

Patryk Pieniążek

Adam Mickiewicz University, Poznań

patryk.pieniazek@amu.edu.pl

ORCID: <https://orcid.org/0000-0002-3015-337X>

Access to public information: comparative study of Poland and United Kingdom

<http://dx.doi.org/10.12775/SIT.2025.005>

1. Introduction

Access to public information is currently one of the most important issues related to the functioning of a democratic state under the rule of law. This right entitles everyone to participate consciously in the social and political life of the country. It is therefore a tool of social control through which every citizen has the right to obtain information on the activities of public authorities and persons performing public functions. W. Skrzydło emphasises that universal and broad access to information is the basis for the functioning of civil society, which is connected with the exercise of democratic principles of public authority in a state under the rule of law, including the fulfilment of the civic duty to control the activities undertaken by public authorities.¹

¹ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków 1998, p. 58.

In the United Kingdom (UK), access to public information is guaranteed by legislation that regulates the accessibility and transparency of the actions of state bodies under the Act of 30 November 2000 – The Freedom of Information Act 2000 (FOIA).² Supporters of the introduction of the regulation believed that its existence would bring a number of benefits, such as increasing the transparency of government actions and strengthening accountability mechanisms. As a result, it could also contribute to deepening public understanding of governance processes and building greater public trust in state institutions.³ Regulation was also seen as a tool to enable citizens to exercise their political, citizens', and social rights.⁴

This Act regulates the most important issues related to access to public information, i.e. the rules of access to public information, the modes of providing public information, the entities obliged to provide public information, the fees for providing public information, or the situations in which it is possible to refuse to provide public information. This article aims to present the operation of the right of access to public information in the UK and Poland. In the context of the political changes that have taken place in recent years, in particular the withdrawal of the UK from the European Union (EU), it is worth emphasising that the right of access to public information has not changed. However, UK citizens can no longer use EU mechanisms to access documents of the EU institutions under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.⁵

² The Freedom of Information Act 2000, <https://www.legislation.gov.uk/ukpga/2000/36/contents> (access: 01.10.2024)

³ See R. Hazell, B. Worthy, M. Glover, *The Impact of Freedom of Information on British Central Government: Does FOI Work?*, London 2010.

⁴ C. Darch, P. Underwood, *Freedom of Information in the Developing World: Demand, Compliance and Democratic Behaviours*, Oxford 2010.

⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ EU L 145, 2001, p. 43, with changes).

Within the framework of this article, the dogmatic-legal method has been used: it has been based on an analysis of the existing legal regulations by referring to the literature. In addition, a comparative method will be used. The analysis of the differences in legal regulations between the legal systems in the UK and Poland is aimed at identifying the strengths and weaknesses of each of them and presenting proposals for legislative changes that could be introduced into the legal order in Poland.

2. Entities required to supply public information: scope and principle of universality

The right of access to public information is one of the key elements of a democratic state under the rule of law, providing citizens with the possibility to control the activities of public authorities and transparency in the functioning of public institutions. The principle of universality of access to public information is expressed in the obligation to make available information concerning the functioning of state bodies, local self-government bodies, and other entities carrying out public tasks.

Schedule 1 of the FOIA details the entities obliged to make public information available. Within the extensive list we find: government departments, devolved administrations, other public bodies and committees, local councils, schools, colleges and universities, hospitals, GPs, dentists, pharmacists and opticians, public companies, publicly funded museums, galleries and theatres, and the police and fire service. In this context, it is worth noting that, in contrast to the Polish Act of 6 September 2001 on access to public information⁶ (u.d.i.p.), the catalogue of entities obliged to make public information available is closed. This means that in the Polish legal system the catalogue of entities obliged to make public information available is open and exemplary. The element

