

PROCESSED ENVIRONMENTAL INFORMATION

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ABSTRACT

The legislator, under the Act on Access to Public Information, introduced a distinction between simple and processed information. Processed information is understood as information that, as at the date of submitting the request, does not exist in a form expected by the requester and, therefore, has to be specially generated for the requester's needs. Provision of processed information is conditional upon the requirement of particular importance for the public interest. A special category of public information, access to which is governed by a separate legislative act, is environmental information. Under the Act on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments, however, the legislator has not introduced any provisions on access to processed information. This gives rise to a practical problem as to how an entity obliged to provide information should react if it receives a request for environmental information whose nature indicates that, in fact, processed information has been requested. The purpose of this article is to resolve this practical issue through a dogmatic analysis of the provisions of both aforementioned Acts in the light of relevant axiological considerations. This is the case as the opinions presented in the literature so far seem to conflict with fundamental constitutional values.

Keywords: public information, environmental information, processed information, limitation of the right to information

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INTRODUCTION

The right to public information is a public subjective right, enshrined both in the Constitution and in provisions of international law.¹ Beyond any doubt, this right materially affects the formation of civil society. It is hard not to notice a correlation between the principle of transparency of public life and the principle of a democratic state ruled by law, since in the latter the citizen must be in a position to obtain information on activities carried out by public authorities. Most obviously, as with any other constitutional right or freedom, the right of access to public information is not absolute and, rather than that, is subject to a number of restrictions.

The basic legislative act of statutory rank governing transparency of public life is the Act on Access to Public Information.² Although, according to the legislator's intention, it was intended to be a 'mother' Act comprehensively regulating the subject matter of the title, already in Article 1(2) API Act, the legislator introduced a conflict-of-law rule under which provisions of the Act do not violate any other provisions of statutory acts that define differently the terms or procedures for providing access to public information. Under the current legislative framework, there are a number of legislative acts that constitute *leges speciales* in relation to the Act under discussion.

One of the statutory acts that regulate specifically issues concerning transparency of public life is the Act on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments.³ The question of mutual relations between the two legislative acts will be one of the leading issues discussed in this article.

As it turns out, interpretative problems in legal practice arise from the procedure to be applied by an entity obliged to provide information when it is faced, in fact, with a request for processed information. This is a specific category of public information, access to which has been conditioned by a requirement of particular importance for the public interest. Such a specific statutory regime, however, can only be found in the API Act. What happens, however, if the request relates to environmental information?

This research issue has, only to a minor extent, been of interest to academic authors (it has been chiefly discussed in commentaries). What is more, in decisions of administrative courts the subject matter has not been frequently commented upon. However, this issue gives rise to decision-making dilemmas for entities obliged to provide information on the environment and environmental protection. The task

¹ Cf. J. Taczowska-Olszewska, *Dostęp do informacji publicznej w polskim systemie prawnym*, Warszawa, 2014, p. 97; K. Karsznicki, 'Kryteria dostępu do informacji publicznej', *Prokuratura i Prawo*, 2015, No. 11, p. 112; A. Kwaśniak, 'Udział prokuratora w postępowaniu o udostępnienie informacji publicznej', *Prokuratura i Prawo*, 2021, No. 9, pp. 103–124.

² Act of 6 September 2001 on Access to Public Information, Journal of Laws of 2022, item 902; hereinafter referred to as 'the API Act'.

³ Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments, Journal of Laws of 2024, item 1112, as amended; hereinafter referred to as 'the Environmental Act'.

is not made easier by a divergence of views expressed in literature. The intention behind this article is to fill the gap in academic literature by putting forward a proposal to solve the existing practical issue based on the current legislative framework (*de lege lata*).

In the article, the formal dogmatic method is used, as analysis made when interpreting the existing legal provisions can be a means towards the goal, that is, formulation of a solution to the issue. To the necessary extent, this will be supported by literature research and an analysis of case law of administrative courts in the area of access to public information and access to environmental information.

PUBLIC INFORMATION AND ENVIRONMENTAL INFORMATION

As signalled at the beginning, an interpretative problem arises already in the context of the mutual relationship between the concepts of 'public information' and 'environmental information'. Public information has been defined, in a generally criticised and rather unfortunate manner, as any piece of information on public matters (Article 1(1) API Act). Article 6 API Act contains a non-exhaustive list of information qualifying as public information. Yet, the legislator decided to define environmental information by means of a list in Article 9(1) of the Environmental Act. Before we move on to further considerations, it should be pointed out that the two rights have a different constitutional basis – the right of access to public information is enshrined in Article 61(1) of the Constitution of the RP,⁴ whereas the right to obtain information on the environment and environmental protection is enshrined in Article 74(3) of the Constitution. However, any closer discussion of differences between the two constitutional rights of the individual goes beyond the scope of this study.

