How to assess applications: guidelines for the authorities[1]

The Freedom of Information Act (FoIA) sets out in law a general right of access to official documents at federal level. It also incorporates measures to protect justified confidentiality interests. If access to a specific document is requested, the entities responsible for processing the application must consider a series of points[2].

Further information about procedural and substantive issues relating to access and mediation proceedings in accordance with the Freedom of Information Act can be found in the FAQs.

1 Formal aspects

1.1 Responsibility for the processing of the application

Responsibility for processing the access application lies with the authority that created the document or that received the document as the primary addressee from third parties not subject to the FoIA (Art. 10 para. 1 FoIA).

If the application was submitted by mistake to an authority that is not the author or primary addressee of the document requested, the authority addressed must forward the application ex officio and without delay to the authority responsible (see also the Dispatch on the Freedom of Information Act BBl 2003 2019).

If more than one authority is responsible for processing the access application, Article 11 of the Freedom of Information Ordinance (FoIO) applies.

1.2 Identification of the document

Under the Freedom of Information Act, anyone may apply for access to official documents or information about the content of those documents. The application must be sufficiently detailed to allow the authority to identify the requested document (Art. 7 para. 2 FoIO). If the application is not sufficiently detailed, the authority may request the applicant to provide further details. In this case, the authority is required to assist the applicant with this procedure (Art. 7 para. 3 in conjunction with Art. 3 para. 1 FoIO).

If there are any questions or anything is unclear, it is advisable to ask the applicant for further information. This can make it easier to identify the document and it may focus the application on specific information. For example, an enquiry might reveal that the applicant is not interested in personal data or that they only wish information about a specific period of time.

2 Applicability of the Freedom of Information Act to the requested document

2.1 Is the requested document an ‘official document’ as defined in the Freedom of Information Act?

An official document is any recorded information retained by an authority which created the information itself or received the information from third parties (entities or persons not subject to the FoIA). A document is only an official document if it concerns the execution of a public function (Art. 5 para. 1 FoIA). Documents which have been produced by means of a simple computerised process from recorded information are also deemed to be official documents. Hence, the right of access may require simple database searches to be carried out (Art. 5 para. 2 FoIA).

The following categories of document are not official documents as defined in the Freedom of Information Act (Art. 5 para. 3 and Art. 1 FoIO) and thus may not be accessed in accordance with the Act:

[1] Original document of 28 June 2006 drawn up by the Federal Office of Justice FOJ and revised by the FDPIC on 15 November 2022.

[2] No guarantee of completeness

- Documents (or items of information) that are used by an authority itself for commercial purposes: e.g. maps, meteorological data, some geodata. This category also includes information or data that is of direct use in the manufacture of a product. However, contracts between an authority and third parties, such as a contract with a company about the supply of goods or services, are not documents that are used commercially.
- Documents that have not been completed: Completed documents are deemed to be documents that have been signed, that have been transferred to an addressee within the Administration or that clearly have been given to another authority or to an entity or person outside the Administration, in particular for information purposes, for an opinion or as the basis for decision-making.
- Documents that are intended for personal use: These include documents that can be found in the workplace but that are not related to official tasks (e.g. private emails, photographs, books) and notes, drafts, working copies of documents and similar that are only intended for personal use or to be used by a limited group of people (e.g. a project team).

If the document requested is not an official document, the application can be rejected. The office in question may decide at its discretion whether the document may be released anyway (possibly with provisos).

2.2 Was the document issued or received by an authority before the Freedom of Information Act came into force?

If a document was issued before the Freedom of Information Act came into force, there is no right of access under the Freedom of Information Act (Art. 23 FoIA). An exception to this is environmental information in official documents and information related to energy regulations that affect the environment, which must be made accessible regardless of the date of issue (Art. 4 Aarhus Convention[3]). By contrast, information about nuclear installations may only be made accessible if it was issued after the Freedom of Information Act came into force (Art. 10g para. 2 EPA[4]).

Applications to see documents issued before the Act came into force may be rejected. However, it is advisable to check whether there actually are any content-related reasons for refusing access. If this is not the case, access may still be granted.

If a document was issued before the act came into force and amended after 1 July 2006, the amended version may be accessed.

2.3 Has the document already been published by the federal government on paper or on the internet?

If this is the case, there is no need to exercise a right of access under the Freedom of Information Act (Art. 6 para. 3 FoIA).

The authority must at least provide information (internet address, place of publication) on where to find the published document (Art. 3 para. 2 FoIO).

