sciendo

Ius Novum

2025, vol. 19, no. 1, pp. 92–110

PRESS ACCESS TO PUBLIC INFORMATION IN THE LIGHT OF ADMINISTRATIVE COURTS' CASE LAW

ŁUKASZ NOSARZEWSKI*

DOI 10.2478/in-2025-0007

Abstract

This article deals with the issue of press access to public information. It presents the thesis that press access to public information, in comparison to the general rules applicable to ordinary citizens, has been limited by additional non-statutory formal requirements. This thesis is supported by numerous judgments of administrative courts regarding the disclosure of public information. This limitation primarily resulted from changes in the interpretation of regulations that have been in force for years and their application by administrative courts and, in part, from changes in the regulatory environment. Therefore, it is postulated that the journalistic right to information should be strengthened, and the function and mission of the press should be recognised to actualise citizens' rights to reliable information, openness of public life, and social control and criticism. The article employs the dogmatic and legal analysis method and an analysis of Polish administrative courts' case law.

Keywords: press, journalist, press law, access to public information, re-use

1. INTRODUCTION

The constitutionally guaranteed freedom of the press is implemented through various guarantees concerning freedom of communication, freedom of speech, prohibition of censorship, and the right to information. According to W. Sokolewicz, it is most commonly assumed that freedom of the press (media), as proclaimed

* LLD, Assistant Professor in the Department Administrative, Constitutional and Employment Law, Faculty of Law and Administration of Lazarski University in Warsaw (Poland), legal advisor to the General Counsel to the Republic of Poland, attorney at law, e-mail: lukasz.nosarzewski@lazarski.pl, ORCID: 0000-0001-8769-6757

in Article 14 of the Constitution of the Republic of Poland, represents a specific aspect of freedom of expression within Polish constitutional law. This freedom of expression, which includes the right to express one's views, obtain, and disseminate information, is guaranteed under Article 54(1) of the Constitution of the Republic of Poland. Freedom of expression should be understood as the freedom to present opinions, beliefs, views, or factual information in various forms. The right to record, reproduce, and disseminate such messages constitutes an integral part of freedom of expression, at which point it transforms into freedom of the press.[1] However, for the press to record, reproduce, and disseminate messages, it must first acquire knowledge.

In a democratic state, the press plays a fundamental role, particularly in election campaigns and in the political process, where it is essential for competing political parties and the politicians representing them in parliament.[2] The goal of every political party is to participate in public life by exerting democratic influence on state policy and the exercise of public authority. Thus, the press plays a crucial role in controlling public authorities, and the right to obtain information about the activities of public authorities and public officials serves as a tool for this oversight. Consequently, there is a strong connection between freedom of the press and the right to public information as enshrined in Article 61 of the Constitution of the Republic of Poland. Legal doctrine and case law recognise that, while the freedom to obtain information under Article 54 does not impose any obligation on other entities to provide information, meaning that individuals – including journalists – are free to seek information independently, the situation is clearly different under Article 61. The right to public information, classified as a political right, correlates with the obligation of public authorities to disclose information.[3] Furthermore, the press access to information should be examined in light of the fundamental principle of a democratic state governed by the rule of law – the principle of openness in public life.[4] For this reason, any restrictions on the exercise of constitutional freedoms and rights may be imposed only by statute and only in compliance with the principle of proportionality, as expressed in Article 31(3) and Article 61(3) of the Constitution of the Republic of Poland. These restrictions must not violate the essence of freedoms and rights.

As J. Sobczak noted years ago, the legislator does not privilege journalists in any way regarding access to public information and, it seems, sees no grounds for journalists to have access to such information on different terms than ordinary citizens.[5] Nothing has changed in this respect. However, the press not only lacks

---

1 See W. Sokolewicz, 'Wolność prasy i jej konstytucyjne ograniczenia', *Państwo i Prawo*, 2008, No. 6, p. 22. Also see cited therein: J. Sobczak, 'Swoboda wypowiedzi w orzecznictwie Trybunału Praw Człowieka w Strasburgu. Część I', *Ius Novum*, 2007, No. 2–3, p. 5.

2 Ibidem, p. 23.

3 See P. Sarnecki, in: Garlicki L., Zubik M. (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. II, Warszawa, LEX 2016. Also judgment of the Supreme Administrative Court of 28 June 2005, OSK 1733/04, CBOSA.

4 E. Ferenc-Szydełko, *Prawo prasowe. Komentarz*, Warszawa, LEX 2013, Article 3(a).

5 See J. Sobczak, 'Dostęp do informacji publicznej – zagadka i parawan', *Środkowoeuropejskie Studia Polityczne*, 2008, No. 1, pp. 17–18.

privileges but may also encounter difficulties in obtaining information. In this article, I present the thesis that press access to public information, in comparison with the general rules applicable to ordinary citizens, has been restricted by additional non-statutory formal requirements. This occurred primarily due to changes in the interpretation of regulations that have been in force for years and their application by administrative courts, and partly due to changes in the regulatory environment. I support my thesis with examples of administrative court judgments concerning the provision of public information upon request, as well as the transfer of public information for re-use. This work primarily employs the method of dogmatic and legal analysis and an examination of Polish administrative courts' case law.

2. PRESS ACCESS TO PUBLIC INFORMATION IN THE LIGHT OF LEGAL REGULATIONS

The press, in accordance with the Constitution of the Republic of Poland, exercises freedom of expression and fulfils the right of citizens to reliable information, openness of public life, and social control and criticism, as stipulated in the Act of 26 January 1984 – Press Law.[6] In the light of the legal definition, the press includes periodical publications with specific characteristics, such as dailies and magazines, as well as all existing and emerging media that disseminate periodical publications. It also encompasses teams of people and individuals engaged in journalistic activities.[7] A journalist is defined as a person who edits, develops, or prepares press materials, is in an employment relationship with an editorial office, or is involved in such activities for an editorial office and authorised by it to do so.[8] In this approach, the concept of the press includes journalists employed by or acting on behalf of a specific editorial office.

