

**THE PRINCIPLE OF OPENNESS AND TRANSPARENCY
OF THE BUDGET PROCEDURE OF LOCAL GOVERNMENT,
AND THE PRINCIPLE OF ACCESS TO PUBLIC INFORMATION
– IN THE EXPERIMENTAL STUDIES ON THE EXAMPLE
OF MUNICIPALITIES IN THE PROVINCE OF LOWER SILESIA**

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ABSTRACT

The purpose of this publication is to indicate how the legislature pursues the principle of openness and transparency of the budget procedure of local government units on the basis of the Act of 27 August 2009 on public finances (Journal of Laws of 2011, No 291, item 1707 as amended) (hereinafter called u.p.f.) in connection with the act of 6 September 2001 on the access to public information (Journal of Laws of 2005, No 132, item 1110 as amended) (hereinafter called u.o.d.i.p.). The following issue is so important because it refers to the transparency of the conducted financial economy by the municipality in the province of Lower Silesia and the right of every member of the particular community of the local government the access to public information. This paper in the first part has a theoretical character, where the author of the publication gives a comprehensive legal state referring to the principle of openness and transparency of the budget procedure of local government units and the principle of the access to public information on the financial situation of the particular municipality. The second part of this paper, describes the principle of access to public information on the basis of the conducted studies using the Internet. In the second part, which has a research nature, the author has presented in detail the methodology of the conducted experiment. At the end of the research part of this experiment the results of the conducted research are discussed in terms of access to public information on the financial situation of the particular municipality in the territory of the province of Lower Silesia in the years 2010-2013.

Keywords: transparency budget, public finance, local government units, experiment.

**THE CONSTITUTIONAL REGULATION OF THE CITIZEN'S RIGHT
TO ACCESS PUBLIC INFORMATION**

The principle of openness and transparency has been expressed in art. 61 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997 r. Nr 78 item 483 as amended) (hereinafter called the Constitution of the Republic of Poland), where every citizen has the right to obtain information about the actions of the bodies of public administration, bodies of the economic and professional

government and other organisational units in the scope of performance of public tasks and the management of the public property as well as people performing public functions. This privilege has most of all the subject character (TK result of 20 March 2006, Ref. Act., K. 17/05, OTK ZU 2006/A, no 3, item 30.), which also includes the access to documents and the admission to the meeting of the collective organs of public authority with the possibility to record sound and image. According to Barbara Kudrycka, such constitutional conditioning of the citizens' rule to access financial information of the specific local government is to support the "transparency of action, open dialogue, free and efficient flow of information between the residents and public officials, a condition *sine qua non* of public administration in many democratic countries. This method also limits biased and unethical actions within the administrative authorities" (Kudrycka, 1995, p. 93). The principle of openness may be limited in case of protection of freedom and rights of other people and entities, as well as due to the protection of the public order, safety of the country or the economic interest of the country (Strzyczkowski, 2011, p. 274). The limitation of access to public information regarding the financial situation of the particular municipality may lead to the arbitrary and discretionary actions of the local government administration (Koniuszewska, 2009, p. 125). That is why the rule of openness and transparency of the budget procedure of the specific unit of the local government for the local society is so important, because they have the greatest level of contact with it (Obrzut, 2002, p. 204). The barrier in access to public information of the specific local community is the payment for sharing public information, collected by the specific government. In general, sharing public information on the financial situation of the particular unit of the local government is free. If the sharing of public information by the specific unit of the local government is connected with the creation of additional costs on the side of the body issuing this information, such a body has permission to collect certain fees from the subject making such a request (WAS ruling in Wroclaw of 20 October 2004, Ref. Act. IV SA/Wr/505/04; unpublished). The amount of the amount taken by the body of the specified unit of the local government should not exceed the costs of the consolidation of the documentation (NSA ruling of 11 October 2002, Ref. Act., II SA 812/00; unpublished), where the exception to the principle of free sharing of public information was confirmed by the Constitutional Court in its judgment (TH ruling of 16 September 2002, Ref. Act., K 38/01; OTK ZU 2002, no. 5a, item 59.). Bodies of local government units are obliged to apply the provisions of the act of 6 September 2001 on the access to public information (Journal of Laws of 2005 No. 132, item 1110 as amended) (hereinafter called as u.o.d.i.p.), without creating additional regulation in this regard (Study of access to public information through the analysis of internal documents regulating the rules of sharing public information and costs of sharing public information, 2008).

