ACCESS INFO EUROPE

Legal Analysis: Access to Decision-Making Information in Europe

This Analysis is based on research carried out by Access Info Europe and its partners: Forum Informationsfreiheit (Austria), OKFN Deutschland (Germany), InfoHouse (Slovenia), Request Initiative (UK), researchers in Finland and Ireland, Watchdog (Poland), Gong (Croatia), Diritto di Sapere (Italy), and VouliWatch (Greece).

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1. Summary of findings:

This Legal Analysis, based on a study of the access to information laws in eleven (11) countries and that of the European Union, evaluates the extent to which these laws provide a right to request the information needed to follow and participate in decision making by public bodies.

The classes of information assessed in the comparative study include minutes of meetings and documents submitted by lobbyists. The Analysis also examines the exceptions that might apply to accessing this information, such as protection of decision making or privacy, as well as whether there is any obligation to publish such documents proactively.

A further dimension to this Analysis is whether there exists any obligations to record certain classes of information such as minutes of meetings.

The main findings of the analysis may be summarized as follows:

- **Europe's Access to Information laws permit requests for decision-making Information**

Although the countries in this survey include those with among the best (Finland, Slovenia) and worst (Greece, Italy) access to information laws in the world, most of the jurisdictions surveyed permit requesters to make requests for information related to decision-making processes.

This is true for eight countries (Croatia, Finland, Germany, Ireland, Italy, Poland, Slovenia and, the United Kingdom) and the European Union. In two countries however, Austria and Greece, only some information about decision making may be requested, in Austria because there are statutory secrecy provisions which can apply to decision making and in Greece because documents submitted by third parties may not be requested. Furthermore, in Spain the law provides public bodies with the option of refusing to process requests where they are for "auxiliary" information, which can included internal reports and communications, although in practice requests are processed and then access is denied.

Another important consideration is that whilst in most countries it is possible to request decision-making information from administrative bodies, in only seven (7) of the jurisdictions surveyed – Croatia, European Union, Greece, Ireland, Italy, Slovenia and, United Kingdom– is the legislative branch included in the access to information law. In Finland, Germany and Spain the law only applies to the administrative tasks of the legislature, whilst in Austria and Poland it is not included at all.

- **Decision Making is an exception to the right of access to information in all the jurisdictions surveyed except Poland, but not all of these regimes have a harm and/or public interest test for this exception.**

All but two jurisdictions in this study have an exception in their national access to information law that specifically protects the decision-making process. In Finland only some decision-making processes benefit from such an exception, whereas the Polish access to information law does not contain a decision-making exception.

In most of the jurisdictions surveyed – 8 out of 12 – there is a harm test that must be applied when invoking the decision-making exception; such a test does not exist in Austria, Greece, Ireland, and Poland. The application of a public interest test when invoking the exception on decision making is obligatory in half of the jurisdictions surveyed. The legal framework is especially weak in Austria and Greece, where there exist neither harm nor public interest tests when denying information on grounds of protection of decision making.

- **All jurisdictions studied have an exception to protect the *privacy of individuals* but harm and/or public interest tests are not always mandatory when applying this exception.**

All jurisdictions in this study have an exception in their national access to information law which protects privacy of individuals or personal data. Austria's very basic access law does not mention privacy, but Austria does, nevertheless, have data protection regulations.

Privacy exception is subject to a harm test in half of the jurisdictions studied and the public interest test should be applied when invoking privacy as an exception in 7 of the jurisdictions surveyed. In Austria, Greece and Poland privacy is an absolute exception.

The absence of harm and/or public interest tests undermines the quality of the access to information laws and weakens transparency of decision making.

A positive finding of the legal research comes from Spain where, although there is an absolute exception with regard to sensitive personal data, when it comes to basic identifying information such as names and job titles, this does not fall under the privacy exception and hence can be requested, something important for access to decision-making documents such as minutes of meetings.

- **There is no obligation to record minutes of meetings held as part of decision-making processes.**

One of the most significant findings of this study was that in 11 out of 12 jurisdictions surveyed we found no legal obligation for public institutions to compile or record minutes of meetings related to a particular policy or decision-making process. Such an obligation only exists in Greece, where the minutes should include the names of those present.

Hence we have found that although minutes of meetings may be requested via the access to information laws in all the jurisdictions surveyed, the lack of record keeping obligations threatens to significantly weaken transparency of decision making.

- **There are either weak or no requirements for proactive publication of information with regards to minutes of meetings and documents submitted by lobbyists.**

Another significant finding of this study was that there is no requirement to make public proactively the core documentation related to decision-making processes. In particular, we found that no country has clear requirements to publish proactively minutes of meetings related to particular policies or decision-making processes.

Similarly, with the exception of Poland, no jurisdiction has clear requirements regarding the publication of lobbying activities and documents submitted by lobbyists and external interest groups during a decision-making process. Our research found that in some cases this information is only published proactively during formal consultation processes.

2. Recommendations:

In order to ensure transparency of decision making, so that the public knows how decisions are taken, by whom, and based on which evidence, the legal framework of each country should ensure that:

- ✓ **All public bodies which participate in decision-making processes fall under the scope of the national access to information law.**
- ✓ **Harm and public interest tests exist for all exceptions to access to information, including decision making and privacy.**
- ✓ **There is an obligation to record minutes of meetings held as part of decision-making processes.**
- ✓ **There is a requirement to publish proactively information about decision-making processes, such as minutes of meetings and documents submitted by lobbyists.**

3. Detailed Research Findings

This research was conducted by Access Info Europe and its partners: Forum Informationsfreiheit (Austria), OKFN Deutschland (Germany), InfoHouse (Slovenia), Request Initiative (UK), researchers in Finland and Ireland, Watchdog (Poland), Gong (Croatia), Diritto di Sapere (Italy), and VouliWatch (Greece). Access Info Europe carried out the study for the European Union and Spain.

Each partner answered a series of questions relevant to decision making transparency regarding the legal framework established by Access to Information Laws. Bellow an analysis of detailed information on each question is provided.

3.1 How Strong are Europe's Access to Information Laws?

European legal traditions and frameworks vary widely when it comes to protecting the right of access to information and promoting transparency: Europe has some of the best and worst access to information laws in the world: from Austria that sits at the bottom of the global ranking with a score of 32 out of 150 points, to Slovenia that has the second-best legal framework in the world with 129 points. Recently-adopted laws are no guarantee of better-quality: Spain's Transparency Law, adopted in 2013, is in the bottom half of the RTI Rating, whilst Finland adopted its law in 1951 and is near the top of the ranking.

Each country's rating in detail can be accessed here: Austria, Croatia, European Union, Finland, Germany, Ireland, Italy, Poland, Slovenia, Spain, Greece, United Kingdom.

RTI Ranking	Score	RTI Ranking	Score
Slovenia	129	**Poland**	79
Croatia	126	**Spain**	73
Finland	105	**Greece**	73
United Kingdom	100	**Italy**	57
European Union	96	**Germany**	52
Ireland	95	**Austria**	32

3.2 Does the definition of information in the access to information (ATI) law include, prima facie, decision-making information?

Decision-making information is included in the definition of information in 8 countries studied and at the EU level, whilst in Austria and Greece there is partial access to decision making, and in Spain the law is not clear.

Definition of information includes, *prima facie*, decision-making documentation?	
Austria	**Partially** as *statutory secrecy* excluded
Croatia	✓
European Union	✓
Finland	✓
Germany	✓
Greece	**Partially** as does not include documents from third parties
Ireland	✓
Italy	✓
Poland	✓
Slovenia	✓
Spain	**Partially,** as some ancillary documents are excluded from right to request information
United Kingdom	✓

In **Austria** the access to information law does not cover access to documents, only access to information held by an administrative body. It does not explicitly address the issue of information relevant to a decision, but it can be presumed that this falls under the scope of the right of access. However, a statutory secrecy provision included in the Austrian constitution states that facts have to be kept confidential if secrecy is in the interest of "the preparation of a decision", among other reasons (Article 20(3))[1].

Decision-making documentation is not explicitly listed in **Croatia's** access to information law, but the definition of information is widely set and would thus apply to such documents as well. Art. 5. states "Information" is any information held by the public authority in the form of a document, record, dossier, register or in any other form, regardless of the manner of representation (written, drawn, printed, recorded, magnetic, optical, electronic or any other record).

One restriction to accessing information relates to documents in the phase of creation or drafting. The recent reform of the Croatian law added another restriction to the definition that would affect negatively access to decision-making information. The other restriction is for information created in the coordination process and exchange of opinion within or between more public bodies where the release of information could undermine the decision-making process. If such information is requested, the Proportionality and Public Interest Test mechanism would be applied with possibility of appeal to the Information Commissioner.

