Vošnjakova 1, p.p. 78, Ljubljana, Slovenija
Telefon: ++386 (0) 1 230 97 30
Faks: ++ 386 (0) 1 230 97 78
www.ip-rs.si

Date: Oct 7, 2009
No: 090-94/2009

Information commissioner (hereinafter: Commissioner) by its attorney, Nataša Pirc Musar, and based on Par 3 and 4, Art. 27 of the Access to Public Information Act (Official Gazette RS, No. 51/2006 – official consolidated text, and 117/2006 – ZDavP-2; hereinafter: ZDIJZ), Art 2 of the Information Commissioner Act (Official Gazette RS, No. 113/2005 and 51-07 – ZUstS-A, hereinafter: ZInfP), and Par 1, Art. 252 of the General Administrative Procedures Act (Official Gazette RS, No 24/2006 – official consolidated text , 105/2006 – ZUS-1, 126/07- ZUP-E and 65/08-ZUP-F; hereinafter: ZUP), in the appeal of **Rok Praprotnik, journalist of Dnevnik d.d.,** Kopitarjeva 2 – 4, 1000 Ljubljana (hereinafter: Applicant) dated July 1, 2009, **against the decision of the Office of the State Prosecutor General of the Republic of Slovenia,** Trg OF 13, 1000 Ljubljana (hereinafter: body) No. Tu 10/09, IC 102/09 of June 22, 2009, issues the following

DECISION:

1. The applicant's appeal is granted and the contested decision is annulled. Within 15 days after receiving this decision the body shall enable access to the following documents:
   - register of visitors for May 10, 2009; the names and surnames of visitors, not employed by the body, shall be covered;
   - in the Rules on procedures and measures for protecting personal data obtained by video surveillance of the entrance to the official premises of the body No. Tu 145/08 of Dec 1, 2008, the following information should be covered:
     - Room numbers (in Art. 1. Par 2, last indent),
     - Par 2, Art. 4,
     - Floor number (Art 6, second line in the text),
     - Room number (Art. 7, Par 1, first line in the text),
     - Room numbers (Art. 9, Par 1, fourth line in the text),
     - Entire article10.

   The remaining part the applicant's request of May 28, 2009 is refused.

2. No expenses were incurred by this proceeding.

GROUNDS:

On May 28, 2009 the applicant filed a request with the body to access public information. The following documents were required:
1. records of video surveillance made on May 10, 2009, from the cameras installed above the entrances on each floor, i.e. video records depicting Barbara Brezigar, the state prosecutor general, and Branka Zobec Hrastar, higher state prosecutor, together or individually.
2. the document which regulates archiving and management of video records,
3. inspecting the register (entry book) on May 10, 2009.

By decision No. Tu 10/09, IC 102/09 of June 22, 2009, the body refused the applicant's request in whole by arguing that video surveillance records can not be treated as public information. The condition for the information to qualify for public information is that the body must produce the information alone, as a result of its activities or in the procedures for which it is authorised according to the general rules, or that the information has been acquired from another person as a result of official duties of the body. The area of work of state prosecutors (and the body), is regulated by the Constitution of RS, the State Prosecutor Act and other laws and statutory regulations. The field of work of state prosecutor covers mainly

prosecution criminal offences and other punishable acts according to the law. Ensuring security in state prosecutor offices fits into the framework of ensuring conditions for smooth operation of the state prosecutor office, however it does not belong to its field of work. Due to the character of their work, the workers of the Higher state prosecution office of RS are highly exposed to security risks and for this reason video surveillance system is a necessary security measure. However, records from video surveillance are not considered public information because they do not derive from the field of work of the body. The body also noted that the request for accessing the document which regulates archiving and management of video records had to be refused based on Subpara 11, Par 1, Art. 6 of ZDIJZ. This document was produced as an internal activity of the body and the disclosure of such document could jeopardize the activities and the employees of the Higher state prosecution office of RS. This document regulates management of video surveillance records according to the statute governing personal data protection and the law governing personal security. While disclosing such document would not serve the interest of the public to become acquainted with the work of the body, it would on the other hand, present a security risk and jeopardize the security scheme of the body.
The request for inspection of the entry book has been turned down based on Subpara 3. and 11. Par 1, Art. 6 of ZDIJZ. The entry book of persons visiting the premises of the body is kept for security reasons and for protecting the occupants of the building, and also to protect personal and other data from prosecution files and other documentation. Therefore, the entry book is being kept as an internal activity of the body. Moreover, this entry book contains personal data, and access to such data may be allowed only under the Personal data protection act.