2.4 Does the requested document concern judicial, dispute settlement or arbitration proceedings?

If a document is part of a case file for legal proceedings within the Administration or for court, dispute settlement or arbitration proceedings, the Freedom of Information Act does not apply (Art. 3 para. 1 FoIA). In this case, the application must be assessed in accordance with the relevant procedural legislation, especially with regard to the rights of the parties to the proceedings.

Documents that concern first-instance administrative proceedings are in principle accessible, with the parties' right to view documents being subject to the Administrative Procedure Act[5]. The exceptions and special cases set out in Articles 7 and 8 FoIA must be noted with regard to access under the Freedom of Information Act.

[3] SR 0.814.07
[4] SR 814.01
[5] SR 172.021

2.5 Does the document contain personal data on the applicant?

If so, the right to information set out in the Data Protection Act[6] applies (Art. 3 para. 2 FoIA). In such cases, procedures follow the rules specified in that act or any special rules (e.g. the rules on indirect right of inspection set out in the Federal Act on Measures to Maintain Internal Security[7]).

2.6 Is the document subject to special provisions governing confidentiality or access?

Examples of special provisions on confidentiality (Art. 4 let. a FoIA) include confidentiality regarding tax (e.g. Art. 74 para. 1 Value Added Tax Act[8]) and regarding statistics (Art. 14 Federal Statistics Act[9]).

Examples of special provisions on access (Art. 4 let. b FoIA) can be found in relation to public registers (e.g. the civil register) and in consultation procedure law (see also Art. 9 Consultation Procedure Act[10] on access to the submissions made in consultation procedures).

Special legal provisions on accessibility apply in particular to the minutes of parliamentary committees (Art. 47 para. 1 Parliament Act[11]) and to official documents prepared at the request of parliamentary committees.

In these cases, access must be assessed in accordance with the relevant special provisions.

A list of special provisions that impose restrictions as mentioned in Article 4 FoIA can be found here (**LINK**).

3 Accessibility under the Freedom of Information Act

3.1 Does the document requested relate to joint reporting proceedings?

Joint reporting proceedings begin with the signing of a request to the Federal Council by the department responsible (Art. 5 para. 1bis GAOO[12]) and end with a formally drafted Federal Council decision.

The definitive request to the Federal Council signed by the head of department is itself a document from joint reporting proceedings. As a result, there is no right of access (Art. 8 para. 1 FoIA). Article 8 paragraph 1 FoIA also applies to all documents produced during the joint reporting proceedings for use in the preparation of a decision by the Federal Council, such as accompanying reports from other departments and the subsequent exchange of letters, including formal proposals from consulted entities and drafts of such documents that have not been signed or have still to be signed.

The exceptions set out in Article 8 paragraph 1 FoIA do not cover documents that were drawn up before the start of the joint reporting proceedings and whose content does not give any insight into the opinion-forming and decision-making processes or decisions of the collegium of the Federal Council. This is the case, for example, for all appendices to the signed proposal to the Federal Council that were produced before the start of the joint reporting proceedings.

Likewise, the issued draft of the proposal to the Federal Council that the office responsible passes on to the department is not yet part of the joint reporting proceedings and so may in principle be accessed under the Freedom of Information Act. Although it has not yet been signed, such a document is considered definitive by the office. Hence the earliest possible access date is when the Federal Council has taken its decision.

3.2 Is the document about positions in current or future negotiations?

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[6] SR 235.1
[7] SR 120
[8] SR 641.20
[9] SR 431.01
[10] SR 172.061
[11] SR 171.10
[12] SR 172.010.1

Negotiations are considered to be any kind of negotiation by authorities with third parties outside the Administration. This includes both negotiations that are intended to result in a contract under private law and international negotiations. This exception can only be claimed if the document in question refers to negotiation positions and is important for the continuation of the negotiations. Future negotiations must be in the near or foreseeable future.

If these conditions are met, access may not be granted to the document concerned (Art. 8 para. 4 FoIA).

3.3 Is the document in question an evaluation report?

An evaluation report is an official document that assesses the performance of administrative entities and the effectiveness of the Administration's measures. Evaluation reports are always accessible (Art. 8 para. 5 FoIA).

Under certain conditions, access might be deferred, for example if the evaluation report is also the basis for decision-making or if it is to be published at a later date in any case.

Documents that assess the performance of individual people are not accessible.