**THE PRINCIPLE OF OPENNESS AND TRANSPARENCY
OF THE BUDGET PROCEDURE OF THE LOCAL GOVERNMENT
IN THE ACT OF 27 AUGUST 2009 ON PUBLIC FINANCES**

The principle of transparency applies to publicising the budget act, transparency of the budget debate and report on the implementation and control of the local government budget. The budget act of the given municipality should be published in the official statute book, as well as other information connected with the budget economy conducted by the local government (Kornberger-Sokołowska, Zdanukiewicz, 2010, p. 42-43). This principle is the "principle of principles" and the political-social postulate (Kołaczkowski, Ratajczak, 2010, p. 49), because the local community should be actively informed by the bodies of the specific unit of the local government about the financial economy conducted by it. It constitutes the instrument of the impact of a particular local community on the government bodies conducting the specific fiscal politics or budget economy (Osowski, 2008). The lack of implementation by the municipalities of the principle of openness and transparency of the budget economy conducted by them proves the lack of healthy public finances of the particular local government (Małecki, 1997, p. 273).

The principle of transparency is that economy of public funds is public. The statutory term in a general way of the openness principle of local government public finances finds detailed clarification in other legal acts. The principle of openness of finances of local government is broad and includes the conducting of accounting and the principle of reporting of the local government budget (Lipiec-Warzecha, 2011, p. 153-154). Keeping the accounts of local government units was regulated in the act of 29 September 1994 on accounting (Journal of Laws of 1994. No 151, item 855 as amended) (hereinafter called u.o.r.) and the regulations of the Minister of Finance. The provision art. 33 par. 2 u.f.p. contains restrictions of the principle of openness under separate laws or the concluded international agreements.

In the jurisprudence it was assumed that public information is not only a message created by subjects of the public law, but also information addressed to public authorities (WSA ruling of 8 October 2008, Ref. Act. IV SAB/Po 14/08, Legal Information System LEX no 509779.). Therefore, access to public information cannot be restricted to the scope of the conceptual "documents" on matters related to public finances of the certain unit of the local government (WSA ruling of 30 October 2002, Ref. Act. II SA 1956/02, Legal Information System LEX no 78062.). NSA formulated a broad theory that public information is constituted by all questions of the interested people addressed to public subjects (NSA ruling in Warsaw of 2 July 2003, Ref. Act. II SA 837/03, M. Prawn. 2003/17/770.). The provision of art. 6 par. 1 pt 3 lit. b) u.o.i.n. clearly indicates that the action of national legal persons and legal persons of the local government within the scope of the performance of public tasks and their activity within the budget and non-budget economy is clear. While art. 5 u.o.i.n. contains provisions restricting the right to transparency of public information. The doctrine distinguishes a dualistic approach to the principle of openness in the formal and material respect. The formal openness of the budget resolution is connected with art. 34 and art. 35 and art. 36 u.f.p. The material openness is connected with financial operations, which come from local

government budgets (Karlikowska, Miemiec, & Sawicka, 2010, p. 91). The mode of implementation of the principle of transparency during the adoption of the budget of units of the local government in art. 34 u.f.p. is achieved through: the performance of a debate on the reports from the implementation of budgets of the units of the local government and the project of the act on the long-term financial forecast, as well as by publicising the amounts of grants from the budget of municipalities. Moreover, the councillors of the given municipality have the right to access the accounting evidence and inventory documents, information on the results of the conducted control of the financial economy and report from the implementation of the audit plan for the previous budget year. The principle of openness is also manifested by sharing by the municipalities of the list of entities outside the public finances sector, which were granted a subsidy from the public funding, a grant to accomplish the task or a loan, or which had the amount due to the unit of the public finances sector cancelled and the annual reports concerning finances and activity of the organisational units belonging to the units of the local government. It is also important to publicise the contents of business plans, reports from the performance of business plans and statements about the condition of the management control. Unfortunately, the legislature has omitted in this legal provision the Multi-annual Financial Forecast for the units of the local government (Kosikowski, 2010, p. 159). Provision of art. 35 u.f.p. directly refers to art. 8 par. 3 of the act of 29 January 2004 – the public procurement law (Journal of Laws of 2012 r. Nr 240, item 1271 as amended) (hereinafter called as u.p.z.p.). The municipal government as a contractor may order the performance of supplies, services and construction works to the subjects of the private sector within the public-private partnership in the given tender mode, where he is obliged in relation to art. 35 u.f.p. to disable the principle of openness due to the company's secret in contracts concluded by the units of the public finances sector. The provision art. 35 u.f.p. contains the rule of presumption of not reserving the clause concerning the exemption of the openness principle and constitutes the independent legal provision. However, the exclusion of the openness principle cannot take place only due to the secret of the company (Lipiec-Warzecha, 2011, p. 163).