⁶ Act of 6 September 2001 on access to public information (Dz.U. 2020 item 2176 with changes)

that determines which entity is obliged to make public information available is whether it performs tasks related to the public sector and spends public funds. In such an adopted model, any person or entity meeting certain criteria will be obliged to make public information available. For example, churches will also be subject to these regulations. The author cites the example of the Church as an entity whose status in relation to the obligation to provide public information is questionable and unclear. At the outset, it should be pointed out that under the current law after 1989, the relationship between church and public administration is based on the principle of “friendly separation of church and state”.⁷ This means that each entity has its own sphere of action, i.e. they do not interfere in each other’s internal affairs. In the light of the above considerations, one may get the impression that churches will not be obliged to make public information available; however, in practice this looks different. In order to count this type of entity among those obliged to make public information available, the following prerequisites must be met: performance of public tasks within the parish and expenditure of public funds. Examples of such tasks are: running a cemetery or various types of schools. Often clergy persons receiving a request for access to public information fail to fulfil their obligation to provide information under the u.d.i.p., citing poor knowledge of the applicable legislation (non-fulfilment of the subjective scope of application of the u.d.i.p.),⁸ thus being exposed to criminal liability (fine, penalty of restriction, or imprisonment).

An important issue in any legal system that regulates the right to freedom of information is undoubtedly the principle of universality. It guarantees citizens and others the ability to request access to public information. The FOIA already introduces the principle of universality in Article 1. It provides that any person requesting information from public authorities has the right to obtain information in writing, thus regulating access to informa-

⁷ See Article 25 of the Polish Constitution.

⁸ Judgment of the Regional Administrative Court in Wrocław of 9 August 2017, IV SAB/Wr 72/17, LEX no. 2340743.

tion held by public authorities. It is worth noting that the FOIA does not restrict access to public information to those who do not have UK citizenship or UK resident status. Organisations, companies, as well as employees of a public authority, will also be entitled to obtain public information.

In the case of the u.d.i.p., the principle of universality is regulated in Article 2(1). It indicates that everyone has the right of access to public information. The doctrine indicates that the term “everyone” should be understood as natural and legal persons, as well as organisational units without legal personality.⁹ It is also worth pointing out that the u.d.i.p. indicates a broader circle of subjects than Article 61 of the Constitution of the Republic of Poland. The position of the Supreme Court emphasises that access to public information is universal, by which it is granted not only to citizens. The purpose of this is a kind of control over public authority, so that it meets the condition of transparency in all aspects.¹⁰

In consideration of the above, it is important to note that the FOIA provides for a broad power, allowing anyone, regardless of residence or nationality, to make requests for information held by public authorities. Such a broad power promotes equality of access to information and enables the integration of international actors and individuals from different backgrounds in the process of obtaining public data. It should also be noted that the act does not impose any restrictions on the entities entitled to make requests for access to public information. This right is not only available to citizens, but also to organisations, companies and other entities that may request to obtain information. This lack of subject restrictions allows various stakeholders, including NGOs, companies and the media, to access data that may be relevant to their activities, research, and evaluation of public authorities’ actions. For example, at central as well as local level, the national press used information obtained through FOIA to publicise cases of waste of public funds

⁹ Judgment of the Regional Administrative Court in Wrocław of 29 March 2018, IV SAB/Wr 23/18, LEX no. 2480193.

¹⁰ Judgment of the Supreme Court of the Republic of Poland of 8 December 2015, II PO 2/15, LEX no. 1996831.

and other unethical behaviour. This ranged from controversial topics, such as surveillance regulations, to more mundane issues, such as salaries, the cost of days off or the fees paid to celebrities for taking part in Christmas lighting ceremonies.¹¹

Finally, it is worth noting that the introduction of the principle of universality in the FOIA and the u.d.i.p. promotes transparency in the actions of public authorities, which is crucial for the functioning of a democratic society. By allowing broad access to public information, the Act contributes to increasing the openness of the authorities' actions, which, in turn, allows the public to better control the actions of these bodies. Transparency supports the building of public trust, reduces the risk of corruption and promotes the active involvement of citizens and organisations in democratic processes and the oversight of the work of authorities.

