

*Law 11/02 of 16 August 2002
on Access to Documents held by Public Authorities¹,
which hereby repeals all legislation that contradicts the provisions of the
current law.*

**Law 11/02
of August 16**

The Decree-Law² 16-A/95 of 15 December consecrates the right to information held by public authorities which includes access to non-classified documents, certificates or authenticated copies and personal documents concerning third parties.

A Democratic State and the Rule of Law are founded on the principle of open government* as a rule and establishes the exceptions relating to classified materials such as State secrets.

Hence the need to concretise and develop the constitutional principle of participative democracy which requires of the public authorities the practice of government* transparency and its subjection to controls, as well as [the need to] regulate citizens' access to documents held by public bodies*.

In these terms, as provided for in sub-paragraph b) of article 89 of the Constitutional Law, the National Assembly approves the following:

Law on Access to Documents held by Public Authorities

CHAPTER I General provisions

NOTES

General: Throughout, I've opted for English words with a Romance/ Latin etymology so as to arrive at as close a match to the original as possible. Nonetheless, where doing so would have made a word/ phrase sound odd to the ear, I have used Germanic-derived words. Grammatically, I have kept also to the original tense structure, not going into the standard English legal "shall"/ "will" etc so eliminate room for ambiguity and possible unfortunate interpretations.

Words in square brackets have been added for clarity

¹ The original in Portuguese speaks of "administração" [administration], just as the Americans speak of the "Bush/ Clinton/ etc Administration". Derived from this word use, comes the term "administrative documents" which I have translated – as appropriate and applicable – into "documents held by public authorities/ public bodies" in line with usage in British instruments such as FOIA and elsewhere. Further occurrences of this are indicated by the asterisk *.

² The term "Decree-Law" or "Law Decree" is not commonly found in documentation on legislation of English-speaking countries, but I have come across it often in English documentation on legislation of French-, Spanish-, Portuguese- and even non-Romance-speaking countries.

Article 1
(Open government*)

Access to documents held by public bodies by those interested is guaranteed by public authorities according to the principles of publication, transparency, equality, justice, impartiality, collaboration, participation, pursuance of public interest and respect for the **legally protected rights and interests**³.

Article 2
(Purpose)

1. This law regulates access to documents in relation to the activities of the entities mentioned in Article 3.
2. The procedure for the exercise by the citizens of their right to be informed by Public Authorities of progress in proceedings in which they have a direct interest, as well as their right to be informed of the final decisions taken thereupon, is covered by separate legislation.

Article 3
(Scope)

The documents referred to in the next article are documents that originate or are held by institutions of the State that have government functions and bodies of public institutions as well as statutory societies and other entities that exercise public authority in terms of the law.

Article 4
(Definitions)

1. For the purposes of this law, will be deemed to be:
 - a) administrative documents: any information media, be it print, audio, visual or digital, or any records of another nature, produced or held directly, indirectly or autonomously by public bodies, to wit, case files, reports, studies, opinion pieces, minutes, official records, circulars, ministerial memoranda, internal orders, internal

³ This law is almost identical to the Portuguese one, so where elements that can be considered as 'unfriendly' or possible loopholes have been added/ deleted, I have highlighted this in red. Article 18, 1.c) "President [Speaker] of Parliament" has been replaced with "President" Article 18, 4. "All members" replaces "with the exception of the Chair, all members". A further clause then goes on to say that the Chair continues to benefit from his salary and other benefits as a judge. Articles and clauses whose omission I believe weaken the law are: [omitted] g) under Article 19: "contribute towards the clarification of, and dissemination of information about, the different forms of access to documents held by public authorities in accordance with the principle of an open administration. An article titled "Co-operation of the administration", which said: "It shall be the duty of the members of the staff of public institutions to co-operate with the Commission; otherwise, their disciplinary liability shall be engaged.

normative decisions, instructions and guidelines for the interpretation of the law or setting the framework for an activity, as well as other pieces of information;

b) personal documents^{**}: any information media containing personal data;

c) personal data: information concerning identified or identifiable natural persons, and containing assessments, value judgments or data covered by limitations on the respect for private life.