On July 1, 2009 the applicant appealed against the decision with the body, expressing disagreement with the arguments given in the decision.

On July 3, 2009, the body referred the applicant's appeal to the Commissioner by letter Ref. No. Tu 10/09, IC 102-1/09.

The appeal is founded.

The Commissioner explains that being the body at second instance, and according to Art. 247 of ZUP, the Commissioner is obliged to test the decision in the part which is being contested by the applicant. The decision had to be tested within the scope of the appellant`s allegations, and by official duty the Commissioner had to assess whether there have been any violations during the procedure at first instance, or violations of the material law.

1. **Inspection *in camera***

As stipulated by Art. 11 of ZInfP, the Commissioner is allowed to take a process action in requests for accessing public information without the presence of the client if it is necessary to prevent access before the final Commissioner's decision has been made. Theoretically, inspection *in camera* without the presence of the public, or the client, means decision making *de novo*. This means that the Commissioner as the appellate body must be acquainted with all the facts which could potentially have harmful effects if the information was disclosed. Having the function of appellate body, the Commissioner has to be fully authorised for investigating the case, including the right to demand inspection of all information or relevant documents from the body at fist instance. Having these competencies, the Commissioner must respect the principle of material truth (Art. 8 of ZUP) which stipulates that during the procedure actual state of affairs needs to be established and all the facts relevant for bringing a lawful and correct decision need to be found out.

In order to establish the actual situation, i.e. to find out whether the body in fact possessed the requested documents, the Commissioner carried out inspection *in camera* on July 14, 2009 at the premises of the body. The Commissioner found out that the body did possess the documents requested by the applicant. The body understood the request for inspection of the »entry book« as a request for inspection of the register of visitors. The Commissioner also inspected the register of entries for May 10, 2009. The body gave the Commissioner a photocopy of the Rules regulating the archiving and management of video surveillance records. As for the video records of May 10, 2009 the body stated that the records were kept in the information system of the body and considered these records as a matter of its own internal activities. With the fact that prosecution service is a body where security plays in important role the disclosure of these data would jeopardize the security of staff, their documentation as well as other persons visiting the building. The body enabled the inspection of video surveillance to the Commissioner,

stressing that none of the documents the applicant requested should be treated as public information since all the records were produced as internal activities of the body.

2. The concept of public information

The ZDIJZ makes manifest the constitutional right of access to public information. Thus, by Par 1, Art 1 it ensures free access to public information held by organs (including state bodies). Organisation and general competencies of state prosecutor offices are regulated by the State Prosecutor Act (Official Gazette RS, No. 63/1994, with amendments, hereinafter: ZDT). Art. 5 stipulates that state prosecutor offices being part of justice administration are independent state organs; their position and mutual relations are regulated by this law. Financial means and other work conditions are provided by the Republic of Slovenia. This means that the body undoubtedly belongs to the category of persons liable to providing access to public information as laid down by Art. 1 of ZDIJZ.

The concept of public information is defined in Par 1, Art. 4 of ZDIJZ by which public information is the information originating from the field of work of the body and occurs in the form of a document, a case, a dossier, a register, a record, or other documentation drawn up by the body, by the body in cooperation other bodies, or is acquired from other bodies. This provision contains three basic criteria for defining public information, and the criteria need to be met cumulatively:
1.) the information must derive from the field of work of the body,
2.) the body must possess the information,
3.) the information must exist in a materialised form.

In the contested decision the body claimed that the documents requested could not be considered public information since they were not produced as a result of their regular activities, adding that ensuring security of the prosecution office belongs to the framework of providing conditions for smooth operation of the state prosecutor, however this activity is not their regular field of work.

