



Guidelines for the application of rules on public access to information and secrecy at KTH

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1. The Swedish principle of public access to information

All citizens have the right to access official documents held by public authorities. This right is known as the *principle of public access to information*. However, not all documents held by public authorities are regarded as *official documents* and a number of official documents are *secret*.

The basic provisions regarding the principle of public access to information are found in Chapter 2 of the Swedish Freedom of the Press Act (SFS1949:105). According to Chapter 2 § 1, every Swedish citizen shall have the right to access official documents, in order to promote the free exchange of opinions and the availability of balanced information, while Chapter 14 § 5 of the Act provides for equivalent rights for foreign nationals. The Swedish Public Access to Information and Secrecy Act (SFS 2009:400) regulates whether or not an official document can be considered as public information.

1.1 Public access to official documents

As a general rule, all documents held by a public authority, and which can be deemed to have been *received* or *drawn up* by such an authority, are official.

1.2 Secrecy and duty of confidentiality

Chapter 3 § 1 of the Swedish Public Access to Information and Secrecy Act defines *secrecy* as “a prohibition on disclosing information, whether orally or by making an official document available or in any other way”.

Chapter 7 § 1 of the Swedish Public Access to Information and Secrecy Act states that “If secrecy applies to information, then nor may the information be exploited outside the operation where it is subject to secrecy”. This prohibition applies both to individuals and other public authorities.

2. What is an official document?

The Swedish Public Access to Information and Secrecy Act defines a *document* as a presentation in writing or images but also a recording that one can read, listen to or comprehend in another way only by means of technical aids. The word ‘document’ consequently may refer to tables, e-mail logs, schedules, forms, minutes, memoranda, maps, photographs, X-ray images or tape recordings. Put simply, one can say that a document is an object which contains information of some kind”.

According to the Act, a document is *official* if:

- It is held by a public authority, and
- According to special rules is regarded as having been received or drawn up by a public authority.

A document is considered as held by a public authority, and therefore official, irrespective of whether or not it

has been registered.

As early as 1999, the Supreme Administrative Court of Sweden ruled that digital files such as cookies and browser histories can also be considered as official documents and are therefore covered by the principle of public access to information.

Even information that solely exists in a database and cannot be retrieved using routine procedures may also be considered as official documents if they are associated with a public authority's core activities (Administrative Court in Stockholm ruling of 23 June 2011, case no. 3005-11).

According to the Supreme Administrative Court of Sweden, a document that is accessible to two public authorities can also be official (ruling of 27 June 2011, case nos. 99-11 and 2173-11). Certain information had been entered into a database by a police authority. As a result, certain civil servants at the Swedish National Police Board gained access to the information. The information was therefore deemed to have been dispatched in the meaning of Chapter 2 § 7 of the Freedom of the Press Act and therefore an official document. It should therefore be released unless covered by secrecy under the provisions of the Swedish Public Access to Information and Secrecy Act.

2.1 When does a document become official?

An official document must be held at the university and have been received or drawn up at the university. A document is *held* if it can be read, listened to or comprehended in another way by means of technical aids at the public authority. The document/recording need not be physically in the possession of the public authority to be considered as held there, it may be somewhere other than on the public authority's premises. The fact of a document that has been received or drawn up by a public authority being temporarily held, for example, in the home of an official or someone else from whom the authority can easily demand its return, does not deprive the document of its official status. The principle of public access to information applies only to documents that, at the time of the applicant's request, can be considered as held by the public authority. The principle of public access to information does not therefore apply to documents that are expected to be received by the public authority.

2.1.1 Received documents

Documents received by the university from external sources become official documents as soon as they are received by the university or become available to an authorised officer of the university.

Letters personally addressed to officers of a public authority are not however official documents if their content relates to purely personal circumstances rather than the public authority's activities. Therefore, the public has a right to access some of the university's post, but only after the document has been reviewed with regard to the need for secrecy and any documents that are not official have been separated (cf. Freedom of the Press Act Ch. 2 § 6, Ch. 2 § 4).