In the **European Union**, "'Document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.[2]"

Article 1 of the Treaty on European Union states that "This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen."

Also, Article 10.3 of the Treaty on European Union states that "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen."

In **Finland** as well, prima facie, all official documents including decision-making documentation are included (Section 5 of the Act).

Decision-making information is also included in the definition of information in **Germany's**, **Ireland's** and the **UK's** access to information laws. In Ireland it covers all types of records in all contexts with a broad definition.

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[1] Austrian Federal Constitutional Laws (selection) available at:
https://www.vfgh.gv.at/cms/vfgh-site/english/downloads/englishverfassung.pdf

[2] Regulation (EC) No 1049 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Al14546

In **Greece** the law grants the access to the documents "drawn up by public services". This definition may include all the central, regional and local administration as well as Ministries but not the head of state. The law does not include the Cabinet of Ministers as well as data and information from the Ministry of Defence which may be classified as sensitive.

In **Italy**, the right of access to information concerns any kind of document materially held by a public administration and related to an activity of public interest, thus – in principle - also decision-making documentation (Article 22(1)(d) of Law 241/1990 and Article 2(2) of Decree 184/2006).

Article 61.1 of the Constitution of the Republic of **Poland** defines public information as information on the activities of organs of public authority as well as persons performing public functions. This general term covers also such basic activities of the public organs as the decision-making process. Article 6 of the Polish access to information law gives an example of public information, the intentions of legislative and executive authorities and information concerning drafting normative acts.

In **Slovenia**, The Access to Public Information Act (APIA) takes a general approach and defines public information as any "information originating from the field of work of the bodies and occurring in the form of a document, a case, a dossier, a register, a record or other documentary material (...) drawn up by the body, by the body in cooperation with other body, or acquired from other persons" (Article 4 of the APIA).

Bodies liable under the APIA include decision-making bodies. The decision-making documentation is therefore considered as information of public character and may be public subject to the assessment of applicability of exceptions.

Whilst the definition of information in **Spain's** access to information law is broad, Article 18 limits access to decision-making information, "Requests will not be accepted if (a) they refer to information that is being elaborated or for general publication, (b) referred to information that has an supporting or helping character such as the contents of notes, drafts, opinion, summaries, communications and internal reports, or between bodies or administrative entities". In effect, this means that decision-making information is not included in the law, something which has proven to be true in practice. That said, this is being challenged through appeals and in some cases the Transparency Council has recommended that such documents be included in the scope of request when they were used as the direct basis for a decision.

3.3 Does the access to information law apply to the legislative branch?

In seven (7) jurisdictions the legislative branch is included in the access to information law. In Finland, Germany and Spain the law only applies to the administrative tasks of the legislature, whilst in Austria and Poland it is not included at all.

Applies to the Legislative branch?	
Austria	**X**
Croatia	✓
European Union	✓
Finland	**Partially** Only in administrative tasks
Germany	**Partially** Only in administrative tasks
Greece	✓
Ireland	✓
Italy	✓
Poland	**X**
Slovenia	✓
Spain	**Partially** Only in administrative tasks
United Kingdom	✓

In **Austria**, the legislative branch is not covered in the access to information law.

The definition of public bodies according to Article 5 of **Croatia**'s access to information applies to the Croatian Parliament as well.

The **European Union** transparency rules cover all EU bodies, institutions, offices and agencies since the entry into force of the Treaty of Lisbon, including the European Parliament, the European Parliament's regulations have excluded MEPs and their offices, something that Access Info Europe believes to be in contradiction to the treaties and the access to documents rules.

In **Finland**, the Act on Openness applies to parliamentary agencies and institutions (section 4(1)(6)). However, the public nature of the actual legislative activities of the parliament is

governed by the constitution and rules of procedure of the Parliament. (section 50 of the Constitution and Section 71 of the Rules of Procedure).

In **Germany**, access is restricted to only the parliament's administrative functions such as papers of its research section.

There is no mention on whether or not the ATI law applies to the legislative branch in **Greece**. However access to information is a constitutional right therefore the Greek Parliament does comply with such requests.

In **Ireland**, the FOI law applies to the legislative branch, but with certain limitations. For example, in Section 42 (j) and (k) (l) certain classes of records relating members of either house parliament are exempt…*"a record relating to any of the private papers (within the meaning of Article 15.10 of the Constitution) of a member of either House of the Oireachtas".*

In **Italy**, the right to access information concerns any kind of document materially held by a public administration and related to an activity of public interest, thus also information related to the Legislative branch (Article 22(1)(d) of Law 241/1990 and Article 2(2) of Decree 184/2006).

In **Poland**, according to the Constitution (art. 61.4), the mode of access to legislative branch information is covered by the Rules of Procedure of the Sejm (lower chamber) and the Rules of Procedure of the Senate, and not the access to information law, but the rules are similar and also contain references to it.

In **Slovenia**, Article 1 of the access to information law describes the bodies liable to proceed in accordance with that state bodies, local government bodies, public agencies, public funds and other entities of public law, public powers holders and public service contractors. The Parliament as the legislative branch is a "state body" and is therefore considered as a body liable under the law.

In **Spain** only administrative information of the parliament or other legislative bodies is available for request.

In the **UK**, the right of access applies to the legislative; both Houses of Parliament are subject to the Act (Section 36 of the FOIA). However, the Act does not apply to individual Members of Parliament (Section 6 of the FOIA).

3.4 Does the access to information law include privacy as an exception?

In all the jurisdictions surveyed there is an exception either for privacy or data protection. Austria's very basic access law does not mention privacy, but Austria does, nevertheless, have data protection regulations.

Includes privacy as an exception?	
Austria	✓ Law refers to data protection
Croatia	✓ Law refers to data protection
European Union	✓
Finland	✓ in multiple exceptions
Germany	✓
Greece	✓
Ireland	✓
Italy	✓
Poland	✓
Slovenia	✓ Law refers to data protection
Spain	✓
United Kingdom	✓

In **Austria**, access to information legislation requires government bodies to provide a response "to the extent that this does not conflict with legal secrecy requirements" (Art.1, Duty to Provide Information Act). Such secrecy requirements also include the Austrian Data Protection Act, which provides protection of personal data of people and also of legal entities.

If privacy is understood narrowly as personal data, then in **Croatia**, public bodies may restrict access to information if the information is protected by the law regulating the area of the personal data protection (Art.15). Privacy as such is not an exception.

Article 4.1(b) of the **European Union** transparency rules, Regulation 1049/2001 include an exception on the grounds of privacy, "The institutions shall refuse access to a document where

disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."

In **Finland**, the Act on Openness does not include privacy as a general exception, but there are several specific provisions that provide protection for the privacy and integrity of an individual. (see for example the following sections: sections 16(3) on modes of access to a personal data filing system, section 24(1)(4) protection for identity documents, section 24(1)(23) protection for data on the economic situation of an individual, section 24(1)(24), Section 24(1)(25) protection for information concerning social or health care, section 24(1)(26) to section 24(1)(28) protection of sensitive information on crime and crime investigation, sections 24(1)(29) and section 24(1)(30) protection of tests, test results, person evaluations and information on students, section 24(1)(31) protection for health and safety of a person. See also section 24(1)(32) on the protection for private life, which is not an exception but a confirmation that some documents relating to private life are nevertheless public.

Sections 5 of **Germany's** access to information as well as RTI law in **Greece** have an exception on access to information on grounds of privacy and personal data.

The FOI law in **Ireland** includes a definition of "personal information" under Section 37: (1) *Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information* (including personal information relating to a deceased individual)

In **Italy**, the law on the right to information provides for an exception when the documents concern the private life or the privacy of natural persons, legal persons, groups, companies and associations, with specific reference to a specific group of interests (correspondence, health, professional, financial, industrial and commercial) had by those subjects in practice, in spite of the fact that that information sought is provided to the administration by the subjects to whom they refer (Article 24(1)(d) of Law 241/1990: *"(…)when documents relate to the privacy or confidentiality of individuals, legal persons, groups, companies and associations, with particular reference to epistolary interests, health, professional, financial, industrial and commercial property referred to are the concrete holders himself 'the relative data are provided to the administration by the same subjects whose ").*

Access to information concerning sensitive and judicial data can be exercised only when strictly necessary. When the information sought concerns the health and sexual life of a person, access can be granted only in the terms set by Article 60 of Legislative Decree 196/2003 (Article 24(7) of Law 241/1990). The latter provision establishes that access to that kind of information can granted when the interests underlying the corresponding juridical situation have at least the same ranking of importance, or when it is about a personality right or another fundamental and inviolable right or freedom (Article 60 of Legislative Decree 196/2003).

