

The Right to Know: Europe and the Police



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About this Report

This study was researched and written by Lydia Medland and edited by Helen Darbishire as part of a research project conducted with David Goldberg to be presented on 26 November 2009 at a conference organised by the Centre for Freedom of Information of the School of Law, University of Dundee and the Scottish Information Commissioner.

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Access Info Europe is an international human rights organisation, based in Madrid, which works to promote a strong and functioning right of access to information in Europe and globally.

Access Info's goal is for the right of access to information to serve as a tool for defending civil liberties and human rights, for facilitating public participation in decision-making, and for holding governments accountable.



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Access to Information Laws and the Police in Europe

The police is a body which is run with taxpayers' money and exercises considerable power over the lives of members of the public. It is therefore a body which merits close public scrutiny to ensure that it is being effective in maintaining law and order and fighting crime.

This research report has been motivated out of concerns in Scotland that some information held by police about routine policing matters is not available to the public. Campaigning groups have raised concerns about issues such as family members not being able to get police documents relating to relatives who have died as a result of vehicle driving and traffic accidents. The issue here is not sensitive information about the fight against organised crime or counter-terrorism operations, but the need to secure access to day-to-day information about primary police functions. This information is necessary to ensure that police forces are fully accountable to the public they serve.

In the research for this report, Access Info Europe reviewed the laws of the 47 member states of the Council of Europe, 42 of which have access to information laws or freedom of information laws, to examine whether the public has a right of access to information or documents held by the police. We also looked at the law in Scotland, the country within the UK which was the trigger for this research.

Access Info found that almost all of the 43 legal regimes studied (42 Council of Europe countries, plus Scotland), include the police within the scope of the obligation to receive and respond to requests from the public. This finding shows that the laws in most countries are consistent with the Council of Europe Convention on Access to Official Documents¹ which makes no exemption for the police, and which states specifically in the Explanatory Memorandum to the Convention that the police fall under the scope of the right to access to official documents. Information about the police therefore falls well within European standards for the public's right to know.

This report builds on previous comparative research into European access to information laws which shows that there is just one country in which the police force is entirely exempt from opening its files to the public: The Republic of Ireland.² In this study we have examined the legal framework more closely in order to identify any additional law and policy issues.

Another established access to information principle is that of *maximum disclosure*, which means that all information held by public bodies should be accessible to the public and that access should only be limited in very exceptional circumstances when justified by a legal exception stated in the law.³ These exceptions should always be subject to a public interest test, so that even if disclosing the information would cause some harm to the protected interest, the information will be released if there is a greater public good in knowing that information. With respect to the police, we found that some exceptions, such as the exception for criminal or judicial investigations, does apply.

Access Info hope that this study will contribute to the development of further work in this area and particularly in construction of transparent and open police information regimes that foment transparency at the local, national and European level.

¹ This treaty was adopted by the Council of Europe on 27 November 2008 and was opened for signature on 18 June 2009. The treaty can be found here: <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>

² Access Info et al, Briefing Regarding the elaboration of a Council of Europe Treaty on Access to Official Documents, November 2006, p.20

³ See for example Article 19's principles, 'The Public's Right to Know: Principles on Freedom of Information Legislation, International standard series, 1999, p.2

The research has brought to light some important findings:

- **Ireland** – the only country with the police outside the scope of the law.
- **Germany** – the lack of access to information laws in 6 provinces means that not all police forces are under the scope of the access to information law. This may also be the case in other Federal states (Austria, Switzerland) where we have limited information as to whether all the provinces have access to information laws.
- **Blanket exceptions** for criminal and judicial information: in a number of European countries information relating to criminal investigations by the police or judicial investigations is exempted from the scope of the access to documents or access to information laws. These countries include **Belgium, Denmark, France, Italy, Norway and Switzerland**. Such a blanket exception is a problem because they mean the requests are not evaluated on a case-by-case basis to ascertain if any real harm would result from release of the information, nor is a public interest test applied.
- **Problems with access** to police information were reported from a number of countries including **Albania, Bulgaria, Poland and Montenegro**. In these cases it appears that the over-broad application of exceptions or the classification of information using other laws is the basis for refusals.