The issue of press access, including that of journalists, to public information is regulated in Article 3a of the Press Law, which states that the provisions of the Act of 6 September 2001 on Access to Public Information[9] shall apply to the press right to access public information. The legislator moved the regulation of journalists' access to public information from the Press Law to the Access Act, indicating that it is more favourable.[10] The Access Act provides the right of access to public information to 'everyone'. This includes the right to obtain public information, including processed

---

[6] Journal of Laws of 2018, item 1914, hereinafter referred to as 'the Press Law'.

[7] See Article 7(2)(1) of the Press Law. Due to the subject matter of the article, the problems with the definition of the concept of 'the press' is not analysed herein. Attention should be drawn to the fact that with the development of new technologies, numerous doubts have arisen regarding the scope of meaning of the terms 'press', 'newspaper', and 'periodical'. Considerable issues have emerged particularly in relation to online press; see, e.g., M. Siwicki, 'Prasa internetowa a obowiązek rejestracji prasy', *Przegląd Sądowy*, 2011, No. 1, pp. 61 et seq.

[8] See Article 7(2)(5) Press Law.

[9] Journal of Laws of 2022, item 902, hereinafter referred to as 'AAPI' or 'the Access Act'.

[10] See the justification for the parliamentary Bill on access to public information, print no. 2094, the Sejm of the 3rd term, pp. 20–21, https://orka.sejm.gov.pl/proc3.nsf/opisy/2094.htm [accessed on 5 March 2024].

information where it is particularly important for the public interest, as well as the right to inspect official documents and access meetings of collegial bodies of public authorities elected in general elections. A person exercising the right to public information must not be required to demonstrate a legal or factual interest. The obliged entity must immediately provide public information containing current knowledge of public matters.[11]

The provision of public information, within the above-mentioned limits, may occur through publication in the Public Information Bulletin (BIP), making it available upon request, displaying or posting it in publicly accessible places, or installing a device enabling public access to the information. In addition, providing access to meetings and materials documenting those meetings, as well as publishing information on the data portal, may also serve as means of making information available.[12] The interpretation of the term 'public information' poses a significant problem under the Access Act. It appears that the objective approach to this concept has dominated the Supreme Administrative Court's case law for years. The definition refers to the concept in Article 1 AAPI, which stipulates that any information on public matters constitutes public information. Thus, when examining cases, the Supreme Administrative Court seeks to determine whether the requested data relate to the functioning of the state in a broad sense.[13] Under the subjective approach, the focus was primarily on whether the information concerned the activities of public authorities and persons performing public functions. Further, the disclosure of public information at the request of the press was analysed, since other methods of disclosure do not require the conduct of administrative proceedings. Any failure to provide public information may result in the initiation of a request procedure, leading either to the transfer of information or to a restriction on availability, which remains subject to administrative court review.[14]

At the same time, in addition to the reference concerning press access to public information, Article 4 of the Press Law remains in force. It regulates journalists' right to information by obliging entrepreneurs, entities outside the public finance sector, and non-profit organisations to provide the press with information. These entities do not coincide with the catalogue of entities obliged to provide public information under the Access Act. Under this obligation, they must inform the press about their activities, provided that the information is not confidential and does not violate the right to privacy under other provisions. If they refuse to provide information, they must, at the request of the editor-in-chief, deliver a written refusal with formalised content to the concerned editorial office within three days.[15] Such a refusal or failure to comply with the formal requirements may be appealed before an administrative

---

[11] See Articles 2 and 3 AAPI.

[12] See Article 7(1), Articles 10 and 11 AAPI.

[13] P. Szustakiewicz, 'Orzecznictwo Naczelnego Sądu Administracyjnego z lat 2015–2018 w sprawach dotyczących informacji publicznej', *Przegląd Prawa Publicznego*, 2019, No. 7–8, p. 11.

[14] See also Articles 16 and 21 AAPI.

[15] A decision of refusal should include the name of authority, organisational unit, or person who issued it, date of issue, editorial office concerned, type of information requested, and reasons for the refusal.

court within 30 days. Within court proceedings, the provisions on appealing administrative decisions apply accordingly. In these proceedings, only an editor-in-chief is entitled to demand delivery of the refusal and to represent an editorial office before an administrative court. The editor-in-chief manages the editorial office, meaning the unit responsible for organising the process of preparing (collecting, evaluating, and developing) materials for publication in the press.[16] Under the Press Law, everyone, in accordance with the principle of freedom of speech and the right to criticism, may provide information to the press. In addition, state bodies, state-owned enterprises, other state organisational units and cooperatives, trade unions, local governments, and social organisations within the scope of their public activities are obliged to respond to press criticism submitted to them without undue delay, but no later than within one month. The press must not be prevented from collecting critical material, and criticism must not be suppressed in any way.[17] We should share the view that the right to public information and the journalistic right to information are two distinct rights. Firstly, one is of a constitutional nature, while the other is not. Secondly, they have different subjective scopes (although there is certain overlap, it should also be noted that entrepreneurs are obliged to provide information). Thirdly, the mode of exercising these rights differs. For this reason, the journalistic right to information is generically distinct from the right to public information. In addition to the right to public information, which everyone is entitled to under the Access Act, a journalist also has the rights laid down in Article 4 of the Press Law.[18] However, this law only applies to certain specific entities and information about their activities, and exercising these rights requires the involvement of an editor-in-chief. This limits journalists acting as freelancers, i.e., those not working on behalf of a specific editorial office.[19] As a result, the press right to access public information under the Access Act is becoming increasingly important for individual journalistic investigations.

3. LEGAL DOCTRINE'S VIEWS ON THE PRESS ACCESS TO PUBLIC INFORMATION

Views within the legal doctrine on Articles 3a and 4 of the Press Law are fairly uniform and consistent. It is recognised that, regarding press access to public information, the provisions of the Press Law are excluded, and a journalist has the same rights and obligations as any other person requesting public information. A journalist, like any other natural person, may request public information, and a public administration body cannot ask or demand to know the purpose for which the information is sought or how it will be used. A journalist must not be asked to show identification

---

16 See Article 7(2)(8) and Article 25(1) Press Law.

17 See Articles 5 and 6 Press Law.

18 E. Czarny-Drożdżejko, 'Dziennikarz i jego uprawnienia', *Przegląd Prawa Publicznego*, 2014, No. 5, pp. 28–29.

19 Cf. A. Augustyniak, in: Kosmus B., Kuczyński G. (eds), *Prawo prasowe. Komentarz*, Warszawa, 2018, Article 4, margin reference 6, Legalis.