Art. 5.2 of **Poland**'s access to information law states that the right to public information is subject to limitation in relation to the privacy of a natural person. The limitation does not relate to the information on persons performing public functions, connected with performing these functions, including the conditions of entrusting and performing these functions and in the event when a natural person resigns from the right to which he/she was entitled to. Access to public information on matters resolved before the state authorities, in particular in the administrative, criminal or civil proceedings cannot be limited with respect to the protection of the party's

interest, if the proceedings concern public authorities or other entities performing public functions, or persons performing public functions – in the scope of these functions or tasks.

In **Slovenia**, privacy in a broader sense is not included as an exception, but the data protection limb of privacy is. Article 6(1)(3) of access to information law states that the body shall deny the applicant access to requested information if the request relates to "[p]ersonal data the disclosure of which would constitute an infringement of the protection of personal data in accordance with the Act governing the protection of personal data."

The Article 15 of **Spain**'s law also have an exception on access to information on grounds of privacy and personal data; however, when it comes to basic identifying information such as names and job titles, this does not fall under the privacy exception and hence can be requested.

Section 40 of the **UK** FOI Act states that when handling a request under FOIA or the EIR for information that may include personal data, the public authority must first establish whether the information constitutes personal data within the meaning of the Data Protection Act and depending on certain criteria may be exempt from disclosure.

3.5 Does the access to information law include a harm and/or a public interest test for the exception on privacy? What about the relationship with any data protection legislation?

In 6 out of 12 jurisdictions in this study, the privacy exception is subject to a harm test, and in 8 out of 12 the public interest test should be applied when invoking privacy as an exception. In Austria, Greece and Poland on the other hand, privacy is an absolute exception.

	Privacy exception subject to a harm test?	**Privacy exception subject to a public interest test?**
Austria	X	X
Croatia	✓	✓
European Union	X	✓
Finland	✓It isn't specific, but through other clauses includes harm test	✓It isn't specific, but through other clauses includes public interest test
Germany	✓	✓
Greece	X	X

	Privacy exception subject to a harm test?	**Privacy exception subject to a public interest test?**
Ireland	X	✓
Italy	✓	X
Poland	X	X
Slovenia	X	✓
Spain	**Partially.** There are some absolute exceptions	**Partially** There are some absolute exceptions
United Kingdom	✓	✓

In **Austria**, there is no public interest test regarding privacy. The ATI provision in the Constitution (Article 20(4) states that information has to be provided unless there is an opposing "legal confidentiality requirement". Such confidentiality requirements include Article 20(3) of the Constitution, which names "the preponderant interest of the parties involved" – which may include privacy protection – as one condition under which information has to be kept secret. The Austrian Data Protection Act of 2000 contains a constitutional right to privacy and the protection of personal data. The Data Protection Act not only applies to natural persons (individuals) but also to legal persons (entities) (Article 4(3)).

If access to information in **Croatia** is restricted on the basis of personal data protection exception, the remaining parts of the information will be made available (Art.15). For example, personal identification number and address will be censored prior to providing access to a service contract between a physical person and a public body.

If the request for access to information deals specifically with personal data, prior to refusing the request the public body must conduct the Proportionality/Harm Test and the Public Interest Test (Art.16). The public body must clearly explain why personal data protection prevails over the right to access information in the case at hand. An appeal may be placed before the Information Commissioner if one is not satisfied with the content or manner of the conducted tests. Commissioner conducts the test and informs the public body it must allow access to information or that access can be restricted (ATI; Art 25).

Personal Data Protection Act defines what personal data is and how it should be handled, but providing access to personal data is regulated by ATI law.

Protection of the integrity of the individual in the **European Union** transparency rules is an absolute exception that is not covered by a public interest test. In practice, there is no need to demonstrate harm as the ECJ has ruled that requests for personal information need to be processed in line with the Data Protection Directive and Regulation, which does not require a "harm test".

In **Finland**, some of the specific exceptions on personal data and privacy are categorical, but some contain discretion. As the exceptions related to the protection of privacy or personal data are so specific they have been aligned with the Personal Data Act (1999/523). The general provision governing the relationship between the Personal Data Act and the Act on Openness is section 8(4) of the Personal Data Act. According to this section the Act on Openness is the principal law governing access to personal data files of the authorities and to other disclosure of personal data therein.

In **Germany**, a public interest test is applied and access can be granted if the "interest of the public" is higher than the interest of privacy. That said, data protection legislation is quite strong in Germany.

In **Greece** the RTI law does not include a harm or a public interest test for the exception on privacy.

The law in **Ireland** includes a public interest test in relation to personal information. There is no direct connection with Data Protection legislation or enforcement - this falls within the ambit of the Data Protection Commissioner. Unfortunately there is not a huge amount of clarity on where personal information under FOI ends and Data Protection begins. The Information Commissioner will issue rulings without prejudice to the Data Protection Acts. The issue has been canvassed in several cases and documents.

In **Italy**, a harm test applies to all the exceptions to the right to information provided for by Law 241/1990 (Article 8(2) of Decree 352/1992).

As for the relationship with data protection legislation, the relevant law (Legislative Decree 196/2003) explicitly establishes that the limits to the right to information related to documents containing private information are set by Law 241/1990 (Article 59 of Legislative Decree 196/2003). The only exception to the latter rule relates to information concerning the health and sexual life of a person.

In **Poland**, the access to information law does not include a specific definition of harm and/or public interest test as an exception concerning privacy (or any other right and good). It also does not refer directly to data protection legislation. Nevertheless, art 21.1 point 2 of the 1997 Data Protection Act allows to process personal data if processing is necessary for the purpose of exercising rights and duties resulting from a legal provision, which is interpreted as a general allowance to process personal data as part of public information, but only if the processing is not breaching the right to privacy. However, public entities and courts must apply the rule of proportionality in examining the possible restriction of access to public information. This rule originates from the constitutional provisions of art. 61.3 of the Constitution (Limitations upon the right to information may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.) and art 31.3 of the Constitution (Any limitation upon the exercise of constitutional

freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.)

In **Slovenia**, the harm test does not apply to the data protection exemption. The public interest test applies to the data protection exemption. Article 6(2) of the APIA states that without prejudice to certain exceptions from free access laid down in Article 6(1), including the data protection exception, access to the requested information is granted, if public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information.

In addition, the Slovenian law has a unique provision governing mandatory disclosure of public information, including personal data, if the information is related to the use of public funds or information related to the execution of public functions or employment relationship of the civil servant (Article 6(3) of the APIA). Thus, information on salaries of public servants and who was responsible for a particular decision in the decision-making process is considered publicly available information.

When considering the relationship between public interest and personal data protection, all data protection principles apply, including the principle of proportionality and purpose limitation.

In **Spain,** article 15 of the access to information law defers to the Spanish Data Protection Law (15/1999) on the issue. According to this law, there is an absolute exception with regard to sensitive personal data so there is no public interest test. Nevertheless, as stated above, when it comes to basic identifying information such as names and job titles, this does not fall under the privacy exception and hence can be requested.

When the information does not contain sensitive personal data, both harm and public interest tests are applied as per required by Spain's access to information legislation.

Section 40 of the **UK** FOI Act along with Data Protection Act (DPA) set out what information is exempt. The public authority can only disclose the personal data if to do so would be fair, lawful and meet one of the conditions in Schedule 2 of the DPA (and in the case of sensitive personal data, a condition in Schedule 3). If all of these requirements (fair, meets scheduled conditions and lawful) are met, then the disclosure would not contravene the first DPA principle. If they are not met, then the information must not be disclosed. This is an absolute exemption. Whether the disclosure is fair or not, does take into account any legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the data subjects and whether there is a legitimate interest in disclosure to the public and disclosure is necessary to meet that interest and it does not cause unwarranted harm to the data subject's interests. Staff seniority and the role played in public life both will be taken to account.

The Public interest is also taken into account when disclosure would contravene section 10 of the DPA (the right to prevent processing likely to cause damage or distress) or when the information is exempt from the subject access right because of an exemption in Part IV of the DPA.

3.6 Does the ATI law include protection of the decision making process as an exception?

All but two jurisdictions in this study have an exception in their national access to information law that specifically protects the decision-making process. In Finland only some decision-making processes benefit from such an exception, whereas the Polish access to information law does not contain a decision-making exception.

	Exception for Decision making process?
Austria	✓
Croatia	✓
European Union	✓
Finland	**Partially**. Specific decision-making processes are protected
Germany	✓
Greece	✓
Ireland	✓
Italy	✓
Poland	**X**
Slovenia	✓
Spain	✓
United Kingdom	✓

Austria has a statutory secrecy provision, in its constitution, which states that facts have to be kept confidential if secrecy is in the interest of "the preparation of a decision", among other reasons (Article 20(3)).