3.4 Do any of the exceptions set out in the list of exceptions in Article 7 of the Freedom of Information Act apply?

For any of these exception clauses to apply, it must be likely that allowing access to the document in question would harm public or private interests. This means that harm must be highly probable 'in the normal course of events' and not just be conceivable or remotely possible. However, the probability of harm does not need to be so high that it borders on certainty.

The feared impact in the event of data disclosure must also be substantial and there must be a serious risk of such an impact. This means that not every minor or simply unpleasant consequence of disclosing a document can be considered as harming an interest, especially if the consequence would primarily be felt by the decision-making authority, i.e. in the form of additional work for the authority or undesirable public attention.

The object of the FoIA must always be taken into account when exception clauses are applied, particularly when they are applied restrictively. In borderline cases – if the probability of the interest to be protected being harmed is present but low or if only minimal negative consequences are to be expected – access should be permitted.

Note: The mechanism to protect confidentiality interests set out in Article 7 paragraph. 1 FoIA is based solely on whether or not there is a risk of loss or damage. Interests need not be weighed against each other. Instead, it must be assumed that the legislator has already done so by setting out an exhaustive list of the reasons for confidentiality taking priority over transparency.

Any assessment of accessibility must also take account of the principle of proportionality. This means that where limitations are imposed, the least stringent option should be selected. Instead of an application being completely rejected, it should be partially approved if there are only certain sections or passages in a document that can be classified as exceptions. It is preferable to defer access rather than to reject an application if the reasons for rejecting access at the time of the application will become invalid in the foreseeable future.

<u>Access to official documents can be deferred, restricted or denied to protect the following public interests:</u>

3.4.1 <u>Avoiding significant harm to the freedom of an authority subject to the FoIA or of another legislative, administrative or judicial body to form opinions and make decisions (Art. 7 para. 1 let. a FoIA)</u>

The freedom of an authority to form opinions and make decisions can be considered 'significantly harmed' if the authority is no longer free because of the disclosure of large parts of the documents to be

assessed. In opinion-forming and decision-making processes, this is only likely to apply to very controversial decisions on fundamental issues. If the decision in question is about a relatively uncontroversial detail, the condition for applying the exception clause is unlikely to be fulfilled.

The threshold for the extent of the harm is higher here than for the other exceptions, with *significant* harm being required for access to be restricted. There is no significant harm if, for example, publishing a document merely risks provoking heated public debate.

Until the decision based on the document in question is taken, the document will remain inaccessible and access will be deferred accordingly (see also No. 5 below).

The freedom of legislative, administrative or judicial bodies that are not subject to the Freedom of Information Act to form opinions and make decisions is also protected.

3.4.2 The ability of an authority to achieve the intended objectives when implementing specific measures (Art. 7 para. 1 let. b FoIA)

The aim of this exception is to ensure that information can be kept confidential if it is being used by an authority to prepare for specific measures, such as supervisory measures, inspections, official investigations and administrative monitoring.

The exception applies if, at the time of assessment of the access request, such access threatens to obstruct the implementation of one or more clearly defined measures by an authority. According to the case law, the potential negative effect that the granting of access would have on the objectives pursued by the authority taking the measure must be relatively significant and the confidentiality of the information must be essential for the success of the measure in question.

However, the exception does not apply to an authority's general fulfilment of a task or supervisory activity.

3.4.3 Switzerland's national and international security (Art. 7 para. 1 let. c FoIA)

The national and international security of Switzerland may be compromised by attacks and threats, such as crime in general, extremism and terrorism, as well as by military and intelligence activities.

This exception applies primarily to the activities of the police, customs, intelligence and military services, and to areas that deal with risk technologies. It can be used to restrict or deny access to documents such as those that contain information on measures to maintain the state's ability to act in exceptional situations or to secure the national economic supply, information about technical details and the maintenance of armaments and similar, or information whose disclosure would impair the security of key infrastructure or persons at risk.

Examples of this include current security assessments and security measures being planned at the time the application is submitted, and information about security measures regarding nuclear installations or materials.

Even where there are legitimate security concerns, the assessment must determine whether disclosing the requested documents would seriously compromise national security. The crucial criterion in this examination is the extent to which it is acceptable to disclose knowledge that would subsequently be available to the general public and could be used in an undesirable manner or in a way that could compromise the Switzerland's national security.