Example: Examination answers submitted to the university are received documents and must be considered as official documents and must therefore be released to anyone so requesting.

A document is considered to have been received at the earliest conceivable point in time, i.e. when it reaches KTH's server, premises or become available to an authorised officer. Whether or not the document has been registered is immaterial. E-mails can also be considered official documents from the day they arrive at KTH.

Example: Generally speaking, any document relating to a recruitment process will become an official document. Applications become official documents when they are received by the public authority. As a rule, job requirement profiles and similar internal material become official documents in conjunction with the conclusion of the process, unless dispatched prior to this.

Example: Results reports from a staff survey are dispatched from the company responsible for preparing the survey to the ordering municipality. Any such result reports constitute official documents. The company is not

deemed to have *independent status* in relation to the municipality, so documents are considered as received by the municipality in accordance with the Freedom of the Press Act.

2.1.2 Drawn up documents

A document drawn up within the university becomes official when:

- When dispatched
- When the matter it relates to is concluded
- When minutes, etc. have been adjusted and approved
- In the case of diaries, journals, etc. kept on an ongoing basis, when the document has been made ready for notation or entry.

Please note that a document becomes official at the earliest possible point in time, for example, if one dispatches material relating to any matter to an external recipient, this becomes an official document as soon as it is dispatched. This does not however apply to documents transmitted solely for consultation purposes, in which case they are not normally considered official documents (cf. Freedom of the Press Act Ch. 2 § 7)

Documents circulated solely within the university are not normally considered official until the matter to which they relate is concluded.

2.1.3 Cookies, Temporary Internet Files and other weblogs

When you visit certain websites, the server you connect to may send files known as *cookies* that are then stored locally on your computer. The sites you visit online are also saved in your browser cache, so that they can be displayed more quickly if you visit them again. The Supreme Administrative Court of Sweden has confirmed that cookies must be considered as official documents, meaning that log files must be saved for a limited period.

2.2 What is not an official document?

Documents sent internally within a public authority are considered to be solely working documents and do not become official documents until the matter to which they relate has been concluded. Memoranda, drafts, outlines and other records or recordings made solely for preparation or presentation purposes, and that do not confer any new information to the matter in question in its final form, are not official documents unless they are retained for archiving. If, on the other hand, any such memoranda confer new information to the matter, they must be registered and archived with all other documentation relating to the matter.

3. SECURITY

3.1 Public or secret?

An official document can be either public or secret. The principal rule is that official documents are open to the public. All exceptions to this rule must be prescribed in the Public Access to Information and Secrecy Act. Secrecy is rarely unconditional, but rather is often for a limited period and linked to what is known as a *requirement of damage*. Secrecy issues must be examined in each individual case by the person holding a document. The basic rule is that the principle of public access should always be weighed against the potential damage that the disclosure of the information may cause.

In principle, all documents protected by secrecy are subject to an absolute registration requirement but must be registered in such a way as to not disclose any information subject to secrecy (cf. Public Access to Information and Secrecy Act Ch. 5 §§ 1, 3).

3.2 The right of parties to be informed

A party in a case or matter before a court or other authority has a further right to access information over and above the principle of public access to information. In principle, all information relating to the case or matter should be made available to involved parties. Provisions relating to this are included in the Swedish Administrative Procedure Act (SFS 1986:223).

A student who is the subject of an investigation by the Disciplinary Board has the right to information relating to his or her case.

3.3 Breach of duty of confidentiality

Breach of duty of confidentiality is covered by criminal liability. If you are in any doubt about a request for access to information or documents, do not hesitate to contact the Legal Department.

3.4 The Public Access to Information and Secrecy Act as it relates to KTH

Below is a list of those provisions of the Public Access to Information and Secrecy Act that are most likely to apply to KTH's organisation. These can be divided into three substantive areas. The relevant chapter and section of the Act is stated in bold text. It must however be underlined that very few secrecy provisions are generally applicable to educational institutions. The stated provisions are therefore applicable only under exceptional circumstances.