In **Croatia**, Article 15 of the access to information law states that public bodies may restrict access to information if it is generated by public authority bodies, and if disclosure prior to completion of the final version might seriously undermine the decision-making process.

Article 4.3 of the **European Union** transparency rules states, "Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."

The case in **Finland** is slightly more complicated; the Act on Openness does not include a general exception relating to the protection of decision-making. However, decision-making processes are protected through sections 6 and 7 of the Act which provide for when a document enters the public domain and section 9(2) that complements sections 6 and 7. Also the definition of an official document in Section 5 contributes to the protection of decision-making process. Moreover, some specific exceptions in section 24 of the Act protect specific decision-making processes. (e.g. section 24(1)(1) protection for documents of the Government Foreign Affairs Committee).

Section 4 of **Germany's** access to information law also has an exception to access in order to protect the decision-making process.

In **Greece** the RTI law include protection of the decision making process as an exception.

Section 29 in the **Irish** access to information law also includes a provision for the exemption of documents related to decision-marking.

A right of access to information in **Italy** is excluded in relation to the activity of the public administration concerning the adoption of normative acts, general administrative acts, planning and programming acts (Article 24(1)(c) of Law 241/1990: *"(…)in respect of 'activity' of the public direct administration to the adoption of legislation, general administrative, planning and programming, for which remain without prejudice to the particular rules that govern the formation ")*.

Poland is the only country with an access to information law without an exception to access in order to protect the decision-making process. It is introduced however (without legal grounds), by some judges of the Administrative Courts in the manner that some parts of the decision-making process do not fall under the definition of public information. The negative example is the case in which an NGO asked the Polish Prime Minister to disclose the correspondence, including e-mails, of members of the Council of Ministers and their assistants that concerned the revision of the Polish Access to Public Information Act. The Regional Administrative Court in Warsaw decided that e-mail correspondence in this case was not private and should be deemed public information and properly disclosed, as it was requested by the NGO, because it

concerned amendments to the law. The Supreme Administrative Court, after considering the appeal filed by the Prime Minister, decided that such information is not public information and shall not be disclosed as the decision-making process does not need civic control at every stage. It is reasonable to argue that such control could disrupt this process, because each of the proposals would be subject to premature judgment. Meanwhile, the process of adoption of the draft law requires an atmosphere of prudence and calm (…). The Polish version is accessible here: http://orzeczenia.nsa.gov.pl/doc/B4DB39F496

Article 6(1) of the **Slovene** access to information law establishes that the body shall deny the applicant access to requested information if the request relates to information from the document that is in the process of being drawn up and is still subject of consultation by a public body, and the disclosure of which would lead to misunderstanding of its contents, as well as information from the document drawn up in connection with internal operations or activities of bodies, and the disclosure of which would cause disturbances in operations or activities of the public body.

Furthermore, the law protects from public disclosure information classified in accordance with the Act governing classified data (Article 6(1)(1) of the APIA). This exemption is sometimes used for refusing the disclosure of information relating to the decision-making processes. For example, the essence of the "lowest" classification of information ("INTERNAL") is to protect information that would harm the activities and the performance of the tasks of the body. However, strict rules apply to when information may be classified in accordance with the Classified Information Act (see the analysis of jurisprudence of the Commissioner, submitted by Info House).

Spain's law on access to information states that the right of access is limited when access to the information supposes a prejudice of the guarantee of confidentiality or secrecy requirements of a decision-making process.

In the **UK**, Section 35 on 'Formulation of Government Policy' is the main exemption to access decision-making information held by public bodies, but Section 34 on 'Parliamentary Privilege' and Section 36 on 'Prejudice to the effective conduct of public affairs' are also used and often are seen as a catch-all for information which is not covered by Section 35.

Section 36 on 'Prejudice to the effective conduct of public affairs', provides an exemption if disclosure would or would be likely to: (a) prejudice collective responsibility (b) inhibit the free and frank provision of advice or exchange of views; or (c) otherwise prejudice the effective conduct of public affairs.

Section 34 on 'Parliamentary Privilege', Section 35 on 'Formulation Of Government Policy' and Section 36 on 'Prejudice to the effective conduct of public affairs' are class based and harm is assumed. Section 34 is an absolute exemption but Section 35 is a qualified exemption and is subject to a Public Interest Test. Section 36, whilst referring to information held by the

3.7 And does the ATI law include both (i) a harm and (ii) a public interest test for the exception to protect the decision making process?

In most of the jurisdictions surveyed – 8 out of 12 – there is a harm test that must be applied when invoking the decision-making exception; such a test does not exist in Austria, Greece,

Ireland, and Poland. The application of a public interest test when invoking the exception on decision making is obligatory in half of the jurisdictions surveyed. The legal framework is especially weak in Austria and Greece, where there exist neither harm nor public interest tests when denying information on grounds of protection of decision making.

In Poland, there is no exception in the national access to information law that specifically protects the decision-making process, thus there are no test.

	Decision-making exception subject to a harm test?	**Decision-making exception subject to a public interest test?**
Austria	**X**	**X**
Croatia	✓	✓
European Union	✓	✓
Finland	✓It isn't specific, but through other clauses includes harm test	✓It isn't specific, but through other clauses includes public interest test
Germany	✓	**X**
Greece	**X**	**X**
Ireland	**X** discretionary exception	✓
Italy	✓	**X**
Poland	**---**	**---**
Slovenia	✓	✓
Spain	✓	✓
United Kingdom	**Partially.** It mixes harm and public interest tests for different	**Partially.** It mixes harm and public interest tests for different

	Decision-making exception subject to a harm test?	**Decision-making exception subject to a public interest test?**
	types of decisions	types of decisions

In **Austria**, national access to information laws include neither a harm nor a public interest test in regards to protecting the decision making process.

In **Croatia**, when conducting a public interest test and proportionality test (Art 15) the public body has to clearly show how access to specific information might seriously undermine the decision-making process. If this is not done in a satisfactory manner, upon placing an appeal, the Information Commissioner (art 25) will/should allow access to information since it was not clearly shown how this will undermine the decision-making process.

The transparency rules of the **European Union** have a harm test (the decision-making process must be "seriously undermined") and public interest test that must be applied when the document concerned relates to a decision-making process.

In **Finland**, because the decision-making process is mainly not protected through exceptions but rather through formulating the temporal scope of access to documents, a public interest test or a harm test is not directly applicable. However, section 17 of the Act does contain a general clause on taking the right of access into account in decision-making. Section 17 provides guidance on the use of discretion of the authorities and on the application of the secrecy exceptions. Section 17 requires the authorities to respect the principle of proportionality.

In **Germany** decision-making exception is subject to a harm test but not public interest applies to decision making processes.

In **Greece** the RTI law does not include a harm or a public interest test for the exception on decision-making processes.

Section 29 of the **Irish** access to information law contains a discretionary exemption that applies only where granting the request would be contrary to the public interest. This allows for refusal "unless in the opinion of the head of the public body concerned the public interest would, on balance, be better served by granting than by refusing access".

In **Italy**, the exception to protect the decision-making process is only subject to the harm test, which applies to all the exceptions to the right to information provided for by Law 241/1990. The latter provision also establishes that the public administrations have to establish how long the exception will apply (Article 8(2) of Decree 352/1992).

As **Poland** does not have an exception on decision-making in its access to information law, there is no need for harm and public interest tests. However, as stated earlier, some judges of the Administrative Courts introduce without legal grounds a decision-making exception by

saying that some parts of the decision-making process do not fall under the definition of public information.

In **Slovenia**, the harm test applies to the exception of protection of "internal consultations" (Article 6(1)(9)) and "internal operations or activities" (Article 6(1)(11)) of bodies. These exceptions only apply if the disclosure of information "would lead to misunderstanding of its contents" or the disclosure of "would cause disturbances in operations or activities of the body" respectively.

The public interest test also applies to the exception of "internal consultations" and "internal operations or activities". Article 6(2) prescribes that without prejudice to certain exceptions from Article 6(1), access to the requested information is granted if public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information.

The public interest test may also be applied to classified information, but only as far as the first two levels of classification (INTERNAL and CONFIDENTIAL) are concerned.

In **Spain**, a harm test must be conducted when applying the decision-making exception; if the information is not going to be disclosed, then the public official must prove that the release of the information would negatively prejudice the decision-making process. A public interest test also must be conducted as the law states, "the application of limitations will be justified and proportionate with the aim of protection, and will attend to the case in hand, especially the coincidence of a public or private interest that justifies access." The Implementing Regulation of the Spanish law however, in its current form, inverts the public interest test by stating that there needs to be an assessment whether there is a public interest in the information remaining undisclosed.