or provide any confirmation of their profession. The applicant's profession is irrelevant – if the request concerns public information, it must be provided to anyone who requests it. The request may be submitted in writing, by email, by fax, or orally. For access to public information, all these forms are legally permissible and binding on the authority.[20] In terms of press access to public information, the rights of journalists have been equalised with those of any other entity that may request such information.[21] It is necessary to share the view that the press right to information (publisher, broadcaster) as a collective entity under Article 61 of the Constitution of the Republic of Poland, as specified in Article 3a of the Press Law, is implemented through individual activities performed by journalists acting on behalf of a publisher or broadcaster. It is the journalist who exercises access to documents and the right to attend meetings of collegiate public authorities to obtain public information. In this situation, every journalist is 'the press', and Article 3a of the Press Law applies to both collective entities and individual journalists who constitute 'the press'. A different interpretation would exclude journalists not affiliated with any press title or publisher from the scope of 'the press' definition.[22] Therefore, a journalist, or more broadly, the press has the right to access public information on the same terms as other citizens. The placement of this reference reflects the role of the press as an entity that exercises citizens' right to reliable information.[23] It is also worth emphasising that the purpose of Article 3a of the Press Law is to unify the rules governing the press right to access information with the general principles set out in the Access Act.[24]

There are also legitimate critical voices in jurisprudence. It is pointed out that the adopted solution to some extent weakens the constitutional determination of the role and importance of the press in a democratic state governed by the rule of law and, above all, diminishes the autonomy and distinctiveness of the procedure for obtaining information by the press.[25] The reference in Article 3a of the Press Law is considered a solution that is only seemingly sound. In practice, this solution has limited journalists' right to information. First of all, a journalist has been treated as an ordinary citizen. The Access Act does not provide for any additional rights for journalists, who nonetheless satisfy the public demand for information and, in accordance with Article 1 of the Press Law, realise citizens' right to reliable information, transparency of public life, and social scrutiny and criticism. Currently, anyone who wishes to obtain public information can do so personally, using the universal right to information. If a journalist requests information, they must wait in line like any other person for their case to be processed. Moreover, the deadlines

---

[20] M. Brzozowska-Pasieka in: Olszyński M., Pasieka J., Brzozowska-Pasieka M., *Prawo prasowe. Komentarz praktyczny*, Warszawa, LEX 2013, Article 3(a).

[21] J. Sobczak, *Prawo prasowe. Komentarz*, Warszawa, LEX 2008, Article 3(a).

[22] Ibidem.

[23] A. Chajewska, K. Orlik, 'Prawo prasowe. Komentarz tezowy', in: Orlik K. (ed.), *Prawo prasowe. Postępowania sądowe w sprawach prasowych*, Warszawa, 2017, p. 4.

[24] M. Bidziński, in: Bidziński M., Chmaj M., Szustakiewicz P., *Ustawa o dostępie do informacji publicznej. Komentarz*, Warszawa, 2023, Article 24, margin reference 1, Legalis.

[25] M. Jabłoński, K. Wygoda in: Piskorz-Ryń A., Sakowska-Baryła M. (eds), *Ustawa o dostępie do informacji publicznej. Komentarz*, Warszawa, LEX 2023, Article 24(7).

specified in the Access Act are not suited to the nature of journalists' work.[26] The critical voices on this issue should be partly and, as a rule, accepted, as the Access Act is, in fact, not an instrument suited either to the work of journalists or to effective communication between administrative bodies and the press. It serves merely as a formal basis for such interaction. At the time the Access Act was passed, it appeared to be 'more beneficial' for the press. However, at present, the citizens' political right to knowledge and control of public authorities, implemented through the Access Act, should not be equated with the journalistic right to information and its correlate, i.e., public authorities' obligations towards the press. As indicated above, these are two distinct legal rights. The Access Act serves as a framework for administrative bodies to handle press-related matters but is not an adequate or efficient tool for daily interactions and the provision of current information. The source of the problem, however, lies in the current regulation of the Press Law, not in the Access Act, which is intended for all citizens in their relations with the state. Nonetheless, critical opinions focus on the legislator's decision to equate journalists with ordinary citizens in their right of access to public information. The problem, however, runs deeper, as an analysis of administrative court case law shows that press access to public information has been restricted in comparison to access granted to 'any' other entity.

4. ADMINISTRATIVE COURTS' CASE LAW IN CASES CONCERNING THE PRESS ACCESS TO PUBLIC INFORMATION

In administrative courts' judgments between 2012 and 2014, there was a noticeable discrepancy in the assessment of whether providing public information at the request of the press should be based on Article 4 of the Press Law or whether Article 3a of the Press Law should be applied. Proponents of the first solution argued that the legal basis of a press request determines the procedure by which the obliged entity should process the request. Conversely, it was argued that the authority is always obliged to determine whether the requested information constitutes public information (regardless of the content and legal basis of the request). Therefore, the assessment of the nature of the requested information and the type of the request's addressee was to determine the applicable procedure. Initially, in order to provide the press with information, regardless of its nature, the procedure laid down in Article 4 of the Press Law was applied. However, case law policy gradually shifted towards the view that the nature of the press request must be assessed individually in each case.[27] As a result, administrative courts distinguished two procedures for press access to information: the so-called 'ordinary' or 'access' procedure under Article 3a of the Press Law, and the 'press procedure' under Article 4 of the Press Law.

Then, the Supreme Administrative Court departed from this interpretation, pointing out that the legal nature of the reference used in Article 3a of the Press

[26] E. Czarny-Drożdżejko, 'Dziennikarz...', op. cit., pp. 29–30.
[27] C. Chabel, *Udzielenie informacji publicznej na wniosek prasy*, 2015, LEX/el.

