
State of Play: PSI Re-use in Slovenia

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Abstract

This report summarises and discusses policy, legislation and practice in the field of PSI re - use in Slovenia. It answers several key questions:

- where to find information for re -use,
- what is the procedure to get it,
- what are the conditions of re - use and
- is there an appeal procedure.

Key words

Public Sector Information, Directive 2003/98/EC, PSI Re-use Slovenia

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The [European Public Sector Information \(PSI\) Platform](#) is funded under the European Commission [eContentplus programme](#).

Introduction

The public sector collects, produces, reproduces and disseminates a wide range of information in many areas of activity. This includes social, economic, geographical, weather, tourist, business, patent, justice, culture, educational and political information, and re-use of this information is in the interest of different applicants. The motto of PSI re-use in Slovenia is based on the premise that the creation of public sector information is financed by public, i.e. government budget sources, and can therefore not be regarded as public sector property but rather property of the people. Re-use is not only in the interest of private sector. There are benefits for all –private sector, public sector and users of the information.

Legislation

The area of PSI re- use in Slovenia is governed by the Access to Public Information Act (Official Gazette of the Republic of Slovenia, no. 24/2003 – together with changes and additions of the Act, APIA¹) and the Decree on the provision and re-use of public information (Official Gazette, No. 76/05²). As in some other European countries, the APIA also covers freedom of Information. In accordance with APIA, re-use of documents held by public sector bodies, is the use of this information by natural or legal entities, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced³. **All state bodies, local government bodies, public agencies, public funds and other entities of public law, public powers holders and public service contractors are obliged to proceed under this act.** The APIA thus covers all three branches of authorities: executive, legislative and judiciary. It also covers private public services contractors and managers of public expenditure (public agencies, public funds and other entities of public law, public powers holders and public service contractors).

The scope of PSI is defined broadly. According to Article 4 of the APIA⁴ PSI is defined as “a document that has been created”, originating from the field of work of the bodies, drawn up by the body, or acquired by the body from others. **The bodies, subject to APIA, are obliged to enable re-use of the existent information and are not obliged to create new documents, collect information, perform researches, analyse data or create answers to questions to satisfy the applicant’s request.** The only exception is the information in computer data bases made in connection to the body’s activity. The obligation to release the information and permit re-use of it is only bound to the so called “raw” information.

In principle, all the information held by the public sector bodies, to which access is allowed, may also be re-used. There is only one general exemption - **archive material held by the competent Archive**, within the frame of public archive service in accordance with the Act governing archives, is not subject to APIA. However, archive material is widely accessible (and available for re – use) according to the Protection of documents and archives and archival institutions act (Official Gazette of the Republic of Slovenia, No. 30/06)⁵.

¹ English translation of the APIA available here: <http://www.ip-rs.si/index.php?id=324>

² English translation of the Decree available here: http://www.mju.gov.si/en/freedom_of_public_information/

³ See Article 4, paragraph 3 of the APIA

⁴ See Article 4, paragraph 1 of the APIA

⁵ English translation of this Act available here: <http://www.arhiv.gov.si/fileadmin/arhiv.gov.si/pageuploads/zakonodaja/ZVDAGAA.pdf>, see Article 63

According to Article 6, paragraph 6, the public body shall also deny the applicant's request to re-use information, if the request relates to:

- Information, defined by APIA as an exception from the publicly accessible information held by public sector (personal information, business secrets, etc.)⁶
- Information protected by the intellectual property rights of third parties, or
- Information held by bodies performing public services of public radio-television or bodies performing public service in fields of education, research and cultural activities, or
- Information for which another Act stipulates accessibility only to authorized persons.

Where to find which PSI is available for re- use and what is the procedure to get it?

To take full advantage of the economic value of information collected by the public sector when executing its tasks, it is particularly important that the public has an overview of the information accessible and available for re-use.

In Slovenia, each public body is obliged to publish a catalogue of public information, which describes which information is in the field of work of the public body. Additionally, Ministry of public administration, which acts as a centralised body, dealing with access and re – use of PSI, is in charge of publishing on the Internet and of updating regularly:

- **E-Government**, a database of all the information which the public sector bodies publish on the Internet (draft laws, programmes, strategies etc)⁷;
- **Informative Catalogue of Public Bodies**, which provides the citizens with the information which bodies are liable under the APIA⁸;
- **National catalogue of Public Information**, which is a database of the catalogues of the information of the individual public sector bodies. The national catalogue of public information is meant to help users ascertain what information a given PSI holder possesses. Applicants can request information listed in the catalogue and also other information that might be omitted from it. The catalogue is only meant to serve as a source of information and not as a legally binding register, and as such does not affect the accessibility and re-use of PSI. The national catalogue is updated regularly and is easily accessible both on the website of the Ministry of public administration⁹ and on the joint government portal *e-government*.
- **Joint Annual Report** (the content is prescribed by Article 28 of the Decree on the provision and re-use of public information¹⁰).