Based on art. 37 u.f.p. the executive body of the unit of the local government makes public until: the end of the month taking place after the end of the quarter – the quarterly information about the execution of the budget of the unit of the local government, including the amount of the deficit or surplus, and about the non-tax granted budget redemptions. Also the executive body of the specified unit of the local government should publicise the amounts of the grants obtained from the budgets of units of the local government and the amount of grants given to other units of the local government, the list of the sureties and guarantees, listing the entities, to which the guaranties refer, the list of legal and natural people, and organisational units without legal status, which were granted discounts within the taxes or payments, deferrals, cancellations or decomposition of repayments of the instalments in the amount exceeding the total of PLN 500. The units of the local government should give public information in relation to the discussed legal provision in the adopted form in the given municipality (Kosikowski, 2010, p. 163-164). This legal regulation refers to the provisions of art. 14 u.f.p. It shapes the

obligation on the side of the executive body of the municipality to the temporary information connected with public finances, the specified local government to public information on the pages of the Public Information Bulletin of the municipality in the Regional Official Journal or in the manner customarily adopted in the given unit of the local government (Karlikowska, Miemiec, Ofiarski, & Sawicka, 2010, p. 106-111).

THE PRINCIPLE OF ACCESS TO PUBLIC INFORMATION ON THE FINANCIAL SITUATION OF LOCAL GOVERNMENTS IN THE PROVINCE OF LOWER SILESIA

The goal of the conducted study was to check how the municipalities in the territory of the province of Lower Silesia comply with their obligation to publicise the public information on their financial situation in the years 2010-2013 in the period from 1 June 2013 – 1 September 2013. For this purpose the Internet was used as the research tool, especially e-mail. Also the Internet was used as a tool to select the representative sample, using the contact information on the pages of the public information bulletin of the specific municipality located in Lower Silesia. For the purposes of this study both telephone survey and mail was used, with the open and closed nature, as means to get access to public information on the financial situation of municipalities located in the area of the Lower Silesian province. The sample of the studied units of the local government turned out to be representative, because it included: 3 cities with district status, 36 municipalities, 78 rural districts and 55 urban and rural municipalities, so the total of 169 municipalities found in Lower Silesia (the area and population in the territorial overview, 2011). Both sending the requests, in the open and disclosed study, to publicise the public information on the financial situation of the given municipality using: email, traditional mail and telephone, signing or introducing yourself as the director of the economic entity, an ordinary citizen, anonymously or signing up as *gumisetofajnemisie* people tried to obtain the answers to the following questions:

- What was the budget deficit of the municipality in the years 2010-2013?
- What was the public debt of the municipality in the years 2010-2013?
- What were the costs of servicing the public debt of the municipality in the years 2010-2013?
- How did the municipality cover the deficit and public debt in the years 2010-2013?