3.4.4 Switzerland's foreign policy interests (Art. 7 para. 1 let. d FoIA)

This exception concerns Switzerland's ability to uphold its interests in matters of foreign policy. Examples of cases in which it may be necessary to keep certain information confidential include:

- intelligence about foreign states' situations, actions and intentions;
- consular and diplomatic protection activities, e.g. if Swiss citizens are abducted abroad;
- measures related to the protection of human rights, to upholding international humanitarian law and to asylum-related matters.

Additionally, Switzerland may be required by international contractual obligations or recognised state practice (e.g. in the context of cooperation within international organisations) to keep certain foreign documents out of the public domain (data protection agreements, confidential international treaties).

Switzerland's interests in matters of foreign policy and international relations may also be harmed in a broader sense under certain circumstances if relationships between Switzerland and semi-private or private foreign contact partners are compromised.

3.4.5 Relations between the Federal Government and the cantons, or inter-cantonal relations (Art. 7 para. 1 let. e FoIA)

Some documents from specific cantons are confidential because the laws of the cantons in question do not recognise the principle of freedom of information or because they define the scope of this principle in a significantly different way from the corresponding provisions at federal level. Hence, disclosing such documents may under certain circumstances harm relations between the Federal Government and the canton in question (or between the canton from where the document originates and other cantons). If this outcome is expected, access to such documents must be denied.

This exception was primarily introduced for the benefit of the cantons that had not yet introduced the principle of freedom of information. Given that most cantons have now introduced this principle, this exception is no longer of much significance.

3.4.6 Switzerland's economic and monetary interests (Art. 7 para. 1 let. f FoIA)

Granting access to an official document must not compromise Switzerland's economic and monetary interests. Confidentiality is justifiable in that it enables economic and monetary policy measures and strategies to be drawn up without any outside pressure. If such information was disclosed prematurely, its effectiveness could be jeopardised or eliminated, as the public or businesses could adjust their behaviour accordingly.

However, the provision is limited to cases in which disclosure of a document could actually seriously harm (and not just adversely affect) economic and monetary interests, that is, if disclosure of certain information would encourage speculative transactions, for example.

Access to official documents can be deferred, restricted or denied to protect the following private interests:

Note: In contrast to public interests, access may be granted in the case of private interests if the affected third party agrees to this.

3.4.7 Professional, business or manufacturing secrets (Art. 7 para. 1 let. g FoIA)

In general, this exception applies whenever disclosure of a document would distort competition between market players. A 'market player' may be a third party about which the document in question contains information, but in exceptional cases it may also be the Administration itself.

A business or manufacturing secret is deemed to be any fact that

1. is neither obvious nor generally accessible (relatively unknown),
2. the owner of the secret would like to keep secret (subjective interest in maintaining secrecy), and
3. the owner of the secret has a justified interest in keeping secret (objective interest in maintaining secrecy).

Manufacturing secrets are details of manufacturing and construction procedures, such as technical information in the context of arms procurement projects or other public procurement projects or files on ongoing patent examination procedures.

Business secrets: The term ‘business secrets’ is to be understood in its broadest sense. This exception makes it possible to deny or restrict access to documents that contain, for example, details of planned or current research projects, specific information about the acquisition of cultural goods or specific market strategies. Additionally, information whose disclosure would affect the share price of companies in which the Confederation has participations may be considered ‘business secrets’ in the broadest sense of the term (e.g. details of a business’s operating organisation; price calculations).

Information about emissions do not constitute business secrets within the meaning of Article 7 paragraph 1 letter g FoIA (Art. 4 No. 4 let. d Aarhus Convention).

A general reference to business secrets is insufficient for this exception to apply: the owner of the secret or the assessing authority must show in practice and in detail the extent to which certain information is protected by business secrecy.

In particular, an objective interest in confidentiality is considered to exist if knowledge of the information in question by third parties or competitors would distort the market and affect financial results, i.e. if public knowledge of the secret information would affect the company’s competitiveness.

Where a request is made for access to information that could constitute business secrets, the affected third parties or owners of the secrets must be consulted first, other than in the exceptional cases in which consultation can be waived (see also number 4.3 Consultation).

Professional secrecy applies in particular in the case of lawyers and persons who work in medical professions.

3.4.8 Confidentiality agreed between an authority and private individuals, where information is voluntarily disclosed (Art. 7 para. 1 let. h FoIA)

If a third party without any legal or contractual obligations provides information in return for a guarantee of confidentiality from the Administration, access to this information must be denied.

