Law n.º 65/93 of August 26: Access to Administrative Documents

Under the terms of Article 164, sub-paragraph d), Article 168, paragraph 1, sub-paragraphs b), d) and v), and Article 169, paragraph 3 of the Constitution, the Assembly of the Republic rules as follows:

CHAPTER 1

General provisions

Article 1

Open administration

Access to administrative documents by the citizens shall be ensured by the Public Administration according to the principles of publicity, transparency, equality, justice and impartiality.

Article 2

Aim

1. This law regulates the access to documents that relate to the activities of the entities mentioned in Article 3.

2. The exercise by the citizens of their right to be informed by the Administration of the progress of proceedings in which they have a direct interest, as well as their right to be informed of the final decisions taken thereupon, are regulated by separate legislation.

Article 3

Scope

The documents mentioned in Article 2 are documents which originate within or are held by organs of either the State or the autonomous regions that perform administrative functions, by organs of either public institutes or public associations, organs of the local authorities, organs of associations or federations of local authorities, as well as other entities that exercise public authority according to the law.

Article 4

Administrative documents

1. For the purposes of this law:

(a) administrative document shall mean any support of information, either graphic, sound, visual or computerised, or any record of another nature, elaborated or held by the Public Administration, including files, reports, studies, opinions, minutes, official records, circulars, circular letters, internal orders, internal normative decisions, instructions and guidelines for the interpretation of the law or setting the framework for an activity, as well as other pieces of information;

(b) named document shall mean any support for information that contains personal data;
(c) personal data shall mean any information concerning an identified or identifiable natural person, and containing assessments, or judgments of value, or covered by the clause of respect for private life.

2. For the purposes of this law, the following shall not be deemed to be administrative documents:

(a) personal notes, sketches or other records of a similar nature;

(b) documents that do not concern administrative activities, in particular documents concerning the meetings of the Council of Ministers and Secretaries of State, or the preparation of such meetings.

Article 5

Internal and external security

1. Documents containing information the access to which is considered to create a risk for or be harmful to the State's internal or external security shall be classified according to special legislation and for a strictly necessary period of time, either as documents the access to which is prohibited or as documents the access to which is subject to authorization.

2. After having been declassified, or once the period of time provided for their classification has expired, the documents mentioned in the preceding paragraph may be freely consulted under the terms of this law.

Article 6

Secret of justice

Access to documents concerning matters covered by the secret de justice is regulated by special legislation.

Article 7

Right of access

1. Everyone shall have the right of access to information by way of access to non-named administrative documents.

2. The right of access to named documents shall be limited to the person to whom the data refer, as well as to third parties who prove that they have a direct and personal interest under the terms set out in the following Article.

3. The right of access to administrative documents includes both the right to obtain reproductions of the documents and the right to be informed of the existence and the contents thereof.

4. Where administrative documents are kept in archives, this shall not preclude the exercise at any time of the right of access to such documents.

5. Access to documents that are instrumental either in proceedings which are undecided or in the preparation of a decision shall be postponed until the decision has been taken or until the proceedings have been discontinued or until one year after their being prepared.

6. Access to administrative or other enquiries shall be permitted only after the deadline for disciplinary proceedings has expired.
7. Access to documents within the domain of notaries or public registers, documents concerning civil status or criminal records, documents concerning automatically processed personal data, as well as documents kept in historical archives is regulated in special legislation.

**Article 8**

**Access to named documents**

1. Exercise of the right of access to personal data contained in administrative documents shall be subject to the provisions of the special law concerning automated processing of personal data, with modifications as appropriate.

2. Information of a medical nature shall only be communicated to the person concerned through a medical doctor appointed by that person.

3. Any claim of a direct and personal interest under the provisions of Article 7, paragraph 2, shall not be accepted if it is not accompanied by a favourable opinion of the Committee of Access to Administrative Documents requested by the person who wishes to enjoy the right of access.

4. Access of third parties to personal data may also be authorised:

   (a) upon written authorization of the person to whom the data concerns;

   (b) subject to a favourable opinion as provided for in paragraph 3, where the purpose of communication of the data is to safeguard the legitimate interests of the person to whom the data concerns and that person cannot give his authorization.