3. Procedures for access to public information

A mode of access to public information is to be understood as a specific way of proceeding and dealing with matters concerning the release of public information, as indicated in the legal rules.¹² When talking about the process of making public information available, we should keep in mind two important elements, which are the definition of the requirements for the manner and form of making public information available. The manner of releasing public information means the mode that the applicant uses when requesting public information, while the form is understood as the form in which the applicant expects to obtain it.¹³ The modes of access to public information in the UK are analogous to the solutions applied in Poland, as a result of similarities in the regu-

¹¹ B. Worthy, R. Hazell, J. Amos, G. Bourke, *Town Hall Transparency? The Impact of FOI on Local Government in England*, London 2011, pp. 23–24.

¹² Judgment of the Supreme Administrative Court of the Republic of Poland of 28 June 2019, I OSK 2941/17, LEX no. 2723964.

¹³ I. Kamińska, M. Rozbicka-Ostrowska, *Ochrona danych osobowych a prawo do informacji publicznej*, Warszawa 2021, p. 151.

lations of both countries. Both legal systems provide broad access to public information, based on the principle of universality and transparency.

In the UK, the principle of the duty to publish stipulates that public authorities have a duty to be proactive and thus publish key information and respond to citizen requests while promoting a culture of openness and transparency.¹⁴ In addition, under the FOIA, public authorities are required to publish certain information about their activities on their websites. The law also imposes an obligation to introduce and maintain an information publication system to ensure transparency and easy access to public data.¹⁵ If the information made available on the websites of entities obliged to provide public information is not sufficient for citizens, they have the right to submit a request for public information. In the request, one should provide one's name, correspondence address, and describe the requested information. Interestingly, however, for a request to be valid under the Act, it must be in writing. This can be in traditional written form (letter) or electronic form (e.g. e-mail). Requests can also be made via the internet and even on social media sites such as Facebook or Twitter if a public authority uses them.

Article 10 of the FOIA provides that public authorities have 20 working days from receipt of a request to respond. Article 10(6) para. 1 of the FOIA indicates that the "date of receipt" is to be understood as the day on which the public authority receives the request for information and, in the case of a "working day", any day other than Saturday, Sunday, Christmas Day, Good Friday, or a public holiday under the Banking and Financial Dealings Act 1971.¹⁶

¹⁴ K. McCullagh, *A Tangled Web of Access to Information: Reflections on R (on the Application of Evans) and Another v Her Majesty's Attorney General*, "European Journal of Current Legal Interests" 2015, Vol. 21, No. 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2985757 (access: 01.10.2024).

¹⁵ See UK Parliament, *House of Lords publication scheme*, <https://www.parliament.uk/site-information/foi/accessing-information/lords-publication-scheme/> (access: 01.10.2024).

¹⁶ Banking and Financial Dealings Act 1971, <https://www.legislation.gov.uk/ukpga/1971/80/contents> (access: 01.10.2024).

In the Polish act, as in the case of the UK, two basic modes of making public information available have been introduced, i.e. request mode and non-request mode. In addition, the u.d.i.p. indicates three additional modes of access to public information, which include: accessibility in a central repository, accessibility by means of posting in generally accessible places or by means of installing a device allowing to get acquainted with the information, as well as a guarantee of access to meetings of public authorities coming from public elections and providing access to materials, including audiovisual and teleinformatics, documenting these meetings.

The primary non-request mode of making public information available is the Public Information Bulletin (BIP), which is a special, official, and electronic publication that operates as a unified system of pages on an ICT network. It is intended to provide access to selected categories of information, as it is the main summary of public information. It is extremely important to emphasise from the outset that this mode excludes the necessity to make public information available upon request. The entity in possession of the information is obliged to make it available only if it has not been previously posted in the BIP. This position is confirmed by numerous rulings of administrative courts, which consistently hold that it is not possible to request, by means of an application, access to public information that has already been placed in the BIP, thus excluding the obligation to make it available again on request.¹⁷ Certainly, the position of the Supreme Administrative Court, which ruled on the deprivation of access to public information of persons deprived of liberty and in prisons, deserves our attention. It noted that such persons cannot be deprived of access to public information by the system, e.g. by limiting access to the Internet. Accordingly, incarceration in prison does not constitute a circumstance excluding the application of Article 10(1) of the u.d.i.p.¹⁸

¹⁷ Judgment of the Regional Administrative Court in Gdańsk of 1 December 2005, II SA/Gd 436/05, ONSAiWSA 2006, no. 6, item 161.