At first glance, it could be assumed that the relation between the referents of the concepts 'public information' and 'environmental information' is that of inclusion, with the latter concept being narrower. The mutual relation between the legislative acts cited above should be approached along the same lines. However, some authors argue that the concepts are cross-related, which means that there are both pieces of information that are public but not environmental (which is obvious and requires no comment) and certain pieces of information that are environmental but not public (which will be discussed below in more detail). It seems, however, that the former approach should be followed. The Republic of Poland is the common good of all its citizens (Article 1 of the Constitution of the RP), and the Republic ensures protection of the natural environment pursuant to principles of sustainable development (Article 5 of the Constitution). Public authorities pursue policies ensuring ecological security of current and future generations, and protection of the environment is the duty of public authorities (Article 74(1) and (2) of the Constitution). The above gives rise to the

⁴ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483, as rectified and amended – hereinafter referred to as: 'Constitution', 'Constitution of the RP'.

conclusion that natural environment is a public good, and that it is an obligation of public authorities to protect the environment, but also an obligation of citizens. In the light of the above, even if a private entity owns certain elements of the environment, as a whole it is still a common good. Therefore, by way of example, information on the chemical composition of waste discharged by the owner of a private plot of land into a river, or on the morphology of waste generated by private-law bodies, which at first glance may give the impression of private information (though it is undoubtedly environmental information), should, in fact, be considered public, as concerning a public matter within the meaning of Article 1(1) API Act. In the light of the above, it should be concluded that information on the environment and on environmental protection is a certain type of public information, which means that the relation between the two concepts is one of inclusion.

With the above in mind, what is the relation between the two discussed statutory acts? In the case law of administrative courts, it has been pointed out that the Environmental Act is *lex specialis* in relation to the API Act, which means that requests for information about the environment are processed under the statutory regime of the former Act – both with regard to disclosure of such information and refusal of its disclosure. Provisions of the API Act do not apply insofar as terms and procedures governing access to the requested information are specified in the Environmental Act.⁵ Doubtlessly, the legislator introduced in Articles 8–28 of the Environmental Act a separate legislative regime – in many ways differing from the general one – governing access to environmental information, and put in place the above-mentioned conflict-of-law rule in Article 1(2) API Act with the intention that special provisions should apply to information on the environment and environmental protection. However, an important reservation must be made in this regard. Namely, taking into account the conflict-of-law rule in Article 1(2) API Act, it cannot be said that the entire Environmental Act is *lex specialis* in relation to the API Act, as it regulates a wide range of matters, not only access to environmental information. It contains 174 Articles divided into smaller sections, with only Articles 8–28 governing access to environmental information. The Act regulates such subject matters, separate from the issues discussed herein, as public participation in environmental protection, environmental impact assessments, administrative fines for non-compliance with legal provisions in the area of environmental protection or, finally, it provides the organisational basis for the operation of an administrative body – the Director General for Environmental Protection. Therefore, it must be concluded that it is not the Act as a whole but only its specific provisions that constitute *leges speciales* in relation to particular provisions of the API Act (e.g. Article 14 of the Environmental Act is *lex specialis* in relation to Article 13 API Act).

In this context, one can only agree with an argument expressed in literature that:

⁵ Cf. judgment of the Voivodeship Administrative Court in Wrocław of 18 May 2021, IV SA/Wr 147/21, LEX No. 3192515; judgment of the Supreme Administrative Court of 5 January 2023, III OSK 6352/21, LEX No. 3481155; judgment of the Supreme Administrative Court of 7 December 2016, I OSK 462/15, LEX No. 2174974.

'In case of concurrence, priority attaches to special provisions (including prior ones), however, this does not mean that the Act on Access to Public Information no longer applies to public information covered by such special provisions. The norms of the Act will apply in all matters in which the Act is not contrary to the special provisions.'⁶

This will have important implications for further considerations on disclosure of processed information on the environment and environmental protection.