The main research problem was to obtain the answer to the following question: how do the municipalities in the Lower Silesian province respect the principle of the access to public information on the financial situation of the particular local government? In the course of the carried out research a detailed problem was encountered as presented below, which referred to the dependency between the date of sending the application by mail, email, phone call to obtain the public information on the financial situation of the particular municipality in the Lower Silesian province in the open and unofficial way (*gumisetofajnemisie*) and anonymous (without signing, not providing any information, which could contribute to the identification of the identity of the applicant). The first independent variable in this study is the way of asking for the public information on the financial situation of the particular

municipality in the Lower Silesian province using the methods listed above. While the dependent variables included the obtaining or the refusal to obtain the public information on the financial situation of the particular municipality in Lower Silesia through the application, email or phone call in the open way (giving the name and surname adopted for the purposes of this experiment as an ordinary citizen of the given local community or the head of the particular company) and in the anonymous way or not too official (signing under the application to share the public information, email or introducing oneself as *gumisietofajnemisie*). In turn, the second dependent variable was the time taken to obtain the public information on the financial situation of the particular municipality in the Lower Silesian province.

THE RESULTS OF THE CONDUCTED EXPERIMENT

During the experiment, the study included 36 urban municipalities and 3 cities with district rights. Submitting the application signed with own personal data to share the public information on the financial situation of the particular municipality, we obtained timely information on 36% using the traditional mail. Also in a similar way we obtained in a timely manner the public information using traditional mail, signing under the application as the head of the particular company. The first study revealed that the occupied social status did not have influence on the timely obtaining of public information on the financial situation of the particular urban municipality. The filed anonymous application to share the public information was not considered at all. Also in the course of the experiment it turned out that well computerised urban municipalities had a problem with the timely sparing of public information using email with the address of *gumisietofajnemisie*. Conducting the phone call with the local government officials responsible for the preparation of the budget of the municipality, we did not encounter greater obstacles in obtaining the public information. Officials gave all information connected with the financial economy of the municipality in a diligent and meticulous way, even without introducing themselves by name and surname. However, during the phone call, introducing oneself as *gumisietofajnemisie*, the officials did not give public information not taking the phone call seriously. Unfortunately, the first part of the study showed that the timely access to public information varied between 36%-43%, and it should be 100%.

Conducting the experiment with rural municipalities located in the territory of Lower Silesia in terms of access to public information, revealed their lack of transparency of functioning. The results of the studies turned out to be almost the same as of the experiment conducted among the urban municipalities. The access to public information on the financial situation of rural municipalities ranged from 29%-38%. It turned out to be lower than in urban municipal governments. It was noticed that public information in 4% of cases was granted in an untimely manner. Also the obtained public information on the financial situation of the rural municipality using email showed poor informatization of the rural local governments. Also conducting the phone call in several ways to share the public information on the financial economy of the particular rural government, we encountered high resistance in its receipt from officials.

Table 1. Access to public information on the financial situation of the urban municipalities located in Lower Silesia in the years 2010-2013 on the basis of the application, email or the conducted phone call

Studied subjects	application			sent email			phone call			
	Zw	Nadzw	A unofficially	Zw	Nadzw	A unofficially	Zw	Nadzw	A unofficially	
Urban municipalities	36,00% t	39,00% t	0,00%	4,00% t	39,00% t	2,00% t	5,00% t	43,00%	38,00%	0,00%
Total	36,00%	39,00%	0,00%	4,00%	39,00%	2,00%	5,00%	43,00%	38,00%	0,00%

Source: Own study. The model of the table based on: Report on access to public information in Lower Silesia, 2011.

Explanations:

Zw - signed as an ordinary citizen of the local community,

Nadzw - signed as the director of the private company,

A - anonymously,

t - public information was obtained timely within 14 days or 2 months,

nt - public information was obtained untimely

Unofficially e-mail message - gumisietofajnemisie.

Table 2. Access to public information on the financial situation of the rural municipalities located in Lower Silesia in the years 2010-2013, based on the application, email, and the conducted phone call

Studied subjects	application			sent email			phone call					
	Zw	Nadzw	A	unofficially	Zw	Nadzw	A	unofficially	Zw	Nadzw	A	unofficially
Rural municipalities	34,00% t/4,00%	37,00% t	4,00% t	0,00%	33,00% t	32,00% t	0,00%	3,00% t	29,00%	29,00%	9,00%	2,00%
Total	38,00%	37,00%	4,00%	0,00%	33,00%	32,00%	0,00%	3,00%	29,00%	29,00%	9,00%	2,00%

Source: Own study. The model of the table based on: Report on access to public information in Lower Silesia, 2011.