5. Documents containing personal data may also be communicated to third parties, depending on the nature of the documents, where it is possible for the administration to expunge all such data without having to rebuild the document and where there is no risk of easy identification.

**Article 9**

**Correction of personal data**

1. Exercise of the right to bring corrections, to complete or to delete inaccurate, insufficient or excessive personal data shall be subject to the provisions of the legislation concerning automated processing of personal data, with modifications as appropriate.

2. Only the corrected version of personal data may be used or communicated.

**Article 10**

**Illegal use of information**

1. It is forbidden to use information without having due respect for copyrights or patent rights; it is also forbidden to reproduce, diffuse or use documents or information therein in such a way as to amount to unfair competition.

2. Personal data communicated to third parties shall not be used for purposes other than those under which access was authorised, and shall otherwise entail liability for losses and damages under the terms laid down in the law.

**Article 11**
Publication of documents

1. The Public Administration shall publish through adequate means:

(a) any documents, including internal normative decisions, circulars and guidelines, that contain structures for the administrative activity;

(b) the reference of any documents containing an interpretation of enacted laws or a description of an administrative procedure, including in that reference inter alia the title and date of the documents, the subject and the originator thereof, as well as the place where the documents may be consulted.

2. Publication of documents and references of documents shall be made at least once every six months and in such a way as to encourage regular access by interested parties.

CHAPTER11

Exercise of the right of access

Article 12

Form of access

1. Documents may be acceded to by way of:

(a) on the spot, free of charge consultation;

(b) reproduction through photocopy or any other technical means including visual or sound means;

(c) certified copies issued by the administration.

2. Reproduction pursuant to paragraph 1(b) shall be in one copy and subject to payment by the requesting person of an amount strictly corresponding to the financial costs of both the materials used and the service rendered; a decree-law or a regional legislative decree, as appropriate, will fix the amount of the costs.

3. Computerised documents shall be transmitted in a way that is intelligible to any person and corresponds rigorously to the contents of the register, without prejudice to the option provided for in paragraph 1(b).

4. Where there is a risk that reproduction as provided for in paragraph 1 will harm the documents, the interested person, at his expense, shall be entitled to promote manual copy of the document, or its reproduction, in any other non-damaging way.

Article 13

Form of request

Requests for access to documents must be made in writing and contain all references necessary for identifying the document, as well as the name, the address and the signature of the interested person.

Article 14
Responsibility for providing access

In each ministerial department, regional department, local authority, institute and public association there shall be an entity responsible for the implementation of the provisions of this law.

**Article 15**

**Reply from the administration**

1. The entity to whom a request for access to a document was made, shall within a period of ten days:

   (a) communicate the date, place and mode in which the document may either be consulted or reproduced, or a certified copy thereof may be obtained; or

   (b) set out, pursuant both to the provisions of Article 268, paragraph 2, of the Constitution, and the provisions of this law, the reasons why total or partial access to the document is refused; or

   (c) notify that the document is not within its possession and, where it knows of its whereabouts, point out the entity that possesses the document, or pass the request on to the latter and so inform the interested person; or

   (d) forward to the requesting person a copy of the request addressed to the Committee of Access to Administrative Documents for the latter to assess the possibility of access to the information contained in the document sought.

2. Where it has doubts about the possibility of access to the information contained in the document sought, the requested entity may request an opinion from the Committee of Access to Administrative Documents, with a copy being sent to the interested person; that opinion shall be delivered within a period of 20 days.

3. If the administration has not replied within 35 days, this shall be deemed an implicit decision rejecting the request.

4. The interested person shall be entitled to submit to the Committee of Access to Administrative Documents a complaint against any explicit or implicit rejection of his request or against any decision that limits the exercise of the right of access.

**Article 16**

**Complaint**

1. Complaints must be submitted to the Committee of Access to Administrative Documents within 10 days.

2. The Committee of Access to Administrative Documents shall produce a report assessing the situation within 30 days and forward it, along with its conclusions, both to the entity involved and the person concerned.