2. For the purposes of this law, the following shall *not* be deemed to be documents held by public bodies:

a) personal annotations and other notes, sketches or other records of a similar nature;

b) documents whose production does not arise from the activities of public bodies, in particular documents with reference to meetings of the Council of Ministers [Cabinet] as well as the preparation of such meetings.

Article 5 (Internal and external security)

1. Documents containing information such that knowledge thereof is considered likely to pose a threat or to cause harm to the State's internal or external security shall be subject to access interdiction or access under authorisation for a period of time [no longer than] strictly necessary and in accordance with classification in terms of specific legislation.

2. The documents to which the preceding paragraph applies can be freely consulted, in terms of the present law, once they have been declassified or once the period of time provided for their classification has expired.

Article 6 (In camera proceedings)

Access to documents concerning in camera proceedings is regulated by separate legislation.

CHAPTER II **Right of access**

Article 7 (Right of access)

1. Everyone shall have the right to information through access to non-personal^{**} documents held by public bodies.

2. The right of access to personal** documents is restricted to the person to whom the personal data refers and to third parties who can demonstrate direct and personal interest, in terms of the next article.

3. The right of access to documents held by public bodies includes not only the right to obtain reproductions thereof, but also the right to be informed of the existence and the contents thereof.

4. Where documents held by public bodies are kept in archives, this shall not at any time hinder the exercise of the right of access to such documents.

5. Access to documents that form part of unfinished court proceedings or to documents produced in the preparation of a court ruling shall be deferred until the ruling has been taken, the proceedings have been shelved or a year after they were first produced.

6. Access to inquests and inquiries shall be permitted only after the expiry of the period for possible disciplinary proceedings.

7. Access to documents within the domain of notaries or public registers, documents on an individual's civilian identity and criminal records, documents concerning automatically processed personal data, as well as documents kept in historical archives is governed by separate legislation.

Article 8 (Access to personal documents)⁴

1. The right to access personal data contained in documents held by public bodies* is exercised with the necessary adaptations in terms of the law applicable to the authorised handling of personal data.

2. Information of a medical nature is communicated to the applicant only through a medical intermediary elected by the applicant.

3. Access by third parties to personal data can further be authorised in the following cases:

- a) by means of a written authorisation from the person to whom the data applies;
- b) when communicating personal data has the objective of safeguarding the legitimate interest of the person to whom the data applies should the latter not be in a position to concede authorisation, and once an opinion has been obtained as provided for in the previous number.

4. Documents containing personal data can further be communicated to third parties when, by their nature, it is possible to delete the personal data without having to recreate the documents and without the danger of easy identification.

Article 9

⁴ The Term “documentos nominativos” [nominative documents], meaning ‘relating to a name’ – i.e. Ben Silver – I’ve translated as “personal documents”. Further occurrences of this are indicated by the double-asterisk **

(Correction of personal data)

1. The right to make corrections, to complete or to delete inaccurate, insufficient or excessive personal data is exercised subject to the provisions of the legislation concerning personal data automatically processed and with the necessary changes.
2. Only the corrected version of personal data can be suitable for use or communication.

Article 10
(Illegal use of information)

1. It is forbidden to use information without due respect for copyright, industrial property rights as well as reproduction, dissemination and use of such documents and the information therein contained, which could constitute practices of unfair competition.
2. Personal data communicated to third parties shall not be used for purposes other than those for which access was authorised, and shall otherwise entail liability for losses and damages under the terms laid down in the law.

Article 11
(Publication of documents)

1. The public body must publish through adequate means:
 - a) all the documents, regular internal decisions, circulars and guidelines that fall within the ambit of its scope of activities;
 - b) the listing of all documents containing an interpretation of legislation or a description of an administrative procedure, with specific mention of the title, subject, date, origin and where the documents may be consulted.
2. Publication and announcement of documents must be made with a frequency of at most six months and in such a way as to encourage regular access by interested parties.

CHAPTER III
Exercise of the right of access

Article 12
(Modes of access)

1. Access to documents is exercised by means of:
 - a) free perusal conducted on the premises of the institution where they are kept;

b) reproduction by means of photocopy or any other technical means, to wit visual or audio;

c) issuance of certified copies by the public body [where the document is kept].