¹⁸ Judgment of the Supreme Administrative Court of the Republic of Poland of 21 April 2017, I OSK 1850/15, LEX no. 2299805.

The legislator, in Article 4(1) and (2) of the u.d.i.p., indicates groups of entities which are obliged to create and maintain the BIP, in which they fulfil the obligation imposed on them, namely making a wide range of information available. The categories of information that are subject to accessibility are regulated in Article 6 of the u.d.i.p. It should be emphasised, however, that the content of administrative acts and positions on matters concerning public life taken by public authorities and functionaries are excluded. M. Bernarczyk correctly states that this is such a broad catalogue that entities obliged to make public information available are left with a kind of “margin of freedom” as to the limits of the published information, as well as the administration of the content located on the BIP website.¹⁹

It cannot be disputed that information posted on the BIP should identify the entity that posted it, so it must be fully identified as to the entities providing the public information, the persons who created the information and are therefore responsible for its content, and the persons who directly entered the information into the system.²⁰ It is certainly worth quoting the position of G. Sibiga, which is unquestionable. He indicates that the entity obliged to make public information available is the “host” of the BIP website in terms of the content of the posted information, as well as the manner of its presentation.²¹

The application procedure has been provided for in the situation when information has not been placed in the BIP. Supreme Administrative Court points out that, in particular, the categories of information indicated in Article 6 of the u.d.i.p. are made available upon request, regardless of whether they are already in public circulation, e.g. on websites of entities obliged to make public information available, as well as whether access to this information is hindered by, for example, lack of access to the Internet. In

¹⁹ M. Bernarczyk, *Obowiązek bezwnioskowego udostępniania informacji publicznej*, Warszawa 2008, p. 133.

²⁰ I. Kamińska, M. Rozbicka-Ostrowska, *Ustawa o dostępie do informacji publicznej. Komentarz*, wyd. III, Warszawa 2016, Art. 8, pp. 234–235.

²¹ G. Sibiga, *O reformę przepisów o dostępie do informacji publicznej*, “Samorząd Terytorialny” 2015, No. 4, p. 14

such a situation, the obligation to make available public information placed on the website of entities is determined not by the lack of Internet access, but by its non-publication in the BIP.²²

The case law indicates that a request for public information may take any form, provided that it is clear from the request what the subject of the request is. It is undeniable that the obligation to consider a request for public information made by means of an application is triggered when the document is delivered to the competent authority.²³ M. Jędrzejczak, in discussing the judgment of the Regional Administrative Court in Gorzów Wielkopolski (II SAB/Go 201/19) concerning the case related to the release of information by the starost about invoices for the supply of fuel for company cars, draws attention to the position of the WSA, which confirms that a vague and incomprehensible request will not constitute a request for access to public information, and in the absence of a legal basis for supplementing the request, the authority should inform the interested party that the request does not have the form of a request for access to public information.²⁴

A request for public information submitted in electronic form also triggers proceedings for the provision of public information. It is the duty of public administration bodies to properly configure mail, as well as to organise the technical service of electronic mail to ensure trouble-free receipt of sent applications, the filing of which in this form is allowed in the Polish legal system. Problems with the service must not shift the consequences onto the users of these systems. An interested person directing an application to an officially indicated electronic address may consider it effectively submitted at the moment of sending.

In view of the above, it can be concluded that the legal regulation of electronic filing of requests for access to public information

²² Judgment of the Supreme Administrative Court of the Republic of Poland of 23 September 2014, I OSK 34/14, LEX no. 1569532.

²³ Judgment of the Regional Administrative Court in Lublin of 6 May 2014, II SAB/Lu 11/14, LEX no. 1531625.