The picture in the **UK** is mixed; Section 36 of the FOI Act on 'Prejudice to the effective conduct of public affairs', provides an exemption if disclosure would or would be likely to prejudice collective responsibility, inhibit the free and frank provision of advice or exchange of views, or otherwise prejudice the effective conduct of public affairs.

Section 34 on 'Parliamentary Privilege', Section 35 on 'Formulation Of Government Policy' and Section 36 on 'Prejudice to the effective conduct of public affairs' are class based and harm is assumed. Section 34 is an absolute exemption but Section 35 is a qualified exemption and is subject to a public interest test. Section 36, whilst referring to information held by the legislature is absolute and is not subject to a public interest test.

3.8 Is there any legal obligation on public institutions to compile or record minutes of meetings related to a particular policy or decision-making process? If so, does this requirement include the names of persons participating in meetings at which decisions are taken?

In 11 out of 12 jurisdictions there is no legal obligation on public institutions to compile or record minutes of meetings related to a particular policy or decision-making process. This obligation only exists in Greece.

	Obligation to compile or record of decision-making minutes of meetings?
Austria	**X** (only some administrative procedures)
Croatia	**X**
European Union	**X**
Finland	**X**
Germany	**X**
Greece	✓
Ireland	**X**
Italy	**X** (only legislative)
Poland	**X** (only legislative)
Slovenia	**X**
Spain	**X**(only some legislative meetings)
United Kingdom	**X**

In **Austria**, the Lobbying Transparency Act does not contain any provisions requiring public institutions to compile or record minutes of meetings related to particular decision-making processes.

The access to information law of **Croatia** does not have provisions obliging public bodies to compile or record minutes of the meetings and to proactively publish them. However, the Act does oblige pubic bodies proactively to publish notes and conclusions from the official sessions of public authority bodies and the official documents enacted at these sessions, including information on performance of the formal work bodies within their jurisdiction (Art. 10). As described above, these are regular sessions of different public bodies at which external stakeholders are not present.

Croatia does not have a Lobbying Act – envisioned to be adopted in 2016. The Code of Ethics for Civil Servants does not have provisions dealing with meetings.

The is no general legal obligation at the **European Union** level to compile or record minutes of meetings related to a particular policy or decision-making process .

A legal obligation that obliges authorities to create and realise good practice of information management is formulated in **Finland** in a general manner in Section 18 of the access to information law. There is no specific legal obligation to compile or record minutes of meetings, but there is a loose obligation to record certain information in Section 6 of the Decree on the Openness of Government Activities and on Good Practice in Information Management (1030/1999).

In **Germany** there does not exist any legal obligation on public institutions to compile or record minutes of meetings related to a particular policy or decision-making process.

In **Greece** all public institutions and bodies are obliged by law to keep minutes of meetings - including the names of participants and observers – however it is not specified whether or not this applies to decision making/policy related meetings.

There are no legal obligations to record meetings per se in **Ireland**; however there are generally codes of conduct which recommend such recording.

In **Italy**, the Chamber of Deputies and Senate are obliged to compile the minutes of meetings ("processo verbale") related to the works of the Assembly and the Commissions. Such minutes are the then kept in the Chamber of Deputies' archive. The Assembly can decide not to compile the minutes of meetings in case of secreted sessions. Nothing is said about the content of such minutes. However, there is no information on whether meetings with third parties need be kept.

The situation is **Poland** is not clear. For example, the Council of Ministers is obliged to record its meetings and prepare minutes in writing. There is no direct obligation to include the names of participants, but it is done. Unfortunately, the same provision states that the minutes fall under the provisions of the Classified Information Act and for that reason are not publicly available. This secrecy provision is also strengthened in the Act on the Council of Ministers. The only document which is publicly available is the protocol of decisions which covers only the final decisions of the Council and the press information on their decisions. According to §18 of the Resolution, Ministers and other persons present at the meetings cannot disseminate any information without the consent of the Prime Minister (incl. individual statements and opinions of others). Also the body called The Constant Committee of the Council of Ministers (Komitet Stały Rady Ministrów), which prepares the legislative document for Council of Minister meetings has to elaborate minutes of its meetings but according to the internal regulation (§10 of The Resolution no 86 of the Prime Minister from28 November 2013 on the Constant Committee of the Council of Ministers) on its proceedings it is a working document treated as the ground for formulating the protocol of decisions. The minutes as such are not available. The executive branch does not have any other obligations that would be specifically described by law to prepare the minutes of other meetings held in the course of the policy or decision-making process.

The Regulation of the Council of Ministers on Public Hearings on the Drafts of Regulations states, in Article 8, that the minutes of the public hearing shall include in particular:

1) the names of speakers in the discussion during the public hearing, indicating who they represent;

2) the main thesis of the opinion presented by the persons referred to in 1;

3) the position of leading a public hearing before the presented opinions. But in fact, those hearings are not organized at all, so it is just a law that does not work in practice.

The general rule of legislative branch proceedings is a constitutional guarantee (art. 61.2) that the right to obtain information ensures entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings. This provision also covers the Sejm and the Senat, and their committees.

The minutes of the works of the legislative branch are prepared at every stage, including the meetings of parliament committees (and some subcommittees) and plenary sessions. According to art. 176 of the Rules of Procedure of the Sejm, the minutes of the sittings of the Sejm are drawn up in the form of stenographic records. These shall include a full record of the proceedings together with attachments, amendments proposed during the debate and lists of registered voting results (with names). The Rules also introduce a slightly different (alternative) manner of preparing the minutes of Sejm sittings. Those minutes are a shorter version of the stenographic record. Although there is no provision obliging specifically to put names of speakers on the list, those names are present in the document covering the minutes of the sitting. The protocol from the sitting of the committee includes a brief description of the meeting and, as an attachment, a complete record of its progress. Among other attachments one may also find the attendance list and the adopted documents (art. 166 of the Rules). Similar regulations apply to the Senate (and its committees') meetings. Apart from the above, all the sittings of the Sejm and the Senate and their committees are broadcasted on their websites.

In **Slovenia**, there is no specific legal obligation to compile or record minutes of meetings as they relate to decision-making process.

The Information Commissioner considered a request from an applicant who demanded access to minutes of meetings of the colleague of the Minister of Justice (Decision No. 090-244/2014 of 26 November 2014). The Commissioner ascertained that the Decree on administrative operations regulates official activities of public sector bodies and how documents and archives should be managed. Nevertheless, neither the Decree nor any other regulation in Slovenia imposes a general obligation to record and keep minutes of meetings of public sector bodies. However, some bodies establish an obligation of keeping minutes in their rules of procedure, such as the Government and the Parliament.

The Rules of Procedure of the Government prescribe that the Secretariat of the Government keeps and stores minutes of Government sessions. The Rules state that the names of members of the Government (present and absent) are recorded, as well as the names of other people present at the session. The Government also used to produce transcripts (verbatim records) of its sessions. The Information Commissioner and the Administrative Court agreed that this, too, could be public information. As a backlash to many FOIA requests, however, the Government recently decided to stop producing transcripts entirely. The minutes, however, are still produced as described above. They are not published proactively.

The Rules of Procedure of the National Assembly (the Parliament) regulate that a transcript of sessions (verbatim records) are to be created. It is the nature of such transcripts to include all the names of those present, especially of those who spoke. The list of everyone invited to the session is proactively published, and so are the transcripts. The Rules do not require that any other meetings aside from the sessions of the Parliament are recorded.

In **Spain** there does not exist any legal obligation on public institutions to compile or record minutes of meetings related to a particular policy or decision-making process (note that in Spain, the minutes of Council of Ministers meetings must contain a "list of attendees" according to the article 18.4 of the Government Act (Law 50/1997)).

There is no specific legal obligation in the **UK** either. Hansard (the Official Report for the legislative branch) is the edited verbatim report of proceedings of both the House of Commons and the House of Lords which keeps a record of all public debates in the House of Commons and the House of Lords. The House of Commons and House of Lords Select Committees also keep records of minutes of public meetings and publish them proactively. In both these case the names of persons participating are taken, however, at these stages it is mostly internal not external participants. No records of deliberations of the executive (cabinet and civil service) are routinely published.

3.9 Does the access to information law permit requests for access to minutes of meetings?

In all the jurisdictions surveyed, requesters may submit requests for access to minutes of meetings via national access to information legalisation.

	Minutes of meetings may be requested
Austria	✓
Croatia	✓
European Union	✓
Finland	✓
Germany	✓
Greece	✓

	Minutes of meetings may be requested
Ireland	✓
Italy	✓
Poland	✓
Slovenia	✓
Spain	✓In theory, but the law provides some room to refuse to process such a request
United Kingdom	✓

The access to information law in **Austria** does not provide for access to documents but only for access to information held by an authority. However, it can be presumed that information contained in minutes of meetings falls under the scope of the right of access. In two instances, the Ministry of Justice responded to requests about consultations with interest groups and lobbyists ahead of planned copyright reforms and provided dates, topics and participating organizations of stakeholder consultation meetings[3].