2. Reproduction pursuant to paragraph 1b) shall be one copy and subject to payment by the applicant of an amount strictly corresponding to the cost of the materials used and the service rendered; such amount to be determined by a decree-law.

3. Documents in digital format shall be transmitted in a way that is intelligible to any person and such so that it constitutes an accurate match of the contents of the file, without detriment to the option provided for in paragraph 1b) of this article.

4. Where there is a risk that reproduction as provided for in paragraph 1b) may cause damage to the documents, the interested person, at his or her expense and under the supervision of the institution, shall be entitled to devise a manual reproduction or reproduction by any other means that does not harm the preservation of the document.

Article 13 (Manner of request)

Requests for access to documents must be made in writing and contain all references necessary for identifying the document, as well as the name, the address and the signature of the interested person.

Article 14 (Responsibility for providing access)

In each public authority, institution and statutory society there is an entity responsible for the implementation of the provisions of this law.

Article 15 (Reply from public authorities)

1. The entity to whom a request for access to a document is made, must within a period of 10 days:

a) communicate the date, place and manner in which to consult the document, reproduce it, or obtain a certified copy thereof;

b) in terms of the provisions of Article 67 of the procedures for public authorities approved by Decree-Law 16-A/95, of 15 December, give reasons for the complete or partial refusal to grant access to the requested document;

c) notify that the document is not within its possession and, if it knows of its whereabouts, point out the entity that possesses the document, or pass the request on to the latter and so inform the interested party;

Article 16
(Amicable or adversarial challenge)

The requestor may amicably or adversarially challenge the express or tacit non-compliance or decision restricting the exercise of the right of access.

Article 17
(Monitoring Commission)

It is the responsibility of the Monitoring Commission to ensure compliance with the provisions of the current law.

Article 18
(Composition of the Monitoring Commission)

1. The Monitoring Commission is made up of the following members:
 - a) a judge from the Chamber of Civil and Administrative Law⁵ nominated by the Judicial High Council, who shall be the Chair;
 - b) two Members of Parliament elected by the National Assembly, reflecting a multi-party composition;
 - c) a law professor nominated by the **President**;
 - d) two persons of high standing nominated by the government;
 - e) a lawyer nominated by the Law Society.
2. Any member may at his initiative be replaced by an alternate appointed by the same entity that appointed him or her.
3. The terms of office of members shall be two years, renewable; without prejudice to [the expected] termination when a member ceases to perform the functions which led to his or her appointment.
4. **All members** may serve their terms over and above their other functions.
5. Rights and benefits of the members are set out in a regulations instrument of the present law.
6. Entities having an interest in matters being discussed at a given session of the commission may have a representative present, without the right to vote.

Article 19
(Powers)

⁵ In the process of looking up the nature of this institution to arrive at as nearly as possible English equivalent, I can find no sign of the existence of such a structure, (using web search engines, finding only a single match for this “Civil Chamber” in Brazil).

It is the responsibility of the Monitoring Commission:

- a) to draft its internal rules;
- b) evaluate all complaints submitted to it by the interested persons;
- c) advise on access to personal documents;
- d) present its position on the system of classification of documents;
- e) give opinions on the implementation of this law, as well as on the drafting and implementation of the **complementary laws**;
- f) prepare an annual report on the implementation of this law and on its activity, to be forwarded to the National Assembly and then to the government for publication.⁶

CHAPTER IV

Final and Temporary Provisions

Article 20 (Putting into Practice)

The present law must be put into practice by the government within a period of 120 days.

Article 21 (Repeal)

All legislation contrary to the provisions of the present law is hereby repealed.

Article 22 (Doubts and Omissions)

Doubts and omissions arising from interpretation and implementation of this law will be dealt with by the National Assembly.

Article 23 (Entry into effect)

This law takes effect on the date of its publication [in the Government Gazette].

Viewed and approved by the National Assembly, in Luanda, on the 23rd of July 2002.

The Acting Speaker of the National Assembly, Julião Mateus Paulo.

Promulgated, on this the 29th day of July 2002.

⁶ As a thought, it might be an idea to try to obtain these annual reports to see how the law has been used/ been put to use.

Let it be published.

The President of the Republic, JOSÉ EDUARDO DOS SANTOS.