

**TRANSLATION FOR CONVIENCE AND NOT A FORMAL LEGAL TRANSLATION  
BY TRANSPARENCY INTERNATIONAL**

**Transparency Act of Hamburg (HmbTG)**

from ....

**Part 1  
Requirement of Transparency**

**§ 1  
Purpose**

- (1) The purpose of this Act is to facilitate opinion formation and the decision-making process and to enable the control of governmental businesses through a comprehensive right to information that immediately makes available and disseminates to the public such information existing at the authorities indicated in § 2 para. 3 observing the protection of personal data.
- (2) Under this act, every person is entitled to immediate access to all information held by reporting bodies as well as to the publication of the information referenced in § 3 para. 1.

**§ 2  
Definitions**

- (1) "Information" includes all records, regardless of method of storage.
- (2) "Releases" are records in the information register as referenced in § 10.
- (3) "Public authorities" are all bodies falling under § 1 para. 2 of the Hamburg Administrative Procedure Law (*Verwaltungsverfahrensgesetz*) from November 9, 1977 (HmbGVBl. page 333, 402), last revised on December 15, 2009 (HmbGVBl. page 444, 449), in its current version; public authorities also includes natural or legal persons under private law, insofar as they administer public functions, especially services for the public, or provide the rendering of services and thereby fall under the control of the Free and Hanseatic City of Hamburg or a legal person of public law under its supervision.
- (4) Control as used in para. 3 occurs when:
  1. the person under private law, through administering public functions or providing public services, undertakes special obligations to third parties or has special rights with respect to third parties, particularly when the person under private law imposes

- an obligation to contract or a compulsory connection to main services or a requirement to use exists, or
2. one or more of the legal persons under public law described in para. 3, alone or together, directly or indirectly
    - a) owns/own the majority of the subscribed capital of the company or
    - b) has/have more than the majority of voting rights connected to the company or
    - c) can appoint more than half of the members of the administration, management, or supervisory body of the company.
  - (5) Reporting bodies are those public authorities of the Free and Hanseatic City of Hamburg described in para. 3 as well as those bodies, public institutions and foundations under public law, which are under the control of the Free and Hanseatic City of Hamburg, also insofar as these entities execute federal law or law of the European community. Recording bodies under the provision of para. 3, second clause, also include natural or legal persons under private law.
  - (6) The information register is a centrally managed, electronic and universally accessible register, which contains all publically available information under this Act.
  - (7) Duty of disclosure (*Auskunftspflicht*) is the duty to make publically available upon request information falling under the guidelines of this Act.
  - (8) Duty to publish (*Veröffentlichungspflicht*) is the duty to actively add information to the information register according to the guidelines of this Act.
  - (9) Duty to inform (*Informationspflicht*) encompasses the duties to disclose and to publish.
  - (10) A contract for services for the public under this law is a contract which is concluded by a public authority and which (i) effects participation of a company in services to the public, (ii) has as its object services to the public, (iii) includes the creation or provision of infrastructure related to services to the public, or (iv) effects a permanent transfer of certain rights in a given area related to services for the public. This covers contracts that have as their object the water supply, sewage disposal, garbage disposal, energy supply, transportation and traffic, particularly regarding local public transportation, the housing industry, education and cultural facilities, in-patient medical care, or data processing for governmental activities.

### **§ 3**

#### **Scope of Application**

- (1) The following fall under the duty to publish, subject to §§ 4 through 7 and 9:

1. Front page and petitions of Senate resolutions,
  2. Communications of the Senate to the Hamburg State Parliament (*Bürgerschaft*),
  3. Decisions made and taken in public session (*öffentlicher Sitzung*), together with the related protocols and annexes,
  4. Contracts pertaining to services to the public,
  5. Household, agency, management, organization, business distribution and filing plans,
  6. Global directives, technical instructions and regulations,
  7. Official statistics and activity reports,
  8. Reports and studies, if commissioned by the public authorities, if incorporated in the decision of the public authorities, or if serving the public authorities in their preparation,
  9. Spatial data (geodata),
  10. Results of measurements, observations and other surveys of harmful environmental effects, environmental hazards, as well as those on the state of the environment that are performed by an authority outside of its regular control activities in particular cases,
  11. The tree registry,
  12. Public plans, particularly local development plans (*Bauleitpläne*) and landscape plans (*Landschaftspläne*),
  13. The main provisions of granted building permits and advance decisions,
  14. Subsidy and grant awards,
  15. The key corporate data of municipal participations, including an overview of annual remuneration and fringe benefits at the top-management level,
- (2) The reporting bodies shall also publish, subject to §§ 4 through 7 and 9:
1. Contracts, in whose publication lies a public interest, insofar as economic interests of the Free and Hanseatic City of Hamburg would not be significantly affected,
  2. Operating procedures and any other information of public interest comparable to that described in para. 1 above and to this paragraph.
- (3) These and all other types of information fall under the duty of disclosure.

