

**The Commissioner for  
Data Protection and  
Access to Information**



# **Inspection-of-Records and Access-to-Information Act**

**(including Scale of Fees)**

**Brandenburg  
Information Code  
Part 2, Book 1**

**Brandenburg Information Code  
Part 2: Access-to-Information Acts  
Book 1**

**Inspection-of-Records and  
Access-to-Information Act  
(including Scale of Fees)**

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Part 1: Data Protection Acts

Book 1: The Brandenburg Data Protection Act

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Book 2: The Environmental Information Act

Book 3: Federal and Brandenburg State Regulations on Archives

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## **Preface**

The Brandenburg Inspection-of-Records and Access-to-Information Act of March 1998 has abandoned a firm principle of German administrative tradition: So far citizens had to give reasons for their interest in official documents before – under certain additional preconditions – they were allowed to inspect them. Brandenburg is the first federal state where exception has become a rule. Under the state's constitution any individual, any civic action group and any association is entitled to obtain information and to inspect records or other official documents, without having to set out any particular interest. This, too and especially, applies if documents do not contain any data about the people who want to inspect them. Administrative bodies, in their turn, have to give reasons why they are not willing to disclose those documents by explaining that predominant public or personal interests conflict with such disclosure (article 21 paragraphs 3 and 4 of the Brandenburg Constitution).

The Inspection-of-Records and Access-to-Information Act is an important contribution to the democratic information society. It constitutes a substantial prerequisite for Brandenburgers to assert their right to participate in political affairs on a municipal or district level or even before regional authorities, not only when elections take place but also between election days. Data protection, i.e. the right to self-determination in the field of information, has been supplemented by the important right to participation and co-determination in information affairs.

Differently from what its slightly misleading name makes you assume, the Inspection-of-Records and Access-to-information Act provides access to both files and all documents which have been recorded in writing, electronically, optically, acoustically or by any other means and serve official purposes. The right of access to information is, however, subject to numerous exceptions that in isolated cases may result in the impossibility to satisfy the public's interest in obtaining information. These exceptions protect public as well as individual interests in the observance of secrecy.

It is, above all, the protection of affected citizens' personal data which leads to a situation where the inspection of such data may be allowed with the affected persons consent only. Nevertheless, there are two important exceptions in favour of the access to information: employees in public service, as a rule, have to take it that their signature under an order or a draft plan for some bypass road is disclosed. Exceptionally, there is even a possibility to disclose citizens' data without their consent if on balance under the particular circumstances of an individual case it results that with a view to the purpose of political participation the interest in the inspection of the records outweighs the interest to have citizens' personal data treated confidentially (section 5 paragraph 2 No. 3).

Even if there is an exceptional situation allowing the administrative body to refuse the inspection of records, that body, at any rate, has to look into the matter concerned to find out whether the file can at least be disclosed either in an anonymous form or in part. If such a form of disclosure involves a disproportionately great effort, there is at least a right to being informed about the contents of the file (instead of inspecting it, section 6 paragraph 2).

Applications for the inspection of records must be made in writing and decision on them has to be taken immediately. For granting the inspection, fees and expenses ( e.g. copying costs) may be charged; fees are to be fixed in such a way that a reasonable proportion is maintained between the administrative effort involved and the fundamental right to inspect records (section 10 paragraph 1). This stipulation is based on the important consideration that the exercise of the fundamental right to have access to information is what matters here and that the exertion of that right on no account must be charged with fees which are cost-covering and often deterrent, therefore. Almost three years after the Inspection-of-Records and Access-to-Information Act had passed the Scale of Fees for the inspection of records and access to information became effective. The wording of this Scale of Fees was freshly incorporated in the present publication. In simple cases, the scale renders it possible to refrain from charging fees. Furthermore, fees must be reduced under the state's Fees Act when the application for the inspection of records is rejected. And generally speaking, the charging of fees may be refrained from altogether if it is equitable to do so. The Scale of Fees is intended to be evaluated three years after its coming into effect.