Methodology – Consulting Experts in Access to Information

Access Info contacted experts on access to information in each of the 42 member states of the Council of Europe which has an access to information law, plus Scotland which is the trigger for this comparative research.

Where possible we have contacted an independent body such as the Information Commissioner or Ombudsman, as well as a civil society group (CSO) with expertise in their country's access to information law. It was not possible in all cases to contact both because either an oversight body or an expert civil society group did not exist. In the majority of cases we received valuable contributions from those we contacted. Of those 43 countries contacted (42 Council of Europe states plus Scotland), we received responses from 32.

This study is not comprehensive, but aims to give some more colour and depth to the current, largely vacant, picture about freedom of information and the police in Europe. The country sections of the report below reflect the comments received from those with professional access to information experience from around Europe.

Contributions were received by Civil Society, Oversight Bodies and Government Representatives in the Following Countries

Countries from which information was provided by Civil Society Groups		Countries where contributions came from Information Commissioners or Ombudsmen or government representatives
Albania	Macedonia	Belgium
Armenia	Moldova	Denmark
Azerbaijan	Montenegro	Germany
Bosnia and Herzegovina	Netherlands	Ireland
Bulgaria	Norway	Liechtenstein
Croatia	Poland	Portugal
France	Romania	Serbia
Germany	Russian Federation	Slovenia
Georgia	Turkey	Scotland
Hungary	Slovakia	Switzerland
Ireland	Slovenia	UK
Italy	UK	
Latvia		

In the chart on the following page you can see which European Freedom of Information laws cover the police and the date these laws came into force.

Included	Police are covered by the Freedom of Information (FOI) Law and explicitly referred to in it
Covered	Police are covered by the FOI law as part of a wider category of public bodies or similar
Not all covered	Not all police are covered by FOI law
Not Covered	There is a FOI law but the police are not covered by it.
No law	There is no FOI law

Are Police Forces in Europe Covered by Freedom of Information Laws?

Country	Name of FOI Law	In Force	Police inc.?
Albania	Law on right to information for official documents	1999	Covered
Andorra	No law	No law	No law
Armenia	Law on freedom of information	2003	Covered
Austria	Federal law on the duty to furnish information	1987	Covered (n/c)
Azerbaijan	Law on access to information	2005	Covered
Belgium	Law on the right of access to administrative documents	1994	Covered
Bosnia	Freedom of access to information act	2002	Covered
Bulgaria	Access to Public Information Act	2000	Covered
Croatia	Act on the right of access to information	2003	Covered
Cyprus	No law	No law	No law
Czech Republic	Law on free access to information	2000	Covered (n/c)
Denmark	Access to public administration files act	1970	Covered
Estonia	Public information act	2001	Covered (n/c)
Finland	Act on the openness of government activities	1951	Covered (n/c)
France	Law on access to administrative documents	1978	Covered
Georgia	General administrative code chapter III, FOI	2000	Covered
Germany	Federal act governing access to information	2006	Not all covered
Greece	Code of administrative procedure	1986	Covered (n/c)
Hungary	Act on the protection of pers. data and public access	1992	Covered
Iceland	Information act	1997	Covered (n/c)
Ireland	Freedom of information act	1998	Not Covered
Italy	Law on administrative procedure and the right of Access	1990	Covered
Latvia	Law on freedom of information	1998	Covered
Liechtenstein	Information act	2000	Covered
Lithuania	Law on the provision of information to the public	2000	Covered (n/c)
Luxembourg	No Law		No Law
Macedonia	Law on free access to information of public character	2006	Covered
Malta	No Law		No Law
Moldova	Law on access to information	2000	Covered
Monaco	No Law		No Law
Montenegro	Law on free access to information	2005	Covered
Netherlands	Act on public access to government information	1980	Covered
Norway	Freedom of information law	1970	Covered
Poland	Law on access to public information	2002	Covered
Portugal	Law on access to administrative documents	1993	Covered
Romania	Law on Free Access to Public Information	2001	Covered
Russian Federation	Law on Providing Access to Information on the Activities of State Bodies and Bodies of Local Self-Government	2010	Covered
San Marino	No Law		No Law
Scotland	Freedom of information act	2005	Included
Serbia	Law on free access to information of public importance	2004	Covered
Slovakia	Act on free access to information	2001	Covered
Slovenia	Access to public information act	2003	Covered
Spain	No Law		No Law
Sweden	Freedom of the press act	1766	Covered (n/c)
Switzerland	Federal law on administrative transparency	2006	Not all covered
Turkey	Law on right to information	2004	Covered
Ukraine	Law on Information	1992	Covered (n/c)
United Kingdom	Freedom of information act	2005	Included

