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In yesterday's Senate session, the amended Hamburg Transparency Act was passed and is now to go into parliament. Despite welcome changes, the draft law in the version that has now left the Senate is not free from data protection and freedom of information concerns.

The inclusion of the indirect state administration fixed in the draft is consistent and eliminates a transparency gap that was apparently not intended by the legislature. The Hamburg Commissioner for Data Protection and Freedom of Information expressly welcomes the fact that in the future he can also be involved by applicants in the course of information access requests under the Hamburg Environmental Information Act and Consumer Information Act. This fulfills a long-standing demand by Germany's Freedom of Information Commissioner for the harmonization of competencies in the area of information access regulations.

However, it is to be expressly regretted that the Hamburg Commissioner for Data Protection will not be provided with the human resources absolutely necessary for the performance of this new task. The submission obligation contained in the legislative draft, according to which written statements regarding the Hamburg Commissioner for Freedom of Information to the citizenship must also be submitted to the Senate at the same time, contradicts the independence of the Hamburg Commissioner for Data Protection and Freedom of Information, which is guaranteed under state constitutional law. In addition, the Hamburg Commissioner for Data Protection and Freedom of Information still does not have the necessary supervisory powers to enforce transparency of state actions towards bodies subject to information obligations in legally binding ways for the benefit of the citizens concerned.

The law also contains numerous contents that call into question the role of the Free and Hanseatic City of Hamburg as a national pioneer of transparency. The area exemption of the State Office for the Protection of the Constitution exempts it from requests for information, although there may well be a considerable public interest in information. Federal and state laws show that security-relevant information from intelligence services can be adequately protected even without area exceptions. The same applies to the exception that is still planned for the area of research. Case-by-case solutions in the sense of extensive freedom of information can only be achieved in this area through the statutory fixing of a balancing clause.

The power to disclose the name and address of the applicant in the event of access to personal data, intellectual property or

trade and business secrets, which is also provided for, contradicts the idea of unconditional access to information and thus the core of modern freedom of information law. Last but not least, there are also doubts about the conformity of such an automatic disclosure mechanism with European law, which obliges bodies subject to the obligation to provide information to process this personal data free of any examination of necessity and proportionality by the bodies subject to the obligation to provide information.

The Hamburg Commissioner for Data Protection and Freedom of Information:

“Overall, the draft law to amend the Transparency Act has its ups and downs. A very central critical point concerns the disclosure regulation of the inquirers by the reporting bodies, which is to be rejected both from the point of view of data protection law and freedom of information law. If the name and address of the applicant are to be provided for every critical inquiry, the discovery of abuses becomes at the personal risk of the inquirer. The fact that information to be obtained via the Transparency Act has to be paid for with one's own data also makes the work of investigative journalists more difficult. I think the regulations should be subjected to a critical review again and I look forward to a fruitful discussion in the citizenship.”

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