PROCESSED PUBLIC INFORMATION

As mentioned at the beginning, processed information is a specific category of public information. Under Article 3(1)(1) API Act, the right of access to public information covers the right to obtain public information, including obtaining processed information insofar as this is particularly important for the public interest. This provision introduces an exception to the rule in Article 2(2) API Act, according to which a person exercising the right of access to public information may not be requested to demonstrate a legal or factual interest. Such an inquiry may be made by the entity obliged to provide information only if the request relates to processed public information. There is no doubt that the need to meet stringent requirements to access processed information is a limitation of the constitutional right to public information.⁷

In practice, access to processed information gives rise to multiple interpretative doubts, which is a consequence of the legislator's use of unclear expressions that have not been defined in statutory provisions at all. This task had to be taken on by academic authors and the judiciary. From the time of entry into force of the legislative regime, it has been indicated that processing of information should be treated as an intellectual process carried out in relation to data at the disposal of the obliged entity.⁸ This involves preparation of certain breakdowns, tables, charts or calculations that are not at the disposal of the obliged entity as at the date of the request; however, they can be generated specifically for the requestor on the basis of the information held. Over time, however, another, wider understanding of the term 'processed information' has developed, according to which the concept also covers

⁶ G. Wierczyński, 'Pojęcie informacji publicznej w świetle ustawy o dostępie do informacji publicznej. Glosa do wyroku NSA z dnia 19 grudnia 2002 r., II SA 3301/02', *Gdańskie Studia Prawnicze – Przegląd Orzecznictwa*, 2005, No. 1–2, pp. 55–64.

⁷ Cf. A. Kwaśniak, 'Faktyczne i prawne ograniczenia w dostępie do informacji publicznej na tle rodzimego ustawodawstwa', *Roczniki Administracji i Prawa*, 2019, No. 2, pp. 193–208; R. Stefanicki, 'Ustawa o dostępie do informacji publicznej (wybrane zagadnienia w świetle orzecznictwa sądowego)', *Państwo i Prawo*, 2004, No. 2, p. 97; E. Jarzęcka-Siwik, J. Wyporska-Frankiewicz, 'Ograniczenie prawa dostępu do informacji publicznej', in: Wyporska-Frankiewicz J. (ed.), *Dostęp do informacji publicznej na wniosek w praktyce jednostek samorządu terytorialnego*, Warszawa, 2019, p. 100.

⁸ Cf. M. Jabłoński, 'Dekodowanie zwrotów niedookreślonych na przykładzie przepisów nowelizujących ustawę o dostępie do informacji publicznej', *Wrocławsko-Lwowskie Zeszyty Prawnicze*, 2013, No. 4, p. 195; M. Jaśkowska, 'Pojęcie informacji publicznej i jej rodzaje', *Kwartalnik Prawa Publicznego*, 2012, Vol. 12, No. 3, pp. 71–72; B. Przywora, 'Regulacje prawne w zakresie dostępu obywateli do informacji przetworzonej – stan obecny i postulaty zmian', *Przegląd Prawa Publicznego*, 2013, No. 5, pp. 79–88.

a large amount of simple information requiring above-average commitment of the obliged entity in the process of gathering and disclosing the information.⁹ This is a consequence of a conclusion drawn in legal practice that processing a request having as its subject hundreds of documents often requires much more commitment from the obliged entity than preparing intellectually engaging breakdowns or charts. Added to this is the still existing and growing phenomenon of abuse of the right of access to public information, which assumes the form of vexatious requests that often even paralyse public administration. In this context, it has been expressly pointed out in literature that the purpose behind the legislator's introduction of a legal provision restricting access to processed public information was to protect the public good against abuses of the right of access to information.¹⁰

Even though such an extensive interpretation of Article 3(1)(1) API Act can be considered controversial – since, strictly speaking, the concept of processing cannot be understood as gathering a large amount of unprocessed data (in fact, one can speak of an extensive interpretation of a provision introducing an exception) – for nearly a quarter of a century of application of the discussed legal regime the legislator has not identified the issue of abuse of the right of access to public information and has not offered any effective antidote. It seems that – *lege lata* – the only remedy to the issue is to resort to an extensive interpretation of the term 'processed information'. In fact, if the obliged entity establishes that two premises are jointly fulfilled, i.e. that the information subject to the request constitutes processed information and that one cannot speak of particular importance of its disclosure for the public interest, the obliged entity is in a position to issue an administrative decision refusing to disclose the requested public information,¹¹ which will often require much less commitment from the administrative authorities than preparing hundreds of documents for disclosure. It must be remembered that the statutory deadline for handling a request for disclosure of public information does not change merely because the request relates to processed information. As a rule, in such situations, the obliged entity will be forced to take advantage of the possibility to prolong the deadline for settling the matter up to two months.¹²