Case Study:

Family's Access to Police reports following a Fatal Road Crash

A case study which shows the variations in access to police information across Europe comes from the Scottish Campaign against Irresponsible Drivers (SCID) which carried out research into the information that could be obtained by bereaved families following road traffic accidents.

COUNTRY	ACCESS TO POLICE TRAFFIC ACCIDENT REPORTS
France	Police report available to families
Greece	The family receives the police report at the end of the police investigation (about 2- 3 months after the event, the report includes all the documents from the hospital ie alcohol tests etc). Free of charge. They contain all statements and investigation reports. Offered automatically.
Romania	Report available upon request and at the end of the investigation. Released documents regard only the investigation at the scene of the crash, but no copies after the witnesses' statements or such documents are released
Spain	The police report can only be obtained through a lawyer which the victim's family would have to appoint.
Switzerland	The reports are available in ongoing cases without any fees.
Turkey	Police records passed to the court; may be available after case closed but this likely to be quite a long time after the accident.
UK Metropolitan Police (London)	Were surprised that a family would be denied it, after the case was closed Fairly typical of the position in England - "normal business"
UK - Liberty (human rights group)	No such thing as a legal right to the report but were surprised that a family would be denied it, after the case was closed
UK - Scotland	Invariably denied

Status of Access to Police Information in Council of Europe Member Countries



Albania

“[T]he FOI Act (no. 8503 of 30 June 1999) applies to all public authorities, defined as ‘all bodies of the public administration and public agencies.’ The police is covered and this has never been disputed to my knowledge. The FOI Act, infamously, does not define exemptions, but refers to ‘all cases provided by law’ that bar disclosure of state-held info. The Govt passed a Classified Info Act covering national security and later another classification act covering police information specifically.” Darian Pavli, Justice Initiative

Cases of Interest

Justice Initiative vs. Ministry of the Interior This case followed the Ministry of Interior’s refusal to provide information regarding the transfer through Albania of CIA extraordinary rendition victim Khaled El Masri in 2005. The case was thrown out on a procedural technicality but nevertheless the police provided some basic info that confirmed El Masri’s transfer through Albania. It failed to provide anything on his entry and ‘stay’ in the country, claiming ‘no info held’ (even though it controls border crossing points).

Andorra

No Law

Armenia

The Access to Information law is interpreted by civil society experts as covering the police as a public body. In practice however, NGOs have raised difficulty getting access to information and a 2003 court case ("Aqilles" NGO vs. the RA Police) resulted in a ruling by a regional Court of First Instance that the police were not authorised to provide information to NGOs. However, a more recent case, from August 2008, has confirmed that the RA Police does have an obligation to provide documents under the access to information law. In the case the applicant was seeking information about a police clashes with the public at a rally.