With this claim, the Commissioner emphasizes that the concept of filed of work, as derives from Art. 4 of ZDIJZ, needs to be interpreted as a document which the body *acquired or created as a result of its work*, which also involves ensuring the conditions for carrying out its activities. The fact that the body created the information in question is related to executing its legal competencies, regulated by public laws, deriving from the provision under Art. 66a of the State Prosecutor Act (Official Gazette RS, No. 94/2007 – official consolidated text; ZDT), which stipulates that the work of the state prosecutor's office involves decision making and other activities and ensuring conditions for regular, correct, conscientious and efficient operation of state prosecutors based on the law, the state prosecutor order, and other by-laws. According to Par 2, Art. 66 of ZDT, this also involves internal work organisation, i.e. management of the building and premises used by the state prosecution and taking care of the security of persons, documentation and property of the state prosecution service. With this in mind, all the measures for ensuring the security of persons, documentation, and property of the state prosecution office belong to the sphere of management of the state prosecution office and hence to its field of work. Moreover, the body also stated that video surveillance is not an urgent security measure *due to the nature of its work*, however, there it goes without saying that video surveillance records were made as a result of implementing this measure. In the court decision No. I Up 122/2006-3 of April 25, 2007 the Supreme Court of RS took a position that the field of work of a body can be interpreted in terms of ZDIJZ when the implementation of tasks and activities is regulated by a public law, which imposes obligations to the bodies to carry out these tasks within their administrative or other functions under public law and other rights, duties or legal entitlements of individuals deriving from this special public law regime. It is the duty of the body, according to Art. 66a of ZDT, to ensure the security of the prosecution office, and should be carried out in public interest, therefore, all the information which is the result of this activity, is undoubtedly public information. In this particular case it needs to be noted that the information in question is not the information which has characteristics of private law. From the position of legal theory it derives that only the information which is in the possession of the body and carries the characteristics of private law can be exempted from public information. »In other words, public information is all the information which is in the possession of authorities or subjects liable to public law and those individuals who perform public function

for such entities. Entities liable to public law can challenge this presumption if it can be proved that they possess the information which is entirely of private law nature (Ref: Dr. Urška Prepeluh, The right to access public information, Ljubljana 2004, p. 147). With all the above, the Commissioner disagreed with the body that this information did not belong belong to its field of work.

During the inspection *in camera* the Commissioner found out that the body possessed all the requested information and that the information existed in a material form. Thus the Commissioner concluded that the information requested meets all the three basic criteria for public information as stipulated by Par 1, Art. 4 of ZDIJZ. Further on, a test was carried out to verify whether the information represents freely accessible public information or whether the information might represent one of the exemptions from free access based on which access could be denied.

3. Assessing exemptions from free access

A body can wholly or partially deny access if it is found out that the information or a document represents any of the exemptions from free access under Par. 1, Art. 6 of ZDIJZ. This provision lists eleven exemptions when the body may refuse access. For this reason the Commissioner had to assess whether this information could be accessed freely or whether it qualified for one of the exemptions.

3.1 About video surveillance records

Subpara 3, Par 1, Art. 6 of ZDIJZ stipulates that a body may deny access to the information if the request refers to personal data the disclosure of which would mean violation of personal data protection according to the statute governing the protection of personal data. In such cases ZDIJZ makes reference to another law, i.e. Personal Data Protection Act (Official Gazette RS, No. 94/07 – UPB1; hereinafter: ZVOP-1 – UPB1).

According to Art. 6 of ZVOP-1-UPB1, personal data is any data relating to an individual, irrespective of the form in which it is expressed, and by definition an individual is an identified or identifiable natural person to whom personal data relates; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity, where the method of identification does not incur large costs or disproportionate effort, or requires a large amount of time.

With regard to the provision mentioned above, the Commissioner explains that we can talk about video surveillance in terms of ZVOP-1 – UPB1 only when a filing system of personal data is formed during video surveillance, i.e. a collection of video records. According to Par 5, Art 6. of ZVOP-1 – UPB1, a filing system is any structured set of data containing at least one piece of personal data, which is accessible according to the criteria enabling the use, or combination of the data, irrespective of whether the set is centralised, decentralised or dispersed on a functional or geographical basis; a structured set of data is a set of data organised in such a manner as to identify or enable identification of an individual.

During the inspection *in camera* the Commissioner found out that the body stores video records in the information system and that persons who appear on these records are identifiable. Thus, this filing system containing personal data falls under the provisions of ZVOP-1– UPB1.

