



**Freedom of access to information in the parliamentary sphere
: Federal Act Governing Access to Information held by the Federal Government
(Freedom of Information Act)**

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Abstract

Leading Thailand according to the policy set up by the national strategy and the model of Thailand 4.0 poses a formidable challenge and, as such, needs careful preparation as well as continual re-adjustments. Remaining open to modern innovation is a key requirement in this regard. Broadening the channel for people to have direct access to information held by the state as a basis for communication between the people and the state is highly necessary in order for the public to understand the potential limitations accompanying certain state actions. Such information can then be used to more clearly and adequately describe the problem or needs of the people. It allows them to get involved properly. It also has to be kept in mind that communication goes both ways. Thus, opening up, the state may obtain more accurate information from the public in return. Information that may help to better understand and thus reduce conflicts, leading to the provision of public services that truly meet the needs. Information that leads to any effects of actions of the state being taken into consideration in full. My research project is aimed at studying the right of people to access information in the context of the German parliament. Against the background of the above considerations, it might provide some valuable inspiration for further shaping the exercise of the rights flowing from the Thai Official Information Act 1997.

Access to information in the possession of government agencies in Germany is currently accepted as a motor for progress as it can create the driving force for big changes in a society, where a large part of information is in the hands of the state. A framework for direct access to public information as a manifestation of the exercise of citizens' rights is provided by the Freedom of Information Act 2006, an important means by which anyone can, in principle, access information that is in the possession of state administrative agencies or other units at the state level engaged in administrative tasks. This also includes information held by private entities assigned by the above agencies to carry out administrative tasks. The exercise of this right is open to any person. It is neither dependent on a person's nationality, nor on the nature or duration of its stay or residence in Germany. Nor does the person concerned need to be a stakeholder in the proceedings to which the information it requests access to refers. In fact, there is no requirement to give any reason, at all, why access to information is requested. Still, however, the mere fact that certain information is in the possession of the state does not imply that the public will be able to access it in all cases. Or at least not straight away. The Freedom of Information Act 2006 still provides for certain "safeguards", containing lists of grounds on which the state may base its refusal to disclose certain information, either temporarily or permanently. If the information is considered in need of protection due to its containing personal data, for example, certain special conditions have to be met before access has to be granted. Furthermore, in case the information concerned is in very high need for protection, e.g. information the disclosure of which would pose a threat to the security of the state, it does not have to be made accessible, at all.

Considering the status of the German Parliament under the Freedom of Information Act 2006, it is instantly apparent that it is not, as such, an administrative government unit, i.e. not one of the principal addressees of this law. Therefore, the German Parliament will have the duty to disclose information in its possession to the people upon request, only if this information is related to the execution of tasks pertaining to the administration of the Parliament. This is not the case, for example, where the passing of a legislative act is concerned. However, over time the German courts have made it clear that a differentiating approach has to be followed, in this regard. It has to be ensured that the non-application of the Freedom of Information Act 2006 is reserved for cases concerning specific actions of the Parliament. Thus, in the case of the Federal Government drafting a law prior to its

presentation of the House of Representatives, for example, it was found that this was not yet part of a legislative action of the Parliament but still part of the execution of a function of the government. Thus, if people want to exercise their rights under the Freedom of Information Act 2006, such access cannot simply be denied on the grounds that the German Parliament was involved in the case concerned. Rather, the full framework provided by this law, with its system of principles and exceptions, has to be carefully applied to the case, mindful of the balance to be found between the high weight to be placed on transparency in a democratic society and the equally high importance of ensuring the Parliament's independence and ability to work.

Keywords:

Freedom of access to information in the parliamentary sphere, Freedom of access to information, Freedom of Information Act 2006, The Official Information Act 1997

Explain the impacts of your work especially to Thailand.

Granting direct access to information held by the state, the German Freedom of Information Act 2006 uses basically the same principles as the Thai Official Information Act 1997. My research shows that the German law is very effective, already, and there is no need to draft new or additional legislation in this regard. As such, it can be understood as something of a “settled system” which may well serve as a reference model and orientation point, also in the Thai legal context. The following issues seem particularly important, in this regard.