In order to safeguard the fundamental right to inspect records the legislator has appointed an authorized representative who is in charge of such inspection and, charged the Commissioner of the State of Brandenburg for Data Protection and Access to Information entrusted with the protection of data privacy with this function (section 11). The state's authorized representative in charge of the access to information has the same powers as the Commissioner of the State of Brandenburg for Data Protection and Access to Information under the Brandenburg Data Protection Act. Hence, he or she can inspect all documents and obtain information, which includes even such information that is withheld from the citizens. It is his or her mission to check the lawfulness of administrative decisions for the purposes of early legal protection. Besides, he or she submits a report on his or her activities to the Landtag (state parliament) every year and publishes it.

## **Inspection-of-Records and Access-to-Information Act**

of March 10th, 1998,  
last amended by the Second Act for the Discharge  
of Local Authorities  
of December 17th, 2003 (Law Gazette I p. 294)

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### **Section 1 The right to inspect records**

In accordance with this act, everybody has the right to inspect records, unless there are conflicting overriding interests, either public or individual, under sections 4 and 5 or other legal provisions containing specific stipulations for an unrestricted circle of persons.

**Section 2**  
**Scope**

(1) The right to inspect records exists in dealing with both the State's authorities and institutions for the purposes of the Second Part of the State Organization Act and local authorities as well as associations of local authorities.

(2) In dealing with the bodies mentioned in section 1 paragraph 2 of the State Organization Act the right to inspect records is only afforded in so far as they perform administrative tasks. If research bodies, central research establishments, schools and examination institutions are dealt with, the right to inspect records is only afforded in so far as they do not act in the fields of research, teaching, training and examination.

(3) In dealing with authorities and administrative bodies of the state, local authorities and associations of local authorities the jurisdiction of which also extends to other federal states, the right to inspect records is only afforded in so far as their records exclusively refer to the State of Brandenburg.

(4) In so far as the authority where the record is kept makes use of the services of private individuals or establishments to perform official tasks these individuals or establishments are liable to grant access to records.

(5) In pending proceedings the inspection of records is granted in accordance with the applicable procedural law only.

**Section 3**  
**Definition**

For the purposes of this Act records are all documents recorded in writing, electronically, acoustically or by any other means in so far as they exclusively serve official purposes. Drafts and notes that are not part of the procedure and that, at the latest, will be destroyed after proceedings have come to an end are not subject to inspection.

**Section 4**  
**The protection of predominant public interests**

(1) The application for the inspection of records must be rejected if

1. the disclosure of the content of records would affect national defence or international relations of either the Federal Government or any other country or if it could interfere with the State's relations with other countries, intergovernmental bodies, the European Union, the Federal Government or other States of the Federation,
2. by making the content of records known data and communications which stem from public authorities and do not fall within the scope of this Act would be disclosed without that authorities' consent,
3. the content of the records refers to discussions held by the State Government or to work performed in preparation of such discussions,
4. the disclosure of the content of records could interfere with concerns of criminal prosecution and the execution of criminal sentences, of warding off danger or any other concern of internal security or if it could cause considerable danger for public safety,
5. by granting the inspection of records the content of files an authority has compiled to carry out court proceedings, criminal or disciplinary investigations or administrative fine proceedings or the authority received on account of proceedings or which serve the purpose of supervising some other establishment would be disclosed.

(2) The application for the inspection of records shall be refused

1. in so far as their content refers to the forming of intentions within or between authorities or administrative bodies or to affairs which under section 44 of the Local Government Code or section 38 of the Rural District Code must be or have been deliberated on or settled in a session in camera,
2. if by making known the content of records prematurely the success of forthcoming authority measures could be put at risk,
3. if it refers to conveying documents not yet completed, or drafts for decisions or to work performed to immediately prepare such decisions or

4. if the proper fulfilment of the public body's tasks would be considerably interfered with,

unless in particular a case the interest in inspecting outweighs the conflicting public interest.

(3) The obligation to observe legal secrecy or to keep professional or special official secrets which are not based on legal provisions remains unaffected.

### **Section 5**

#### **The protection of predominant individual interests**

(1) Save as provided in paragraphs 2 and 3, the application for the inspection of records must be refused in so far as

1. by granting inspection individual data would be disclosed,
2. the inspection is in conflict with the protection of intellectual property and, particularly, of copyrights or
3. by granting inspection an applicant or a third person would learn about some fact which is known to a limited circle of persons only, connected with a specific commercial enterprise and which must be kept secret according to the wishes of that enterprise or the secrecy of which is in the legitimate interest of the enterprise.

