

Access to environmental information in connection with the Lake Fertő Aquatic Centre development

Description of the case:

In the public procurement procedures concerning the development of Lake Fertő Aquatic Centre, the draft contracts required the use of a specific limited liability company (Ltd. company) to carry out the monitoring tasks. Applicant submitted a request to the company holding the relevant information (the data holder) – a nonprofit company dealing with tourism development - to access information regarding the selection process concerning the Ltd. company. The data holder did not comply with the request arguing that the requested data is information in support of the decision-making process and thus it may not be disclosed until selection of the successful tender.

Relevant legislation:

One of the main reasons for rejecting requests to access environmental information is the reference to data being information in support of the decision-making process. Subsections 5 to 7 of Section 27 of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (Privacy Act) lays down the provisions relating to data in support of the decision-making:

(5) Any information compiled or recorded by a body with public service functions as part of, and in support of, a decision-making process for which it is vested with powers and competence, shall not be made available to the public for ten years from the date it was compiled or recorded. Access to this information may be authorized by the head of the agency that controls the information in question upon weighing the public interest in allowing or disallowing access to such information.

(6) A request for disclosure of information underlying a decision may be rejected after the decision is adopted, but within the time limit referred to in Subsection (5), if the information is retained to support a future decision as well, or if disclosure is likely to jeopardize the legal functioning of the body with public service functions or the discharging of its duties without any undue influence, such as in particular the freedom to express its position during the preliminary stages of the decision-making process on account of which the information was required in the first place.

(7) The time limit for restriction of access as defined in Subsection (5) to certain specific information underlying a decision may be reduced by law.

It is a frequent problem that public authorities and other public bodies keep on applying these limitations to reject requests even after the decision has been made and data should be accessible.

The Hungarian Authority did not accept the data holder's reference to Subsection 5 of Section 27 of the Privacy Act, arguing that specifying the content of the public procurement documentation also qualifies as "decision", just as the draft contract being part of the documentation named the Ltd. company to perform the monitoring tasks. The data supporting the selection process of the monitoring company and the public procurement documentation are considered public information.

The data holder failed to refer to the provisions prohibiting access to the public procurement documentation and also failed to point out that in what way the access to data concerning the selection of the monitoring company and the public procurement documentation would jeopardize the conclusion of the procedure.

The importance of the case:

According to the Authority's position it is of utmost importance that when carrying out the public interest test based on Subsection 5 of Section 30 of the Privacy Act, the data concerning the selection

procedure of the monitoring company constitutes environmental information pursuant to Subsection (c) of Section 2 of the Government Decree 311/2005. (XII.25) on access to environmental information:

„Regardless of its medium all data concerning

c) environment-related measures, in particular sectoral policies, legislation, plans, programmes and agreements, as well as measures or actions taken to protect the environment and its elements;

constitutes environmental information.”

The appointment of the monitoring company provides protection for the area of Lake Fertő, a protected nature conservation area that is part of the world heritage and a significant bird protection site in Hungary thus there is an overriding public interest in the accessibility of data concerning the selection process.

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