

Turkish Law On The Right To Information, Law No: 4982

PART ONE

Object, Scope and Definitions

Object

Article 1 - The object of this law is to regulate the procedure and the basis of the right to information according to the principles of equality, impartiality and openness that are the necessities of a democratic and transparent government.

Scope

Article 2 - This law is applied to the activities of the public institutions and the professional organisations which qualify as public institutions.

The provisions of the Law on the Use of the Right to Petition (date:01.11.1984, No: 3071) are reserved.

Definitions

Article 3 - The terms used in the law means following:

- a) Institutions: All the authorities that can be included under article 2 of this law.
- b) Applicant: All natural and legal persons who apply to the institutions by way of exercising the right to information and
- c) Information: Every kind of data that is within the scope of this law and are included in the records of the institutions.
- d) Document: Any written, printed or copied file, document, book, journal, brochure, etude, letter, software, instruction, sketch, plan, film, photograph, tape and video cassette, map of the institutions and the information, news and other data that are recorded and saved in electronic format that are within the scope of this law.
- e) Access to information and document: Depending on the nature of the information and the document, providing a copy of the information or the document to the applicant; in cases were it is not possible to give a copy, permitting the applicant to examine the original information or the document and to take notes or to see the contents, or to listen to.
- f) Board: The Board of Review of Access to Information

PART TWO

Right to Information and the Obligation to Provide Information

Right to Information

Article 4 - Everyone has the right to information.

Foreigners domiciled in Turkey and the foreign legal entities operating in Turkey can exercise the right in this law, on the condition that the information that they require is related to them or the

field of their activities; and on the basis of the principle of reciprocity.

The rights and the obligations of Turkey under the international conventions are reserved.

The Obligation to Provide Information

Article 5 - The institutions are required to apply administrative and technical measures to provide every kind of information and document, with the exceptions set out in this law, to provide the information for applicants; and to review and decide on the applications for access information promptly, effectively and correctly.

The other legal regulations which are incompatible with the provisions contained herein shall cease to be applicable as of the date this Act comes into force

PART THREE

Application for Access to Information

Procedure of Application

Article 6 - The application for the access to information is made through a petition that includes the name, surname, residence or the work address of the applicant and the signature; where the applicant is a company, its title and the address, and the signature of the authorised person together with a certificate of authorisation, to the institution that possesses the information or the document. The application can be made also through electronic or other types of communication tools, if the identity and the signature of the applicant can be legally determined.

The information and the document that is required must be specified in the petition.

The Quality of the Information or the Document that can be required

Article 7 - The application for access to information should relate to the information or the document that the institutions which are applied possess or should have possessed due to their tasks and activities.

The institutions may turn down the applications for any information or document that require a separate or special work, research, examination or analysis.

Where the required information or the document is at an institution other than the one that is applied, the petition will be sent to the relevant institution and the applicant will be notified accordingly.

The Information and Documents that are Published or Disclosed to the Public

Article 8 - The information and documents that are published or disclosed to the public either through publication, brochure, proclamation or other similar means, may not be made the subject of an application for access to information. However, the applicant will be informed of the date, the

means and the place of the publication or disclosure of the information or the document.

Exempting the Classified Information

Article 9 - Were the required information or the document contain classified elements, such information shall be set a aside if separable and the applicant shall be notified of the grounds for this exemption.

Access to the Information or the Document

Article 10 - Institutions give a certified copy of the required document to the applicant.

Where the information or the document is not appropriate for copying or may cause damage to the original, the institution will provide the applicant with the necessary means;

- a) to examine the original document and take notes for those that are published or written,
- b) to listen to the material that are in the form of sound recording,
- c) to watch the material that are in the form of visual recording.

Where the access to the information or document require other means than those mentioned above, such information or document shall be provided unless it damages the original material.

The applied institution, will charge the applicant for the cost of the procedure, to be added as an income to the budget.

The time limits for access to information or document

Article 11 - The institutions shall provide the required information within 15 working days. However, where the required information or document is to be obtained from another unit within the applied institution or it is necessary to receive the opinion of another institution or if the scope of the application pertains more than one institution; the access shall be provided in 30 working days. In such case, the applicant will be notified of the extension and its reasons within 15 working days.