Since the disclosure of personal data (which includes video records from surveillance cameras as well) means processing of personal data according to Par 3, Art. 6 of ZVOP-1-UPB1, it had to be assessed whether it would be necessary to consider the general grounds for processing personal data in order to decide if the disclosure could be granted, as specified under Art. 8 and 9 of ZVOP-1-UPB1(public sector). Drawing upon these two provisions, processing of personal data is allowable if determined by the law, or if personal consent has been given by the individual.

It also derives from Subpara 3, Par, 1, Art. 6 of ZDIJZ that not all personal data enjoy the status of protected personal data, which means that the disclosure of personal data in some cases may be allowed. Under certain circumstances the disclosure of personal data is allowable also within executing the right to access public information. Subpara 1, Par 3, Art. 6 of ZDIJZ stipulates that notwithstanding the exemption under Subpara 3. Par 1, Art. 6 of ZDIJZ, access to the information can be allowed if the data relates to the performance of public function or employment relationship of a public officer, except in

cases given under Subpara 1 and 5 to Subpara 8, Par 1, Art. 6 of ZDIJZ, or in cases when the law governing public finances, or public procurement law, stipulate otherwise. When the Slovenian legal order adopted this provision it became approximated to the developed legal systems which had already differentiated between two elements: privacy expectation and entitlement to privacy expectations. It is considered that government officials or public officers are not entitled to expect their privacy in terms of their names, job position, salary, official address or other data which are related to performing their public function or employment relationship.

In this appellate procedure the crucial question was to assess whether video surveillance records can be considered personal data which are related to the performance of public functions of the persons involved. According to Art. 4 of ZDT, state prosecutors are persons who perform a public function and have been appointed by the Government of RS, while the State prosecutor general is appointed by the National Assembly of RS.

As for the question which data, related to performing a public function of the state prosecutor general, are allowed to be disclosed with regard to Subpara 1, Par 3, Art. 6. of ZDIJZ, the Commissioner emphasizes that this provision is an exemption among the exemptions and needs to be interpreted in view of the aims pursued by ZDIJZ. The aim of ZDIJZ, as derives from Art. 2, is to ensure that the work of the body is public and open and that legal entities can exercise their rights to acquire information held by public authorities. Thus in view of achieving this aim the bodies must endeavour to inform the public about their work. Therefore, we need to differentiate between personal data which are directly linked with performing their tasks under public law and the use of public funds of the state prosecutor general as a holder of public function, and other personal data which the body handles as a personal database administrator. Government officials, by performing a function in the public sector, are not completely waived from their privacy at the workplace. The purpose of the provision under Subpara 1, Par 3, Art. 6 of ZDIJZ is to give free access only to the information which could have certain impact on the implementation of the tasks carried out by public officials under public law, on the use of public funds, on the work of the body as a whole, or the information which indicates irregularities in the procedures carried out by the body. With this, the Commissioner makes reference to the protection of privacy and personality rights under Art. 35 of the Constitution of RS and the right to physical and mental integrity. As can be seen from the decision of the Constitutional court No. U-I-57/06-28 of March 29, 2007, there were several occasions when the Constitutional Court of RS dealt with the question of the limits of encroaching into the privacy of individuals, also when execution of a public function was in question. The Court took a position that individuals, who assume a public function or appear publicly, can not avoid the interest of the public and this needs to be taken into account. This factor depends on the level of public function or appearance this person assumes (the same position was taken in the decision of the Constitutional Court of RS No. Up-462-02 of Oct 13, 2004, Official Gazette RS, No. 120/04 and OdlUs XIII, 86): *However, in relation to this it is allowed (without the agreement of the person concerned) to describe publicly that which is relevant to the character, actions, and reasoning of these persons related to their public activities. However, encroaching into the intimacy of these persons, without their agreement, is not allowed* (Ref: decision No. Up-50/99 of Dec 14, 2000, Official Gazette RS, No. 1/01 and OdlUS IX, 310). In other words, in this particular case, personal data, directly connected with performing the public function of supreme state prosecutors as individuals to which video records refer to, are not protected. A video record can reveal a relatively complete and precise personal features of an individual, since in technical terms video is a carrier which allows copying the image of a person to a medium (a video tape, or a chip in case of a digital camera). Video records contain a number of personal data which can produce a complete personal image (e.g. physical appearance of the person in the moment the shot was taken, the way the person was dressed, gestures, appearance). The disclosure of the image of individual, i.e. the disclosure of video records in this case would contribute nothing to the aims pursued by Par 3, Art. 6 of ZDIJZ; it would only mean excessive encroachment into the privacy of individuals. During the inspection *in camera* the Commissioner, viewing the video records found out that video scenes did not show how public officers are implementing their tasks under public law. Also, it could not be concluded that public funds have been used irrationally, and there were no indications of any irregularities in the procedures performed by the body. With this in mind, the Commissioner concluded that video records are in no direct connection with the performance of the public function of the body and therefore represent an exemption from free access to public information according to Subpara 3, Par. 1, Art. 6 of ZDIJZ. Considering the above, the applicant's request had to be refused in this part.