The APIA stipulates that the request for PSI re-use may be informal (oral) or in writing (formal). However, only the applicant who files a written request shall enjoy legal protection¹¹.

⁶ See Article 6, paragraph 1 of the APIA

⁷ <http://e-uprava.gov.si/e-uprava/en/portal.euprava>

⁸ http://www.mju.gov.si/si/informacije_javnega_znacaja/katalog_zavezanih_organov/

⁹ <http://www.ckijz.gov.si/index.php>

¹⁰ English text available here: http://www.mju.gov.si/en/freedom_of_public_information/

¹¹ See Article 13 of the APIA

The applicant shall file a request for PSI with the body which is considered by the applicant to hold such information. According to Article 17 of the APIA, in his request, the applicant has to specify:

- The information he wishes to get acquainted with,
- The way he wishes to get acquainted with the contents of the requested information (consultation on the spot, a transcript, a copy, an electronic record),
- And the purpose he wishes to re-use the information for (commercial or non-commercial purposes).

If the public body, which has received the request, does not hold the information, it must immediately, within the time limit of 3 working days, assign the request to the body which is competent for resolving the request and notify the applicant.

According to Article 23 of the APIA, the time limit for the decision of the public body is 20 working days beginning from the day of receiving the complete request. **The public body shall decide about the request immediately and at the latest within the time limit of 20 working days.** If the body charges for the re-use or, in accordance with the APIA, states other conditions, it shall issue a written decision.

What are the conditions of re - use?

The APIA provides for the transparency of the conditions of re-use. Re – use is open to all applicants at the same price and under the same conditions. PSI holders in Slovenia are obliged in advance to publish on their websites all conditions of re-use, information on pricing and charging policy, as well as the cost calculation method according to which they will consider special requests¹². **The general principles, that must be followed by the PSI holders, are: non discrimination, prohibition of exclusive arrangements, the number of applicants to which re – use is granted shall not be limited and the price for re-use of PSI shall be non-discriminatory for comparable categories of re-use.**

The Directive 2003/98/EC gives the member states the discretion to set the prices for PSI re-use. The members can regard PSI as freely available or establish a charging policy, however, in the latter case the members have to comply with the Directive's provisions regarding the prices of public information. The set price should be foremost based on recovery of costs, together with a reasonable return on investment.

Slovenia has adopted a unique pricing and charging policy in the sense, that the charging of re-use is determined according to the intended purpose of the re-user. The public body *may charge for the PSI re-use for commercial purposes*, except in cases of re-use for the purpose of providing information, ensuring the freedom of expression, and re-use of information for purposes of culture and art and media's re-use of information¹³. **This means that the body may charge for commercial re-use of information, however, it is not obliged to do so.** The price may not exceed the costs of collecting, producing, reproducing, and disseminating, together with a reasonable return on investment. **The public body may not charge for the PSI re-use, if it transmits the same information over the internet free of charge.**

¹² See Article 36, paragraph 2 of the APIA

¹³ See Article 34a of the APIA

The body is obliged to provide the information in electronic version whenever possible. However, for PSI re-use, it is not obliged to transform the data into different form or provide abstracts of documents, when this would require disproportionate effort beyond simple procedure¹⁴. The body is also not obliged to continue creating certain information only for the purpose of re-use by other bodies or other persons.

In the request for re-use of PSI the applicant has to clearly state the commercial or non-commercial purpose of the information re-use. The purpose is defined foremost with the applicant's legal organizational form or status and activity, and with the proposed way of the information re-use, including the conditions under which the information may be transmitted to public. When the body charges the re-use of the public sector information, it may require from the applicant an advanced deposit of the assessed amount for the full coverage of the costs of information transmission and a proof of payment. As a precondition to commercial or non-commercial re-use of information, the body may always request a reference to the source of information that consists of the name "Public Information of Slovenia" and the name of the body.

According to APIA the public sector too, can re-use its own information (and charge it to the users). In this case, though, when using the documents as entry data for its business purposes outside the field of public functions, the same prices and conditions must be applied both for the public body itself as well as for other parties on the re-use market.

Is there an open appeals process? How does it work?

The APIA provides for two appeal possibilities. The first is when the public body fails to provide answer within 20 working days, and the second when a negative decision has been issued and the applicant is not satisfied with the result. The appeal is lodged with the Information Commissioner¹⁵ who acts as an autonomous and independent state body. Decisions of the Information Commissioner are legally binding; so as to fully safeguard the rule of law and the possibility of judicial review, however, the appellant may then also seek redress against a decision of the Information Commissioner by means of an administrative dispute before the Administrative Court.

Conclusion

The general policy of Slovenia is very supportive of improving access to and enhancing re-use of public sector information. There is a comprehensive well-functioning public system which is transparent and fully open to competition in the re-use of public sector information. Pricing policy is clear and designed to minimise costs for re-use.

¹⁴ See Article 5. Paragraph 4 of the APIA

¹⁵ <http://www.ip-rs.si/?id=195>