²⁴ M. Jędrzejczak, *Nieprecyzyjne żądanie nie stanowi wniosku o informację publiczną*, <https://prawodlasamorządu.pl/2020-06-08-nieprecyzyjne-zadanie-nie-stanowi-wniosku-o-informacje-publiczna> (access: 01.10.2024).

in Poland could significantly increase the accessibility of information for people who do not have the possibility to visit offices in person. However, it is worth noting that this aspect requires further investigation and consideration of the current possibilities of submitting requests via the Internet. In the Polish legal system, there is no obligation to use special application forms, which makes it possible to submit applications via e-mail and thus anonymously. Therefore, this procedure is relatively simplified and should not be considered complicated or time-consuming; however, in the Polish legal system, the current regulations create the possibility to hinder the work of entities obliged to provide public information by frequent and anonymous submission of requests. Nonetheless, such measures can lead to administrative burden and complications in the process of making information available.

4. Refusal of public information and appeals procedures

As with all freedom of information regimes, the FOIA presupposes a number of exceptions which, in certain situations, allow public authorities to refuse to provide information to a requester. However, most of the exceptions are referred to as absolute exemptions and remain effective regardless of any conflicting public interest.²⁵ The reasons for refusing a request for public information may be as follows: (1) the public authority does not have the requested information; (2) the cost of providing the information will exceed the established limit; (3) protection of personal data; (4) the information will constitute a business secret.²⁶ If the authority neglects

²⁵ J. Griffiths, *Recapturing Liberated Information: The Relationship between the United Kingdom's Freedom of Information Act 2000 and Private Law Restraints on Disclosure*, in: *Intellectual property and human rights*, ed. P. Torremans, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1646616 (access: 01.10.2024).

²⁶ Information Commissioner's Office, *When can we refuse a request for information?*, <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/> (access: 01.10.2024).

the obligation to provide public information, or performs actions that constitute alteration, blocking, destruction, or concealment, this will prejudice the commission of an offence.²⁷

The refusal to release public information on cost grounds is scrupulously regulated in the FOIA. The legislator assumed that entities obliged to release public information must not allow this task to consume time, energy, and financial outlay that may negatively affect the functioning of the authorities. Article 12 of the FOIA provides for the possibility of applying a refusal to release public information where the cost limit for carrying out a response to a request from an individual or group alone exceeds £600 for central government, parliament, and the armed forces, and £450 for all other public bodies. It should also be emphasised that in estimating costs, public authorities use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.²⁸ The following actions are regulated in detail in this regulation: determining whether the authority has the requested information, finding that information, retrieving the information, or extracting the requested information from the file. The British legislator has also regulated staff time, which it values at GBP 25 per hour per employee. In addition, when making the calculation, the authority is required to add up the costs of all related requests received within 60 working days from the same person. If the costs and resources of releasing public information expose the authority to a blatant burden, a request under Article 14 of FOIA can also be adjudicated, which will be for the refusal to release information on the grounds of so-called vexatious or unreasonable requests. It is important to point out that in cases of abuse of the FOIA, it will be justified to call on requesters to pay the costs of releasing public information.²⁹ Charging applicants with costs

²⁷ See Article 77 FOIA.

²⁸ The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made> (access: 01.10.2024).

²⁹ J. Corderoy, *UK government could charge fees for requesting official information*, <https://www.opendemocracy.net/en/freedom-of-information/uk-government-could-charge-fees-requesting-official-information/> (access: 01.10.2024).

goes some way to reducing the number of applications that will constitute so-called annoying or unjustified requests.