Access to minutes of meetings in **Croatia** is also possible in principle. If these minutes are kept they should be accessible through the access to information law. Public bodies could apply the exception to protect the decision making process, but they have to conduct public interest and proportionality tests, while the decision of the public body and the results of the tests are subject to appeal before the Information Commissioner.

In the **European Union**, the access to documents regulation does apply to minutes of meetings and there are many examples of such access being provided[4].

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[3] See: https://fragdenstaat.at/anfrage/einladungslisten-der-gesprachsrunden-zur-urheberrechts-novelle-2013/ , https://fragdenstaat.at/anfrage/treffen-mit-interessensvertretern-zur-vorbereitung-der-urheberrechts-novelle-2015/

[4] See an example here:

http://www.asktheeu.org/en/request/1794/response/6397/attach/5/04 Minutes 4th June Meeting Redacted.pdf

In **Finland**, Section 6(1)(6) of the access to information law governs when minutes enter the public domain. If minutes are kept for the preparation of a matter, they will normally enter the public domain only when the process has been concluded in the authority, however, there is room for discretion for the authority to grant access even before this period of time (sections 6(1)(9) and 9(2) of the Act) Access to information requests concerning minutes of meetings are assessed in the same way as any other document falling within the scope of the Act and the definition of an official document. Therefore, if the minutes do not come under the secrecy obligations provided in Section 24, access to them should be granted.

In principle, you can access minutes of meetings in **Germany** too unless they are "part of an administrative process". For example: https://fragdenstaat.de/anfrage/gesprachsnotizen-vom-staatsbesuch-aus-china/#nachricht-528

In **Greece** the access to information law in principle provides access to minutes of meetings. This applies in **Ireland** too.

In **Italy**, In principle the access to information law may provide access to minutes of meetings as long as they are materially held by a public administration and relate to an activity of public interest (Article 22(1)(d) of Law 241/1990 and Article 2(2) of Decree 184/2006).

In **Poland**, there is no specific provision, however, if those documents are prepared it should be possible to receive them using a FOI request. The problem is that drawing up the minutes of the meetings is not compulsory and for that reason not always accessible (apart from Council of Minister sittings which must be recorded, but fall under the Classified Information Act and are therefore not accessible). It is possible to ask for the recordings of some meetings taken during public consultations.

In **Slovenia**, it is possible to obtain minutes of meetings related to a particular decision-making process using the access to information law. Indeed, the law has been used for this purpose and the Information Commissioner has also issued several decisions instructing public sector bodies to release such information.

The most notable example of using the law for access information on meetings of decision-making bodies is requesting access to transcripts of Government sessions. There have been a few high profile cases where journalists requested access to transcripts of particular Government sessions where matters of heightened public interest were discussed. For example, journalists demanded access to transcripts of a Government session where the then prime-minister self-nominated herself to a position of an EU Commissioner. The Information Commissioner ordered the release of the transcript, and the case is currently pending [2015] before the Administrative Court upon a lawsuit filed by the Government.

In principle in **Spain**, the definition of information does not exclude any type of information but Article 18 excludes auxiliary information (which does not have an official definition) and therefore may include internal communication and reports; hence there is currently a lack of legal clarity over whether request for such auxiliary information have to be processed, although in general what happens is that they are and then access is denied.

The **UK** FOI Act covers all recorded information held by a public authority (‘information is defined in Section 84 of the FOIA). It is not limited to official documents and it covers, for

example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information created by the public authority, so it also covers, for example, letters you receive from members of the public, although there may be a good reason not to release them.

Brief minutes were included as part of the response to a FOIA request for information regarding the Lords Arctic Committee, including minutes and information on a number of meetings. This request also included an example of Section 34 of the Act on Parliamentary Privilege with a signed certificate signifying absolute exemption. It stated: "*The House holds other information relevant to your request. This information is exempt from disclosure under section 34 (Parliamentary privilege) of the 2000 Act, because exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of the House of Lords. A copy of a certificate signed by the Clerk of the Parliaments for the purposes of section 34(3) is attached*"

3.10 Is there any requirement to proactively publish minutes of meetings related to a particular policy or decision-making process?

No country has clear requirements to proactively publish minutes of meetings related to particular policies or decision-making processes.

	Requirement to proactively publish minutes of decision-making meetings?
Austria	**X**
Croatia	**X**
European Union	**X**
Finland	**X**
Germany	**X**
Greece	**X**
Ireland	**X**
Italy	**X**
Poland	**X**
Slovenia	**X**
Spain	**X**

	Requirement to proactively publish minutes of decision-making meetings?
United Kingdom	**X**

We found that in **Austria**, **Croatia**, **Germany**, and **Spain**, there are no legal requirements or regulation on the proactive publishing of minutes of meetings related to policy or decision making processes.

The **EU's** access to documents regulation does not require the proactive publication of minutes of meetings expressly The regulation does require creation and updating of a register of documents so to the extent that such documents exist, a reference should be included in the register. In Access Info's analysis, this requirement is not strong enough to constitute a requirement to proactively publish minutes of meetings.

In **Finland**, Section 19 of the RTI Act provides for a duty of the authorities to provide access to information in pending matters. This duty is limited to specific information (e.g. deadlines and persons responsible) not including minutes of meetings or participants, but the aim of the provision is to facilitate public participation.

In **Greece** despite all public institutions are obliged by law to keep minutes of meetings, there are not proactive publication requirements of the meetings.

In **Ireland**, there are no legal requirements to proactively publish minutes of meetings in general, or within specific policy areas. However in the event that they are published, names of officials are included. In general all names of participants are included, as a matter of practice rather than law – sometimes after a process of third-party notifications has been carried out. Notwithstanding the European ruling on Bavarian Lager, Irish officials will generally err on the side of releasing names rather than not.

In **Italy**, there is the obligation to publish the minutes of meetings ("resoconto") related to the works of the Assembly and the Commissions of the Chamber of Deputies, however, they may decide to hold secret sessions. Nothing is said about the content of such published minutes (Articles 63-65 of the Chamber of Deputies' Regulation).

In the Italian Senate there is the obligation to publish the minutes of meetings ("resoconto") related to the works of the Assembly and the Commissions. Nothing is said about the content of such minutes besides the fact that in the latter document it is not possible to mention secret items (Articles 33 and 60 of the Senate's Regulation).

A requirement to publish minutes of meetings in **Poland** applies directly only to the Parliament (Sejm) and the Senate according to their Rules of Procedure. The minutes of public hearings of draft regulations should be published online in the Public Information Bulletin. The Council of Ministers are obliged to keep minutes of its meetings, but these fall under the Classified Information Act. The executive branch does not have any other obligations that would be

specifically described by law to prepare the minutes of other meetings held in the course of the policy or decision-making process

In **Slovenia**, whilst there is a provision in the RTI law (Article 10) obliging public sector bodies to proactively publish certain information, it does not include minutes of meetings. There is an obligation however, to publish information that was previously requested by at least three applicants, meaning in theory, that if three applicants requested access to minutes of meetings, the authority would be required to publish it on the Internet. In practice, however, this provision is difficult to monitor and it is difficult to enforce its implementation.

In Slovenia, there is only a general provision in the Rules of Procedure of the National Assembly about the publicity of the Parliament's work and about publishing documents that the Parliament discusses. All names and usually professional details are made public (again, there is no legal requirement to do so)[5].

In the **UK**, the definition of document for government departments states minutes as a type of information they would expect to publish, although in practise it is not the case. On the other hand, specific meetings between external bodies and senior level staff are published quarterly for each government department. Yet, there is around a 10 to 11 month delay between the meeting occurring and the information being published. The information on the meetings consists of the month (not actual date) the organisation/company (not individual names) and a brief description of the purpose of the meeting (this can be as plain as 'to discuss energy and climate change' for a meeting involving the Department of Energy and Climate Change).

3.11 Does any law mention the obligation of public institutions to compile information and/or to set up a database of documents submitted by lobbyists and external interest groups during a decision-making process?

In 11 out of 12 jurisdictions there is no specific obligation to compile information and/or to set up a database of documents submitted by lobbyists. Such an obligation only exists in Poland.