Section 4 paragraph 3 shall apply mutatis mutandis.

(2) The inspection of records may be granted in so far as

1. personal data are disclosed with the consent of the person concerned or the disclosure is permissible under this Act or any other legal provision,
2. the personal data can be taken out of generally accessible sources and none of the concerned person's legitimate interest prevent disclosure,
3. the applicant's interest in disclosure on account of particular circumstances of the individual case given, and with the purpose of participation in political affairs in mind, outweighs the concerned person's interest in confidential treatment of the information or
4. data within the meaning of paragraph 1 No. 3 are disclosed with the consent of the enterprise.

Section 16 of the Brandenburg Data Protection Act does not apply.

(3) When records are inspected it is admissible to disclose any office-holder's cooperation in administrative matters or other sovereign acts as well as his or her name, title, academic degree, official function, official address and telephone number, unless legitimate interests of the office-holder prevent the disclosure.

### **Section 6**

#### **Putting the inspection of records into practice**

(1) The application for inspection must be sufficiently precise. In cases as defined by section 4 paragraph 2 and section 5 paragraph 2 No. 3 the particular circumstances of the individual case on account of which the predominant interest in disclosure is asserted have to be explained, too. The application shall be submitted in writing or in electronic form to the authority keeping the record. In cases as defined by sentence 2 the authority keeping the record must afford the applicant the opportunity to comment within two weeks' time. If the applicant lacks data to make his application sufficiently precise, the public agency shall give him advice and support. If the application is made before an incompetent authority, this administrative body is obliged to immediately forward it to the competent authority and to inform the applicant thereof. The application has to be decided upon within one month; if this is not possible, an interim notice has to be given. Any rejection of such an application must be given reasons in writing by the authority keeping the record. If the application is refused the applicant has to be informed about his right according to section 11 para. 2 (1).

(2) In so far as the protection of the public and individual interests as mentioned in sections 4 and 5 can be ensured by sorting out parts of files or isolated data, the applicant shall be provided access to the remaining part of the record. If the sorting out involves a disproportionately great effort, there is only a right to being informed.

(3) In cases as defined by section 5 paragraph 2 No. 2 and 3 the person concerned shall be heard before the inspection of the record is granted. The same applies to cases where data of an enterprise which do not fall under the

provisions of section 5 paragraph 1 No. 3 are affected by any inspection of records.

(4) The application can be refused if the applicant already has the information desired at his or her disposal or if he or she reasonably can obtain it out of generally accessible sources or if the application is made to frustrate or delay administrative acts.

### **Section 7**

#### **The way the right to inspect records is granted**

The competent authority shall determine the procedure at their due discretion. Subject to the exceptions as stipulated in section 6 paragraph 2 and section 8, the claim for inspection is fulfilled by allowing the original documents to be inspected. With the applicant's consent the right to inspection may also be granted

1. by conveying copies,
2. through documentations,
3. through electronic mail,
4. through pamphlets or
5. by making information carriers available in any other way,

provided that these contain the information desired. The applicant may even be referred to publications edited by the competent authority.

### **Section 8**

#### **Identical applications and limitation to giving information**

(1) The right to inspection shall be limited to giving information if more than 50 applications aiming at the same pieces of information have been submitted and if such information is comprehensible also without the information carrier. Divergingly from sentence 1, the authority can confine themselves to just giving information even if less than 50 applications are made, provided that the granting of inspection would involve a disproportionately great effort.

(2) Concerning applications which have been signed in lists by more than 50 people or take the form of copied

identical texts (identical applications), the sections 17 and 19 of the Brandenburg Administrative Procedure Act shall apply mutatis mutandis.

### **Section 9**

#### **The right to access information for civic action groups and associations intended to influence public affairs**

(1) This Act shall apply mutatis mutandis to civic action groups and associations intended to influence public affairs as defined by article 21 paragraph 3 of the Constitution of the State of Brandenburg, provided that they assert their right to information.

(2) Applications under paragraph 1 may only be filed by the managing committee or a person particularly authorized to do so. In cases of doubt, the authority must be shown the power of representation.

### **Section 10**

#### **Costs**

(1) Costs (fees and expenses) shall be charged for functions performed under this Act. Fees shall be assessed in such a way that a reasonable proportion is maintained between the administrative effort involved, on the one hand, and the right to inspect records, on the other hand, taking into account the importance or further benefit for the applicant. Regulations as to costs which are contained in other legal provisions shall remain unaffected.