⁹ Cf. D. Lebowa, A. Fermus-Bobowiec, 'Prawo do informacji publicznej a jego nadużycie – rozważania na gruncie orzecznictwa sądów administracyjnych', *Annales UMCS Sectio G*, 2022, Vol. LXIX, No. 2, p. 32; K. Pawlik, 'Szczególnie uzasadniony interes publiczny w udostępnieniu informacji publicznej', *Informacja w Administracji Publicznej*, 2020, No. 2, p. 45; P. Szustakiewicz, Ł. Nosarzewski, 'Wpływ orzecznictwa sądów administracyjnych na stosowanie ustawy o dostępie do informacji publicznej', in: Błachucki M., Sibiga G. (eds), *20 lat ustawy o dostępie do informacji publicznej – podsumowanie i perspektywy ustawowej regulacji prawa do informacji publicznej*, Warszawa, 2022, pp. 51–52.

¹⁰ Cf. A. Korzeniowska-Polak, 'Postępowanie z wniosku o udostępnienie informacji publicznej przetworzonej', *Kwartalnik Prawa Publicznego*, 2012, Vol. 12, No. 3, p. 111; A. Kręciś-Sarna, 'Ochrona przed nadużyciem prawa do informacji publicznej', *Informacja w Administracji Publicznej*, 2019, No. 1, p. 52; similarly, the Constitutional Tribunal in the judgment of 18 December 2018, SK 27/14, OTK-A 2019, item 5.

¹¹ Cf. B. Pietrzak, 'Decyzja o odmowie udostępnienia informacji publicznej przetworzonej', *Informacja w Administracji Publicznej*, 2015, No. 3, pp. 56 et seq.; P. Szustakiewicz, 'Zróżnicowanie informacji prostej i informacji przetworzonej', *Informacja w Administracji Publicznej*, 2017, No. 2, pp. 61 et seq.

¹² Cf. A. Kwaśniak, 'Bezczynność organu w przedmiocie udostępnienia informacji publicznej przetworzonej. Glosa do wyroku NSA z dnia 21 maja 2014 r., I OSK 2472/13', *Orzecznictwo w Sprawach Samorządowych*, 2021, No. 4, pp. 131–139.

CAN ENVIRONMENTAL INFORMATION BE PROCESSED INFORMATION?

A provision analogous to the regime described above is nowhere to be found in the Act on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments. Oddly enough, this statutory regime was put in place several years later, when the legislator had to be aware of the practical aspects of disclosing processed information and of the ensuing problems. The phenomenon of abusing the right of access to public information was already known at that time. However, for certain reasons – unfortunately not made clear in the explanatory memorandum to the draft bill – the legislator did not decide to include in the Environmental Act a provision following the pattern of Article 3(1)(1) API Act.

However, it is hard not to notice that the practice of requesting public information and the practice of requesting environmental information are very much the same. In fact, requestors often cite an incorrect legal basis, requesting environmental information while, at the same time, invoking the right of access to public information (which is more frequent), or *vice versa* (much less frequently). The procedure itself, i.e. submitting a request, which initiates the lapse of statutory deadlines, the need to prepare, often copy, scan, anonymise information, and to provide it to the requestor, is the same in both situations. Therefore, if we accept that a request for public information may also include information that is not held by the obliged entity in the requested form as at the date of the request but can be generated specifically for the requestor based on available data (processed information), there are no rational grounds to conclude that an identical situation will not arise in the context of environmental information. In practice – especially before administrative bodies whose main task is environmental protection¹³ – these are very common situations. Unfortunately, they have not been duly regulated under the statutory regime. In light of the above, it can be concluded that the phenomenon of processed environmental information is real and exists in practice; however, as opposed to processed public information, it has not been identified by the legislator and duly regulated.

PROCEDURE UPON SUBMISSION OF A REQUEST FOR PROCESSED ENVIRONMENTAL INFORMATION

THE CURRENT STATE OF RESEARCH AND CASE-LAW

The key problems, from the point of view of this study, have only to a limited extent been of interest to academic authors, and, if so, this refers mainly to commentaries. However, even within this limited scope, one can speak of two opposing views regarding the procedures to be followed, according to the applicable law, upon receipt of a request for disclosure of processed environmental information.