The 15 working days time limit shall be suspended at the time when applicant is notified of the cost for the access to the information or the document stated in Article10. The applicant will be considered to have withdrawn the application unless the cost is paid within the next 15 working days.

Response to the Application

Article 12 - Institutions notify the applicants, or inform them in electronic format, of the result of their applications regarding access to information. If the application is rejected the applicant will be notified of the reasons and the appeal mechanism against the decision.

The Procedure for Appeal

Article 13 - Within 15 days starting from the official notification, the applicant whose application for access to information is rejected due to the reasons under Articles 16 and 17, may appeal to the Board before appealing for judicial review. The Board shall render a decision within 30 days. The institutions are obliged to provide every kind of information and document that are required by the Board within 15 days.

Appeal to the Board suspends the time limit to refer to the administrative jurisdiction.

The Board of Review of the Access to Information

Article 14 - The Board of Review of the Access to Information reviews the administrative decisions rendered under Articles 16 and 17, and makes decisions regarding institutions on the exercise of right to information.

The Board is composed of 9 members. The Council of Ministers, appoint two members amongst the four candidates nominated by the General Board of the Court of Appeals and the Council of State from their members; three members, each amongst the scholars of criminal, constitutional and administrative law who bear the title Professor or Associate Professors; one member among the two candidates that have the qualifications to be elected as chief of bar and are nominated by the Turkish Bar Association, two members amongst those who have been serving as general director; and a member among judges in service of the Ministry of Justice as recommended by the Minister.

Nomination is subject to the approval of the candidates.

The Board president is appointed by the Council of Ministers among the Board members.

The Board convenes at least once a month or anytime upon the call of the President when there is need.

Board Members serve for four years. The members, who complete their time may be re-elected. In the event that a member leaves before four years, the new member who is elected with the same procedure to replace the leaving member, completes the period of the member that s/he has replaced. The former Board operates until the new Board starts to operate.

With reservation to the provisions of the Act No: 6245 dated 10.02.1954, Board members who already bear the title of public officer are paid the amount found as 2000 multiplied by public officer payment coefficient while those who do not qualify as public officer receives the amount multiplied by 1000. Those payments are exempt from any tax but only stamp tax.

The Board can set up commissions and working groups and in addition may invite representatives from the ministries, non-governmental organisations and other institutions to participate in the meetings as it finds appropriate.

The secretarial services of the Board are executed by the Prime Ministry.

The Prime Ministry prepares and puts into force the regulation concerning the procedure and the basis for the activities and tasks of the Board.

PART FOUR

The Restrictions on the Right to Information

The Transactions that are not subject to the Judicial Review

Article 15 - The transactions that are not subject to the judicial review, those that affect the working life and professional honour of the persons, are within the scope of this law. The right to information provided in this way, does not eliminate the restriction regarding the judicial review of the transaction.

The Information and Documents Pertaining the State Secrets

Article 16- The information and documents which qualify as state secrets which their disclosure clearly cause harm to the security of the state or foreign affairs or national defence and national security are out of the scope of the right to information provided herein.

The Information and Documents Pertaining the Economical Interests of the State

Article 17- The information or documents of which their disclosure cause harm to the economical interests of the state or will cause unfair competition or enrichment, are out of the scope of this law.

The Information and Documents Pertaining the State Intelligence

Article 18- The information and documents regarding the duties and activities of the civil and military intelligence units, are out of the scope of this law.

However the information and documents, that affect the professional honour and working life of the persons, are within the scope of right to information.

The Information and Documents Pertaining the Administrative Investigation

Article 19- The information or the document that is related to the administrative investigation held by the administrative authorities and which will;

- a) clearly violate the right of privacy of the individuals,
- b) endanger the security or the life of the individuals or the officials that carry out the investigation,
- c) jeopardise the security of the investigation,
- d) disclose the source of the information which needs to be kept secret, or endanger the procurement of similar information in connection with the investigation,

are out of the scope of this Law.