Law serves only as a reference concerning the manner of disclosing information that meets the definition of public information, and does not result in a change of the procedure for disclosing such information from the 'press' procedure to the 'ordinary' one.[28] At the same time, it was pointed out that when applicants demand that information be provided to the press, i.e., when they refer to their status as journalists or the press, they must prove it, as they cannot obtain the information otherwise. This was justified by the fact that anonymous individuals may apply for public information under the access procedure, and there is no requirement to determine their true identity, unless a decision is issued. On the other hand, the press is referred to in the Press Law in both an objective aspect (publications) and a subjective aspect (teams of people and journalists). However, such teams must be formalised in some way and actively engaged in journalistic activities. Likewise, journalists must demonstrate membership in such teams, be in an employment relationship with an editorial office, or be authorised by an editorial office to act on its behalf. Although it was pointed out that no provision expressly requires that an individual demonstrate their status as press or a journalist, the Supreme Administrative Court held that such an obligation arises from the nature of the request procedure. This requirement could be fulfilled in any way, using any means of evidence. However, failure to provide such proof would prevent the request from being processed, and, moreover, such an approach by the authority would not constitute inaction. In distinguishing the two procedures, the Supreme Administrative Court concluded that transitioning to access regulations would be possible only upon an appropriate request from the press. 'Appropriate' in this context means that if applicants claim the special status of the press, they must demonstrate it; otherwise, it cannot be recognised that authorised persons under the Access Act submitted the request. Since the authority must first establish appropriate information, then determine the content of the request, and finally decide on the applicable procedure and the manner and form of handling the matter, failure to demonstrate action on behalf of the press makes it impossible to initiate proceedings to provide access to public information.[29] Thus, the Supreme Administrative Court reduced the issue of demonstrating journalist status and acting on behalf of the press to the requirement of a formal application, regardless of whether it would be processed under the 'ordinary' or 'press' procedure. In the justification of this stance, there is a noticeable inconsistency and a smooth transition between the procedures. Eventually, however, the adopted interpretation clearly limits the press access to public information, creating non-statutory requirements for an access request, solely because the applicant is a journalist and refers to the provisions of the Press Law in the application. In this respect, one should share the doubts expressed in dissenting

[28] See judgments of the Supreme Administrative Court of 21 July 2017, I OSK 1533/15; of 26 July 2016, I OSK 1645/15, I OSK 2161/15, 1924/15, I OSK 2189/15, I OSK 1529/15; of 17 March 2016, I OSK 1452/15, I OSK 1411/15, I OSK 1400/15, I OSK 1088/15; of 15 February 2016, I OSK 1120/15, I OSK 1105/15, I OSK 1119/15; of 12 February 2016, I OSK 1238/15 and I OSK 1280/15, CBOSA.

[29] See judgments of the Supreme Administrative Court of 17 March 2016, I OSK 1088/15 and I OSK 1411/15, CBOSA.

opinions, which argue that it is the authority that qualifies the submitted request, regardless of the legal basis cited, and that there is no justification for treating journalists and other applicants differently in proceedings concerning the provision of public information.[30] In some cases, although it used similar arguments, the Supreme Administrative Court rightly stated that, since the applicant failed to prove journalist status, they should be treated as a natural person requesting information under the Access Act. However, this did not prevent the court from recognising a cassation appeal as justified, even though it lacked confirmation of the applicant's journalist status.[31]

The thesis repeatedly cited in case law regarding the nature of the reference to Article 3a of the Press Law is erroneous. The two different procedures, 'ordinary' (Article 3a of the Press Law) and 'press' (Article 4 of the Press Law), are determined by the scope of entities obliged to provide information and the subject matter of the information provided, not by the person of a journalist. Therefore, Article 3a of the Press Law not only affects the way in which information is provided, but, above all, establishes a different 'access' procedure in comparison with the 'press' procedure. One should share the opinion that the Press Law extends the circle of entities obliged to provide information to the press by including entrepreneurs, entities outside the public finance sector, and non-profit organisations. However, it also narrows the scope of the information they must provide, limiting it to information about their activities.[32] This is the so-called 'press' procedure. Thus, if an application does not provide grounds for it to be classified as submitted under the provisions of the Access Act, the failure to demonstrate the status of a journalist or press representative may prevent it from being processed – but only under the 'press' procedure. In contrast, where an application can be processed based on the Access Act, the obliged entity should provide the requested information to the press even if the applicant's journalist status has not been confirmed. The formal limitation applied by courts should therefore concern only the 'press' procedure under Article 4 of the Press Law, but not the 'ordinary' ('access') procedure under Article 3a of the Press Law.

However, in the practice of applying these provisions, the obligation to prove journalist status and acting on behalf of the press has been extended to both procedures, including the 'access' procedure. Numerous judgments of the Supreme Administrative Court have established this stance. Admittedly, it is noted that if the information requested by the press is public in nature, its disclosure or refusal to disclose should be made in accordance with the Access Act. Therefore, in this respect, the press does not benefit from legal regulations other than those applicable to the general public. However, there is an inconsistency because, despite the distinction between the procedures, it is still required to document acting on behalf of the press even when a request concerns public information under the Access Act. This requirement does not apply to the general public. As a result, the Supreme

[30] Ibidem, M. Jaśkowska's voice of dissent to judgments of the Supreme Administrative Court of 17 March 2016, OSK 1088/15 and I OSK 1411/15, CBOSA.

[31] Judgment of the Supreme Administrative Court of 21 July 2017, I OSK 1533/15, CBOSA.

[32] Judgment of the Supreme Administrative Court of 5 April 2016, I OSK 1487/15, CBOSA.

Administrative Court has established a flawed case law direction, according to which Article 3a of the Press Law grants the press the right of access to public information, but in order to create an obligation to fulfil the request submitted under this procedure, it is necessary to prove beyond any doubt that it originates from the press. In other words, requesting public information does not exempt an applicant claiming to be a journalist from the obligation to confirm their status as a representative of the press.[33] Therefore, to apply Article 3a of the Press Law in a case, it is necessary not only to request information that is public in nature but also to undertake these activities as the press, including as a journalist. The status of a journalist, i.e., the existence of a relationship with an editorial office, must also be proved.[34] Subsequent case law has followed this interpretation.[35] This interpretation contradicts the legislator's intent and the uniform views of the legal doctrine in this respect. Moreover, it introduces non-statutory, unconstitutional restrictions on access to public information for 'everyone' who is a journalist, or, more broadly, the press.