¹³ Such as bodies of the Environmental Protection Inspectorate, Directors for Environmental Protection, the Polish Waters, etc.

Nevertheless, it seems that neither of these extreme approaches takes into account certain essential axiological conditions and, above all, is compatible with provisions of the Constitution. Both opinions explained below are based on an observation that the Environmental Act does not contain any provisions in this regard, and assume that its provisions constitute *leges speciales* in relation to the API Act and – importantly – that, as a result, they cannot be applied jointly with that Act.

The first of the views, which seems to be the majority opinion, assumes – in great simplicity – that since the legislator did not regulate the matter in the Environmental Act, in the event of submission of a request for environmental information bearing the features of processed information, the obliged entity is exempt from the obligation to comply with such a request.

It has been emphasised in literature that:

‘It cannot be concluded that there is a legal dualism in the context of disclosing information on the environment and environmental protection. There are no grounds to apply, as appropriate, in such matters the provisions of the Act on Access to Public Information. Matters concerning provision of information on the environment and environmental protection should be resolved exclusively on the basis of the legal regime under the Environmental Act.’¹⁴

As pointed out in a judgment of the Voivodeship Administrative Court in Wrocław, ‘as opposed to the procedure under API Act, the Environmental Act does not mention disclosure of processed information. In addition, the administrative body is definitely under no obligation to search for materials in generally available media.’¹⁵ The Court in Wrocław also emphasised that

‘The Environmental Act, in the context of providing environmental information, does not use the terms “simple” and “processed” information (unlike the Act on Access to Public Information). The discussed Act points only to a possibility of converting information, however, only as to its form. Public authorities, when disclosing information on the environment or environmental protection, are required to take measures permitted by law (under legal provisions and within their scope), and when it comes to conversion of information, they only take technical substantive measures that do not interfere with the contents of the disclosed data. Provisions of the Environmental Act regarding disclosure of information on the environment or environmental protection do not permit a conclusion that entities obliged to provide information are also obliged to “generate” such information for the requestor. This follows, among other things, from the provision of Article 8(1) of the Environmental Act providing for a requirement to provide information held by the public authority and intended for public authorities. Such a position is also confirmed by the provision of Article 8(2) of the discussed Act, imposing on public authorities an obligation to provide necessary assistance and guidance in the search for information on the environment and its protection, which materialises when the authority is not in possession of the requested information. Obviously, the above does not exempt the authority from preparing simple breakdowns of the environmental information already held that allow the requested data to be obtained.’¹⁶

¹⁴ Judgment of the Supreme Administrative Court of 19 June 2024, III OSK 1859/22, LEX No. 3746429.

¹⁵ Judgment of the Voivodeship Administrative Court in Wrocław of 1 February 2024, II SA/Wr 591/23, LEX No. 3689204; similarly, judgment of the Voivodeship Administrative Court in Cracow of 13 September 2022, II SA/Kr 572/22, LEX No. 3416674.

¹⁶ *Ibidem*.

In line with the above, commentaries point out that ‘there are no legal grounds to conclude that, under provisions of the discussed Act, processed information can be disclosed in the understanding developed in administrative court jurisprudence’.¹⁷

The above opinion deserves criticism on account of the serious limitation of the constitutional right of the individual to obtain information on the condition of the natural environment and its protection. Although the institution of processed information constitutes such a limitation, the restriction itself seems to be proportional and, first of all, does not compromise the essence of the limited right (cf. Article 31(3) of the Constitution), since the requestor can obtain processed information; however, the prerequisite of particular importance for the public interest must be fulfilled. The opinion presented above seems to go much further, effectively excluding the possibility of obtaining such information in the context of environmental information. This can be treated as a limitation compromising the essence of the constitutional right of the individual, and therefore contrary to Article 31(3) of the Constitution.

Referring to the arguments of the Voivodeship Administrative Court concerning consequences of the provision in Article 8(1) of the Environmental Act, it can only be mentioned in passing that Article 4(3) API Act also provides that only public information held by a given obliged entity is subject to disclosure; however, in the light of Article 3(1)(1) API Act, no one derives from that norm the conclusion that it is inadmissible to request processed information. From the semantic perspective, both provisions are equivalent. It seems that both Article 8(1) of the Environmental Act and Article 4(3) API Act are a logical consequence of the obvious fact noticed by the legislator that it is impossible to disclose information that is not in the entity’s possession, assuming at the same time that one should not impose on entities obliged to provide information a requirement to search, on behalf of the requestor, for information that might potentially be held by other entities.

