

## FORMAL REQUIREMENTS AND PROCEDURE FOR SUBMITTING A REQUEST FOR ACCESS TO PUBLIC INFORMATION

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**Summary.** The Act on Access to Public Information is the basis for exercising the right of citizens and other entities to obtain information on public matters. This regulation, despite its undoubted advantages, contains numerous shortcomings that impede the proper implementation of the above mentioned right. The considerations undertaken in the present work relate primarily to the procedural provisions of this Act. The analysis of the regulations gives grounds for claiming that they are too general and therefore ambiguous, which hinders their proper application. This leads to the conclusion that it is necessary to introduce legislative changes, in particular regarding the clarification of formal requirements and the procedure for submitting a request for public information and the legal forms of its disclosure.

**Key words:** public information, application for providing public information, public information sharing procedure, legal form of providing public information.

### INTRODUCTION

The constitutional right to obtain information on the activities of public authorities and persons performing public functions, as well as other entities carrying out public authority tasks and managing municipal property or property of the State Treasury has been established in Art. 61 of the Polish Constitution.<sup>1</sup> It is assumed that the above mentioned right is aimed at ensuring the transparency of exercising public authority, facilitating its control, preventing the abuse of law and improving the functioning of administration [Wild 2016, 1421]. In the literature it is emphasized that this right has public, subjective and political nature [Tomaszewska 2015, 41–43]. The Constitution stipulates, first and foremost, that the right to obtain public information includes access to documents and admission to a meeting of collegiate bodies of public authorities which have been emerged in general elections as well as the simultaneous possibility of recording audio and video. As far as the procedure for providing information is regarded, the Art. 61, sect. 4 of the Constitution refers to the relevant law and provides that in relation to the Sejm and Senate, this procedure shall be specified in their regulations.

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<sup>1</sup> The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 2009, No. 114, item 946.

In order to implement the constitutional delegation, the legislator specified the procedure for making public information available in the Act on Access to Public Information.<sup>2</sup> This Act grants priority to non-request mode of an access to the public information [Bernaczyk 2008, 150–56].<sup>3</sup> Such a solution facilitates an access to information both from the point of view of entities obliged to provide public information and those who want to obtain it [Kędzierski 2014, 123]. The legislator's goal was to create the basis for ensuring broad access to public information and limit the procedure requiring submission of an application. Thus, the access to public information may consist solely of the factual activities of interested parties, i.e. getting acquainted with the content of information, in particular through the use of electronic devices, the Internet or other forms, without the need of initiating any proceedings<sup>4</sup> [Jabłoński 2009, 176–77; Szustakiewicz 2012, 61].

The lack of direct, unlimited access to public information obliges interested persons to submit an application. The analyzed Act does not require any particular form of a request for access to public information, which is supposed to simplify an access to this information, but at the same time it significantly hinders the operation of the authorities, and thus may adversely affect the implementation of the constitutional right to obtain public information.

This paper analyzes regulations of API relating to the form and procedure for submitting requests for obtaining public information, as well as those referring to formal deficiencies of a request and application of the Code of Administrative Procedure.<sup>5</sup> Not only the provisions of the Act have been analyzed, but also the case law of courts and statements of legal doctrine. The goal of the considerations is to systematize the problems related to the issue presented and to indicate precisely which formal requirements should be met by a request for obtaining public information, in what mode it should be submitted as well as in what situations and in what form it is necessary to correct the formal deficiencies of requests. The paper aims also at indicating the proper ways of ending proceedings.

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<sup>2</sup> Act of 6 September 2001 on Access to Public Information, Journal of Laws of 2019, item 1429 as amended [henceforth cited as: API].

<sup>3</sup> The basic tool for obtaining information in the non-request mode is the official ICT publisher – Public Information Bulletin and the so-called central repository widely available on the ICT network – Art. 8, 9a API.

<sup>4</sup> Limitation of the scope of information available upon request may be also a result of displaying public information in publicly available places or installing in such places devices which enable getting acquainted with the content of public information. Any possibility of free access to public information by means of an ICT network, displaying information in public, using other methods or devices resulting in the general, unlimited availability of such information shall limit the scope of information available upon request.

