

Publicity and Data Protection in Finland - Problem areas

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ARKISTOLAITOS



Act on the Openness of Government Activities and Authorities, problems

- Hierarchy of norms
- The relation of a general act (e.g. Act on the Openness of Government Activities) to special acts
- An official document and a non-document and not yet a public document
- Officials' (alleged) insufficient knowledge of acts = authority discretion, different interpretations

Hierarchy of Norms

- An upper norm replaces a lower norm, a newer norm replaces an older norm, a specific provision replaces a general provision
- Interpretation problems are caused by e.g. old special acts, which have not been renewed at the time general acts have been changed.*

The relation of a general act to a specific provision

- Types of specific provisions:
 - Deviation from a provision of a general act (used instead of a general provision)
 - Supplement to a provision of a general act

The relation of a general act to a specific provision

- Specific provision is generally interpreted narrowly in favour of fundamental rights
- As a consequence of special provisions, different authorities have e.g. different lengths of periods of secrecy for the same documents
- Right of access to official documents also varies

An official document and a non-document and not yet a public document

- An official document
 - Act on the Openness of Government Activities, section 5
 - A principle for preparation (prepared by an authority)
 - A principle for possession: delivered to an authority for the consideration of a matter or otherwise in connection with a matter within the competence or duties of the authority

An official document and a non-document and not yet a public document

- A non-document (Act on the Openness of Government will not be applied) 5.3.-4, Archives Act, section 7.2
- Private commissions and commissions given by private individuals - except delivered in connection with the matter
 - Notes and drafts
 - Documents prepared for internal activity
- A document is not yet a public document, Act on the Openness of Government Activities, sections 6-7



Act on the Openness of Government Activities and Authorities

- Discretion of the authority, different interpretations
 - The Supreme Administrative Court has made 563 decisions on document publicity during 1999-2012
 - Of the decisions 29 are annual publications. The Supreme Administrative Court considers the amount of decisions to be significant.



Archival documents (Act on the Openness of Government Activities section 27)

- Deviation from secrecy
 - the person whose interests are protected by the secrecy provision consents to the access or
 - a possibility to deviate is provided by an act

Access to archival documents

- Access may be granted to a secret official document which has been archived in accordance with the Archives Act for research or another approved purpose, unless otherwise ordered by the authority which has sent the document to be archived. When a decision on access is made, due consideration shall be given to the safety of the **freedom of scientific research**
- The person who has gained access to the document shall undertake in writing not to use the document to the detriment or defamation of the person whom it concerns, nor to the detriment or defamation of a person close to him, nor in violation of those other interests protected by the secrecy provision



The National Archives Service, problems with publicity and secrecy

- The same problems as authorities have (e.g. similar documents have, under specific acts, different periods of secrecy in different archives). Furthermore,
- The guidance of the National Archives Service is not fully up-to-date
- As a result of organisational changes, extremely recent secret material is archived in the National Archives Service. There is no sufficient guidance for this secret material

Recent secret documents/ Insufficient guidance

- As a result of organisational changes, extremely recent secret material is archived in the National Archives Service. There is no sufficient guidance for this secret material.
 - Authorities have not precisely enough or at all marked that the documents are secret
 - Provided by acts, the other authority(e.g. former) is responsible for the documents in question, in which case an authority cannot authorize the National Archives Service