Such a restrictive case law policy is accompanied by excessive formalism. In one judgment, the Supreme Administrative Court stated that the applicant determines the method of access to the requested information by specifying their journalist status and requesting that the information be provided to the press. In such a case, they act as a special entity rather than simply as 'everyone' within the meaning of Article 2(1) of the Access Act. Referring to the Press Law in the request necessitates the application of the legal regime first.[36] This stance is erroneous in two ways. First, it assumes that a journalist cannot act as both a special entity and 'everyone' at the same time within the meaning of the Access Act. Second, it suggests the existence of a separate 'journalistic' legal regime, whereas a journalist's reference to the Press Law in an access request should at most result in the application of the Access Act based on the reference in Article 3a of the Press Law, i.e., providing information under the so-called 'ordinary' procedure. It is rightly pointed out that being a journalist and having a professional obligation to seek public information should not be perceived as a 'handicap' but rather as irrelevant to the scope and procedures applied by obliged entities when providing such information. Therefore, even if a journalist discloses their professional interest in obtaining public information, it cannot be expected that an official representative of an editorial office or an editor-in-chief should submit a request concerning a public matter to the obliged entity under Article 4 of the Access Act.[37] In case law and administrative practice, it is emphasised that a journalist must demonstrate their special status, otherwise the

---

[33] Judgments of the Supreme Administrative Court of 13 January 2016, I OSK 302/15; of 16 February 2016, I OSK 1135/15, I OSK 1136/15, I OSK 1231/15 and I OSK 1228/15; of 17 February 2016, I OSK 1102/15; of 18 February 2016, I OSK 1239/15 and I OSK 1427/15; of 26 February 2016, I OSK 438/15; of 26 July 2016, I OSK 1912/15, CBOSA.

[34] Judgment of the Supreme Administrative Court of 26 July 2016, I OSK 2031/15, CBOSA.

[35] Judgment of the Voivodeship Administrative Court in Białystok of 19 June 2019, II SAB/Bk 33/19, CBOSA.

[36] Judgment of the Supreme Administrative Court of 26 February 2016, I OSK 568/15/CBOSA.

[37] See M. Jabłoński, K. Wygoda, in: Piskorz-Ryń A., Sakowska-Baryła M. (eds), *Ustawa o dostępie…*, op. cit., Article 24(16).

request will not be processed. Thus, a journalist who conceals their status is in a more favourable position because the authority will not require proof 'beyond any doubt' that they are acting on behalf of the press, making the provision of an answer conditional. Each additional request also requires additional time, delaying access to information and often preventing its use in the press material being prepared. This leads to paradoxical practical consequences. A journalist seeking public information encounters difficulties that ordinary citizens do not face. Therefore, it is easier for a journalist to conceal their press-related status, as they do not have to prove anything to obtain information. Revealing their profession only hinders their activities.[38] This issue applies to all possible cases, whether access to simple information or processed information.[39] Ultimately, a journalist must prove their status, regardless of whether an administrative decision will be issued and whether the provisions of the Act of 14 June 1960 – Code of Administrative Procedure[40] will apply, or whether the proceedings will be conducted solely under the Access Act and concluded with a letter providing information. In the former case, each applicant is also required to sign the request and meet other formal requirements, such as specifying the object of the request precisely.[41] Thus, in every case, when an applicant is a journalist, their only additional obligation will be to prove their status, otherwise the request will not be processed.

It is worth noting that during the development of the above-mentioned case law policy, administrative courts presented a different stance in some judgments. According to this view, under Article 3a of the Press Law, a journalist's request addressed to an obliged entity for public information should be processed in accordance with the procedure determined by the Access Act. In this context, it is insignificant whether the request originates from a citizen acting independently or from the press. It should also be noted that the Access Act does not impose any formal requirements on applications for access to public information. The request may take any form, as long as its subject matter is clear.[42] This means that information qualifying as public information is made available to the press under the 'access' procedure, rather than under Article 4 of the Press Law. A journalist is treated in the same way as any other citizen submitting a request for access to public information.[43] It was also later stated that public information is provided to the press under the Access Act, while Article 4(1) of the Press Law extends the catalogue of entities obliged to provide information to the press to include entities not listed in the Access Act. As a result, in determining the appropriate procedure of granting access to specific information requested by the press, what matters

---

[38] See A. Augustyniak, in: B. Kosmus, G. Kuczyński (eds), *Prawo prasowe*…, op. cit., Article 3a, Legalis.

[39] See Article 3(1)(1) AAPI.

[40] Journal of Laws of 2023, item 775, as amended, hereinafter referred to as 'CAP'; see also Article 16(2) AAPI.

[41] See Article 63 §§ 2 and 3, as well as Article 64 CAP.

[42] Judgment of the Voivodeship Administrative Court in Warszawa of 16 April 2015, II SAB/Wa 1053/14, CBOSA.

[43] Judgment of the Voivodeship Administrative Court in Kraków of 12 May 2016, II SAB/Kr 72/16, CBOSA.

is not who submits the request or how it is made, but rather the nature of the requested information and the nature of the addressee of the request.[44] In other words, a person seeking public information for journalistic purposes has the same rights as any other person acting under the provisions of the Access Act.[45] Despite these several correct and equitable judgments issued by voivodeship administrative courts, one can still observe a consistently upheld stance that, in the case of a request submitted by a journalist, the applicant should be asked to document that they are acting on behalf of the press, since merely being a journalist does not exempt them from the obligation to prove that they are a representative of the press. After such confirmation, in accordance with Article 3a of the Press Law, the request should then be processed pursuant to the regulations of the Access Act.[46] Eventually, case law assumes that the obligation to confirm acting on behalf of the press applies not only in the 'press' procedure but also in the 'access' procedure.[47]

5. ISSUE OF RE-USE

In addition to the right of access, the legislator has regulated the right to re-use public sector information in the Act of 11 August 2021 on Open Data and the Re-Use of Information of the Public Sector.[48] This right also applies to everyone, just like the right of access to public information, and also extends to public sector information that is: made available without a request in the Public Sector Bulletin, data portal, or other IT systems of the obliged entities, and transferred on request for re-use.[49] Public sector information refers to any content or part thereof, regardless of the method of recording, that is in the possession of an obliged entity.[50] Therefore, it also qualifies as public information, meaning any information concerning public matters.[51] The catalogue of obliged entities is based on the criteria laid down in public procurement law. These include: public finance sector units, state organisational units without legal personality, public law entities, and public enterprises.[52] According to the legal definition, re-use refers to the use of public sector information by users (any natural person, legal person, or organisational unit without legal personality) for any purpose, with the exception of information exchange between obliged entities

---

[44] Judgment of the Voivodeship Administrative Court in Rzeszów of 1 June 2021, II SAB/Rz 29/21, judgment of the Voivodeship Administrative Court in Opole of 23 February 2021, II SAB/Op 76/20, CBOSA.