Turning to the denial of public information due to so-called annoying or unwarranted requests, detailed guidelines on this issue are regulated in Article 14 of the FOIA. The legislator foresaw that certain entities may abuse access rights. Thus, it should be pointed out that the article in question serves to protect public authorities by allowing them to refuse access to public information. The acceptance of the protection of public authority resources from unreasonable requests was also expressed in the case of *Dransfield v Information Commissioner*, which concerned the refusal of a request for public information indicating it as vexatious within the meaning of Article 14(1) FOIA due to the volume and frequency of his previous correspondence on similar matters.³⁰

To conclude the discussion of the UK regulations granting the right of access to public information, it is important to point out that anyone who is dissatisfied with the authority's response has the power to lodge a complaint. In the notice of refusal to provide public information, the authority is required to state whether there is an appeal procedure in this case and, if so, how to access it. A complaint under the appeals procedure should be dealt with within 40 working days. This is not the only means of appeal. It is worth noting that where a complainant remains dissatisfied after a complaint has been dealt with by a public body, they can complain to the Information Commissioner's Office (ICO), which is an independent body in the UK. It upholds the right to freedom of information and the protection of personal data, whose main objective is to promote the openness of public bodies towards citizens and the privacy of individuals' data.

Within the Polish system of access to public information it is necessary to distinguish a refusal to provide access to public information from a discontinuance of proceedings. The issuance of a decision on the refusal to release public information, referred

³⁰ See *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013), <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680> (access: 01.10.2024).

to in Article 16 u.d.i.p., may take place in the case when, synthetically, the following prerequisites are met, namely: the entity to which the request is addressed belongs to the entities obliged to release public information; the requested information fulfils the prerequisites qualifying it as public information or is in the possession of the addressee of the request; the information of interest to the requesting entity has not been published in the BIP; the provisions of other Acts do not apply to the requested information; there is no possibility to discontinue the proceedings pursuant to Article 14(2) u.d.i.p.; there are prerequisites for issuing a decision on refusal to release public information.³¹

The form of an administrative decision shall only be used where subjective and objective conditions are met. The subjective conditions include the existence of an addressee of the request, who is an entity obliged to make public information available, while the objective condition will be information having the nature of public information. It is worth pointing out that in the case of the absence of one of the abovementioned elements, the use of the form of an administrative decision will be a significant mistake from the point of view of the legislator, since it is reserved only for the refusal to provide access to public information, the essence of which has been determined in the course of the proceedings. The position of the Regional Administrative Court in Warsaw (II SAB/Wa 789/19) may be considered a confirmation of these considerations.³²

An administrative decision to refuse access to public information should be issued without undue delay. It is assumed in doctrine that the time limit for its issuance is 14 days from the date of receipt of the application by the entity obliged to provide access to information; however, the Act on Access to Public Information does not suggest this deadline explicitly. The issuance of such a decision concludes the proceedings; nevertheless, the appli-

³¹ M. Sakowska-Baryła, *Dostęp do informacji publicznej a ochrona danych osobowych*, Wrocław 2014, p. 275.

³² Judgment of the Regional Administrative Court in Warsaw of 11 March 2020, II SAB/Wa 789/19, LEX no. 3020166.

cant is entitled to legal remedies, namely an appeal to the second instance and, subsequently, to the administrative court.

In the case of discontinuance of the proceedings, the authority has the right to also issue a decision in the case indicated in Article 14(2) u.d.i.p. This concerns the situation in which information exists. Nonetheless, it may be made available only in a manner or form other than that specified in the application. A decision to discontinue the proceedings may only take place in a situation where it is preceded by a notice obliging the entity requesting public information to change the form and manner of making the information available. The authority must, however, indicate the reasons why the information cannot be made available.³³

If the applicant does not modify the application within 14 days of being notified of the above situation, the authority shall issue a decision to discontinue the proceedings. Undoubtedly, the lack of a response from the applicant or the lack of agreement with the authority as to the modification of the manner or form in which the information is made available in the absence of technical capabilities, entitles the authority to take action to terminate the proceedings as a result of discontinuance. The above position is confirmed by the judgement of the Supreme Administrative Court of 30.11.2012 (I OSK 1811/12),³⁴ which also indicates the necessity to apply the provisions of the Administrative Procedure Code (K.p.a.).³⁵

It is also worth pointing out that the doctrine indicates a frequent mistake, which consists in the application of a wrong interpretation of Article 105 of the Code of Administrative Procedure (defining the prerequisites for discontinuing the administrative proceedings) in the case of issuing a decision on discontinuing the proceedings on making public information available. Therefore, the practice of entities obliged to provide access to public information consisting in “assuming the pointlessness of the pro-

³³ P. Szustakiewicz (ed.), *Dostęp do informacji publicznej*, Warszawa 2019.