Austria

Access Info' reading of the Federal Law on Access to Information is that the police operating at the federal level (Bundespolizei) would fall under the scope of that law, but this has not been confirmed by any groups or government representatives. Journalistic organisations have, however, reported to us that they have problems accessing public information in Austria.

Azerbaijan

Civil Society in Azerbaijan reports that the Law on Access to Information extends to the police because they fall into a wider category of public bodies. There is no information to indicate whether the public have access to police information in practice.

Belgium

The Belgian Commission on Access to Administrative Documents confirms that the law is applicable to administrative authorities and that the police is an administrative authority since it reports to the executive power. Certain police documents are exempted from the scope of the law: that is the case for documents which introduce a criminal action before the courts, for example. Such documents are not considered to be administrative documents, but to be juridical documents. It is reported that there are very few cases where requestors have challenged refusals to provide police information.

Bosnia and Herzegovina

Two civil society organisations active in this area confirmed that the police is covered by the FOI law as they fall into a wider category of public bodies.

Bulgaria

Civil society in Bulgaria has confirmed that the police is included in the Access to Information law within the wider category of public bodies. They report that in practice there are problems with too little information being made available because the exceptions are applied very widely.

"The type of information classified as state secret under Schedule 1 of the Protection of Classified Information Act (PCIA) is extremely broad and this is the most used ground for refusal to provide information regarding the police. For example information regarding the human resources, the structure of the police is classified as state secret. At the moment a draft bill of the Ministry of Interior Act, which refers to the Schedule 1 of the PCIA amends the list of categories information classified as state secret. It envisages making public the number of police officers for instance. AIP campaigns for narrowing more the list and for reviewing some categories, which are out of date (such as statistical data). We have addressed a statement to the working group and the Parliament. The bill is still to be considered by the National assembly at second reading."

Gergana Jouleva Access to Information Programme (AIP) Bulgaria.

Cases of Interest from Bulgaria

AIP provided legal assistance and representation in court in several cases against the Ministry of Interior. For example, a citizen requested information related to the purchase of two armoured vehicles by the Ministry of Interior. The silent refusal of the minister of Interior was challenged before the Supreme Administrative Court (SAC). Decision No. 1753 as of February 20, 2007 of the SAC, Fifth Division repealed the silent refusal of the Minister and sent the request back to the body for reconsideration. Access to the information was granted. Another case relates to the access to two protocols of police warning. At the time of drafting of the protocols a copy was not given to the complainant. He filed a FOI request in order to receive the protocols. No answer was given by the police within the time limits set out under the APIA. The silent denial was challenged before the Supreme Administrative Court (SAC). Decision No. 7314 as of June 17, 2008 of the SAC, Third Division repealed the silent refusal of the Minister and sent the request back to the body for reconsideration. Information was provided.

Croatia

Civil society has confirmed that the police is covered by the FOI law and limited evidence shows that this law is working in practice.

Cyprus

No Law

Czech Republic

Based on comparative information gathered by Access Info in 2007, it seems that the police is covered by the FOI law but this has not been confirmed during the course of this study.

Denmark

The Danish Freedom of Information regime covers the police but information related to the administration of criminal justice is exempted.

“According to Art. 1, the Act applies to all activities exercised by the public administration. This includes the police. However, according to Art. 2(1), the Act does not apply to the administration of criminal justice. This means that many cases and documents of the police *de facto* are exempt.” Lisabeth Adserballe, on behalf of the Ombudsman.

The representative of the Danish Ombudsperson did however emphasise that the law represented a minimum level of information to be disclosed and that the police were able to give out all information except where they were under a professional promise of secrecy.

Estonia

Information held by Access Info indicates that the police is covered by the FOI law but have not had this confirmed by any national experts.