[45] Judgment of the Voivodeship Administrative Court in Kielce of 31 May 2023, II SAB/Ke 45/23, CBOSA.

[46] Judgment of the Supreme Administrative Court of 2 March 2023, III OSK 2286/21, CBOSA.

[47] See also judgment of the Voivodeship Administrative Court in Gliwice of 27 June 2023, III SA/Gl 255/23 and judgment of the Voivodeship Administrative Court in Opole of 27 July 2023, II SA/Op 203/23, CBOSA.

[48] Journal of Laws of 2023, item 1524, hereinafter referred to as 'the Act on Re-Use'.

[49] See Article 5 of the Act on Re-Use.

[50] See Article 2(8) of the Act on Re-Use.

[51] Cf. Article 1(1) of the Act on Re-Use.

[52] See Article 3 of the Act on Re-Use.

solely for the implementation of public tasks.[53] The institution of re-use of public sector information has been part of national legislation since 2011 and reflects the implementation of EU law.[54] It should be noted that the essence of the right resulting from the discussed regulation remains unchanged regarding the presented issue. Therefore, the case law and the achievements of the doctrine relating to previously applicable provisions remain up to date.

The right consists in the possibility of re-using public sector information. Its implementation depends on the availability of the information itself and may also occur without the need to provide or share information, e.g., by informing about the lack of conditions. Therefore, it is the right to exploit information, which everyone has.[55] Re-use involves the process of opening up public data. In connection with this process, the role and importance of public data have begun to be emphasised as a resource that has high economic value, is in the possession of public authorities, and may serve the general public. This is because public data constitute an attractive 'raw material' for the corporate sector, which can be used for economic development. However, the re-use of information cannot be perceived solely in economic terms, as it also has democratic foundations. It assumes sharing the common good (data) by public authorities in the common interest. The benefits of data release are therefore both economic and non-economic.[56] Thus, the right to re-use public sector information is economic, not political, in nature, and also has a utility value, as new goods, products, and services with added value can be created based on public information.

In this way, in addition to the right of access to public information, the legislator has regulated a separate right to re-use. Both rights may be exercised upon request; however, while access to public information under the Access Act is, in principle, deformalised and may be requested anonymously, an application for re-use must meet numerous formal requirements, and failure to comply may result in it not being processed.[57] The legislator did not grant the press any privileged status as an authorised entity in such cases. Instead, this new right has further complicated the legal environment surrounding journalists' right to information. A doubt arises as to whether the press or a journalist requesting information to prepare press material is actually submitting an application for the re-use of public sector information. After all, re-use, according to the legal definition, is the use of information by users (here, the press) for any purpose. Additionally, the acquisition of data by a journalist

---

[53] See Article 2(12) and (14) of the Act on Re-Use.

[54] I outline the course of implementation and subsequent regulations in detail in: Ł. Nosarzewski, *Prawne ograniczenia ponownego wykorzystywania informacji publicznej*, Warszawa, 2022, pp. 68–74.

[55] D. Sybilski, in: Sibiga G., Sybilski D. (eds), *Ustawa o otwartych danych i ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*, Warszawa, 2022, Article 5, Legalis.

[56] B. Fischer, A. Piskorz-Ryń, M. Sakowska-Baryła, J. Wyporska-Frankiewicz, in: Fischer B., Piskorz-Ryń A., Sakowska-Baryła M., Wyporska-Frankiewicz J. (eds), *Ustawa o otwartych danych i ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*, Warszawa, LEX 2022, Article 1.

[57] See Article 39(3) and (5) of the Act on Re-Use.

would not constitute an exchange of public sector information between obliged entities solely for the purpose of implementing public tasks.

This time, however, administrative courts interpreted the regulations correctly. In subsequent rulings, they indicated that the right of access to public information for re-use is a public subjective right that guarantees the obtaining of public information for a specific purpose. This purpose is for the applicant to obtain 'benefits' in a broad sense. Therefore, it goes beyond merely ensuring transparency in the state's decision-making process and actions; it also creates real opportunities for citizens to exercise and defend their constitutional rights against public authorities. Thus, the concept of re-use of public information should be interpreted in a way that better incorporates systemic and purposefulness-related directives. When an applicant's aim is to exercise social control and to engage a wider group of entities in the information obtained – e.g., by posting it online or sending it to the media – this serves only to strengthen the above-mentioned social control and to initiate and sustain public debate on a matter of public interest. In no circumstances can this be interpreted as an activity undertaken for the purpose of 're-using' public information.[58]

The introduction of the institution of re-use did not affect the implementation of the right of access to public information. Access to data constituting public information is linked to the constitutional freedom to acquire and disseminate information (Article 54 of the Constitution of the Republic of Poland), the scope of which partially overlaps with the right to public information (Article 61 of the Constitution of the Republic of Poland). This means that a person who acquires public information from an obliged entity has, in principle, the right to disseminate it. The possible application of the re-use procedure to information provided upon request depends on the purpose of its acquisition. Therefore, the right to disseminate information should not be equated with its re-use. Although running an online portal or a print journal may constitute a business activity generating income for a given entity, the scope of journalistic work includes, among other things, efforts to promote transparency of public entities. In this sense, journalists' applications are, in principle, not subject to the re-use regime. Publishing information acquired through access to public information should not be identified with the 'benefits' referred to in Directive 2003/98/EC.[59] Similarly, the new Directive 2019/1024 states that its objectives are: to facilitate the creation of Union-wide information products and services based on public sector documents, and to ensure the effective cross-border

---

[58] Judgment of the Supreme Administrative Court of 18 February 2016, I OSK 2136/14, CBOSA.