<sup>5</sup> Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2018, item 2096 as amended [henceforth cited as: CAP].

## 1. GENERAL CHARACTERISTICS OF THE PROCEDURE FOR OBTAINING PUBLIC INFORMATION

As indicated in the introduction, the Act on Access to Public Information grants the priority of non-request disclosure of public information, and thus favors the universal availability of a wide range of public information; simultaneously it restricts an access to information upon request. In addition, while implementing constitutional provisions, the Act provides for the right to openness and accessibility of collegiate meetings of public authorities coming from general elections, including protocols and transcripts of their deliberations (Art. 3, sect. 1, point 3 and Art. 18–20 API).

It should be noticed that if the proceedings are conducted solely on the basis of API, i.e. when: the entity displays public information, the entity does not have the information requested, the entity is inappropriate to provide information, the information requested is not public information within the meaning of the Act, there is a separate mode of providing information or the application has been directed to an entity which is not obliged to provide public information, the application is settled by means of a material and technical activity<sup>6</sup> [Jabłoński 2009, 176–77]. Actions of this kind cause specific legal effects through facts and not through the direct creation of a new norm of legal order [Starościak 1957, 299].<sup>7</sup> At the same time, it is worth emphasising that although providing public information should be qualified as factual activities of public administration bodies, these activities – as being undertaken in the sphere of citizens' rights and freedoms – are strictly regulated by generally applicable legal provisions and there is no place for administrative freedom in their implementation [Błaś 2007, 508, 515].

In relation to the general administrative procedure, referred to as the jurisdiction procedure, which aims to empower and unilaterally concretize the rights and obligations of the individual by means of an administrative decision [Janowicz 1995, 22; Adamiak 2010, 3; Zimmermann 1996, 11–13], procedure for access to public information has a specific meaning. It serves the implementation of the constitutional right to obtain information on the activities of public entities and does not lead to determine individual rights and obligations in an administrative act. This constitutional origins of the analyzed proceedings justifies the special mode of displaying public information, which should be – as a rule – publicly available. Therefore, in the activities of authorities and other entities providing for public information, there predominate material and technical activities strictly regulated by law. In these proceedings, disclosure of public information becomes the rule, while refusal to disclose or discontinuance of proceedings is an excep-

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<sup>6</sup> See judgement of Voivodship Administrative Court in Gliwice of 11 April 2018, IV SAB/GI 28/18, LEX no. 2482383.

<sup>7</sup> See more Masternak 2018, 116–26.

tion.<sup>8</sup> In the last two cases the entities obliged to provide information cannot end the proceedings by means of a material and technical activity, but – pursuant to Art. 16, clause 1 and 2 API – they should issue a decision under the Code of Administrative Procedure. Decision concerning disclosure of public information – as not issued in an individual administrative case within the meaning of Art. 1, point 1 CAP – is only one of the forms of termination of the proceedings and the provisions of the Code of Administrative Procedure – due to the unequivocal and narrow reference in Art. 16, clause 2 API – apply to such an understanding referring solely to the form of administrative decision<sup>9</sup> [Piskorz–Ryń 2019, 58]. The above considerations lead to the conclusion that the procedure for disclosing public information can be considered at most as an administrative procedure in the broad sense<sup>10</sup> [Knysiak–Molczyk 2015, 10] and as a particular regulation<sup>11</sup> which legal nature is still debatable.

## 2. FORMAL CONDITIONS OF THE REQUEST FOR ACCESS TO PUBLIC INFORMATION

As far as the submission procedure and formal requirements of the request for access to public information are concerned, it should be emphasized that these issues have not been precisely regulated in the analyzed Act. It is only indicated in Art. 10, para. 1 API that public information, that is not publicly available, may be disclosed upon a request. However, pursuant to Art. 10, para. 2 API public information, which can be immediately made available, is disclosed orally or in writing without a written request.

