, it does not address the situation where the applicant disagrees with the manner in which the information requested pursuant to Section 16 (2) of the Act on Municipalities was provided to him or her. Having regard to Article 2 (3) of the Information Act, it is therefore necessary to apply the Information Act to the process of resolving complaints filed by Applicants for information. Legal conclusions following from the cited decisions of the Supreme Administrative Court cannot be construed otherwise.

Following assessment of the situation, I state that, on the basis of the Complainant’s “complaint against the failure to process an appeal and a request for the resolution of an appeal” of 23 April 2015, the Regional Authority failed to properly evaluate the case. In response to the Complainant of 7 May 2015, the Regional Authority failed to reflect the cited court rulings and maintained its previous opinion that it did not have subject-matter jurisdiction to make decisions on remedies lodged by the Complainant if the request for information was submitted pursuant to the Act on Municipalities.

The procedure of the Regional Authority led to the same “illogicality” the Supreme Administrative Court repeatedly warned against. The Regional Authority admitted the existence of “procedural comfort” within the regime of the Information Act but not within the regime of the Act on Municipalities.

In doing so, the Regional Authority incorrectly evaluated its lack of subject-matter jurisdiction to make a decision on the remedy (complaint) lodged by the Complainant. The Regional Authority was correct only in that it could not make a decision on the appeal, due to the lack of a formal decision in the matter. It was, however, obliged to evaluate the complaint pursuant to Section 16a of the Information Act and to address whether the conditions for the provision of information by reference to published information stipulated by Article 6 of the Information Act were met when the Roudnice nad Labem Municipal Authority provided[12] link to its website containing a collection of all the resolutions of the municipal council and assembly, not only to the specific resolutions requested by the Complainant.

## **D – Conclusions**

Based on the above findings and considerations, I have reached the conclusion in the sense of Section 18 (1) of the Public Defender of Rights Act that the Regional Authority made errors when it failed to make decision on the complaint against the procedure in resolving a request for information lodged by the Complainant, which was at variance with the Section 16a of the Information Act.

I am sending this inquiry report to the director of the Regional Authority, and request that he respond to the found errors within 30 days of its delivery and inform me of the remedial measures he adopted. The report summarises my current findings, which may be reflected in my final statement.

I am also sending this inquiry report to the Complainant.

JUDr. Stanislav Křeček, signed  
Deputy of the Public Defender of Rights  
(this report bears an electronic signature)

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

*[2] Pursuant to Section 1 (2) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.*

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

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

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

[6] Letter Ref. No. MURCE/8649/2014 of 7. March 2014.

[7] Letter Ref. No. 687/KON/2015.

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

[9] By “complaint against the failure to process an appeal and a request for the procession of an appeal” of 23 April 2015.

[10] Act No. 18/1997 Coll., on peaceful use of nuclear energy and ionizing radiation (the Atomic Act) and amending and supplementing some laws, as amended.

[11] Pursuant to Section 16 (2) of the Act on Municipalities, a citizen of a municipality who has reached the age of 18 has the right:

- a) to vote and be elected to the municipal assembly under the conditions stipulated by a special law;
- b) to vote in a local referendum under the conditions stipulated by a special law;
- c) to express opinions on matters discussed at meetings of the municipal assembly in accordance with the rules of procedure;
- d) to express opinions on draft budget of the municipality and on the final accounts of the municipality for the previous calendar year, either in writing within the set deadline or orally at a meeting of the municipal assembly;
- e) to inspect the budget of the municipality, the final accounts of the municipality for the previous calendar year, resolutions and minutes of meetings of the municipal assembly, resolutions of the municipal council, committees of the municipal assembly and commissions of the municipal council, and make extracts thereof;
- f) to demand that a certain matter within the scope of independent competence be discussed by the municipal council or the municipal assembly; if the application is signed by at least 0.5 % of the citizens of a municipality, it must be discussed at a meeting within 60 days, or within 90 days if the competence of a municipal assembly is concerned,
- g) to submit proposals, comments and suggestions to the municipal bodies; the municipal bodies shall process the proposals, comments and suggestions without delay, but not later than within 60 days, or not later than within 90 days if the competence of a municipal assembly is concerned.

[12] Letter Ref. No. 687/KON/2015.