[59] Judgment of the Supreme Administrative Court of 9 April 2015, I OSK 1029/14, CBOSA; see also judgment of the Constitutional Tribunal of 20 March 2006, K 17/05, OTK ZU 3A/2006, item 30, cited therein; similarly, judgment of the Supreme Administrative Court of 6 February 2015, I OSK 681/14, CBOSA. The judgments mention Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90). It was repealed pursuant to Article 19 of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast) (OJ L 172, 26.6.2019, pp. 56–83), hereinafter referred to as 'Directive 2019/1024'.

use of public sector documents, both by private businesses for added-value information products and services, and by citizens to facilitate the free circulation of information and communication.[60] The Polish legislator adopted these objectives, as the proposed provisions of the Access Act were primarily aimed at implementing Directive 2019/1024, as well as: increasing the supply of open data, including high-value information resources with potential for creating new services and products, and creating an optimal regulatory environment for the effective use of public sector information in Poland.[61] That is why Directive 2019/1024 builds upon, and does not prejudice Union and national access regimes.[62] This is also confirmed by the conflict rule in the Polish statute, which states that the provisions of the Access Act do not infringe: the right of access to public information, the freedom to disseminate public information, or the provisions of other statutes that specify the rules, conditions, and procedure of access to or re-use of information that constitutes public sector information.[63] For the press, Article 3a and Article 4 of the Press Law serve as such special provisions. However, a similar conflict rule was previously in force,[64] yet in practice, it did not dispel administrative bodies' doubts, which opened the way for judicial interpretation of the provisions.

Therefore, a request for information for the purpose of journalistic work cannot be automatically classified as a request for re-use, as this would render the concept of access to public information meaningless.[65] An obliged entity cannot deprive an applicant of the right of access to public information by arbitrarily determining that the application concerns re-use and should be left without consideration due to failure to meet formal requirements – if such a circumstance (i.e., the purpose of its re-use) does not directly result from the content of the application.[66] Currently, we can partially agree that the rules regarding re-use of public information apply to situations other than its use in a local newspaper, as they refer to a systematic process involving constant data processing.[67] A distinction must be made between an 'ordinary' application for re-use and the so-called application for online access, which concerns making possible the re-use of public sector information in a permanent, direct, and real-time manner, as collected and stored in the obliged entity's ICT system.[68] However, re-use differs from mere access to information in that it is, as

---

[60] See recital 70 of the Directive 2019/1024.

[61] See the justification for the governmental Bill on open data and the re-use of public sector information, print no. 1338, Sejm of the 9th term, p. 1, https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1338 [accessed on 5 March 2024].

[62] See Article 1(3) Directive 2019/1024.

[63] See Article 7(1) AAPI.

[64] See Article 7(1) of the Act of 25 February 2016 on the Re-Use of Public Sector Information, Journal of Laws 2016, item 352.

[65] Similarly, also in judgment of the Voivodeship Administrative Court in Rzeszów of 23 June 2015, II SAB/Rz 48/15, CBOSA.

[66] Judgment of the Voivodeship Administrative Court in Kraków of 16 January 2017, II SAB/Kr 146/16, CBOSA.

[67] Judgment of the Voivodeship Administrative Court in Olsztyn of 25 February 2014, II SAB/Ol 5/14, CBOSA.

[68] Cf. Article 39(1) and (2) of the Act on Re-Use.

a rule, continuous, rather than one-off, in nature. This is further confirmed by the requirements specified for the used information that has the features of a work, as well as the concluded agreement on the re-use of this information, which, in fact, constitutes a temporary copyright licence. Once the application is processed, the obliged entity may, *inter alia*, make an offer containing the terms of re-use.[69] This offer, if accepted, results in the conclusion of a civil law contract.[70] Thus, in practice, the distinction between the access procedure and the re-use of information is based on the criterion of directness or indirectness in implementing the principle of openness of public life. If the purpose of the application is solely the exercise of the political right to information, it falls primarily under the framework of access. However, when this transparency serves other purposes, whether economic or non-economic, the Act on Re-Use shall be applied.[71] For this reason, journalists' requests should, as a rule, be processed under the Access Act, as their primary objective is the oversight of public life.[72]

At the same time, however, the mere fact that a person submitting a request is a journalist does not automatically mean that the re-use procedure is never applicable to this applicant-journalist. The very liberal definition of a journalist allows for situations where a request should be treated as a classical application for the re-use of public sector information. A 'journalist' is a person involved in editing, developing, and preparing press materials. Editing means drafting a text, amending it, and correcting stylistic and grammatical mistakes. Developing refers to creating the content of the press material. Preparing the press material is actually a chronologically earlier stage than 'developing' or 'editing'.[73] Therefore, in the course of journalistic work, there may be 're-use' of information obtained from administrative bodies. However, it is justified to claim that the exercise of access rights by the press cannot involve a cascading process through various access procedures, including the re-use procedure. This also indirectly proves that this procedure should be regulated separately and independently, taking into account the constitutional role and significance of the press in a democratic state ruled by law and respecting the freedoms and rights of persons (and entities) about whom information will be made public.[74]

---

[69] See Article 41(1)(4) of the Act on Re-Use in conjunction with Article 14(2) of the same act.

[70] See the justification for the governmental Bill on open data and the re-use of public sector information, print no. 1338, Sejm of the 9th term, pp. 57–58, https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1338 [accessed on 5 March 2024].

[71] M. Jaśkowska, 'Ponowne wykorzystywanie informacji sektora publicznego w świetle orzecznictwa sądów administracyjnych a zasada transparentności władz publicznych', in: Jagielski J., Wierzbowski M. (eds), *Prawo administracyjne dziś i jutro*, Warszawa, 2018, pp. 148–149.

[72] Ibidem, p. 149.

[73] P. Sitniewski, *Ustawa o ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*, Warszawa, 2017, p. 34.

[74] Thus also M. Jabłoński, K. Wygoda, in: Piskorz-Ryń A., Sakowska-Baryła M. (eds), *Ustawa o dostępie*…, op. cit., Article 24(25).