Based on the legal precedent, this exception can be claimed if the following three requirements are all met:

1. the information came from a private individual;
2. the information was given to the authority voluntarily, i.e. not in fulfilment of a legal or contractual obligation; and
3. the assessing authority guaranteed confidentiality at the express request of the informant.

This exception does not apply if the information is provided by a canton or another country, as such cases do not involve private interests.

3.4.9 Privacy of third parties (Art. 7 para. 2 FoIA)

Right of access must be limited or refused if such access is likely to prejudice the privacy of third parties. This is primarily the case if the document in question contains information about third parties. The questions that arise in relation to documents that contain the personal data of third parties or data of legal persons are examined in Section 4.

4 Personal data of third parties and data on legal entities

4.1 Does the document contain information about third parties who are natural persons (i.e. information that refers to identified or identifiable natural persons)?

Under the Data Protection Act, personal data is any data that refer to an identified or identifiable natural person.

Official documents containing personal data must, wherever possible, be made anonymous (Art. 9 para. 1 FoIA). Making personal data anonymous means that the document is altered so that information it contains can no longer be related to identified or identifiable persons.

It is generally not necessary to render data anonymous if:

- the person concerned has already agreed to such disclosure or if their agreement can be clearly assumed in the specific circumstances (e.g. if the person has accepted an order from the Administration or if they are mentioned as a member of a committee of experts) or
- the personal data in question has already been made generally accessible by the person concerned.

If it is not possible to make the data anonymous, i.e., if the applicant requests access to the personal data of third parties, the Federal Supreme Court has specified a multi-step procedure. The first step entails a preliminary examination of interests to determine whether disclosure of the document is an option or whether it can be ruled out from the start due to overriding public or private interests. If it can be ruled out from the start, the procedure must be discontinued. If, however, granting access is an option, the third parties concerned must be consulted, that is, they must be given an opportunity to assert their interests. The applicant's identity must not be revealed to the third parties concerned. Based on the positions that the third parties take, the competing interests must be weighed up to determine whether access should be granted to the personal data in question.

This examination of interests is crucial and involves weighing up the private interest in privacy of the person concerned against the public interest in access.

A higher weighting should be given to private interests based especially on the data in question, the function or positions of the person concerned and the potential consequences of disclosure. The person concerned's interest in protection will tend to outweigh the interest in disclosure if the information in question consists of sensitive personal data or personality profiles. In any case, personal data must not be disclosed if this would result in overwhelming disadvantages to the person concerned.

Public interest must also be considered, however. As well as a (general) interest in freedom of information in the Administration (Art. 1 FoIA), there may be additional information interests, such as the examples listed in Article 6 paragraph 2 FoIO. Disclosure is conceivable if the documents in question concern the granting of significant financial benefits to individual parties (contracts, subsidies), if holders of permits or concessions are affected, or if the documents are agreements that the state has entered into with private persons (Art. 6 para. 2 let. c FoIO).

4.2 Does the document contain data relating to legal entities?

The same considerations apply to access to documents containing data relating to legal entities as apply to access to documents containing personal data of natural persons (see also number 4.1), in particular the provisions on making documents anonymous and on consultations. When the new Data Protection Act comes into force on 1 September 2023, the relevant legal basis will be the main difference: access applications relating to official documents that cannot be made anonymous will have to be assessed in accordance with the Government and Administration Organisation Act with respect to the data of legal entities (Art. 57r–57t GAOA).

4.3 Consultation

If the authority is considering granting access to documents containing personal data or data relating to legal entities, the third parties affected must generally be consulted. Additionally, according to the

Federal Supreme Court case law, the third parties affected or the owners of secrets must be consulted before data is disclosed that may constitute business secrets.

By way of exception, a consultation is not required if both of the following conditions are met:

1. The preliminary examination of interests points so clearly in favour of disclosure that it is not seriously expected that there are unknown private interests that could lead to a different result;
2. Holding consultations seems disproportionate, in particular because the consultations would involve an excessive amount of work.

The person to be consulted must be informed in a suitable manner that unless they object within the specified time period, it will be assumed that they agree to granting access.

If they object, the person consulted must indicate with respect to each document or passage of text for which they are requesting a restriction, deferral or refusal of access why they consider this essential to protect personal data or the data on legal entities (Art. 7 para. 2 in conjunction with Art. 9 FoIA) or business secrets (Art. 7 para. 1 let. g FoIA). Nonetheless, the representations of the consulted third party do not release the authority from its obligation to assess the matter independently in accordance with the provisions of the law and the legal precedent.