(2) The State Government is authorized to determine both the functions subject to charges and the amounts of fees to be levied, which it shall do in agreement with the Committee for Internal Affairs of the State Parliament by passing a statutory instrument (scale of fees).

(3) Local authorities and associations of local authorities may levy charges and fees for exercising functions under this Act and may determine the details by local bye-laws. The provisions of the Local Authorities Tax Act for the State of Brandenburg are to be applied.

**Section 11**  
**Commissioner for Access to Information**

(1) In order to safeguard the fundamental right to inspect records and to have access to information a Commissioner for Access to Information is appointed. This function shall be discharged by the Commissioner entrusted with the protection of data privacy. The election and legal status of this Commissioner shall comply with the sections 22 and 23 of the Brandenburg Data Privacy Protection Act. He or she shall bear the official title of "The Commissioner of the State of Brandenburg for Data Protection and Access to Information", either in its male or female form.

(2) Everybody has the right to have recourse to the Commissioner of the State of Brandenburg for Data Protection and Access to Information. If this Commissioner is appealed to, he or she shall have the powers under sections 23, 25 and 26 of the Brandenburg Data Protection Act.

(3) The Commissioner of the State of Brandenburg for Data Protection and Access to Information shall submit a report on his or her activities to the Landtag (State Parliament) every year.

**Section 12**  
**Coming into effect**

This act shall become effective on the day following its promulgation.

**Scale of Administrative Fees for Duties  
of Office performed to carry out the  
Inspection-of-Records and  
Access-to-Information Act**

(Scale of Fees concerning the Inspection of  
Records and Access to Information)

of December 11th, 2003  
(Law Gazette II, page 706)

On the basis of section 10 paragraph 2 of the Inspection-of-Records and Access-to-Information Act of March 10th, 1998 (Law Gazette of the Länder I, page 46) and in agreement with the Committee for Internal Affairs of the State Parliament the State Government decrees the following:

**Section 1  
Tariff of Fees**

For functions under the Inspection-of-Records and Access-to-Information Act fees shall be charged according to the tariff schedule which is part of this decree.

**Section 2  
Assessment of Fees**

When determining the fee in any individual case given the following should be borne in mind:

1. the administrative effort the function involves, unless expenses are separately calculated as costs, and
2. on application, the applicant's economic situation.

**Section 3  
Costs**

(1) Costs that are necessarily incurred in connection with the performance of a function subject to charges shall be considered as already included in the fee.

(2) Paragraph 1 shall not apply if the right to inspect records is fulfilled in any way other than by inspecting the original documents (section 7 of the Inspection-of-Re-

cords and Access-to-Information Act); costs necessarily incurred here shall be reimbursed by the applicant. The amount of costs is determined by tariff item 3 in the schedule. The costs shall be reimbursed even if the function performed is free of charge or if the levying of fees is refrained from either fully or in part.

**Section 4**  
**Coming into Effect, Expiration**

This decree shall become effective on the day following its promulgation (on April 20<sup>th</sup>, 2001). It shall expire on December 31<sup>st</sup>, 2005.

**Enclosure**

## Tariff of Fees

Tariff Item	Subject	Fee in Euro
1.	Conveyance of information	
1.1	giving an information	0 - 102
1.2	allowing for inspections of records or other data carriers	
1.2.1	in simple conveyance of information cases	0 - 102
1.2.2	with great administrative efforts being involved	102 - 511
1.2.3	with extraordinary administrative efforts being involved, particularly if in numerous cases data must be sorted out to protect overriding public or individual interests (sections 4 and 5 of the Inspection-of-Records and Access-to-Information Act)	511 - 1022
2.	notifications in reply to objections raised	
2.1	issuance of notifications in reply to objections - if and in so far as these are rejected	10 - 51
2.2	notifications in reply to objections to orders for payment of costs – if and in so far as these are rejected	10
3.	costs	
3.1	making duplicates, copies or computer printouts	
	- for the first 50 pages, per page	0,50
	- for any further page	0,15
3.2	costs for the conveyance of information under section 7 sentence 3 No. 2 to 5 of the Inspection-of-Records and Access-to-Information Act	to the amount really incurred