- (4) The duty to publish requirements apply to all authorities falling under § 2 para. 3. The duty to disclose requirements apply to all reporting bodies falling under § 2 para. 5.

#### § 4

#### Protection of Personal Data

- (1) Personal data are to be made unrecognizable when published on the information register. This shall not apply to
1. Contracts according to § 3 para. 1 no. 4 and according to § 3 para. 2 no. 1 with regard to the name of the contractual party;
  2. Expert opinions and studies according to § 3 para 1 no. 8 with regard to the name of the authors;
  3. Geodata according to § 3 para. 1 no. 9, insofar as its publishing is allowed pursuant to the current data protection provisions;
  4. The material provisions of issued building permits (*Baugenehmigung*) and advance decisions (*Bauvorbescheid*) according to § 3 para. 1 no. 13 with regard to the description of the land parcel number (*Flurstücknummer*); and
  5. Personal data in connection with government subsidies according to § 3 para. 1 no. 14, insofar as recipients of individual grants are concerned; personal data in the purpose (*Zweckbestimmung*) are not to be published.

The further limitations of the duty to inform set forth in § 9 shall be applied.

- (2) Name, title, academic degree, profession and functional description, business address and phone number of operator (*BearbeiterInnen*) are not subject to the duty to publish; these data is made available upon application, insofar as it is expression and result of the public occupation, no exemptions are fulfilled and it does not contradict legitimate security concerns.
- (3) Upon application, access to personal data is to be granted, if
1. allowed by legal regulation,
  2. crucial to avoid considerable disadvantages for the general welfare (*Allgemeinwohl*) or dangers to the life, health, personal freedom or other serious impairment of individual rights,
  3. the person affected has consented to the transmission, or
  4. there is a legitimate interest to the information which does not conflict with other prevailing protected interests.

- (4) Personal data of applicants, employees (public servants and normal employees) and former employees of departments being responsible to provide information are excluded from duty to inform. Para. 2 and § 3 para. 1 no. 15 remains unaffected.
- (5) In case personal data is to be released, the person affected shall be informed about the release, if this does not cause an unjustifiable expense and effort. If the release might affect interests worthy to protect, the releasing agency shall give the person affected the opportunity to comment prior to the release.

## **§ 5**

### **Exemptions from the Duty to Inform**

No duty to inform under this Act is required

1. for courts, prosecuting and law enforcement authorities, insofar as they were involved in their capacity as body of the administration of justice (*Organ der Rechtspflege*) or on grounds of special regulations in judicial independence, as well as for disciplinary authorities and public procurement bodies,
2. for the Court of Auditors (*Rechnungshof*), as far as it has been active in judicial independence; this does not apply to its reports,
3. for the State Office for the Protection of the Constitution (*Landesamt für Verfassungsschutz*), for information connected to the field of work of the working group Scientology (*Arbeitsbereich Scientology*) at the Authority for Internal Affairs and Sport (*Behörde für Inneres und Sport*), as well as for authorities and other public offices of the Free and Hanseatic City of Hamburg, as far as they carry out duties according to § 10 no. 3 of the Hamburg Security Screening Act as of 25 May 1999 (HmbGVBl., page 82), last revised on 17 February 2009 (HmbGVBl., pages 29, 32), each in its current version,
4. for processes of tax assessment (*Steuerfestsetzung*) and tax collection (*Steuererhebung*) as well as internal audits (*Innenrevisionen*),
5. for forecasts, assessments, recommendations or instructions in connection with the judicial or extrajudicial assertion or defence of claims,
6. for public service broadcasters with respect to journalistic-editorial information,
7. for basic research or application-oriented research; § 3 para. 1 no. 8 remains unaffected.