The above mentioned Act therefore allows both oral and written applications, however, providing for information on an orally-submitted application is limited primarily to situations when information can be immediately made available, i.e. information of a basic nature for a given entity, which its employee can provide without increased workload or additional effort [Fleszer 2010, 23]. In the case of the necessity of appropriate individual preparation of information or the inability to provide information, an oral application may prove ineffective<sup>12</sup> [Knopkiewicz 2004, 101].

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<sup>8</sup> See judgement of Supreme Administrative Court of 5 February 2019, I OSK 840/17, LEX no. 2624677.

<sup>9</sup> Judgement of Supreme Administrative Court of 4 November 2016, I OSK 1372/15, LEX no. 2169772.

<sup>10</sup> Nonetheless the concept of administrative proceedings in the broad sense is rejected by Adamiak 2017, 3.

<sup>11</sup> See justification of the above-mentioned judgement of the Supreme Administrative Court of 4 November 2016.

<sup>12</sup> The author indicates that an oral application is admissible only if public information can be made available immediately, and if this is not possible, the oral application is inadmissible. However, the presented thesis seems to be too far-reaching; it might be assumed that the oral application will be recorded in the form of an official note or protocol documenting submission of the application toge-

Apart from the statutory indication that the application may be submitted orally or in writing, there are no further detailed regulations in this regard. Hence, both in case law and the literature, the apt thesis is presented that a request for access to public information does not have to meet any specific formal requirements other than the obligation to be prepared in Polish as the official language [Sitniewski 2011, 166].<sup>13</sup> However, it should be emphasized that while in the case of disclosing public information only the provisions of the API are to be applied, in the event of refusal to disclose it, additionally the Code of Administrative Procedure must be applied. And this is a Code which regulates the procedure and formal requirements of the application in more detailed way.

Pursuant to the above deliberations, an application for access to public information may be submitted in any mode and form provided that the entity which is obliged to decide upon a request has technical possibilities to receive it. The request for disclosure of information does not have to meet any specific requirements, however, its content must clearly raise the request for an access to public information in the mode of the analyzed Act as well as the scope of the request, and thus what specific information the applicant wants to obtain. It should be noted that pursuant to Art. 14, para. 1 API disclosure of public information upon request takes place in a manner and form compatible with the form of request, unless the technical means being at the disposal of the entity obliged to provide information do not enable the provision of information in the manner and in the form specified in the request. Therefore, it depends on the applicant in what mode the public information will be made available to him, provided that the entity obliged to decide on a request is technically able to comply with it.

In practice, the actions of bodies and entities obliged to provide public information are usually performed in writing via the postal operator or electronic mail. Persons requesting information usually indicate the form in which they want to receive information or do not specify it at all, which requires that the information should be made available in the form in which the application has been submitted.

In the lack of relevant regulation, it should be also considered whether the application may be submitted anonymously. Such a view seems to be justified by the fact that the Act on Access to Public Information in Art. 2, clause 1 grants everyone the right to public information; furthermore, pursuant to Art. 2, clause 2 API, a person exercising the right to public information may not be required to prove legal or factual interest. However, it cannot be excluded that the content of an anonymous application may rise doubts, what in turn generates problems if it is necessary to specify or complete the request.

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ther with the address, on which the information is to be forwarded and then after its preparation, which might need some more time, it will be made available to the applicant.

<sup>13</sup> The author also indicates the possibility of submitting the application in the so-called an auxiliary language, i.e. a national and ethnic minority or a regional language. From the latest case law see: judgement of the Supreme Administrative Court of 18 January 2019, I OSK 1742/18, LEX no. 2608700, as well as the judgement of the Supreme Administrative Court of 22 March 2018, I OSK 2453/16, LEX no. 2495282.

The admissibility of submitting anonymous applications, i.e. neither traditionally nor electronically signed, as well as those not indicating their author, raises controversies in the doctrine of law [Kowalska 2012, 41–50; Szustakiewicz 2015, 140; Taczowska–Olszewska 2014, 262–63], however, *de lege lata*, a different interpretation of the law seems unjustified [Sitniewski 2011, 160; Aleksandrowicz 2008, 240]. On the one hand, this facilitation allows for wide and free access to public information, on the other, it threatens the appropriate realization of the right to obtain public information and creates a significant impediment to the proper functioning of entities obliged to provide for public information.