	Obligation to compile information submitted by lobbyists during decision-making process?
Austria	**X**
Croatia	**X**
European Union	**X**
Finland	**X**

[5] An example of a transcript (In Slovenian): http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VII&type=sz&uid=45DDA008BD25730AC1257DDD0050CA9A

	Obligation to compile information submitted by lobbyists during decision-making process?
Germany	X
Greece	X
Ireland	X
Italy	X
Poland	✓
Slovenia	X
Spain	X
United Kingdom	X

In **Austria**, **Ireland**, **Germany**, **Spain**, **Greece** and **UK**, there is no law obliging public institutions to compile information and/or to set up a database of documents submitted by lobbyists and external interest groups during a decision-making process.

In **Croatia,** there is no legal obligation to compile information and/or to set up a database of documents submitted by lobbyists, but several legal acts (Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts; RTI Act (Art. 11), Rules of procedure of the Croatian Government) proscribe that all comments submitted during public consultations must be made public in the report on held consultations. These reports must be accompanied with explanations from public bodies on accepting or refusing proposals. Internet consultation is the most often form of consultations (if not the only one).

In the **European Union there is no legal requirement to publish documents submitted by lobbyists.** In general all submissions during public consultations are made public unless the person making the submission expressly states that they don't want it published. Aside from this, submissions made outside of formal consultations however, are not regulated. Indeed, the European Parliament does not consider these to be "EU Parliament documents", according to their reading of the EP Rules of Procedure.

There is no general obligation in **Finland** to compile such information. However, usually in legislative reforms a public consultation is held and the documents submitted by lobbyists become public once they are in the possession of the authority pursuant to section 7 of the Act

unless the secrecy obligations in Section 24 provide otherwise. Often a public summary of statements from interest groups is compiled by the authority and published proactively.

In **Italy**, the activities of lobbies are not regulated by the Italian legal system. However, one should note that the Commissions of the Chamber of Deputies and the Senate may hold auditions of representatives from the private sector in order to acquire news, information or documents which are relevant to their parliamentary activity. While in the Chamber of Deputies the minutes of such meetings are compiled and published unless the relevant Commission decides otherwise, in the Senate the compilation and publication of such minutes takes place only if the Commission decides so (Article 144 of the Chamber of Deputies' Regulation and Article 48 of the Senate Regulation).

In **Poland,** according to Article 52.3 of Resolution no. 190 of the Council of Ministers – the Rules of Procedure of the Works of the Council of Ministers from 29 October 2013 each document (also that received by lobbyists and external interest groups concerning a specific legislative process) should be published on a special website called the Governmental Legislative Process (www.legislacja.rcl.gov.pl) at the URL of the specific legislative process it refers to.

In **Slovenia**, the Integrity and Prevention of Corruption Act (IPCA) imposes a reporting obligation on registered lobbyists requiring them to submit lobbying reports, i.e. reports on their lobbying activities to the Commission for the Prevention of Corruption (Article 63 of the IPCA). These reports do not, however, contain information on what documents they submitted to a decision-making body, and there is no requirement to attach the documents themselves. The IPCA imposes a reporting obligation also on "persons lobbied" (i.e. public officials and functionaries). They need to make a record on each lobbying activity and forward a copy of the record to the Commission for the Prevention of Corruption. The record should contain, inter alia, a list of documents handed over to the person lobbied. The Commission for the Prevention of Corruption publishes a register of lobbying contacts, but this does not contain a list of documents handed over to the person lobbied, but rather other information (such as the interest group being lobbied for, the public body, the purpose of the meeting etc.).

3.12. Do national access to information law cover, in principle, documents submitted by lobbyists?

Documents submitted by lobbyists can be requested via national access to information laws in nine (9) of the jurisdictions surveyed. However the situation in Austria, Greece and Spain is more complex, with the Austrian law only giving access to the information contained in such documents the Greek law granting only access to documents "drawn up by public services", and the Spanish law providing the option of qualifying such documents as "internal".

	Covers, in principle, information submitted by lobbyists?
Austria	X
Croatia	✓

	Covers, in principle, information submitted by lobbyists?
European Union	✓
Finland	✓
Germany	✓
Greece	**X**
Ireland	✓
Italy	✓
Poland	✓
Slovenia	✓
Spain	**Partially** In principle, but the law excludes ancillary information
United Kingdom	✓

In **Austria**, the access to information law does not in principle, cover documents submitted by lobbyists, but paradoxically, it would appear to cover information contained in documents submitted by lobbyists.

At the **European Union** level, the Regulation on access to EU documents states that access applies to "all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union" which would imply access to documents submitted by third parties. Examples of disclosure of such documents can be found via AsktheEU.org. Example 1

The principle of access to documents submitted by lobbyists also applies to **Croatia**. If these documents are received by public bodies they should be accessible through the access to information law. Public bodies can apply the exception to protect the decision making process in

order not to release this kind of document, but they have to conduct public interest and proportionality tests, while the decision of the public body and the results of the tests are subject to appeal before the Information Commissioner.

In **Finland**, there is no provision specifically on access to documents submitted by third parties because as a general rule a document delivered to an authority enters the public domain once the authority has received it. For example, following public consultations, the documents submitted by lobbyists become public once they are in the possession of the authority unless secrecy obligations provide otherwise. Often a public summary of statements from interest groups is compiled by the authority and published proactively.

In theory, it is possible to request access to documents submitted by third parties under national access to information laws in **Ireland** and **Poland.** There are examples of access to documents submitted by lobbyists in **Germany** and an example of such a document being published proactively in **Slovenia** too.

In **Greece**, it is not possible to request information submitted by third parties as the law grants access only to documents "drawn up by public services".

In **Italy**, the access to information law may provide access to documents submitted by lobbyists as long as they are materially held by a public administration and relate to an activity of public interest (Article 22(1)(d) of Law 241/1990 and Article 2(2) of Decree 184/2006).

The situation is **Spain** is less clear. The Spanish access to information law in principle allows access to documents submitted by lobbyists because the definition of information is broad. Yet, the broad definition of excluded information such as auxiliary information, internal communications, and reports (Article 18), could mean documents submitted by lobbyists are also excluded.

In the **UK**, the FOI Act includes access all recorded information held by a public authority. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information created by the public authority, so it also covers, for example, letters you receive from members of the public, although there may be a good reason not to release them.

However, Section 43 of the Act on Commercial Interests is often used to withhold information from disclosure.

3.1 Are there any requirements to proactively publish information submitted by lobbyists and external interest groups during a decision-making process?

Only Poland has specific legislation regarding the publication of lobbying activities and documents received by lobbyists. No other country however has clear requirements for proactive publication of documents submitted by lobbyists and external interest groups during a decision-making process. In some cases this information is proactively published only during formal consultation processes.

	Requirement to proactively publish information submitted by lobbyists during a decision-making process?
Austria	X Parliament publishes documents submitted to consultations on draft laws
Croatia	X
European Union	X
Finland	X
Germany	X
Greece	X
Ireland	X
Italy	X
Poland	✓
Slovenia	X
Spain	X
United Kingdom	X

In **Austria,** the only example of external documents being collected and published concerns the so-called pre-parliamentary process. When a ministry prepares a bill, this draft law is usually published on the Parliament´s website in a public consultation process; anybody is able to submit written comments. Submissions are published on the Parliament's website within one or two working days. The ministry responsible for drafting the proposed law is supposed to use the feedback to further improve the draft, which then has to pass the Council of Ministers and is submitted by the government to Parliament for the parliamentary process. This practice, however, appears to be rooted in tradition and is not prescribed by law. There is no further obligation to compile and proactively publish information submitted by external interest groups.

In **Croatia**, **Germany**, **Ireland**, **Greece, Slovenia,** and **Spain**, there are no specific requirements for proactive publication of documents submitted by lobbyists and external interest groups during a decision-making process.

At the **EU** level, submissions made during formal consultations are made public unless you expressly state you don't want it published. Submissions made outside of formal consultations however, are not regulated. There is no legal requirement to proactively publish documents submitted by third parties and in practice these are usually not even recorded in the register of documents.

In **Finland**, there is no specific legal obligation to publish documents proactively, but such documents would fall under Section 7 of the RTI Act and would be assessed in light of the secrecy obligations in Section 24. If none of the secrecy obligations apply, the document is public once the authority receives it.

According to Article 16 of the 2005 Act on Lobbying in the Legislative Process, **Polish** public authorities are obliged to make available immediately, in the Public Information Bulletin, any information on actions pertaining to them and initiated by professional lobbyists with a description of the solution expected by these lobbyists. This does not however, include the obligation to attach the received documents.

According to Article 18 of the Act, by the end of February every year, public authorities must prepare information on activities commenced by professional lobbyists with reference to these authorities in the previous year. The information must include:

1) Specification of matters professionally lobbied for;

2) Indication of entities that carried out professional lobbying;

3) Forms of professional lobbying with information on whether the specified projects were lobbied for or against;

4) Description of the influence exerted by a professional lobbyist in the legislative process regarding the matter in question.