3.4.1 Secrecy for staff

- **21(1)**; secrecy applies to information regarding health and sex life if it must be assumed that the individual or someone close to them will be caused significant suffering by the disclosure of the information.
- **21(3)**; secrecy applies to information regarding the individual's home address or similar contact information if there is a specific reason to believe that the individual or someone close to them may be subject to threats or violence or otherwise be caused serious suffering by the disclosure of the information.
- **21(5)**; secrecy applies to information regarding a foreign national if it can be assumed that the disclosure of such information would lead to a danger of anyone being subjected to attack or suffering serious injury as a result of the relationship between the foreign national and a foreign state or agency or organisation of foreign nationals.
- **21(7)**; secrecy applies if it can be assumed that disclosure would result in the information being processed in contravention of the Swedish Data Protection Act (SFS 1998:204). Note: This paragraph primarily applies to the mass extraction of data.
- **25(1)**; secrecy applies with regard to information generated within occupational health services regarding individual employees' health status or other personal relationships, unless it is clear that the information can be disclosed without causing suffering to the individual or those close to them.
- **39(1)**; secrecy applies to information generated in HR social activities that refers to psychological studies and treatment and similar activities unless it is clear that the information can be disclosed without causing suffering to the individual or those close to them.
- **39(2)**; secrecy applies to HR administrative activities other than those referred to in 39.1 above, regarding information on the individual employee's health status, redeployment or retirement where it can be assumed that they or someone close to them will suffer due to the disclosure of the information

In a ruling on 10 December 2004 (case no. 6703-04), the Administrative Court in Stockholm found that secrecy applied regarding notes taken in an employee performance appraisal meeting, but that completed forms under the designation *salary-affecting criteria* could be released if certain specifically stated information was

removed.

- **39(3)**; secrecy applies to HR administrative activities other than those referred to in 39.1 and 39.2 above for information regarding an individual's personal relationships if it can be assumed that they or someone close to them may be subjected to violence or other serious suffering if the information is disclosed.

Example: In a ruling on 23 February 2010 (case no. 6174-09), the Supreme Administrative Court of Sweden ordered the Swedish Civil Aviation Administration to disclose the names of seven people who had been dismissed for personal reasons. Nor was the fact that one of the individuals had been charged with a criminal offence deemed to be a hindrance to disclosure of the names.

3.4.2 Secrecy for students

- **17(4)** secrecy applies to information included in or forming the basis for examinations or psychological tests conducted under the public authority's supervision, if it can be assumed that the purpose of the examination will be negated if the information is disclosed.

Note: An examination usually becomes an official document at the moment it is handed over to the students taking the examination. Prior to that moment, secrecy applies in order to avoid negating the purpose of the examination.

There is no secrecy for examination papers once they have been handed in. Anyone can request a copy of someone else's exam paper without giving any reason for doing so. However, in order to obtain their own original exam paper, a student must provide proof of identity.

- **21(1)**; secrecy applies to information regarding health and sex life if it must be assumed that the individual or someone close to them will be caused significant suffering by the disclosure of the information.
- **21(3)**; secrecy applies to information regarding the individual's home address or similar contact information if there is a specific reason to believe that the individual or someone close to them may be subject to threats or violence or otherwise be caused serious suffering by the disclosure of the information
- **21(5)**; secrecy applies to information regarding a foreign national if it can be assumed that the disclosure of such information would lead to a danger of anyone being subjected to attack or suffering serious injury as a result of the relationship between the foreign national and a foreign state or agency or organisation of foreign nationals.
- **21(7)**; secrecy applies if it can be assumed that disclosure would result in the information being processed in contravention of the Swedish Data Protection Act. Note: This paragraph primarily applies to the mass extraction of data

The Supreme Administrative Court of Sweden Yearbook 2002 ref. 54, reports on a request from a company for the National Board of Student Aid to release registers of student grant recipients at university level in the form of lists of names, addresses and postcodes. The information was to be used to distribute discount cards to students. According to the Court, for the request to be met, it should require an unequivocal balance in favour of the company's commercial interests against the rights and freedoms of the individuals. No secrecy applied to the information.