Assuming the correctness of a thesis that the request for an access to public information does not in principle need to meet any specific formal requirements and can be submitted in any mode, a reference should be made to the situation of conducting the procedure for disclosure of public information according to provisions of the Code of Administrative Procedure. The key regulation related to this issue is Art. 16 API, which provides in para. 1 that the refusal to provide public information and discontinuation of the procedure for disclosure of information by a public authority in the case specified in Art. 14, para. 2 shall require a decision and – in para. 2 – that for the decisions referred to in para. 1, the provisions of the Code of Administrative Procedure shall apply, except that: 1) an appeal against a decision shall be recognized within 14 days and 2) the justification of the decision refusing an access to information shall also include the names, surnames and functions of the persons who took a position in the course of the procedure for disclosure of information, and the designation of entities, which interests and goods referred to in Art. 5, para. 2 have been a reason for a decision refusing an access to information.

The general administrative procedure precisely defines the formal conditions of a request (application) primarily in Art. 63 CAP. The basic requirement for each application is either a manual party's signature or a signature of a person authorized by a party who is unable to sign by himself or using one of the forms of electronic signature<sup>14</sup> [Adamiak 2014, 325]. A handwritten signature or an equivalent electronic form allows the identification of the author of the application and makes it possible to assume that the statement is a procedural declaration of intent of the party. The facsimile, stamp, computer printout or copy of the signature sent by fax or an e-mail cannot be considered as a signature. It should be noted that although the application may be submitted orally by a party, it must be written down by an employee of the authority in the form of a report and signed by the applicant and the person preparing the report.

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<sup>14</sup> According to Art. 63, para. 3a, points 1 and 2 CAP the application submitted in the form of an electronic document should: be authorized by the mechanisms specified in Art. 20a, para. 1 or para. 2 of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks; and contain data in a set format provided in the specified application set out in separate regulations, if those regulations require that applications be submitted according to a specific formula.

To sum up this part of the considerations, it should be stated that the application for access to public information does not have to meet specific formal requirements and can be submitted in any way that allows the entity to read it and provide the requested information.<sup>15</sup> However, if the entity obliged to disclose information is to issue a decision refusing to provide information or discontinuing the proceedings on disclosure of information, it is necessary for the application to meet the requirements set out in the Code of Administrative Procedure.

### 3. CORRECTING FORMAL DEFICIENCIES OF THE REQUEST FOR AN ACCESS TO PUBLIC INFORMATION

The view assuming that the application for an access to public information requires fulfilling the formal conditions provided in the Code of Administrative Procedure only in proceedings regarding refusal to disclose public information or discontinuance of proceedings, implies further consideration of the manner in which the authority may request for supplementing deficiencies of an application.

The Act on Access to Public Information does not contain any regulations regarding the procedure for supplementing the formal conditions of applications [Cybulska 2019, 71–73]. This lack of regulations does not create any doubts or problems only if the application has been made in an unequivocal manner, it relates to simple public information and the applicant has provided both necessary data concerning his person and clear instructions as to how the information shall be disclosed, e.g. a postal or electronic address. All actions of entities conducting proceedings for disclosure of information based solely on the analyzed Act, aimed at obliging applicants to specify or supplement their applications, will materialize the right to good administration, which implies, among others, the obligation to provide necessary explanations and instructions [Kmieciak 2014, 114–15]. It is also good practice in administration to respond to any letter submitted by an external entity.

Due to the lack of regulations regarding the manner of supplementing formal deficiencies in requests for access to public information, it should be assumed that in case of doubts as to the content of a request, the entity addressed may re-strain itself to sending a letter to the applicant in which it explains its doubts and informs about the necessity of renewing the properly specified application [Kamińska and Rozbicka–Ostrowska 2016, 264]. It is assumed aptly in the jurisprudence that submitting an imprecise, unclear request for access to public information does not create an obligation of the authority to provide information, because in fact it does not constitute a request for public information within the meaning of Art. 1, clause 1 and Art. 10, para. 1 API, and as a result is not subject to consideration in its mode.<sup>16</sup>

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<sup>15</sup> Judgement of Supreme Administrative Court of 18 January 2019, I OSK 1742/18.

