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Resolution of Public Sector Information – the Hungarian Model

The notion of freedom of information means that we have the right to get to know information of public interest, that we have the right to inspect official documents. The State, sustained on our own taxes, cannot hide its operations from society. The shared purpose of data protection and freedom of information is to continue maintaining the non-transparency of citizens in a world that has undergone the information revolution while rendering transparency of the state.

The essence problem of the reusing Public Sector Information is that the domain of PSI and Freedom of Information is the same, but the *approaches* of commercial reuse and the constitutional aim to access of public data are different.

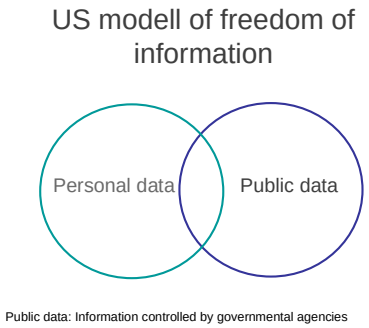
"In the Republic of Hungary, every individual is granted the right to free expression, as well as to access and disseminate data of public interest."[1]
In Hungary is unique in the degree to which the protection of personal data within its borders is linked with the constitutional values of freedom of information[2]. In Europe, Hungarian legislation stands alone in having opted for the rather common-sense solution to enact a single law to regulate freedom of information in conjunction with the protection of personal data.
The Act of data of public interest has turned out to be quite peculiar in Hungary. As for the foreigner trying to understand Hungarian law, it is a serious challenge that data of public interest and public information are not synonymous and, what is more, data of public interest (according to the main rule it is public, though) it may be secret; moreover state secrets may also constitute data of public interest (and generally they do so, if they are not personal data) like business secrets.

I have not met our Act of *data of public interest* in legal systems of other countries. It is worth setting the Acts of data of public interest / public information of the Hungarian DP&FOI Act side by side with those of the U.S. Freedom of Information Act:[3]

In the U.S. Act, freedom of information may, of course, cover personal data, i.e. personal data may be of public interest. But in the Hungarian DP&FOI Act, it is not the case, i.e.: it would violate the dogmatics of informational rights in the DP&FOI Act to state that freedom of information may cover personal data.
The U.S. Act applies the expression of public *information* as the pair of our data of public interest.
The DP&FOI Act, until its last amendment, consistently used the expression "data" in all contexts, and it did not apply the word *"information."* The text in force uses it in section 3(7) in a rather non-emphasised context.
The U.S. Act defines public information so that it includes the Acts of data and data carrier.[4]
Considering *"data carrier,"* the U.S. Act uses the expression *records*, the Act of which may

[1] Constitution of Hungary. § 61 (1).
[2] See: DP&FOI Act No. LXIII of 1992
[3] "The Freedom of Information Act 5 U.S.C. § 552, As Amended by Public Policy Rules Through Technology" (1998) 76 Texas L.R., Issue 3.
[4] Cf. DP&FOI Act, section 4: "'*data of public interest' shall mean any information or knowledge, not falling under the definition of personal data, processed by an organ or person performing a state or local-government function or other public function determined by a legal rule, or any information or knowledge pertaining to the activities thereof.*"

is to be considered as all electronic data carriers due to the adoption of the Act on Electronic Freedom of Information.
The unique solution of the Hungarian of data protection-freedom of information rights is that contrary to the laws of the USA and other countries, it does not specify files, documents, minutes, records, etc. but rather it describes *data* which may be *personal* or *of public interest*. With this, it gave possibly one of the most up-to-date answers to the basic challenge of the Information Age in 1992.
The DP&FOI Act does not deal with the data carrier which – in my view – is specifically up to date, and not least exhibits a technology-neutral viewpoint.
It does not define the Act of data either, as it does not draw the line between data from information that cannot be objected – supposing a kind and intelligent enforcement of law. Accordingly in our country, all knowledge (whether it is conceived or not) is data.
In the case of the U.S. Act, *freedom of information* is actually equal to legal regulation of *public data / information* related to the State.



In the case of the DP&FOI Act, freedom of information refers to data of public interest which is both narrower and broader at the same time than the world of state/public authority organ and state/public authority data, and its accessibility is regulated in the situation if data of public interest is also public.

"For the purposes of this Act:
'data public on grounds of public interest' shall mean any data, not falling under the definition of data of public interest, the making public or accessibility of which is provided for by an Act on grounds of public interest."

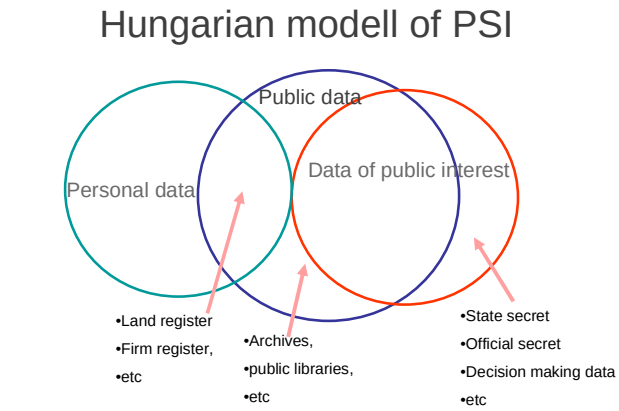
Further differences:

The most singular peculiarity, actually arising from the subject of this study, is that –
Any knowledge may be personal data or data of public interest.
I should not write it down – I do so, however – since the first statement includes the idea that the common class of personal data and data of public interest is an empty logical class.