Table 3. Access to public information on the financial situation of the urban and rural municipalities located in Lower Silesia in the years 2010-2013 based on the application, email, and the conducted phone call

Studied subjects	application			sent email			phone call					
	Zw	Nadzw	A	unofficially	Zw	Nadzw	A	unofficially	Zw	Nadzw	A	unofficially
Rural municipalities	39,00% t	38,00% t	5,00% t	0,00%	43,00% t	42,00% t	11,00% t	2,00% t	53,00%	49,00%	15,00%	3,00%
Total	39,00%	38,00%	5,00%	0,00%	43,00%	42,00%	11,00%	2,00%	53,00%	49,00%	15,00%	3,00%

Source: Own study. The model of the table based on: Report on access to public information in Lower Silesia, 2011.

The best from the local governments subjected to the experiment were the urban and rural governments. Submitting the application to share public information on the financial situation of the particular municipality we obtained timely responses, where also social status and the professional position did not influence the time of its obtaining. The urban and rural municipalities proved to be the most technologically advanced among the other municipalities subjected to the study throughout the whole Lower Silesia. We obtained 43% of responses to the sent emails with the inquiry to share the public information on the financial situation of the particular urban and rural municipality, including 2% from the email address gumisietofaj-nemisie. Also in a telephone manner we obtained a high rate of responses to the inquiry on the financial situation of the particular urban and rural municipality. The result of the obtained responses using the phone call ranged within the range of 49%-53%, which proved to be the highest rate during the whole conducted experiment, where also the professional status did not influence the time of obtaining the public information. Also in the unofficial way during the phone call with the officials we obtained the public information on the financial situation of the particular urban and rural municipality. It is worth noting that officials during the conducted phone call on the financial situation of the particular urban and rural municipality turned out to be the most cultured and competent in comparison with officials working in typically urban or rural local governments.

CONCLUSION

Summing up this experiment, it should be noted that in municipalities lying within the territory of the province of Lower Silesia it is not easy to obtain public information on the financial situation of the particular unit of the local government, which results from the type of system used by the particular municipality. The most transparent municipalities are the urban and rural municipalities. While the least transparent in gaining access to public information proved to be the urban municipalities and rural municipalities, which results from large developmental disparities, inferior qualifications of the administrative staff in terms of the knowledge of the provisions of the Act of 6 September 2001 on the access to public information, as well as poor administrative local government computerisation. The arithmetical average of the obtained information on the financial situation of the municipalities in ordinary application was 31%, while by email it was 27%, and by phone 35%, where this average should be 100%. The author of these studies was concerned by the fact that many municipalities left the applications and emails on the sharing of public information unanswered, but we cannot interpret this phenomenon as rejection of applications to share the public information. In this case, the entity applying for public information may complain to the county administrative court for the idleness of the body.

It is worth noting that the telephone method of obtaining the public information on the situation of the given unit of the local government proved to be the most effective. While the poorly conducted digitisation of the offices in Poland is reflected in the study where the officials to a greater extent preferred to share the public infor-

mation using traditional mail. We did not observe any significant differences in the statutory period of obtaining public information by the ordinary resident of the particular unit of the local government, and the unit, which was to fulfil the managerial role in the private company, where the average error between them was +/- 5%, which can be considered as insignificant. The officials employed in the municipalities tried, in most cases, to keep within the two month period of granting the public information to the requesting party. Unfortunately, the conducted study showed also that public information was not granted on the finances of the particular municipality to the person who, anonymously or unofficially, tried to obtain public information using the provisions of art. 63 of the act of 14 June 1960 – code of administrative procedure (Journal of Laws of 2012 No 186, item 1529 as amended), where you should provide the person, from whom comes the request to obtain the public information and her/his address, which is illegal, because it constitutes the breach of art. 2 par. 2 u.o.d.i.p. In accordance with the provisions of art. 2 par. 2 u.o.d.i.p. you cannot demand from the person exercising the right to public information to show the legal or factual interest. Moreover, in the feedback information concerning the granting of public information by municipalities on their financial situation there appeared claims concerning the payment of the fee for the actions connected with sharing of public information, which is inconsistent with art. 7 par. 2 u.o.d.i.p.