3. Having received the report mentioned in the preceding paragraph, the entity that refused the request shall within 15 days communicate its final decision to the person concerned; failure to do so shall be deemed an implicit decision rejecting the complaint.

**Article 17**
Appeal

The person concerned shall be entitled to appeal before the courts against any final decision on his complaint, under the terms of the legislation concerning the administrative or fiscal courts and pursuant to the procedural rules, adapted as appropriate, that apply to the procedure concerning intimation to consult documents or obtain certified copies.

CHAPTER III

On the Committee of Access to Administrative Documents

Article 18

The Committee

1. The Committee of Access to Administrative Documents (CADA) is hereby created; it shall be entrusted with watching over the implementation of the provisions of this law.

2. The CADA shall be a public independent entity attached to the Assembly of the Republic and having its own technical and administrative support services.

Article 19

Membership of CADA

1. Membership of the CADA shall be as follows

a) one judge member of the Supreme Administrative Court, appointed by the Supreme Council of the Administrative and Fiscal Courts, who shall be the Chairman;

b) two members of the Assembly of the Republic elected by the latter, one nominated by the parliamentary group of the largest party supporting the government, and the other nominated by the parliamentary group of the largest party in opposition;

c) one law professor appointed by the President of the Assembly of the Republic;

d) two persons of high standing appointed by the government;

c) one representative of each of the Autonomous Regions, respectively appointed by the Governments of the Autonomous Regions;

f) one person of high standing appointed by the National Association of Portuguese Municipalities;

g) one advocate appointed by the Bar Association;

h) one member of the National Committee for the Protection of Computerised Personal Data appointed by the latter.

2. Any member may at his initiative be replaced by an alternate appointed by the same entity that appointed him.

3. The term of office of members, which is renewable, shall last for two years; however it shall reach an end when a member ceases to perform the functions which led to his appointment.
4. The chairman shall receive the salary and enjoy the benefits to which he is entitled in his capacity as member of the Supreme Administrative Court.

5. All members, except the Chairman may keep their other functions.

6. The legal texts regulating the implementation of this law shall determine the rights and benefits of the members.

7. Entities having an interest in matters being discussed in a meeting of the CADA may attend that meeting without the right to vote.

**Article 20**

**Powers**

1. The CADA shall have powers to:

   a) adopt its internal rules;
   
   b) examine any complaint submitted to it;
   
   c) give opinions on the access to named documents, pursuant to Article 8, paragraph 3;
   
   d) decide on the system of classification of documents;
   
   e) give opinions on the implementation of this law, as well as the preparation and implementation of legislation in related matters, at the request of the government, the Assembly of the Republic or the administration;
   
   f) prepare an annual report on the implementation of this law and on its activity, to be forwarded both to the Assembly of the Republic, for publication and examination, and the Prime Minister.

2. The provisions of Articles 8 and 9 shall not obstruct complaints to the CADA where the right of access is refused.

3. The internal rules of the CADA shall be published in the Diário da República, 2nd. series.

4. Opinions shall be drafted either by a member of the CADA or by a member of its staff, appointed by the Chairman under the terms set out in the internal rules.

5. The opinions shall be published under the terms set out in the internal rules.

**Article 21**

**Co-operation of the administration**

It shall be the duty of the members of the staff of the public administration to co-operate with the CADA; otherwise, their disciplinary liability shall be engaged.

**CHAPTER IV**

**Final and transitional provisions**
Article 22

Information concerning the environment

Documents concerning the environment shall be acceded to under the terms of this law within the scope and the meaning derived from Directive No. 90/313/EEC, of 7 June.

Article 23

Establishment of the CADA

The members of the CADA shall be appointed within a period of 30 days from the entry into force of the legal texts regulating the implementation of this law; they shall take up office before the President of the Assembly of the Republic within 10 days of the publication of their names in the Diário da República, 1 st. series.

Article 24

Implementation

The government shall adopt within 90 days legal texts regulating the implementation of this law.