Finland

Access Info's analysis of the Finnish legal framework conducted in 2008 indicates that the police do fall under the scope of the access to information law, although certain specific exceptions apply. Section 24 — Secret official documents **(1)** Unless specifically otherwise provided, the following official documents shall be secret:

(5) the documents containing information on the tactical and technical plans and methods of the **police**, the frontier guard, the customs authorities and the prison authorities, if access would compromise the prevention of crime, the clearing up of offences or the maintenance of public order or the order of penal institutions;

(9) the documents of the **security police** and the other authorities concerning the maintenance of State security, unless it is obvious that access will not compromise State security.

France

Access Info's analysis of the French Law on Access to Administrative Documents is that the police is not specifically mentioned but are deemed to hold administrative documents and so are covered by the law. Decisions from the Commission on Access to Administrative Documents (CADA) indicated that documents concerning judicial

Cases of Interest

Access Info researchers found that at least 50 cases concerning police information had been dealt with by the French Commission on Access to Administrative Documents, (CADA). The non-binding decisions of the CADA indicate that some police-held information routinely falls outside the scope of the right to request documents:

- Complaints alleging violations are judicial documents and do not fall under law on access to administrative documents.
- Notes of fines, including things such as parking tickets and fines for violations of planning permission are judicial documents and do not fall under access to documents law.
- Documents relating to police enquiries can be accessed by anyone after 75 years from their date of creation or 25 years after the death of the person concerned, whichever is sooner.

On the other hand, documents relating to spending of funds, such as a report on fees paid to a lawyer to defend three police officers in a trial was ruled to be a public document.

But data protection rules may apply: bills related to police holidays from a local authority were deemed by the CADA to have too much personal information to be meaningful if released with this information removed and so did not have to be provided.

Georgia

The police is covered by the Georgian FOI law (General Administrative Code of Georgia), with the exception of materials related to the criminal investigation and covert operations.

Germany

Not all police forces in Germany are covered by a Freedom of Information Act. This is because Germany is a Federal State with 16 provinces and only 10 of these provinces have a dedicated FOI law. The majority of police forces in Germany are managed at the provincial level.

The German provinces and the dates of their FOIA Acts are listed below,

Brandenburg (20.3.1998)

Berlin (16.10.1999)

Schleswig-Holstein (25.2.2000)

Nordrhein-Westfalen (1.1.2002)

Bremen (1.8.2006)

Saarland (15.9.2006)

Thüringen (20.12.2007)

Rheinland-Pfalz (26.11.2008)

Sachsen-Anhalt (19.06.2008):

Hamburg (17.2.2009)

Residents of the remaining six German provinces lack any legal entitlement of access to information from their provincial police force.

Civil society experts have confirmed that the German Federal Act Governing Freedom of Information covers federal police forces. They have told us that this federal law covers the federal Administration, a broader category which includes federal police information. It is reported that, at the Federal level, a security exception is commonly used meaning that requested information is often not exposed.

Greece

The police is covered in the article on access to administrative documents of the administrative code. There is an exception that specifically refers to the police but this would have to be applied on a case-by-case basis.

“The competent administrative authority may refuse to satisfy this right if ... [release of the document would] substantially obstruct the investigation of judicial, police or military authorities concerning the commission of a crime or an administrative violation.” Article 5 of the code of Administrative Procedure

Hungary

Hungarian experts have confirmed that the Hungarian Freedom of Information Act covers the police force as it is a public body using public funds.

The experts report that citizens are able request information but in some cases, for example for information related to the location of CCTV cameras, requests have had to be taken to court in order to secure access to the information. In response to the court cases brought by civil liberties groups under the freedom of information act, the Hungarian parliament removed an exemption to access from the Police Act in order to make more police information available to citizens.

Iceland

Access Info's reading of the Icelandic law is that the police is covered by the FOI law but have not had this confirmed by any groups or government representatives.

Ireland

Ireland has the only Freedom of Information Act in Europe that does not include the police. Therefore in no place in the Republic of Ireland do citizens have the right of access to police information.