6. CONCLUSIONS

The analysis above leads to the conclusion that the stance established years ago, according to which journalists applying for access to public information must prove their status each time, continues to dominate in current administrative courts' case law. The exercise of the journalistic right to information in accordance with the Access Act is possible only after proving that the journalist is acting on behalf of the press. While such an obligation is justified in the exercise of the journalistic right to information under Article 4 of the Press Law, it lacks any legal basis in the press right of access to public information under Article 3a of the Press Law. This access procedure entitles everyone, including an anonymous applicant, to submit a request, with the only requirement being a precise indication of the public information requested. Thus, compared to the general principles applicable to ordinary citizens, the press access to public information has been additionally restricted by non-statutory formal requirements for applications. Furthermore, another informative right – the right to re-use public sector information – introduces a separate application procedure for acquiring public sector information for the purpose of 're-use'. As a result, applications for access submitted by journalists, who use obtained information in press materials, may be subjected to the much more formalised procedure of the Act on Re-Use, which does not provide any conveniences for the press access to information. The evolving regulatory environment of informative rights applicable to everyone increasingly highlights the problem of the lack of specific legal solutions dedicated to the press. Admittedly, the Press Law provides for journalists' right to information and a general obligation to respond to press criticism. However, such rights may prove to be insufficient. Especially since, as demonstrated, the broadest and constitutionally established right of access to information about the activities of public authorities and persons performing public functions in practice faces restrictions that do not apply to other citizens.

De lege lata it should be postulated that the interpretation of Article 3a of the Press Law, in accordance with the legislator's intention, *de iure* and *de facto*, equates the press right with the right of 'everyone' interested in obtaining information. It is unacceptable that journalists must hide their status to avoid the risk of their request not being processed for formal reasons. In addition, the assessment of the requirement to prove action on behalf of the press by a journalist is discretionary. However, this is a minimal demand, as under the current legal framework, a journalist still cannot expect to obtain information more quickly, and the two-month maximum deadline for processing the request under the Access Act or the Act on Re-Use is entirely insufficient. Currently, in accordance with Article 4 of the Press Law, only the editor-in-chief is authorised to file a complaint or to demand the delivery of a refusal to provide information, meaning that a journalist's individual rights are not taken into account.

That is why, *de lege ferenda*, legislative changes in the Press Law and the abandonment of the reference contained in Article 3a should be postulated. The press right of access to public information should be regulated separately as part of a journalist's broader right to information. The Press Law should define the scope

of entities obliged to provide information to the press and combine the categories of entities laid down in the current provisions of the Access Act and the Act on Re-Use. The legislator should also determine the specific scope of information provided to avoid doubts regarding what constitutes public information under the AAPI. The press access should include the widest possible range of information. Here, the broad definition of public sector information provided in the Act on Re-Use may indicate necessary exclusions and limitations resulting from Article 61(3) and Article 31(3) of the Constitution of the Republic of Poland. The Press Law should also regulate procedural issues, taking into account a journalist's individual rights so that they can effectively exercise their right before authorities and courts. The rights of editors-in-chief and editorial offices could only supplement individual measures. Importantly, a journalist should still have the right to public information just like any other citizen, in accordance with the Access Act. Strengthening the journalistic right to information and recognising the function and mission of the press is necessary to actualise citizens' rights to reliable information, openness of public life, and social control and criticism.

BIBLIOGRAPHY

Bidziński M., Chmaj M., Szustakiewicz P., *Ustawa o dostępie do informacji publicznej. Komentarz*, Warszawa, 2023, Legalis.

Brzozowska-Pasieka M., in: Olszyński M., Pasieka J., Brzozowska-Pasieka M., *Prawo prasowe. Komentarz praktyczny*, Warszawa, LEX 2013.

Chabel C., *Udzielenie informacji publicznej na wniosek prasy*, 2015, LEX/el.

Chajewska A., Orlik K., 'Prawo prasowe. Komentarz tezowy', in: Orlik K. (ed.), *Prawo prasowe. Postępowania sądowe w sprawach prasowych*, Warszawa, 2017.

Czarny-Drożdżejko E., 'Dziennikarz i jego uprawnienia', *Przegląd Prawa Publicznego*, 2014, No. 5.

Ferenc-Szydełko E., *Prawo prasowe. Komentarz*, Warszawa, LEX 2013.

Fischer B., Piskorz-Ryń A., Sakowska-Baryła M., Wyporska-Frankiewicz J. (eds), *Ustawa o otwartych danych i ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*, Warszawa, 2022.

Jaśkowska M., 'Ponowne wykorzystywanie informacji sektora publicznego w świetle orzecznictwa sądów administracyjnych a zasada transparentności władz publicznych', in: Jagielski J., Wierzbowski M. (eds), *Prawo administracyjne dziś i jutro*, Warszawa, 2018.

Kosmus B., Kuczyński G. (eds), *Prawo prasowe. Komentarz*, Warszawa, 2018, Legalis.

Nosarzewski Ł., *Prawne ograniczenia ponownego wykorzystywania informacji publicznej*, Warszawa, 2022.

Piskorz-Ryń A., Sakowska-Baryła M. (eds), *Ustawa o dostępie do informacji publicznej. Komentarz*, Warszawa, LEX 2023.

Sarnecki P., in: Garlicki L., Zubik M. (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. II, Warszawa, LEX 2016.

Sibiga G., Sybilski D. (eds), *Ustawa o otwartych danych i ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*, Warszawa, 2022.

Sitniewski P., *Ustawa o ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*, Warszawa, 2017.

Siwicki M., 'Prasa internetowa a obowiązek rejestracji prasy', *Przegląd Sądowy*, 2011, No. 1.
Sobczak J., 'Dostęp do informacji publicznej – zagadka i parawan', *Środkowoeuropejskie Studia Polityczne*, 2008, No. 1.
Sobczak J., *Prawo prasowe. Komentarz*, LEX.
Sobczak J., 'Swoboda wypowiedzi w orzecznictwie Trybunału Praw Człowieka w Strasburgu. Część I', *Ius Novum*, 2007, No. 2–3.
Sokolewicz W., 'Wolność prasy i jej konstytucyjne ograniczenia', *Państwo i Prawo*, 2008, No. 6.
Szustakiewicz P., 'Orzecznictwo Naczelnego Sądu Administracyjnego z lat 2015–2018 w sprawach dotyczących informacji publicznej', *Przegląd Prawa Publicznego*, 2019, No. 7–8.

Cite as:

Nosarzewski Ł. (2025), *Press access to public information in the light of administrative courts' case law*, Ius Novum (Vol. 19) 1, 92–110. DOI 10.2478/in-2025-0007