³⁴ Judgment of the Supreme Administrative Court of the Republic of Poland of 30 November 2012, I OSK 1811/12, LEX no. 1291356.

³⁵ Act of June 14, 1960, Code of Administrative Procedure (Dz.U. 2024 item 576).

ceedings for providing access to official documents due to their non-existence and discontinuing the proceedings in this case on the basis of Articles 104 and 105 of the Code of Administrative Procedure should be critically assessed”.³⁶

To conclude – significant differences also exist in the appeal procedures for access to public information in Poland and the UK. These differences affect the way in which citizens in both countries can assert their rights regarding access to public information, which has a direct impact on the efficiency and speed of obtaining the desired data. In Poland, the appeal procedure, which includes the possibility of filing an appeal to a higher level authority and then taking the case to an administrative court, can be time-consuming, especially due to the formalism and long waiting time for the courts to consider the case. In contrast, in the UK, the ICO’s role as an independent review body makes the process more focused on rapid intervention and mediation between parties. The ICO has the ability to issue decisions directly, which often speeds up the resolution of disputes.

5. Conclusion

In concluding the above discussion, it is worth noting the key issues raised in the article. Both legal systems place great emphasis on the transparency of public authorities’ activities, although approaches to the implementation of this right differ in some aspects.

It is worth considering the establishment of a new body within the public administration structure, modeled on the British Information Commissioner’s Office, which would be responsible for overseeing the implementation of the right of access to public information. This body could be equipped with wide-ranging powers, including the right to inspect public institutions that fail to comply with the obligation to provide access to information, as well as the

³⁶ I. Kamińska, M. Rozbicka-Ostrowska, *Ochrona danych osobowych a prawo do informacji publicznej*, Warszawa 2021, p. 175.

ability to impose administrative sanctions for violations in this regard. This proposal is not intended to replace the administrative courts, but to supplement the existing control system by creating a specialised institution that acts more quickly and efficiently in matters concerning access to public information. However, it should be made clear that the effectiveness of such a body would be possible only under the condition of its institutional independence from other public administration bodies, especially those obliged to provide access to information. Therefore, consideration would have to be given to whether this body should be situated as an independent central office with the character of a law enforcement body – analogous to the Commissioner for Human Rights – instead of functioning within the government administration. In addition, such a body could perform an educational function, offering training to officials and other interests, thereby helping to raise standards in information sharing and countering fraud and dishonesty.

An important development to increase the efficiency of the system of access to public information in Poland would be the introduction of guidelines on the possibility of refusing to release public information, modelled on the British regulation contained in Article 14 of the FOIA. This article allows public authorities to refuse to release information in situations where a request is manifestly unfounded, repetitive, unduly burdensome, or clearly aimed at an abuse of the law. In the author's opinion, this change could contribute to a better balance of public and private interests in access to information. It would also enable better protection of public authorities against procedural abuses without undermining the constitutional right of citizens to information. In this regard, the amendment of the u.d.i.p. should clearly define in which cases a request may be considered unjustified, repetitive, or disproportionate to the purpose it is intended to serve. Such criteria should be based on objective grounds, e.g. the number of requests made by one person at a given time, their nature, their impact on the functioning of the institution and the relationship between the scope of the requested information and the public interest. In conclusion, it is necessary to recognise that in the UK there is a fast and effective appeal process against decisions of public authorities

regarding access to public information and protection of personal data. In Poland, similar solutions can be introduced to ensure a faster and more effective appeals process. One such solution is the establishment of an independent complaints body to deal with complaints against decisions of public authorities regarding access to public information and personal data protection. In addition, the introduction of electronic complaint systems and procedures could be considered. This would make the procedure much faster and more efficient and facilitate appeals against decisions issued by Polish public authorities.