The information must be made available immediately in the Public Information Bulletin.

Since 2015 in the **UK**, organisations must join the Register of Consultant Lobbyists if they conduct the business of consultant lobbying as defined by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. *This is only a list of lobbyists however, and there are no requirements to proactively publish documents. Transparency International in their recent publication 'Lifting the Lid on Lobbying: The Hidden Exercise of Power and Influence in the UK' states that 'the system that exists to regulate [lobbying] is in serious disrepair - there are at least thirty-nine loopholes we have identified; and the Lobbying Act has not only solved nothing, although barely a year old it is a thoroughly discredited piece of legislation'.*

The activities of, and documents submitted by, lobbyists are not regulated by **Italy's** legal system[6]. The Commissions of the Chamber of Deputies and the Senate however, may hold meetings with representatives from the private sector in order to acquire news, information or documents which are relevant to their parliamentary activity. While in the Chamber of Deputies the minutes of such meetings are compiled and published unless the relevant Commission decides otherwise, in the Senate the compilation and publication of such minutes takes place only if the Commission decides so (Article 144 of the Chamber of Deputies' Regulation and Article 48 of the Senate Regulation).

3.2 What is the appeal process: Administrative Appeal, Information Commissioner, Ombudsman, and/or direct to the Courts?

In four jurisdictions – the **EU**, **Finland**, **Ireland,** and **Poland** – an internal administrative appeal is required before taking an appeal to the Information Commissioner or to Court. In **Austria**, **Croatia**, **Italy**, **Germany**, and the **UK**, and administrative appeal is optional, whilst the **Slovenian** and **Spanish** laws require that appeals be made directly to the Information Commissioner.

If the response to an access to information request is declined or the requested information is not fully provided in **Austria**, the citizen can request an official decision from the authority ("Bescheid"). This decision has to provide the legal justification why information is not provided as requested and must contain instructions on how to file an appeal. Within four weeks after receiving the official response, the citizen can file an appeal with the administrative court or with the authority that is refusing to provide the information, which then has to forward the case to the appropriate administrative court. The administrative court system was reformed in 2014, there is thus little data on how long the appeals process usually takes but some cases suggest that it takes more than one year for an administrative court to rule on an appeal. In most cases, the court decides on annulling a justification for the refusal of information and does not rule on the release of information.

In **Croatia**, if a request is denied (or not answered) the requester can directly place an appeal before the Information Commissioner. Additionally, the rulings of the Information Commissioner can be appealed before the High Administrative Court by filing a law suit.

In the **European Union**, any appeal must first go through what is known as a "confirmatory application", or an internal appeal. After that, you can either make a Complaint to European Ombudsman (whose Decisions are non-binding), or take a Case before the European Court of Justice (whose Decisions are binding), but you have to choose between the two options, as you cannot go to court after taking a complaint to the Ombudsman.

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6 Transparency International Italy, Lobbying e Democrazia - La Rappresentanza Degli Interessi In Italia, https://www.transparency.it/wp-content/uploads/2014/11/LobbyingDemocrazia_Transparency_International_Italia_cor.pdf

In **Finland**, the procedure has two stages. In the first stage the decision is done by the official and if she/he refuses the applicant can refer the matter to the authority. The decision of the authority is seen as final in the sense that an appeal to a court can be made (section 14(3) of the Act on Openness (1999/621), below referred to as "the Act").

An appeal to court is the most effective and most important way to contest the decision of the authority. The competent court to rule on the appeal varies slightly depending on the authority whose decision is being contested. For example the competent court to rule on decisions taken by the government and ministries is directly the Supreme Administrative Court, whereas for most other authorities' decisions it is the administrative courts. (section 33 of the Act) The process is also governed by the Administrative Judicial Procedure Act (1996/586). (see in particular sections 7-9)

A complaint to the parliamentary ombudsman or the Chancellor of Justice is also possible. (For the mandates of the Ombudsman and the Chancellor of Justice see the Constitution sections 108 and 109 of the Constitution)

Whilst it is possible to ask for an internal review of a denial by the public body, an administrative appeal is not mandatory in **Germany** as a lawsuit can be filed directly after receiving a denial. Mediation by the Information Commissioner can be requested at any time.

Administrative appeals are not mandatory in **Greece.** The internal appeal process foresees the intervention of the Inspector General of Public Administration. External appeals can be lodged with the Ombudsman.

In **Ireland**, an administrative appeal is mandatory before an appeal can be made to the Information Commissioner (except in certain types of cases such as third-party notification issues). The appeal process is 1. "Internal review" which is made to a more senior member of staff in the public body. 2. Appeal to the Information Commissioner. 3. The Commissioner rules, and this decision may be appealed by the public body or by the requester, to the High Court, on a point of law.

Requesters in **Italy** can always appeal to the Access Commission and to the Regional Administrative Tribunal. However, the latter appeal can be filed in alternative to or after the appeal to the Access Commission. For requests filed to municipal, provincial, and regional authorities, the requester can lodge appeal to the regional ombudsman called "Difensore Civico Regionale".

In **Poland**, each refusal must be given in the form of an administrative decision. According to Article 16.2 of the Polish Access to Public Information Act (APIA), the provisions of the Code of Administrative Proceedings shall apply and appeals from the decision shall be investigated within 14 days. Appeals must be filed with the higher instance within the administrative system. If the body that refused access has no instance above it (i.e. the Prime Minister) the applicant shall request that the refusal be reconsidered by that body (art. 17.2 APIA). Only after obtaining the second/confirmatory decision the applicant is allowed to file a complaint to the Regional Administrative Court (art. 21 APIA). According to this provision, in the case of complaints considered in the proceedings on making public information available, the provisions of the Act of 30 August, 2002 – the Law on Proceedings before Administrative Courts shall apply:

1) the transfer of the files and replies to the complaints to the court by a public body shall be made within 15 days of receiving the complaint,

2) the complaint is considered within 30 days of receiving the files alongside with the reply to the complaint. Unfortunately the latter does not work in practice as the complainant has to wait at least 6 months to be heard in front of the court.

However, this is not obligatory in every case. As there are lot of cases where the public entity silently refuses (i.e. lack of any action within 14 days; claiming that the information is not considered as information described by API) the applicant can file a complaint on the failure to act to the Regional Administrative Court without obligation to exercise the administrative appeal. This is a very good solution as it makes judiciary control much quicker in those cases.

In both situations the complaint should be sent to the court via the entity that refused access by confirmatory decision or failed to act according to the FOIA.

The first appeal against a refusal decision goes directly to the Information Commissioner in **Slovenia**. The Commissioner may (1) uphold the appeal and order the release of the information; (2) dismiss the appeal as unfounded or for not meeting the admissibility requirements; (3) order that the public sector body re-examines the case.

If the applicant or the public sector body is not satisfied with the Commissioner's decision, they may lodge an administrative dispute with the Administrative Court.

The Supreme Court reviews the Administrative Court's judgments upon appeal in cases of alleged violation of the law or procedure (not the disputed facts). The law further limits the right to appeal against the Administrative Court's judgments.

In **Spain** there is no administrative appeal and the first option for appealing is the Transparency Council, an administrative body that can only be used for appealing decisions from the central administration. After that a court appeal can be lodged.

In the **UK**, all requests for information have the option to appeal first via an 'Internal Review' although this is not mandatory. The relevant rules are contained within the "Part VI of the Secretary of State's Section 45 Code of Practice". Internal Reviews are carried out internally within the original department from which the information was requested, but via a more senior member of staff. The ICO recommend that reviews should be carried out within 20 working days, but there is no statutory time limit.

After an Internal Review has been completed, if you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision (Section 50 of the FOIA). If either the Public Body or the requester are not content with the outcome of the appeal then either may appeal to the Tribunal.

The Information Rights Tribunal is part of the First-Tier Tribunal in the General Regulatory Chamber and is referred to as the First Tier Tribunal (Information Rights). A panel composed of the tribunal judge and two other non-legal members hears appeals. The tribunal can overturn the Information Commissioner's decision and issue a substitute decision notice if it decides that the decision was wrong in law, or that he exercised his discretion wrongly. The tribunal's

substitute decision notice would have the same legal status as the ICO's original decision notice. There is no fee for appealing to the tribunal and in most cases each party pays their own costs. However, the tribunal does have the power to award costs in particular circumstances.

If a party is still not content with the decision, either party has the ability to appeal to the Upper Tribunal (Administrative Appeals) (UT(ACC)) and beyond this there are possibilities to appeal to the Supreme Court.

A good example of a case which passed through many stages of the appeals process is the case of the 'Black Spider Memos', which covered letters from Prince Charles to various government departments. The case was concluded in the Supreme Court.