Then:
The data may be either public or confidential (its confidentiality have varying levels and titles, of course).
The main rule in the case of personal data is confidentiality.
The main rule in the case of data of public interest is publicity.

Logical connections of data groups in Hungarian law

Logical connections between particular data groups in Hungarian law may be illustrated as follows:



Data of public interest-personal data

The logical class of data of public interest *and* personal data is empty because "*data of public interest shall mean any information or knowledge, not falling under the definition of personal data, processed by an organ or person performing a state or local-government function or other public function determined by a legal rule, or any information or knowledge pertaining to the activities thereof.*"

The 1992 Decision of the Constitutional Court says: "*The information may only not be considered of public interest if it is personal data.*"[5]

In the last year the Hungarian Parliament enacted the EFOI Act. The regulatory principles of the EFOI legislation[6]:

1. The principle of disclosure

As a point of departure, the Act uses the basic tenet of the philosophy of freedom of information, which regards information handled by public agencies and officials as accessible for anyone by default, that is, allowing for certain exceptions as may be specified by law. However, universal access means more than just rendering information accessible to the applicant upon request. Just as importantly, it implies unsolicited general disclosure of information of broader social interest and consequence. The institution of disclosure moves public data controllers to positive action, motivating them to voluntarily making available as much information as possible. In essence, the principle of disclosure specifies the notion,

[5] *Decision 32/1992 Constitutional Court*. Of course, this view does not stand up logically since there may be data not personal, nor of public interest: for example because it is possessed by an organ not performing public duties.

[6] CONCEPT FOR HUNGARY'S ACT ON ELECTRONIC FREEDOM OF INFORMATION Prepared by the EÖTVÖS KÁROLY PUBLIC POLICY INSTITUTE on commission of the Ministry of Informatics and Telecommunication, June 2004.

often articulated in international documents and professional legal literature, that public agencies are liable to take a proactive role.

2. The protection of freedom of information in its conventional forms

Enshrining electronic freedom of information by legislative means serves the broadest possible enforcement of civil rights, rather than their restriction. Therefore, mandating electronic access should not be allowed to prevent the exercise of access to public information in conventional ways. It is therefore vital to ensure the functional equivalence of the two channels of communication, including the citizen's discretion to choose the format or data carrier, as well as the medium for receiving the information sought. In this latter respect, the Act allows for a certain measure of imbalance. Agencies be obliged to supply data stored exclusively in the digital domain in printed form upon request (except of course special databases that are unfit for such conversion by their very nature), but not the other way round. In other words, it should not be made mandatory for agencies to digitalize paper-based information.

This same principle is served by another proposed measure, which would prevent agencies from construing their compliance with the mandatory posting requirement as an excuse for refusing individual requests for disclosure. To put it in different words, the maintenance of a homepage should not be seen as a disjunctive alternative of answering individual calls for public information.

3. The principle of technology independence

The electronic freedom of information implies the right to access data of public interest by electronic means. The law must not stipulate any one technology or network platform for that access.

It is equally obvious that making disclosure mandatory on every conceivable electronic platform, including e-mail, the web, SMS, WAP, and in the future even digital television, would impose an excessive burden that no agency of public administration could possibly shoulder. In reality, it is possible to ensure electronic disclosure by providing a single channel of electronic communication. At the same time, it is preferable during implementation to accommodate the expectations and actual capabilities of data seekers by concentrating development efforts on solutions easily accessible to most people without making a major investment in technology. This criterion also goes a long way toward guaranteeing the judicious use of public funds. Whenever some new technology becomes available at a lower cost for a broader group of users, it must be enabled as a means of accessing public information.

Crucially, the principle of technology independence implies that electronic disclosure must always use the most common format that is user friendly and intuitive for the most citizens. As an exception to the rule of technology independence, the authors of this Act recommend that applicable agencies be required on a mandatory basis to post all information specified on disclosure lists on their web site. This requirement is justified by the need to facilitate universal access, and to improve the efficiency and standardization of disclosure.

4. The principle of equal opportunity and government subsidy of access

To uphold the freedom of information, it is not enough for the government to refrain from infringing on people's rights. The government must actively provide for the conditions under which it becomes possible to exercise that fundamental right.
The Act identifies a number of ways of ensuring equal opportunity in this field: by declaring that public information posted on the web is available free of charge; by mandating the government to ensure access to electronically disclosed public information free of charge for disadvantaged groups and to maintain an assistance service; by requiring handicapped access to web sites; and by requiring the option of accessing information in foreign languages. As a token of equal access, public agencies should be required to post their basic information in the languages of Hungary's ethnic minorities.

5. The protection of personal data while implementing freedom of information

The fundamental right to have access to data of public interest accrues to everyone under the Constitution of the Republic of Hungary. Petitioners, therefore, need not justify their petitions to have access to information. Formulating the beneficiaries of the freedom of information in this way implies the right of anonymous access, that is, that the citizens must be guaranteed anonymity in the process of accesing information concerning the activities of public authorities and officials. Although the amendments required on this count are justified in part by the emergence of electronic tools such as the management of log files and the use of cookies, the special requisites appearing in the electronic context can be readily converted into rules of general application. We believe that the protection of privacy is imperative throughout the process, whether disclosure takes place by mandatory posting or upon request.

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