<sup>16</sup> Judgement of Supreme Administrative Court of 25 August 2016, I OSK 219/15, LEX no. 2142145.

The similar conclusion refers to situation in which the application for disclosure of public information does not contain data enabling provision of relevant information, i.e. an address enabling delivery or an indication that the applicant intends to collect the answer by himself on the premises of the entity; in that case non disclosure of information may not be considered as inappropriate. However, if the authority already has an appropriate address owing to previously received inquiries for public information or is able to determine the address itself, as the applicant is known, it should provide public information according to its knowledge.

Another problem resulting from the lack of detailed regulation in the Act on Access to Public Information concerns the issue of determining the legal capacity of a party requesting access to public information. Although Art. 2, clause 1 API states that everyone has the right of access to public information, the doctrine stresses that natural persons requesting for public information should be of legal age and incapacitated, and if the request is made by another entity that has no legal capacity, e.g. a group of citizens, then it should be treated as if it has been submitted by several natural persons [Szustakiewicz 2015, 22–23]. If the application is submitted on behalf of a legal person and the natural person acting on its behalf has not demonstrated its right to represent it or the documentation shows that it is not properly authorized, such application should be treated as originating from a natural person acting on behalf of himself.<sup>17</sup> Since anyone can apply for access to public information, and the Act does not provide for specific formal conditions of the application, obliged entities not having complete data on the correctness of the representation of a legal person or organizational unit should provide information to the natural person who has issued the request. This conclusion also stems from the need to maintain strict, short deadlines, which are provided for disclosure of public information (Art. 13, sect. 1–2 API).

However, if the entity obliged to provide information has reasonable doubts as to whether the person requesting access to information has legal capacity, then it should demand the submission of relevant documents confirming these facts. The act, as it has been already indicated, does not refer to this issue, which raises significant doubts concerning both the legal form of this request and the consequences of not providing an appropriate answer. However, it seems that in this situation the authority should, taking into account the standards arising from the principle of good administration, send a demand to clarify doubts in this respect with the instruction that the lack of response shall be tantamount to the factual termination of the procedure on disclosure of public information. In such cases, it is not permissible to issue an administrative decision pursuant to Art. 16 API as well as according to the provisions of the Code of Administrative Procedure, as the Act on Access to Public Information refers neither to Art. 64 nor Art. 61a CAP.

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<sup>17</sup> Differently Szustakiewicz 2015, 24–25.

The entity addressed is obliged to proceed in different mode in case of necessity of issuing a decision based on Art. 16 API. In such a situation the proceedings for access to public information shall be conducted on the basis of both the analyzed Act and the Code of Administrative Procedure. Therefore, the entity will be obliged to analyze if the submitted application for access to information meets the basic requirements specified in Art. 63 CAP. Formal deficiencies of the application concerning, amongst other, the appropriate indication of the entity requested for access to information along with the address and signature of a party will preclude the issuing of a correct decision pursuant to Art. 107 CAP and its delivery in accordance with the codex mode.

It seems to be unjustified assumption that if the authority finds it necessary to issue an administrative decision refusing access to public information, then it initiates proceedings in this matter *ex officio*.<sup>18</sup> It should be noted that the procedure for access to public information in the face of lack of its public availability may be commenced only on the basis of the application submitted by an interested person. The mere fact that the authority is to issue a decision refusing an access to public information or discontinuing proceedings does not transform the nature of the proceedings and does not allow to treat it as if it was initiated *ex officio*. The procedure for disclosure of public information is initiated by the request of a person regardless of how it is completed, and therefore it always has the features of an application procedure with all the consequences arising from the provisions of the discussed Act, as well as the Code of Administrative Procedure regarding the issuing of an administrative decision. The person who requests the disclosure of information is the disposer of the proceedings in this case, may modify the application, change the form of disclosure of information, and withdraw it at any time. If the authority conducted the proceedings *ex officio*, the applicant would have limited procedural rights. In addition, it should be noted that neither Art. 16 API nor any other statutory regulation, gives basis for the initiation of the proceeding on access to public information *ex officio* by the public authority or other entity. The judgements of administrative courts reasonably emphasize that the decision refusing an access to public information is an alternative to the act of disclosure of public information and is a kind of refusal to accept the application initiating the matter of disclosing public information.<sup>19</sup> Therefore, since the obligated entity performs the act of providing public information upon request, also the proceedings regarding the refusal to provide information or discontinuance of proceedings are undertaken only upon the request and not *ex officio*.