3.2 About the Rules governing the procedures and measures for protecting personal data and implementation of video surveillance

When the body refused the request for accessing the Rules regulating the procedures and measures for the protection of personal data collected during video surveillance of entrances to the official premises, the body made reference to the exemption under Subpara 11, Par. 1, Art. 6 of ZDIJZ.

To qualify for the exemption under Subpara 11, Par 1, Art. 6 of ZDIJZ, two conditions need to be met cumulatively:
- the information must be drawn up from the document which was created in connection with internal activities of the body, and
- a specific harm test (the disclosure would cause disturbances in operations or activities of the body).

In theory, the following examples are given for the data considered to be drawn up as a result of internal activities: all internal correspondence between government officials and public officers (administration), which is meant for preparing government decisions (administration) or other persons liable to law, internal communications of the body, particularly letters, minutes, opinions, reports, instructions, guidelines and other internal documents (Ref: Commentary to the Access to Public Information Act with EU legislation and comparative legal practice, Institute of Public Administration, Faculty of Law, Ljubljana 2005 – Commentary to ZDIJZ, p. 139). According to comparative law, exemptions also include sensitive internal instructions and plans for determining the method of collection and implementation of various forms of surveillance. This is an exemption where it is necessary to apply a harm test to assess justifiability – whether the disclosure would cause any disturbances in operations and activities of the body. This exemption is known in the majority of comparative law statutes in which the »internal process of reasoning of the body" is protected by law, i.e. the data created during the process of formation of the policy of the body are protected. These include documents for internal use which describe the procedures or methods of work of the body, as well as its internal policy. In legal theory this is referred to as "deliberative process privilege", i.e. a process which protects internal consideration of the body to enable open reasoning of the body and which would be inhibited if it was open for the public. At the same time the purpose of this exemption is to prevent damage which could affect the quality of decision making of the body since reasonable protection of the process of »internal reasoning« of the body is not necessarily in contradiction with the principles of transparency of administration. If all such document were to become public, this would seriously endanger critical, innovative and efficient work of the public sector.

For the exemption to exist, both conditions need to be met cumulatively. The other part of this exemption requires assessing the harm effects on the implementation of the procedure. This is a test, which in theory is referred to as a harm test and is one of the weighing tests. Thus, access to the information can be denied only if after weighing between the harm or disturbances in operations of the body and the disclosure of information, the beam of the balance moves towards the damage, or in other words, if the damage caused to the body is greater than the right of the public to obtain this information. With this exemption a very strict harm test needs to be applied: if access to the documents is to be denied, the disclosure of the document must not only endanger a legally protected good but also seriously jeopardize the process of decision making of the institution.

As far as the first condition is concerned, the Commissioner established that the Rules which the applicant requested, is an internal document which the body used for its internal operation. During the inspection *in camera* the Commissioner received a photocopy of the Rules dated Dec 1, 2008 Ref. No. Tu 145/08 and established that the document has an internal character. The document was adopted according to Art. 56 of ZDT and Art. 25 of ZVOP-1-UPB1 and regulates internal operations of the body related to the implementation of video surveillance over the entrance to the official premises of the body.