## **§ 6**

### **Protection of Public Interest**

- (1) Excluded from the duty to inform are the immediate decision-making process of the Senate, drafts, preparatory notes and preparatory comments.
- (2) From the duty to inform should also be excluded
  1. Drafts for decisions as well as works and resolutions for their immediate preparation, so far and so long as the early announcement of the information would foil the success of the respective decisions or of the forthcoming measures. Statistics, compilations of data, geo-data, regular results of the collection of evidence (*Beweiserhebung*), information (*Auskünfte*), expert opinions or statements of third parties do not serve the immediate decision-making according to sentence 1,
  2. Protocols and documents of the consultations which are protected by confidentiality provisions under special-laws, as well as documents which are protected by the classified material instruction for the Authorities of the Free and Hanseatic City of Hamburg.
- (3) The same applies to other information as far and as long as
  1. its publication would not just insignificantly endanger the international relations, the relations to the federal or a state government, the national defence, or the internal security,
  2. a court procedure, a preliminary investigation (*Ermittlungsverfahren*), an administration offence proceeding or disciplinary proceeding would be affected by its announcement,

## **§ 7**

### **Company and Business Secrets**

- (1) Company secrets and business secrets are all facts, circumstances and processes referring to an enterprise not being evident, but accessible only to a restricted circle of persons and whose owner has a legitimate interest of non-disclosure. A legitimate interest is given if the disclosure of a fact is likely to promote the competitive position of a competitor or to curtail the competitive position of the own company or if it is likely to cause economic harm to the bearer of the secrets. This does not apply to company secrets and business secrets in terms of § 35 para. 4 of the First Book of the Social Code as of December 11, 1975 (BGBl. I p. 3015), last revised on April 12, 2012 (BGBl. I p. 579, 599), each in its current version.
- (2) Information and contract elements which contain company secrets or business secrets are subject to the duty to inform only as far as the interest of information outbalances the secrecy interest.
- (3) Information submitted to authorities, company secrets and business secrets are to be marked and to be presented separately. The secrecy interest is to be demonstrated. By

the time of their publication or the information as requested, the confidential parts of the information are to be made unrecognizable or be separated. This can also be made through photocopy of the non-confidential parts. The extent of the parts separated or made unrecognizable is to be noted with reference to the presence of a company secret or business secret.

- (4) In case of an access to company secrets and business secrets as requested, the reporting body shall give the affected person the opportunity to comment prior to the disclosure.

## **§ 8**

### **Separation Rule**

The authorities should make suitable organizational arrangements, so that information which is subject to §§ 4 to 7 can be separated without disproportionate expense and effort.

## **§ 9**

### **Limitation of the Duty to Inform**

- (1) As far as the disclosure of information is forbidden by higher-ranking principle of law or special-legal regulations, a description of its object and title is to be published or to be made accessible in the extent permissible in accordance with this Act.
- (2) From the duty to publish excluded are:
  1. Contracts with an object value of less than 100,000 Euros, if the contracting parties have concluded contracts with an object value not exceeding 100,000 Euros in total in the course of the past twelve-months.
  2. Subsidy and allowance assignments with a value less than 1,000 Euros over a period of twelve months to one receiver.
  3. Granting of a building permission and a preliminary notice to an applicant, provided that it concerns pure residential area with a maximum of five residential units.
- (3) As far and as long as parts of information may neither be published nor be made accessible on request pursuant to §§ 4 to 7, the other parts are to be published or to be made accessible on request.

## **§ 10**

### **Form / Scope of the Duty to Inform**

- (1) Information in terms of § 3 para. 1 is to be published in its full text in electronic form in the information register immediately after the technical conditions according to § 18 a para. 2 are met. All documents must be easily discoverable, machine searchable and printable.

- (2) The contracts which are to be published at the time of their execution in accordance with this Act shall become effective at the earliest one month after their publication and the authority shall have the right to withdraw from the contract within this term. In case of imminent danger (*Gefahr im Verzug*) or impending heavy damages deviation from these provisions is permissible.
- (3) The use, further utilization and dissemination of the information is free, provided that higher-ranking law or special-legal regulations do not determine anything else. This does also apply to expert opinions, studies and other documents which are taken into account in the decisions of authorities or serve their preparation. Rights of use according to sentence 2 are to be excluded in connection with the procurement of information as far as they could conflict a free use, further utilization and dissemination.
- (4) The access to the information register is free and anonymous. The access will be provided over public communication nets. Access to the information register is granted in a sufficient degree in public spaces.
- (5) All published information must be provided in a reusable format. An automatic processing must be guaranteed and may not be limited by a platform-specific or system-conditioned architecture. The data format must be based on widespread and freely accessible standards and be supported and maintained by organisations independent of the respective manufacturer. An entire documentation of the format and all extensions must be freely available.
- (6) The information in the information register must be made available at least ten years following its last amendment.
- (7) If published information is amended or revised, the respective version must be retrievable beside the amendment at every time.
- (8) The information register also contains information which is to be published by the Free and Hanseatic City of Hamburg pursuant to other legal provisions.
- (9) The Senate is authorised to establish the provisions necessary to implement this Act by statutory order, in particular the details of the publication like concrete data formats or processing cycles to the fulfilment of the duty to publish.