In case of proceedings concerning an access to public information going through the stage of refusal to disclose information or discontinuing the proceedings pursuant to Art. 16 API there arises an obligation of the entity to initiate the

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<sup>18</sup> Such a thesis has been presented – without any broad argumentation – by Jaśkowska 2002, 60 and the Voivodship Administrative Court in Krakow in the judgement of 21 December 2018, II SAB/Kr 215/18, LEX no. 2606887.

<sup>19</sup> Judgement of Supreme Administrative Court of 4 November 2016, I OSK 1372/15.

phase of correcting formal deficiencies of request. If it is necessary to issue a decision, the entity should first of all determine who submitted the application and then demand supplementing formal deficiencies pursuant to Art. 64, para. 2 CAP, of course if they exist.<sup>20</sup> Issuing a decision under the Code of Administrative Procedure on the basis of an application burdened with formal deficiencies, may be considered as gross violation of the law specified in Art. 156, para. 1, item 2 CAP<sup>21</sup> [Jabłoński 2013, 101–105].

The authority obliged to provide public information after finding the necessity to issue a refusal should call the party to correct any formal deficiencies, otherwise the application will not be examined (Art. 64, para. 2 CAP). However, a significant difficulty may be the lack of address and other data identifying person who requested the information. If it is impossible to properly deliver the summons, the authority will be obliged – pursuant to Art. 64, para. 1 CAP – to leave the application without recognition.

Court rulings as well as legal doctrine clearly support the thesis that an application for access to public information may be submitted via e-mail, even without the use of a secure electronic signature<sup>22</sup> [Symbler 2018, 133–41; Piskorz–Ryń 2019, 59–60]. The Code does not provide for submission of an application by ordinary electronic mail, as it is impossible to make a proper electronic delivery. Bearing in mind the above-mentioned Code regulation, the court case-law presents the view that submission of a request by ordinary electronic mail to the e-mail address of a public administration body that is not an electronic inbox does not have legal effects, i.e. does not initiate proceedings before a public administration body.<sup>23</sup> Correct submission of the application should take place using the electronic inbox, which is not the address of the ordinary electronic mail authority.<sup>24</sup> The above mentioned view based on the formal interpretation of Art. 63, para. 1 CAP, although presented inconsistently by administrative courts,<sup>25</sup> has its clear legitimacy in the provisions of the Code. In addition, even if one assumes that the Code allows for submitting an application by an ordinary electronic mail without using an electronic inbox, there will remain the problem of the method of delivery of a request, if the applicant has not indicated his address of residence

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<sup>20</sup> Judgement of Supreme Administrative Court of 10 December 2018, I OSK 1574/18, LEX no. 2598732.

<sup>21</sup> Judgement of Voivodship Administrative Court in Warsaw of 6 October 2017, II SA/Wa 109/17, LEX no. 2399183.

<sup>22</sup> From the latest rulings see judgement of the Voivodship Administrative Court in Gliwice of 4 April 2018, IV SAB/GI 78/18, LEX no. 2482918.

<sup>23</sup> Judgement of the Voivodship Administrative Court in Warsaw of 16 February 2018, VII SA/Wa 1046/17, LEX no. 2465739 together with the literature provided there and administrative court rulings.

<sup>24</sup> It should be also noticed that currently it is not possible to submit an application via an electronic inbox with use of a normal e-mail address.