As for the second condition (i.e. the disclosure of the document could cause disturbances in the operation and activities of the body), the body claimed that the disclosure of the document could jeopardize their operation and their employees because the document contained the rules for managing with video surveillance records and thus the disclosure of such data could present security risk and negatively affect the security scheme of the body. Having analysed the rules, the Commissioner established that this document contains general provisions related to the procedures and measures for the protection of personal data, organisation of security, and in a one part also reveals which premises are being under

special protection. In this part the Commissioner agreed with the body that disclosing such data would present a security risk and disturb the operation of the body. The aim of the provisions of the rules is that the premises are provided with special security means. If this information became freely accessible, the significance of this aim would be removed and this would present a disturbance in the operation and activities of the body since the body would be unable to protect the premises and hence the security risk would be increased. With this in mind, and considering the principle of partial access provided under Art. 7 of ZDIJZ the Commissioner decided (see the explanation under 4 of the decision), that the body should cover this information in the Rules. In the remaining part the Commissioner did not agree with the arguments of the body, namely that the contents of the rules could present a security risk which could cause disturbances in the operation and activities of the body. In this part of the rules the body failed to prove what disturbances could be caused by the disclosure. The fact that official premises are under video surveillance must be known to persons entering the premises of the body as stipulated under Art. 74 and 75 of ZVOP-1-UPB1 which governs video surveillance, and by which person implementing video surveillance must issue a notice on this. ZVOP-1-UPB1 also regulates the conditions under which video surveillance can be carried out, and specifies which data created as a result of surveillance are kept in the personal data filing system. The provisions of the Rules only summarise and concretise the provisions of the law, thus the Commissioner assessed that the disclosure of this data could not cause any disturbances in the work of the body, since the body was unable to actually prove any possible damage. Also, these data can not present an exemption under Subpara 11, Par 1, Art. 6 of ZDIJZ. As for the names of persons who appear in the text of the rules and their responsibilities, the Commissioner established that these could not be considered protected data since these persons are public officers and their personal data are not protected by Subpara 1, Par 3, Art. 6 of ZDIJZ.

3. 3 On the register of visitors on May 10, 2009

In this part the applicant requested inspection of the entry book (register of visitors) for May 10, 2009. During the inspection *in camera* the Commissioner found out that the register in question is a book which is kept at the porter's desk and is used for visitors to register in upon entering the official premises of the body. Referring to the exemption Subpara 3 and 11, Par 1, Art. 6 of ZDIJZ, the body refused access to this document.

Firstly, the Commissioner established that the register of visitors contains the names and surnames of visitors, the time of registering in and registering out. As for the exemption under Subpara 3, Par 1, Art. 6 of ZDIJZ, the Commissioner makes reference to indent 3.1 of this decision where the conditions for the existence of such exemption are extensively elaborated. The Commissioner also adds that names and surnames of visitors are undoubtedly personal data by which individuals can become identifiable. Considering all this, these personal data are treated as an exemption from free access to public information under Subpara 3. Par 1, Art. 6 of ZDIJZ. Since in this case no legal basis was provided for processing these personal data, the request had to be refused in this part. Thus, the Commissioner, considering the principle of partial access from Art. 7 of ZDIJZ, (as will be explained further on in indent 4 of this decision), decided that the body must cover these data in the document. This, however, does not apply to personal data of public officers and government officials employed by the body. During the inspection *in camera* the Commissioner found out that on May 10, 2009 the visitors, as well as the employees of the body registered in. According to Subpara 1, Par 3, Art. 6 of ZDIJZ, access to the information is granted notwithstanding the exemption under Subpara 3, Par 1, Art. 6 of ZDIJZ, if the information concerns the data related to the performance of a public function or employment relationship of public officers, except in cases from Subpara1 and 5 to 8, Par 1, Art. 6 of ZDIJZ, and in cases when the statute, governing public finances, or the law governing public procurements stipulate otherwise. In this particular case it needs to be noted that the fact alone that the body's employee was present in the premises on a particular day and at a certain time, is undoubtedly related to the employment relationship or performance the officer's public function. Considering the criterion of justifiable expectation of privacy and relating it with the performance of a public function -- which the Commissioner has already explained in indent 3.1 of this decision -- this data indicates that public officers and government officials were engaged in activities under public law. Drawing upon this, these data are not protected personal data

which should be exempted from free access to public information according to Subpara 3, Par 1, Art 6 of ZDIJZ.

As for the register, the Commissioner also established that the conditions for exemptions under Subpara 11, Par 1, Art. 6 of the ZDIJZ are not fulfilled (details about the conditions have been elaborated under indent 3. 2 of this decision), since the body could not prove what kind of disturbances (if any) might be caused to the operation and activities of the body if this information became freely accessible. Thus the condition for proving harm could not been met. According to the principle of free access, provided under Art. 5 of ZDIJZ, which stipulates that when in doubt, access to the information needs to be allowed, while the burden of proof for the existence of exemption vests with the body. It had to be taken into account that this is freely accessible information, however, access to the information on other visitors (who are not the employees of the body) had to be denied also for the reasons of personal data protection.