In only Ireland, and one other country, Slovenia did we get a response to our enquiries from both civil society and government representatives, perhaps suggesting that this is currently a lively topic in Ireland.

Maeve McDonagh, Associate Professor of Law at University College Cork who specialises in freedom of information law confirmed that the Irish police currently escape Freedom of Information law and said,

There is express scope within the Act for it to be extended to cover the police but that would require the introduction of Regulations and so far this has not happened. Last year the Minister for Justice said he would "consider" covering the police but nothing has happened.

Sean Garvey, Senior Investigator for the Irish Information Commissioner agreed and expanded on the comments on Maeve explaining that the Irish law specifically lists those public bodies covered by the Act and then further lists another category of bodies that could be brought

under the act if regulations be passed. The police is in the second category and for it to be brought under the act the Ministry of Finance new regulation would need to be adopted. Mr Garvey also commented that he knew of no plans to pass such regulations.

Helen Darbishire, Director of Access Info Europe, further commented that it appeared that the Irish government's intentions were on the contrary. Two Irish negotiators had been sent to the meetings of the draft treaty of the Council of Europe Convention on Access to Official Documents, specifically to argue for the low standards of their law to be included in this draft of the world's first international convention on access to information. One of the features of the Irish law which the representatives in Strasbourg tried to promote was for the police to be excluded from the list of administrative bodies; this was not successful and the Explanatory Memorandum to the Convention specifically mentions that it applies to the police.

Cases of Interest

Sean Garvey commented that there was one High Court judgement relevant to police records (2001 No.72MCA), but that it did not provide detail on the nature of the records considered in the judgement. In fact the judgement reveals nothing of relevance and as there is no mention of the police, neither the nature of the information requested nor the requestor.

Italy

Legal analysis by Access Info and partners shows that in Italy the police is covered by the access to documents legislation. Article 22 (definitions and principles) of law no. 241 of 7 August 1990 says in point e) that 'public administration' (to which the right of access is applicable) concerns any subjects under public and private law insofar as their public interest activity regulated by national or EU law is concerned. Hence, the police is included.

There is however a specific exception for documents relating to the judicial police and those carrying out criminal investigations (Article 24.6c), which reads: *"when the documents concern the structures, equipment, personnel and actions strictly instrumental to the safeguard of public order, to the prevention and repression of criminal activity with particular reference to investigative techniques, to the identity of sources of information and the security of the goods and people concerned, to judicial police activity and the carrying out of investigations"*

It should also be noted that a fundamental problem with the Italian access to documents law is that it only gives the right of access to "right of access": the right of "interested parties" who wish to view or extract copies of administrative documents (art. 22.1 ATI)

Latvia

Groups in Latvia confirmed that the Law on Freedom of Information covers the police because it is a public body.

Linda Austere from the organisation Providus commented,

"The law was little known to regular police forces and therefore often times misunderstood and wrongly interpreted, I believe, however, that the situation has improved, owing much to press secretaries of major police institutions as well as efforts to increase web-presence of institutions and communication with the wider society."

Liechtenstein

The Government of Liechtenstein confirmed that the police is covered by the Information Act as part of a wider category of public bodies.

Lithuania

Access Info's earlier research indicates that the police is covered by the FOI law but have not had this confirmed by any groups or government representatives.

Luxembourg

No Law

Macedonia

Civil society organisations in Macedonia confirmed that the Access to Information law extends to the police because as a public body they fall under the category of information holders.

Cases of Interest

Nade Naumovska, from the organisation FOSIM offered her experience,

"In 2007 our colleague from the Law Program in FOSIM had a case before the Administrative Court concerning the refusal of Ministry of Interior to provide access to information, which were allegedly classified. Unfortunately, the Administrative Court rejected (as ungrounded) the suit, just stating that the information were classified in accordance with the Law on Classified Information, but without any explanation (for example, citing the decision for classification or similar). This case is the only experience that we are aware of before the Administrative Court on police information."