## **Part 2**

### **Information on Request**

#### **§ 11**

#### **Request**

- (1) The request to access information shall be made in writing. An electronic or oral request is permissible.

- (2) The requested information is to be named in the application. Thereby, the applicant shall be advised by the respective authority. In case the respective authority has not the duty to inform itself, it shall identify the relevant body and name it to the applicant.

## **§ 12**

### **Access to Information**

- (1) The bodies having the duty to inform have to provide the information or to make the information medium accessible, which contains the relevant information, in accordance with the choice of the applicant.
- (2) In case of files of other authorities temporarily handed over, which shall not become part of the own files, the body having the duty to inform shall notify about this fact and name the competent authority to grant inspection of files.
- (3) The bodies having the duty to inform shall provide sufficient timely, factually and spatially possibilities for the access to information. The preparation of memos and notes is allowed. If the bodies having the duty to inform cannot comply with the provisions according to para. 1, they shall provide copies. §§ 17 and 18 of the Hamburg Procedure Act (VwVfG) apply accordingly.
- (4) The body having the duty to inform is to provide copies of the information on application, also by way of sending. If the applicant has not made a choice regarding the way of transmittal, in general, the cheapest way is to be chosen.
- (5) If information media can only be read by the help of machines, the body having the duty to inform provides the applicant at his request with the necessary reading devices together with the relevant reading instructions or with readable printouts.
- (6) The body having the duty to inform may refer to a publication being accessible via public electronic communications networks, if it names the place of recovery to the applicant.
- (7) Insofar as information requests cannot be fulfilled according to reasons set forth in § 4 (personal data) and § 7 (company and business secrets), the body having the duty to inform shall request the consent of the affected person or persons on demand of the applicant.

## **§ 13**

### **Decision on the Application**

- (1) The agencies providing data shall make the sought after information available in the desired form immediately, at the latest within one month following the receipt of the respective request.

- (2) The refusal of a request or the restriction of the desired access occurs within the term according to para. 1 by way of written notice including instructions on the right to appeal. Oral questions need to be answered only orally.
- (3) If the requested information cannot or not completely be made accessible within one month or if its extent or complexity requires an intensive review or check, the party being subject to the duty to inform can extend the term to two months. The applicant is to be informed about that fact in writing.
- (4) For official acts set forth in §§ 11 to 13, fees, interest and disbursements become due according to the Fee Act as of 5 March 1986 (HmbGVBl. page 37), last revised on 14 December 2010 (HmbGVBl. page 667), in its current version.

### **Part 3**

#### **The Officer for Data Protection and Freedom of Information**

#### **§ 14**

##### **The Hamburg Officer for Data Protection and Freedom of Information**

- (1) A person who takes the view that his request to information was not adequately handled or has been rejected wrongfully or has not been followed or that he has received an inadequate answer from a body being subject to the duty to inform can invoke the Hamburg officer for data protection and freedom of information. The right of every person to turn to the Hamburg officer for data protection and freedom of information according to § 26 para. 1 of the Hamburg Data Protection Act as of 5 July 1990 (HmbGVBl. page 133, 165, 226), last revised on 14 June 2011 (HmbGVBl. page 255), each in its current version, if he is of the opinion of being violated in his rights by the processing of his personal data within the scope of this Act, remains unaffected.
- (2) The Hamburg officer for data protection and freedom of information supervises the observance of the regulations of this Act. Appeal and legal position of the Hamburg officer for data protection and freedom of information are set forth in §§ 21 and 22 of the Hamburg Data Protection Act.
- (3) The bodies named in § 2 para. 3 and 5 are obliged to support the Hamburg officer for data protection and freedom of information and his or her representatives with the fulfillment of his or her duties. The Hamburg officer for data protection and freedom of information shall in particular
  1. be given information to his or her questions as well as to be granted the examination of all documents and acts which stand in connection with the concern of information, and
  2. be granted admission to offices.