In conclusion it should be stated that in the municipalities of the territory of Lower Silesia there is a low legal awareness in the application of the act on the access to public information, which influences the reception of local governments in not being transparent in their actions in the scope of the financial economy conducted by them. Therefore, we should change this state of affairs by introducing obligatory training courses for the officials working in the local government municipalities in Lower Silesia on the knowledge of provisions of the act on the access to public information, in order to build in the future the trust of local communities to the country, because these are the local communities that constitute the place of the first contact for ordinary citizens with the actions of the public authority. And the lack of trust on both sides both of the citizens of the local community towards the local government and its opposite, influence the lack of completion of the constitutional principle of the country and the law and practice of applying the law.

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- Act of 8 March 1990, the Local Government Unit's (Journal of Laws of 2012 r. Nr 217, item 567 as amended).
- Constitutional Court's judgment of 16 September 2002*, K 38/01; OTK ZU 2002, nr 5a, item 59.
- Constitutional Court's judgment of 20 March 2006*, K 17/05, OTK ZU 2006/A, nr 3, item 30.
- Constitutional Court's judgment of 20 October 2004*, IV SA/Wr/505/04. (unpublished).
- Constitutional Court's judgment of 30 October 2002*, II SA 1956/02, Legal System of Information LEX number 78062.
- Judgment of the Regional Administrative Court of 8 October 2008*, IV SAB/Po 14/08, Legal System of Information LEX number 509779.
- Judgment of the Supreme Administrative Court on 2 July 2003*, I SA 837/03, Legal Monitor 2003/17/770.
- Judgment of the Supreme Administrative Court on 10 April 2002*, II SA 3126/01. (unpublished).
- Judgment of the Supreme Administrative Court on 11 October 2002*, II SA 812/00. (unpublished).
- Judgment of the Supreme Administrative Court on 3 December 1999*, III SA 1699/99, ONSA Journal of Laws of 2001r. Nr 1, item 22.
- Main Committee for Trial Judgment of 8 January 2001*, 148/242-243/RN-82-83/2000. (unpublished).
- Regulation of the Minister of Finance of 19 January 2006 on the principles of accounting and chart of accounts, record keeping taxes and non-tax budget tax authorities subordinate to the Minister for public finances* (Dz. U. Nr 17, item 134 as amended).
- Regulation of the Minister of Finance of 2 March 2010 on the detailed classification of incomes, expenses, revenues and expenses, and funds from foreign sources in § 1 is income, expenses, revenues and expenditures of the chapters, sections and paragraphs* (Dz. U. Nr 38, item 207 as amended).
- Regulation of the Minister of Finance of 25 October 2010 on the accounting policies and chart of accounts for the tax authorities of local government units* (Dz. U. Nr 208, item 1375 as amended).
- Regulation of the Minister of Finance of 3 February 2010 on budgetary reporting* (Dz. U. Nr 20, item 103 as amended).

Regulation of the Minister of Finance dated 4 March 2010 on the statements of public sector entities in the field of financial operations (Dz. U. Nr 43, item 247 as amended).

Regulation of the Minister of Finance dated 5 July 2010 on detailed principles of accounting and account plans for the state budget, local government budgets, budget units, government budgetary establishments, state-appropriated funds and government entities domiciled outside Poland (Dz. U. Nr 128, item 861 as amended).

The Constitution of the Polish Republic Act of 2 April 1997. (Journal of Laws of 1997 r. Nr 78 item 483 as amended).

The Act of 16 April 1993 on combating unfair competition. (Journal of Laws of 2003 r. Nr 153, item 1503 as amended).

The Act of 22 January 1999 on the protection of classified information (Journal of Laws of 2005 r. Nr 196, item 1631 as amended).

The Act of 27 August 2009 on public finances (Journal of Laws of 2011 r., Nr 291, item 1707 as amended).

The Act of 29 January 2004 - Public Procurement Law (Journal of Laws of 2012 r. Nr 240, item 1271 as amended).

The Act of 29 September 1994 on Accounting (Journal of Laws of 1994 r. Nr 151, item 855 as amended).