The Information or Documents Pertaining the Judicial Investigation and Prosecution

Article 20- The information or the document of which its disclosure or untimely disclosure will

- a) give rise to a criminal offence,
- b) endanger prevention and investigation of the crime or endanger the legal procedure for the detention and the prosecution of the criminals,

- c) obstruct the proper operation judicial duty.
- d) violate right to fair trial of a defendant in a pending case

are out of the scope of this law.

The provisions of the Code of Criminal Procedure (Date: 4/4/1929, No:1412), Code of Civil Procedure (Date:18/6/1927, No: 1086), Code of Procedure of Administrative Jurisdiction (Date: 6/1/1982, No: 2577) and the provisions contained in other specific regulations are exempted from this Law.

Privacy of the Individuals

Article 21- With the proviso where the consent of the concerned individual has been received, the information and documents that will unjustly interfere with the health records, private and family life, honour and dignity, and the economical and professional interests of an individual, are out of the scope of the right to information.

Due to public interest considerations, personal information or documents may be disclosed by the institutions on the condition that concerned individual is notified of the disclosure at least 7 days in advance and his/her written consent is obtained.

The Privacy of Communication

Article 22- The information and documents that will violate the privacy of communication, are out of the scope of this law.

Trade Secrets

Article 23- The information and documents that are qualified as commercial secret in laws, and the commercial and financial information that are obtained by the institutions from the private or corporate persons with the condition of keeping secret, are out of the scope of this law.

Intellectual Property (Works of Art and Science)

Article 24- In the event of application for access to information concerning intellectual property, the relevant provisions of the intellectual property law shall apply.

Institutions' Internal Regulations

Article 25- The information and documents of the institutions that do not concern the public and are solely in connection with their personnel and the internal affairs, are out of the scope of the right to information. However, the employees of the institutions who are subject the regulations have the right to access to such information.

Institutions' Internal Opinions, Information Notes and Recommendations

Article 26- The information and document qualified as opinion, information note, proposals and recommendations which facilitate the execution of the activities of the institutions are within the scope of the right to information, unless the opposite is decided by that institution.

The opinions of the units, individuals or institutions that are legally obliged to give reports on scientific, cultural, technical, medical, financial, statistical, legal and other similar expertise fields are within the scope of the right to information with the proviso that such opinions constitute the basis of administrative decisions taken by the institutions.

Requests for Recommendation and Opinions

Article 27- The requests for recommendations and opinions are out of the scope of this law.

Formerly Classified Information and Documents

Article 28- The information and documents which cease to be classified either by a judicial or administrative decision are open to the applications for access to information, with the proviso that they fall within the scope of the other exceptions provided in this law.

PART FIVE

Miscellaneous

Criminal Provisions

Article 29- Without prejudice to any prosecution to be conducted by virtue of general provisions of criminal law, the officials and other civil servants who negligently, recklessly or deliberately obstruct the application of this law, shall be subject to disciplinary sanctions as provided in the relevant regulations of personnel regime.

The information and documents that are obtained according to this law, cannot be copied and used for commercial interest.

Preparation of the Reports

Article 30- The institutions shall prepare reports pertaining the previous year and that show,

- a) the number of the applications on the access to information received by the institutions,
- b) the number of the applications that the institutions accepted and provided access to information or document,
- c) the number of the applications that are rejected and statistical information about their categorisation ,
- d) the number of applications that are accepted and accordingly provided access to information which previously had been qualified as classified.
- e) the number of the appeals to the decisions of rejection and the and their results,

and send them to the Board of Review of the Access to Information until the end of February, every year. The institutions that are associated, related or connected to another public legal entity send their reports through the ministry they are associated with. The Board prepare a general report and send it to the Turkish Grand National Assembly every year until the end of April, together with the reports received from the institutions. These reports are disclosed to the public by the Presidency of the Turkish Grand National Assembly in two months time.

Regulations

Article 31- The Regulation concerning the essentials for the application of this law shall be prepared by the Prime Ministry and put into force by the Council of Ministers within six months after the date that this law is published.

Entry into Force

Article 32- This law comes into force six months after the date of its publication.

Execution

Article 33- The Council of Ministers executes the provisions of this law.