Special professional secrets and secrecies are not contrary to this. If the Senate finds out in particular cases that the security of the federal government or a federal state is endangered by an announcement linked to the examination of information, the rights according to para. 2 may only be exercised by the Hamburg officer for data protection and freedom of information personally or from one of his or her representatives being particularly authorized in writing.

- (4) The Hamburg officer for data protection and freedom of information informs the citizens about questions of the duty to inform. She or he advises the Senate and the other authorities named in § 2 para. 3 and 5 regarding questions of the access to information and may give recommendations for the improvement of the access to information. On request of the Hamburg State Parliament, the input committee of the Hamburg State Parliament or the Senate, the Hamburg officer for data protection and freedom of information shall follow hints to matters and processes which concern its area of responsibility immediately. On requirement of the Hamburg State Parliament, the Senate or one quarter of the members of the Hamburg State Parliament, the Hamburg officer for data protection and freedom of information has to provide expert opinions and reports. Moreover, she or he presents at least every two years a report on the activities. She or he may turn to the Hamburg State Parliament at any time. Written statements towards the Hamburg State Parliament are to be presented at the same time to the Senate.
- (5) If the Hamburg officer for data protection and freedom of information ascertains offences against this Act by authorities liable to information set forth in § 2 para. 3 and 5, she or he shall demand the removal of such offence. In case of considerable injuries of the duty to inform, the representative complains:
1. in the area of the administration and the courts of the Free and Hanseatic City of Hamburg towards Senate member being responsible for the authority or court, in the area of the district administration towards the Senate member responsible for the district supervisory authority;
  2. in the area of legal entities under public law (and their institutions established under public law) being under the supervision of the Free and Hanseatic City of Hamburg towards the board of directors or such other organ having the power of representation;
  3. in the area of the Hamburg State Parliament and the Court of Auditors towards the respective president;
  4. in all other respects, towards the management as well as, for information purposes, towards the responsible Senate member.

First, the representative shall request the affected authority to give a statement within a term to be determined by him or her and inform the responsible supervisory authority about the objection. The Hamburg officer for data protection and freedom of information

shall combine the statement and objection with proposals for the removal of the defects and for other improvements of the access to information.

- (6) If the defects are not corrected in time, the Hamburg officer for data protection and freedom of information shall direct a further objection in the cases of para. 5 sentence 2 no. 1 and 4 to the Senate, in the cases of para. 5 sentence 2 no. 2 to the responsible supervisory authority and in the cases of para. 5 sentence 2 no. 3 to the president of the Hamburg State Parliament or the Court of Auditors.
- (7) The provisions on the legal protection according to the Law on Administrative Court Proceedings remain untouched.

#### **Part 4 Final Provisions**

##### **§ 15**

##### **Claims to Access Information according to other Provisions**

Regulations or special legal relationships which grant a further-reaching access to information remain untouched.

##### **§ 16**

##### **State Treaties**

The provisions of this Act shall be applied to state treaties (*Staatsverträge*).

##### **§ 17**

##### **Existing Contracts**

- (1) Contracts having been concluded before the introduction of this Act (existing contracts) which provide for the exclusion of their publication are not subject to the disclosure obligation.
- (2) If a request for information is made concerning an existing contract and provisions of the contract prohibit the granting of information, the contracting authority shall request the contracting party to enter into negotiations aiming at the release of the information. If no agreement can be achieved within a period of six months, the information shall be granted, as far as the interest of information outbalances the secrecy interest considerably.
- (3) The provisions of this Act apply to amendments or supplements of existing contracts.

**§ 18**

**Transitional Provisions, Entry into Force**

- (1) The duty to publish applies to information which has been taped before the introduction of this Act only as far as it is available in publishable electronic form.
- (2) The technical conditions for the implementation of this Act shall be established within two years after it has entered into force. The Senate shall report to the Hamburg State Parliament publicly about the progress of the conversion according to sentence 1 every six months after the Act has entered into force. At the latest four years following its entering into force, the Senate shall review the Act with regard to its use and effects under consideration of the reports of the Hamburg officer for data protection and freedom of information and reports to the Hamburg State Parliament about the result.
- (3) This Act shall enter into force three months after its announcement. At the same time the Hamburg Access to Information Act as of 17 February 2009 (HmbGVBl. page 29) in its current version expires.

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