Malta

No Law

Moldova

Civil society in Macedonia confirmed that the Access to Information law extended to the police as part of a wider category of public bodies.

Monaco

No Law

Montenegro

Civil society organisation MANS confirmed that the police is covered by the law on Free Access to Information as it is a government agency. MANS has filed large numbers of requests with the police as part of its monitoring of Montenegro's Plan to Fight Corruption and Organised Crime. The Police Administration usually does not respond to requests which refer to its anti-corruption and anti-organised crime responsibilities. MANS has to appeal to the Ministry of Interior which orders disclosure; the Police Administration then frequently states that the requested data is not in its possession.

MANS also has a pending court case against refusal to provide information about police access to data retained by telecommunications service providers (as part of the fight against corruption and organised crime). The MANS lawyers have argued that the Police Administration has not shown how disclosure of this information would harm national security and defence nor had they applied the public interest test.

Netherlands

Experts from the Netherlands commented that a substantial proportion of all information requests were for police information and that the police were covered by the Act on public access to government information as they fall into the larger category of public bodies.

Norway

In Norway the police is covered by the Freedom of Information law as they are considered to fall within the definition of “public administration”. **However the law explicitly exempts the police when they act in accordance with their duties according to the Criminal Procedure Act.** In these cases, permission must be granted by a court before the information can be released. The office of the Parliamentary Ombudsman commented that most court cases involving access to police information relate to these provisions in the Criminal Procedure Act that restrict access to information.

Poland

Polish access to information advocates confirmed that the Polish Law on access to Public Information covers the police. They did however raise **concerns about internal police regulations which could affect access to information for citizens.** At the moment Access Info does not have more detailed information about these internal regulations and what their impact might be on access to information but it is an area for further investigation.

Portugal

David Duarte the Information Commissioner of Portugal confirmed that the police, as a public body are covered by the Law on Access to Administrative Documents. However the right of access is limited. If the documents have data involved in criminal investigation, or private matters, only persons with a qualified interest are allowed access to such documents, this qualified interest should be applied in accordance with relevance and proportionality.

Mr Duarte does note that, “there are some decisions by CADA (the commission that rules on access to public information) that say that police should allow the access to some data.”

Romania

Civil society experts on access to information confirm that the Romanian Police fall under the Law on Free Access to Public Information as they are considered a public body.

It is reported that recent monitoring shows that the Ministry of the Interior responds better to information requests than other areas of government, although the response rate for government bodies is not high.

Russian Federation

The Russian ‘*Law on Providing Access to Information on the Activities of State Bodies and Bodies of Local Self-Government*’ adopted this year includes the police as a public body. The law comes into force in 2010 so there is not, as yet, any real experience of to what degree it will allow citizens access to information.

San Marino

No Law

Scotland

In Scotland the police is specifically listed as a public body covered by the Freedom of Information law. In the majority of European countries is the inclusive approach is preferred by most in which police bodies are assumed to be covered by FOI regimes because they are publicly run. This Scottish approach differs because individual police bodies must be explicitly listed in the law. The police entities included in the law are:

- The Police Advisory Board for Scotland
- The Scottish Police Services Authority, but only in respect of information relating to the provision of the police support services within the meaning of section 3(2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006

- A chief constable of a police force in Scotland
- A joint police board constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967

Any other police bodies would presumably fall outside of the remit of the Scottish Freedom of Information Act.

Since the act came into force the Scottish Information Commissioner has issued 93 decisions involving police information. Many have these have dealt with the boundaries between information and privacy.

Serbia

The Law on free access to information of public importance in Serbia refers to all state authorities, including the police. In addition, the Serbian law extends to organisations established or financed (wholly or predominantly) by state authorities or local self-government authorities.