4. Institution of partial access

In dealing with requests for access to public information, an essential obligation of the body is to act in the spirit of ensuring transparency (Art. 2 of ZDIJZ), and if at all possible, to grant partial access. This means that a body should not deny access to the whole document if some protected (personal) data could be excluded from the document in order to protect the confidentiality of data. In particular, the body can not deny access to the whole document on the grounds that the document contains a protected exemption.

The institution of partial access is laid down by Art. 7 of ZDIJZ. It stipulates that if a document or a part of the document contains only a part of the information referred to in Art. 6. of ZDIJZ (e.g. protected personal data), which may be excluded from the document without jeopardizing its confidentiality, the authorised person of the body must exclude such information from the document and refer the contents of the remaining part of the document to the applicant. This provision, combined with the principle of transparency of the work of the bodies provided by Art. 2 of ZDIJZ means that the body is always obliged to apply the institution of partial access, except if this is not practicable according to the criteria from Art. 21 of the Decree on communication and re-use of information of a public nature (Official Gazette RS, No. 76/2005 in Official Gazette RS , No. 119/2007, hereinafter: Decree), i.e. when (and if) partial access would not jeopardize the confidentiality of protected information. Art. 21 of the decree stipulates that if the document (or part of it), only partially contains the information from Art. 6 of ZDIJZ, it is deemed that the information can be excluded from the document without jeopardizing its confidentiality if it is possible to:

- physically remove, cross out, permanently cover or make the information inaccessible in some other way if the document exists in a physical form;
- erase, encode, block, limit or otherwise make inaccessible if the document exists in electronic format.

Notwithstanding the above, it is deemed that the information can not be removed from the document if the same information could be discerned from other information in the document.

The Commissioner assessed that this particular case the institution of partial access could be applied: if all protected personal data were erased this would prevent the public to know who were the visitors (which is a protected personal information), and also, by partially erasing the data from the Rules, which the applicant had also requested, it would be possible to protect the data which represent an exemption under Subpara 11, Par 1, Art. 6 of ZDIJZ. With all this, it wad decided the body shall cover the following protected information:

- names and surnames of persons, not including the employees of the body, who were registered in the book of visitors on May 10, 2009,
- the following information from the Rules governing the procedures and measures for protecting personal data and implementation of video surveillance of official premises No. Tu 145/08 dated Dec 1, 2008:
    - room numbers in Art 1, Par 2, last indent,
    - Par 2, Art. 4,
    - Floor number in Art 6, second line,
    - Room number in Art 7, Par 1, first line,

- Room numbers in Art. 9, Par 1, fourth line,
- Art. 10 (whole text).

For the remaining part the body shall, within 15 days after receiving this decision, allow access to the document requested.

From the grounds of this decision it derives that the body at first instance incorrectly applied the material law, therefore the Commissioner granted the appeal to the applicant and with reference to Par 1, Art. 252 of ZUP, annulled the decision of the body and brought its own decision as it derives from the operative part of this decision.

No special expenses were incurred by this proceeding.

According to Subpara 30, Art 28 of the Administrative Fees Act (Official Gazette RS, No. 42/2007 - official consolidated text with amendments- ZUT-UPB3), this decision is exempted from payment of administrative tax.

Instruction on legal remedy:

This decision cannot be appealed, but the applicant can initiate administrative dispute against the decision. The administrative dispute can be initiated by a lawsuit, which must be filed within 30 days after receiving this Decision with the Administrative Curt, Fajfarjeva 33, Ljubljana. The lawsuit can be sent by registered mail or filed directly with the Court. If the lawsuit is dispatched by registered mail, the date of delivery to the post office shall deem to be the day of delivery to the court. The lawsuit, together with attachments, must be filed in three copies. It must contain the attachment with this Decision in original, or in a copy form.

Procedure conducted by:
Kristina Kotnik Šumah, BL
Deputy Commissioner

Information Commissioner:
Nataša Pirc Musar, BL
The Commissioner