An opposing view posits that

‘When it comes to environmental information, processed information should also be disclosed, that is information whose provision requires additional measures consisting, e.g. in reaching for reference documentation or performing appropriate analyses, calculations, statistical breakdowns involving engagement of particular personal and financial resources in the process of their preparation.’¹⁸

It can be assumed (as this was not expressly stated in the cited commentary) that, in the opinion of the authors, such information should be disclosed without a need to demonstrate that any premises have been fulfilled, that is without an option to issue a negative decision on account of the processed status of the information and, at the same time, non-compliance with the special prerequisite of particular

¹⁷ T. Filipowicz, A. Plucińska-Filipowicz, in: Wierzbowski M. (ed.), *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz*, 2nd ed., Warszawa, 2020, p. 97.

¹⁸ M. Bar, J. Jendrośka, *Komentarz do wybranych przepisów ustawy o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko*, 2nd ed., LEX/el., 2024, Article 8.

importance for the public interest. In consequence, this opinion is a polar opposite of the one previously discussed.

However, such a position cannot be accepted. As rightly pointed out in literature, exercise of the right of access to public information cannot lead to paralysis of the state's institutions.¹⁹ Efficiency, or even viability, of the state's structures seems to prevail, as a value, over transparency of such structures' operation, especially in a situation of abuse of the right of access to information on activities of public authorities. This is the case, as diligence and efficiency of public authorities are constitutional values enshrined in the Preamble to the Constitution. The institution of access to processed information is regarded as a protection measure for entities obliged to provide information against the phenomenon of abuse of the right of access to public information, understood as

'such actions of the entitled party that are made in exercise of their right of access to information under the established legal order, however, do not correspond to purposes of the law adopted by the legislator'.²⁰

However, it cannot be accepted that omission of that institution in the Environmental Act should lead to an entirely unlimited obligation to disclose any environmental information, no matter how extensive or how engaging for the obliged entity. This would lead by the most direct means to the state's paralysis. A situation can easily be imagined in which a party of interest to Environmental Protection Inspectorate bodies, pursuing its activities in violation of legal provisions, submits extensive requests for environmental information for the sole purpose of paralysing the body and, at the same time, precluding effective review of its own activities. This was definitely not the legislator's intention.

THE PROPOSAL TO SOLVE THE PROBLEM

The solution to the depicted problem lies in appropriate interpretation of provisions of both Acts and, in particular, the conflict-of-law rule discussed at the beginning. As pointed out in case law:

'Existence of separate terms or a procedure for disclosing public information precludes application of the Act on Access to Public Information, however, only insofar as a given matter is expressly regulated by such special provisions. As highlighted in legal litera-

¹⁹ Thus, e.g. in M. Badowski, 'Dostęp do informacji publicznej jednostek samorządu terytorialnego. Nadużycie prawa', *Prawo i Więź*, 2021, Vol. 38, No. 4, p. 434.

²⁰ A. Piskorz-Ryń, 'O nadużyciu prawa dostępu do informacji publicznej', in: Błachucki M., Sibiga G. (eds), *20 lat ustawy o dostępie do informacji publicznej – podsumowanie i perspektywy ustawowej regulacji prawa do informacji publicznej*, Warszawa, 2022, p. 91. For more on the same phenomenon, see M. Kowalski, 'Nadużycie prawa do informacji publicznej', *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2016, No. 2, pp. 49–60; A. Knopkiewicz, 'O nadużyciu prawa do informacji publicznej', *Państwo i Prawo*, 2004, No. 10, pp. 69–81; A. Kwaśniak, 'Countering Abuse of Subjective Rights as Exemplified by the Right to Public Information', *Roczniki Administracji i Prawa*, 2024, No. 2, pp. 67–78.

ture – the provision of Article 1(2) of the Act on Access to Public Information requires that in each situation where specific matters concerning terms and procedure of access to public information are regulated differently in the Act on Access to Public Information and differently in a special statutory act on disclosure of information, and provisions of both acts cannot be reconciled with one another, priority must be afforded to provisions of the special act. However, if a given matter is only partially regulated or not regulated at all in the special act, appropriate provisions of the Act on Access to Public Information will apply; in the former case they apply on a supplementary basis, and in the latter case they are the only legal framework in that respect.²¹