If a document contains personal data, data on legal entities or business secrets that involve various third parties, it is essential to ensure that confidential data are not improperly disclosed to any of the parties during the consultation.

It is advisable to notify the person to be consulted of the extent to which the authority intends to grant access and, where appropriate, of any content that it intends to keep secret, by delivering the documents to that person with the corresponding content highlighted and a summary of the reasons for secrecy.

Note: The person to be consulted should be granted ten days to submit an opinion (Art. 11 para. 1 FoIA).

4.4 Request by the consulted person for mediation

If, after weighing up interests, the authority intends to grant access to personal data, data on legal entities or information that the authority does not consider to constitute a business or manufacturing secret, contrary to the opinion of the owner of the secret, it must notify the third parties consulted (natural persons and legal entities) of its intention (Art. 11 para. 2 FoIA). These persons are entitled to request mediation (Art. 13 para. 1 let. c FoIA), as is the applicant (see also number 6). The authority must indicate this option in its opinion. Here is an example of suitable wording:

> ‘If you do not agree with this decision, you may request mediation in accordance with Article 13 FoIA. Your request for mediation must be addressed in writing to the Federal Data Protection and Information Commissioner, Feldeggweg 1, 3003 Bern, or to info@edoeb.admin.ch within 20 days of receiving notice of the decision.’

In addition to the person consulted (Art. 11 para. 2 FoIA), the applicant must also be notified of the authority’s decision on granting access (Art. 12 para. 4 FoIA), so that the applicant can submit a request for mediation, if necessary.

5 Timing of access

5.1 Has the political or administrative decision based on the document in question been taken?

The Freedom of Information Act specifies that access to official documents must only be granted after the political or administrative decisions based on those documents have been taken. (Art. 8 para. 2 FoIA)

‘Political or administrative decision’ is to be understood in the broad sense of the term. It may be a decision by a specific division within the office, the office itself or the department.

The content is not significant. The decision may be about a legal or political position or procedure or it may concern organisational matters within the Administration, staff management questions or the involvement of third parties in fulfilling administrative tasks.

A document represents the basis for a decision if:

- it is directly and immediately connected with a specific decision and
- it is of considerable material importance for this decision.

Where the documents in question are for office consultation procedures, the Federal Council can decide that they (i.e. submissions from the offices) must also remain inaccessible after its decision (Art. 8 para. 3 FoIA).

In such cases, only the timing of access should be examined. It is not necessary to assess whether access should be granted to the document or not in view of its content (the latter should be examined in accordance with number 3 and 4). Access must therefore merely be deferred and should only be denied in exceptional cases. Nonetheless, access may be denied if it is not yet at all clear when the decision will be taken.

6 Final decision by the authority

The authority responsible should issue a decision within 20 days of receiving the application. If it grants partial or full access, it must notify the applicant accordingly and provide the official documents within the legal time period.

If the access application is denied or only partially approved, the applicant must be sent a written decision (Art. 12 para. 4 FoIA). The decision must contain a clear but concise explanation of why at least one of the exceptions to access set out in the law applies. It is advisable to name the identified documents in the opinion.

Finally, the applicant must be notified that they can submit a request for mediation. This option is possible even if the document is not available. Here is an example of suitable wording:

> "If you do not agree with this decision, you may request mediation in accordance with Article 13 FoIA. Your request for mediation must be addressed in writing to the Federal Data Protection and Information Commissioner, Feldeggweg 1, 3003 Bern, or to info@edoeb.admin.ch within 20 days of receiving notice of the decision."

The decision on access is not deemed to be an administrative law 'ruling'. A ruling is only issued in proceedings that follow on from the mediation procedure, where appropriate.

If the 20-day time period for the decision cannot be met due to the consultation, the applicant must be notified accordingly (Art. 12 para. 2 FoIA).

Note: Deadlines

- The deadline for the final decision is 20 days from receipt of the application (Art. 12 para. 1 FoIA)
- It can be extended in exceptional cases by a further 20 days if the request involves extensive or complex documents or documents that are difficult to obtain (Art. 12 para. 2 sent. 1 FoIA).
- If disclosure might affect the privacy of third parties, the deadline is extended for the period required to resolve the matter (Art. 12 para. 2 sentence 2 FoIA).
- If the application relates to official documents whose disclosure might affect the privacy of third parties, the authority will defer access until the legal situation has been clarified. (Art. 12 para. 3 FoIA).