SUMMARY

Access to public information: comparative study of Poland and United Kingdom

Access to public information is currently one of the most important issues related to the functioning of a democratic state under the rule of law. This right entitles everyone to participate consciously in the social and political life of the country. It is therefore a tool of social control through which every citizen has the right to obtain information about the activities of public authorities and persons performing public functions. This article aims to present the operation of the right of access to public information in the UK and Poland, taking into account the legal arrangements that shape the way in which citizens can exercise this fundamental right in both countries.

Keywords: access to public information; public information; transparency; citizens' rights; appeals procedures

STRESZCZENIE

Dostęp do informacji publicznej: studium porównawcze Polski i Zjednoczonego Królestwa

Dostęp do informacji publicznej stanowi aktualnie jedno z najważniejszych zagadnień związanych z funkcjonowaniem demokratycznego państwa prawa. Prawo to uprawnia do tego, aby każdy mógł świadomie uczestniczyć w życiu społecznym i politycznym kraju. Stanowi to zatem narzędzie kontroli społecznej, przez które każdy obywatel ma prawo do uzyskania informacji o działalności organów władzy publicznej oraz osób pełniących funkcje publiczne. Niniejszy artykuł ma na celu przedstawienie funkcjonowania prawa dostępu do informacji publicznej w Wielkiej Brytanii i Polsce z uwzględnieniem rozwiązań prawnych, które kształtują sposób, w jaki obywatele mogą korzystać z tego prawa w obu krajach.

Słowa kluczowe: dostęp do informacji publicznej; informacja publiczna; transparentność; prawa obywatelskie; procedury odwoławcze

BIBLIOGRAPHY

- Bernarczyk M., *Obowiązek bezwinnoskowego udostępniania informacji publicznej*, Warszawa 2008.
- Corderoy J., *UK government could charge fees for requesting official information*, <https://www.opendemocracy.net/en/freedom-of-information/uk-government-could-charge-fees-requesting-official-information/>.
- Darch C., Underwood P., *Freedom of Information in the Developing World: Demand, Compliance and Democratic Behaviours*, Oxford 2010.
- Griffiths J., *Recapturing Liberated Information: The Relationship between the United Kingdom's Freedom of Information Act 2000 and Private Law Restraints on Disclosure*, in: *Intellectual property and human rights*, ed. P. Torremans, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1646616.
- Hazell R., Worthy B., Glover M., *The Impact of Freedom of Information on British Central Government: Does FOI Work?*, London 2010.
- Jędrzejczak M., *Nieprecyzyjne żądanie nie stanowi wniosku o informację publiczną*, <https://prawodlasamorzadu.pl/2020-06-08-nieprecyzyjne-zadanie-nie-stanowi-wniosku-o-informacje-publiczna>.

- Kamińska I., Rozbicka-Ostrowska M., *Ochrona danych osobowych a prawo do informacji publicznej*, Warszawa 2021.
- Kamińska I., Rozbicka-Ostrowska M., *Ustawa o dostępie do informacji publicznej. Komentarz*, wyd. III, Warszawa 2016.
- McCullagh K., *A Tangled Web of Access to Information: Reflections on R (on the Application of Evans) and Another v Her Majesty's Attorney General*, "European Journal of Current Legal Interests" 2015, Vol. 21, No. 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2985757.
- Sakowska-Baryła M., *Dostęp do informacji publicznej a ochrona danych osobowych*, Wrocław 2014.
- Sibiga G., *O reformę przepisów o dostępie do informacji publicznej*, "Samorząd Terytorialny" 2015, No. 4.
- Skrzydło W., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków 1998.
- Szustakiewicz P. (ed.), *Dostęp do informacji publicznej*, Warszawa 2019.
- Worthy B., Hazell R., Amos J., Bourke G., *Town Hall Transparency? The Impact of FOI on Local Government in England*, London 2011.