Importantly, literal interpretation of Article 1(2) API Act leads to the conclusion that provisions of the Act on Access to Public Information do not violate provisions of other acts laying down different terms and procedures of accessing information. Therefore, first of all, it is provisions of other acts that can supersede provisions of the Act on Access to Public Information, and not entire acts. This issue has already been discussed above. Second, such provisions will be *leges speciales* only if they define differently the terms and procedure of access. *A contrario*, in situations where provisions of another statutory act do not specify different terms and procedure of access to information, they will not constitute special rules in relation to provisions of the API Act. In turn, if a particular question has not been regulated differently, the conflict-of-law rule in Article 1(2) API Act will not apply, and *leges generales* will.

Along the above lines, it must be concluded that Article 3(1)(1) API Act has no normative equivalent in the other statutory regime discussed. And since there is no special provision regarding access to processed information, the entity applying the law has no other choice but to reach for a general rule in this regard. The conflict-of-law rule in Article 1(2) API Act will not apply in such a case, since neither the terms nor the procedure of access to processed information have been regulated differently under the Act on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments.

In light of the above, if a request is submitted for disclosure of information and content of the request shows that it relates to environmental information referred to in Article 9(1) of the Environmental Act and, second, the requested information bears features of processed information (developed by academic authors and the judiciary but not defined in the Act), the obliged entity will classify the information as environmental information; however, it will then take further steps according to the procedure under the Act on Access to Public Information. The obliged entity will explain to the requestor why it considers the information processed and will call on the requestor to demonstrate particular importance of disclosure for the public interest (it should be borne in mind, however, that it is always for the obliged entity to determine whether this premise is met). If it is found that the premise has not been met, the right will materialise to issue an administrative decision refusing disclosure of the processed information. It seems that the appropriate legal basis

²¹ Resolution of the Supreme Administrative Court of 9 December 2013, I OPS 8/13, *ONSA i WSA*, 2014, No. 3, item 38, p. 67, and a study cited therein: J. Jendrońska, M. Bar, Z. Bukowski, *Dostęp do informacji o środowisku i jego ochronie*, Poznań–Wrocław, 2007, pp. 64–65.

for such a decision will be Article 16(1) in conjunction with Article 3(1)(1) API Act, since, in the absence of special provisions, the conflict-of-law rule referring the matter to the Environmental Act will not apply.

The proposed solution lies between the two extreme conceptions expressed so far. On the one hand, it takes into account the constitutional status of the right of the individual to obtain information on the condition of the environment and environmental protection. Even though the solution restricts the right, the restriction does not compromise its essence but, on the other hand, permits effective and efficient performance of public tasks by entities obliged to provide information. In the end, it must not be overlooked that no state authority has been appointed for the sole purpose of disclosing information to citizens. This is always a secondary activity in relation to the principal area of the authority's responsibility.

CONCLUSIONS

The issue of citizen access to information on public activities is invariably of high practical importance and, over time, its significance has continued to grow. This can be confirmed, for example, by the high number of decisions of administrative courts relating to this question, which is increasing every year. Since the legislator has used many vague expressions, the everyday practice of applying the legal provisions in question gives rise to an increasing number of new problems, which have so far not been examined in the academic literature or by administrative courts.

One such issue encountered in practice by entities obliged to provide information that – as it seems – has not been satisfactorily resolved to date is the handling of requests for environmental information having the status of processed information. Although this question has been regulated (though imperfectly) under the Act on Access to Public Information, analogous provisions are nowhere to be found in the Act on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments.

Research carried out demonstrated, on the one hand, that the phenomenon has so far met with limited interest from academic authors and the judiciary. The purpose of this article is to fill that gap. On the other hand, two extreme opinions can be found, one of which seems to compromise the constitutional rights of the individual, and the other neglects the need to ensure effective operation of the state. In contrast, interpretation made leads to the conclusion that it is possible – avoiding extremes and bearing in mind all imperfections of the currently applicable legislative framework – to apply jointly, to a certain degree, provisions of both discussed Acts.

From the point of view of entities applying the law, the most favourable solution would be intervention by the legislator. However, having regard to the need to respond to current problems, it seemed more pertinent to achieve a solution *de lege lata*, leaving proposals *de lege ferenda* for a separate publication.

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