Stanojla Mandic, Deputy Information Commissioner stated of the Serbian experience, *'In 5-years practice of the Serbian Information Commissioner's most frequent reasons to limit or deny access to information held by the police were in cases where requests related to classified information or that revealing the information could expose to risk the life, health, safety or another vital interest of a person, e.g. a witness. Protecting the right of the applicant in the appeals procedure the Commissioner would often order the police to provide access to information with due regard to secure data that should not be available to the public (e.g. personal data).'*

Cases of Interest

One particular case was signalled by to be of particular interest: The police refused to provide the copy of the document due to its confidentiality explaining that revealing such classified document would jeopardise the work of the police force units in question. The Commissioner annulled the decision and returned the case to the authority with the instruction that not all parts of the document could be confidential and that information that might cause damages to the work of the police (e.g. the location and number of staff of some specific police force units) could be adequately protected while other could be available.

Slovakia

Groups confirmed that the police fall under the Act on Freed Access to Information but are not specifically mentioned in the law.

Slovenia

Slovenia was one of the only countries where Access Info received input from both civil society and the Information commissioner's office. Both confirmed that as a part of state body, the police is covered by the Access to Public Information Act, and both contributed interesting observations on the situation in Slovenia.

Among the exceptions from the access there is one referring to "information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution, or misdemeanours procedure, and the disclosure of which would prejudice the implementation of such procedure". Brankica Petkovic, Peace Institute, Slovenia.

I must say, that our office cooperates with the police in this field very well, as they are really trying to be as transparent as possible. We actually don't have many complaints against the police for not disclosing public information and those we do have, are usually not justified.

Kristina Kotnik-Sumah, Information Commissioner's Office Slovenia

Spain

No Law

Sweden

Access Info's analysis of the Swedish legal framework indicates that the police is covered by the FOI law but have not had this confirmed by any experts or government representatives.

Switzerland

Switzerland's information commissioner has confirmed to us that the Federal Swiss Police are covered under the Freedom of Information Act in Switzerland however, as in Germany those police forces who are in Provinces (Cantons) which do not have Freedom of Information Laws are not subject to any Freedom of Information provisions.

Access Info also notes from that there is a blanket exception for official documents relating to:

- Civil proceedings;
- Criminal proceedings;
- Constitutional and administrative judiciary proceedings.

These exceptions would therefore result in information held by the police being excluded from the scope of the right of access.

Turkey

Turkish experts confirmed that the access to information law extends to the police as part of a wider category of public bodies.

Ukraine

Access Info's information from earlier research is that the police is covered by the information law but this has not been confirmed by any groups or government representatives.

United Kingdom

The UK and Scottish FOI acts share the approach of explicitly listing those bodies covered by Freedom of Information legislation. Katherine Gundersen of the UK Campaign for Freedom of Information confirmed that the police is included under the UK Freedom of Information Act. The Information Commissioner's office (ICO) also confirmed that the police is included in the Act and are explicitly referred to (Schedule 1, Part V of the Act).

The CFI further pointed out that after recent government consultations in which the government were considering which other bodies to list and cover under the act, the Association of Chief Police Officers has volunteered itself to be covered by the Act. This will be one of the new bodies to be covered by the Act.

The ICO notes that the law provides some exemptions which cover information about specific police investigations and general policing issues. These are not absolute as they are subject to a **Public Interest Test**. For example if a request is received for information about an old police case which is now closed, the information will be covered by one of these exemptions. However if there are good reasons for disclosing the information for example because it shows the investigation was not carried out very well, then in this situation the public interest test might override the exemption.

Other exceptions which might be invoked but which are also subject to the public interest test include exemptions for information connected to national security. Police may also withhold information which is classed as "personal data" and covered by the UK's data protection law.

Access Info Europe is an international human rights organisation, based in Madrid, which works to promote a strong and functioning right of access to information in Europe and globally.

Access Info's goal is for the right of access to information to serve as a tool for defending civil liberties and human rights, for facilitating public participation in decision-making, and for holding governments accountable.

