

18.12.2019 • HmbBfDI

The Activity Report on Freedom of Information 2018/2019 published today by the Hamburg Commissioner for Data Protection and Freedom of Information not only presents the Commissioner's activities over the past two years. It also describes the status of the development of freedom of information and transparency in Hamburg. There is both light and shadow. Particular attention is paid to the reform of the law, which was once a lighthouse project for all of Germany and is now finally in the citizenship for revision.

The Transparency Act is now getting on in years. This is noteworthy in two respects: The development of perception of the law by citizens is positive. Since its enactment in 2012, the Hamburg Transparency Act has developed into a regulation that is in demand by those entitled to a considerable extent. This is made clear by the consistently high number of submissions to the Freedom of Information Commissioner and a consistently high number of court decisions on the allocation of information as a resource. Citizens no longer simply accept the rejection of requests for publication or for the provision of information.

Administrative courts are being appealed to more and more often. This leads to an institutionalized clarification of existing legal uncertainties in the interpretation of norms and thus to greater legal certainty not only for citizens but also for the administration itself. The court decisions can create breaches in the rejection thicket. This not only helps plaintiffs. Rather, this can also be helpful for other applications in which court decisions are no longer necessary because the legal view of the Hamburg administrative courts has already been clarified.

It is particularly gratifying that not only applicants are suing, but also that authorities are defending the right to access information in court against the resistance of companies who invoke alleged trade and business secrets. The public authorities are thus taking the side of the citizens – a constellation that shows that a transparency-friendly perspective is increasingly gaining ground among the authorities. Transparency is part of administrative normality and is implemented by authorities just as consistently as other legal requirements.

The activity report contains a number of selected court decisions that show that the right to information in Hamburg has developed into an independent legal matter that is subject to ongoing legal development.

On the negative side, after seven years, the Transparency Act is no longer up to date in some areas. In this respect, there is a need for amendment by the legislature. The exemption of indirect state administration from the obligation to publish in the

transparency register was controversial from the outset. Decisions of the VG and the OVG Hamburg, which have denied an obligation of the indirect state administration, triggered a pressure to act in the legal-political area: the publication obligation must be extended by a change in the law. In other federal states, the competences of the freedom of information officers have already been expanded to include further information access regulations such as the Environmental Information and Consumer Information Acts (e.g. in Schleswig-Holstein). In Hamburg, too, the time is ripe for meaningful harmonization of these regulations. This would only catch up with other federal states. In order to regain the former top position, however, Hamburg would have to lead again. A regulation that would in future enable the Freedom of Information Officer to issue legally binding decisions in the field of freedom of information independently, instead of merely taking on an advisory function, would once again be a great success that could serve as a model for all other legal regulations in Germany.

Today, the citizenry decides to amend the Transparency Act. From the point of view of the Hamburg Commissioner for Data Protection and Freedom of Information, two first drafts have given cause for hope, but also for concern. In particular, a regulation was criticized according to which information about the person asking the question should be released to companies that refer to trade and business secrets. Absolute caution is required here. It must not be the case that the requester has to pay for the information with their data. Investigative journalism in particular is endangered because it happens that people who want to clarify grievances are persecuted and threatened. Suggestions for improvement that still exist, such as increasing transparency in the field of science, creating more transparency for public service broadcasting in northern Germany or the deletion of the exception for the protection of the constitution, have been raised for years and are also highlighted again in the current activity report.

On the presentation of the Activity Report on Freedom of Information 2018/2019, the Hamburg Commissioner for Data Protection and Freedom of Information, Johannes Caspar: "The report published today shows that the commitment to more transparency in administration is a successful, but also very rocky path, which sometimes involves those involved through the judicial instances. The central resource of the digital world is information. It is a functional condition for democratic processes based on the rule of law. Public bodies must always make them accessible. There is still a lot to do here. I am looking forward to the final content of the amendment to the law and I hope that the Free and Hanseatic City of Hamburg will continue the outstanding tradition of transparency up to now."

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