<sup>25</sup> See, unlike the judgement cited above, the judgement of the Voivodship Administrative Court in Gdańsk of 26 April 2017, II SA/Gd 39/17, LEX no. 2278566, as well as the judgement of the Supreme Administrative Court of 23 February 2018, II OSK 1901/17, LEX no. 2450427 and the judgement of the Supreme Administrative Court of 10 December 2018, I OSK 1574/18.

or electronic address enabling proper delivery, when submitting the application. Drawing attention to the formalization of the procedure for disclosure of public information, it is justified in this case to ask the applicant to provide for a traditional or electronic address allowing to proper delivery of the summons, and, as a consequence, other pleadings and decisions. The applicant's failure to respond to such a demand may result in termination of the proceedings pursuant to Art. 64, para. 1 CAP.

In other cases, when the entity addressed intends to correct the formal deficiencies of the application before issuing a decision based on Art. 16 API, it should call for their supplementation pursuant to Art. 64, para. 2 CAP under rigor provided in this provision. Examination of the application containing formal deficiencies by issuing an administrative decision refusing access to information or discontinuing proceedings, as indicated, shall be considered as a gross violation of law.

At the same time, it is important to indicate that the lack of payment of a fee that may be charged to the applicant pursuant to Art. 15, para. 1 and 2 API is not a formal lack of a request for access to public information. If making public information available in the course of proceedings commenced on the basis of a request entails additional costs on the obliged entity, it shall notify the applicant of the amount of the fee. Within 14 days of notification of the amount of costs, the applicant may modify his application as to the method or form of providing information, so that it does not generate additional costs, or withdraw the application. In case of lack of an appropriate fee, the entity addressed should provide information; then, the costs generated in the course of preparing information shall be sought by way of administrative enforcement [Sitniewski 2011, 217–19; Jaśkowska 2002, 63–65].

It should also be emphasized that as far as the a request for access to processed public information is concerned, the lack of justification indicating that the disclosure of public information is particularly important for the public interest – according to Art. 3, clause 1, point 1 API – is not considered as a formal deficiency of an application. The entity obliged to provide information should disclose processed information only if the applicant demonstrates the existence of the above mentioned qualified condition. In a situation when the request for access to processed public information does not contain a justification, the entity should demand demonstrating whether disclosure of information is particularly important for the public interest [Jabłoński 2015, 188–205]. The obligation to summon does not arise directly from the Act on Access to Public Information and is rather an obligation treated as an entity's activity fulfilling the requirements of good administrative practices, and not strictly a legal obligation. If, despite the demand, the request is not justified, then the entity addressed should issue an administrative decision refusing to provide processed public information. The absence of a premise of special significance for the public interest in the provision of processed public information is a material, not a formal nature [ibid.].

#### 4. WITHDRAWAL OF A REQUEST FOR ACCESS TO PUBLIC INFORMATION

In the above considerations it has been pointed out that, in general, proceedings for access to public information are conducted only on the basis of an Act on Access to Public Information, and only in a limited number of cases they are also based on the Code of Administrative Procedure. Therefore, withdrawal of the application by a person who submitted it does not require any special form. In case of withdrawal of the application the entity obliged to provide information should only make an appropriate official annotation in the case file or notify the party by letter that because of the withdrawal of the application it ends its examination. The above statement seems to be correct not only in relation to proceedings pending solely on the basis of the Act on Access to Public Information, but also when the obliged entity intended to issue an administrative decision. It should be noted that the scope of referring to the Code of Administrative Procedure is limited. Only refusal to provide public information and discontinuation of proceedings for access to information in the case referred to in Art. 14, para. 2 takes place on the basis of a decision issued pursuant to the Code. The analyzed Act does not refer to the issue of withdrawal of the application and the legal form of termination of the proceedings in this case. Therefore, it should be assumed that the termination of the proceeding in the circumstances discussed should take the form of a material and technical activity.