1. Access to information relating to the work of the Prime Minister or the Cabinet – In Germany, the application of the Freedom of Information Act 2006 is not limited to the parts of the government working as administrative bodies but also covers the more highly political dealings. This concerns, for example, the Cabinet Dialogue or the drafting of legislation by the Cabinet. In Thailand, on the other hand, there are tighter restrictions on the exercise of citizens' information rights, in this regard.

2. Who has the right to request information under the Freedom Information Act? – In Germany, the right to request access to information held by the state is not limited to persons of German nationality. If, for example, a Thai citizen residing in Germany needs information held by state agencies (such as action plans, etc.) to make investment decisions, to obtain this information he or she can rely on the same provisions as German nationals. In Thailand, so far, only Thai nationals enjoy this type of informational freedom.

3. Need to give a reason for one's request to access information held by the state – The principle that access to information in the possession of the state can be sought without having to give a reason for one's request is strictly enforced in Germany. While according to the letter of the Thai law the same principle should apply here, it appears that in practice the state agencies still require citizens approaching them with requests for freedom of information to state their reasons for this.

4. Interpretation of exception clauses allowing the state to not disclose certain information – According to the German Federal Administrative Court, exceptions must be interpreted in the strictest sense so that the right to access information held by the state is not unduly restricted. Accordingly, it does not suffice to merely recur, in the abstract, to such non-specific concepts as “benefit of the nation”, “security of the state” or “danger that may occur”, etc. Rather, it has to be shown, in each individual case, why exactly such negative consequences should be expected if the information is made available, and actual facts have to be presented, speaking to the realism of these prognoses. The Thai administrative courts tend to follow a strict approach, as well, when interpreting exception clauses in the Thai Information Law. Still, the very strict German approach might serve as a reference model for them for going still more in that direction.

5. Weighing reasons to disclose or not disclose information – The German Freedom of Information Act 2006 provides clear criteria for differentiating between cases where the authorities are bound to immediately disclose the information, cases where they are strictly forbidden to disclose information, and cases where they are to exercise discretion with regard to this decision, taking into account the principle of proportionality. In the Thai legal framework, such clear distinctions are mostly absent.

6. Disclosure of personal information – In Germany, when it comes to questions of disclosing personal information under the Freedom of Information Act 2006, some of the definitions contained in the Personal Data Protection Act apply. In Thailand, such definitions are contained in the Information Law itself, as there is no specific law, yet, to protect personal information in a more general way.

7. The public service system – In Germany, there is a central information inquiry point where people can address their access requests, no matter which state agency might possess the information they wish to obtain. This service is available online and can be monitored at any time. Meanwhile, in Thailand the only way to get information is to apply directly to the agency holding the respective information. There are no central agencies dealing with this matter.

Explain how your work fit with the ATPER conference theme

Sustainable social development cannot happen if the public, the entrepreneur, or the state do not have all the information at their disposal that is needed as a basis for making adequate and sound decisions. Having enough information does not only help to reduce errors in problem-solving approaches, be it at the private or at the public level. Rather, the right kind of communication today is being understood as maybe the most important means of identifying those problems that are most relevant in a given situation, in the first place. But what if a citizen is faced with a situation where a set of (potentially) relevant information is in the hands of the state? She will ask the state to disclose that information. And this is the point where a whole set of legal questions come into play: Does this person need to provide a reason for her request, specifying what interest she has in this data and what she is planning to use it for? What type of information can the state be requested to provide, at all? And what which reasons could justify a denial of access to information held by the state? Would it suffice to refer to such rather non-specific categories as that of “the sake of the nation”? What about reasons like “the security of the state” or “to prevent any possible harm”? Recently, more and more states have become aware of the high relevance of these questions as they eventually relate to the basic relationship between state and citizen in the age of information. The answers provided by them have, in many cases, come in the form of specific laws tackling these exact questions. Against this background, my research project focuses on the German Freedom of Information Act 2006 and its application in the sphere of the German Parliament, i.e. the state organ primarily responsible for representing the whole of society and ensuring its sustainable development.