A different position should be adopted only if the request for public information is withdrawn at the appeal stage. In such a situation, a decision refusing an access to public information or discontinuing the proceedings has been already issued and the appeal proceedings are conducted on the basis of the Code of Administrative Procedure. The content of decisions that can be taken in the appeal proceedings has been strictly defined. In addition to the provisions on the inadmissibility of an appeal and finding a failure to comply with the time limit for lodging an appeal (Art. 134 CAP), the appeal body in the form of a decision maintains the contested decision in force, repeals it in whole or in part and issues substantive decision in this respect or discontinues the proceedings of the first instance bodies, discontinues appeal proceedings or annul the contested decision and refers the case for reconsideration (Art. 138, para. 1 and 2 CAP). It should be assumed that in case of withdrawal of the request for access to public information at the stage of the appeal procedure, the entity is no longer interested in obtaining information, so that the entire procedure in such circumstances becomes irrelevant. The body examining the appeal should therefore annul the contested decision and discontinue the proceedings of the first instance body regarding the disclosure of public information pursuant to Art. 138, para. 1, point 2 CAP [Kamińska and Rozbicka–Ostrowska 2016, 317]. The applicant at all stages of the procedure for disclosure of public information has the right to freely dispose of his request.

## CONCLUSIONS

The Act on Access to Public Information ensures the implementation of citizens' right to information on public matters and increases the transparency of public entities. Despite the significant role that this regulation plays, the provisions regarding the procedure for making public information available, in particular those related to providing information on request, cannot be assessed positively. While the use of indefinite phrases by the legislator has its undoubted advantages associated with the possibility of adapting the interpretation of substantive law to changing external conditions, and thus promotes the proper implementation of the basic objectives of the Act, the formal provisions regarding the procedure for providing information should be precise and unambiguous [Jabłoński 2009, 261–64]. The analyzed statutory solutions regarding in particular the form of the request for access to public information and the procedure for its submission and subsequent disclosure of information through its vague nature do not allow for their proper and reliable application by entities obliged to provide information, and thus do not provide sufficient guarantees of the implementation of the subjective right to obtaining information by citizens and other persons. The lack of legal certainty limits the implementation of the fundamental principles of the rule of law and results in a loss of confidence in its organs.

It seems quite obvious that the above mentioned Act requires changes and clarification of provisions regarding the procedure for making information available. It is necessary to limit the possibility of submitting anonymous applications, as well as to introduce a transparent procedure to correct formal deficiencies in requests for information. The Act should also clearly specify the legal form in which the information is made available, and also respond to requests submitted to the wrong entity, not regarding public information, aimed at obtaining processed information and constituting an abuse of the right to information. Furthermore, the relations between the Act and the Code of Administrative Procedure should be precisely defined.

The necessity of these changes is visible in the light of the analysis of rich and heterogeneous judicial decisions regarding the provision of public information, and above all in those situations in which entities applying the Act encounter legal loopholes that prevent or greatly impede the application of this regulations. Legislative changes should lead to clarifying and ordering regulations in the field of providing public information while ensuring full exercise of the right to access public information.

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#### WYMOGI FORMALNE I PROCEDURA SKŁADANIA WNIOSKU O UDOSTĘPNIENIE INFORMACJI PUBLICZNEJ

**Streszczenie.** Ustawa o dostępie do informacji publicznej stanowi podstawę do realizacji prawa obywateli oraz innych podmiotów do uzyskania informacji o sprawach publicznych. Regulacja ta pomimo niewątpliwych zalet zawiera liczne mankamenty utrudniające prawidłową realizację wskazanego prawa. Rozważania podjęte w przedmiotowej pracy odnoszą się przede wszystkim do przepisów proceduralnych tej ustawy. Analiza przepisów uwidacznia, że są one zbyt ogólne, a przez to niejednoznaczne, co utrudnia właściwe ich stosowanie. Prowadzi to do wniosku o konieczności wprowadzenia zmian legislacyjnych w szczególności w zakresie doprecyzowania wymogów formalnych oraz trybu składania wniosku o informację publiczną oraz form prawnych jej udostępniania.

**Słowa kluczowe:** informacja publiczna, wniosek o udostępnienie informacji publicznej, tryb udostępniania informacji publicznej, forma prawna udostępniania informacji publicznej

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