- **23(3)** secrecy applies at higher education institutions and universities to information that refers to psychological examinations or treatment and to information on an individual's personal relationships held by psychologists, counsellors and career advisors, unless it is clear that the information can be disclosed without causing suffering to the individual or those close to them
- **23(6)**; secrecy applies to matters regarding the expulsion of students from higher education for information relating to the individual's health status or other personal circumstances if it can be

assumed that the individual or those close to them will suffer significantly if the information is disclosed.

- **37(2)** secrecy applies to the extent that the Riksdag has approved an agreement in that regard with another state or international organisation regarding information referred to in 21.5 that a public authority has obtained in accordance with said agreement. This provision is intended to ensure that information that Sweden receives pursuant to such an agreement is used for certain specified purposes and is only released to public authorities that in some way handle foreign affairs.

3.4.3 Secrecy for the protection of financial interests

- **19(1)** secrecy applies within a public authority's business activities for information about the authority's commercial or operating conditions, if it can be assumed that anyone conducting a similar enterprise may benefit from the disclosure of the information at the authority's expense.

Example: A computer program developed at a university department for the administration of its own activities was not deemed to belong to the university's (Stockholm University) commercial activities. As a consequence, the software's source code must be considered an official document that must be disclosed by public request, as it is not covered by any secrecy decision.

Example: In a ruling on 11 May 2007, the Administrative Court in Stockholm found that the National Veterinary Institute was required to disclose information to Kalmar Bioscience regarding remuneration and payment terms in an agreement on the capture and sampling of wild birds. The National Veterinary Institute had reached the conclusion that secrecy applied in accordance with Chapters 19(1) and 31(12) of the Public Access to Information and Secrecy Act. However, the Administration Court in Stockholm ruled that neither of these provisions applied to the agreement and therefore the information must be disclosed.

- **19(3)**; secrecy applies to tenders if it can be assumed that the public interest will be harmed if the information is disclosed.

Even information related to the matter that does not refer to a concrete sale but rather to a more preliminary mapping of potential future sales may be covered by secrecy. One example of possible harm is that a public authority's position in a negotiation for the basis of a tender may be weakened, or that a future tender process may be negatively affected by the disclosure of information from a completed procurement process.

- **31(16)**; secrecy applies to information relating to an individual's commercial or operating conditions when they have entered into an agreement with a public authority if, for a specific reason, it can be assumed that the individual may suffer harm if the information is disclosed.

Example: In a ruling on 30 October 2007 (case no. 4753-06), the Supreme Administrative Court of Sweden found that tender documentation held at the Swedish Road Administration should not be disclosed to competing companies. It was considered that the company in question (NCC) might suffer injury if the competitor (Peab) obtained the documents.

3.4.4 Secrecy in research

- **24(1)**; secrecy applies to psychological studies carried out for research purposes, unless it is clear that the information can be disclosed without causing suffering to individuals or those close to them.
- **31(12)**; secrecy applies to tasks that a public authority carries out on behalf of individuals if it must be assumed that the task has been assigned on condition that the information is not disclosed.

This provision becomes relevant when KTH is contracted by an individual party, typically a company, to research a solution to a problem, "contract research". The client does not participate in contract research work. The primary purpose of this provision is to protect the financial interests of the individual client, although it is also considered to cover the personal and financial conditions of third parties.

Please note that KTH never signs agreements on complete confidentiality, as it is not possible to contract out

of the principle of public access to information. It is however possible for KTH to maintain the confidentiality of, for example, business relationships pursuant to 31(12). In order for secrecy to apply in accordance with the provision, it is necessary that the nature of the task is such that confidentiality must be considered so essential to the client that, without the duty of confidentiality, it would have refrained from employing the authority.

Example: If the client is a company, information regarding its employees can be protected where such information is handled as part of the assignment. In a ruling on 6 April 2011 (case no. 192-11), the Administrative Court in Stockholm found that information relating to clients who had submitted certain samples to the National Veterinary Institute could be disclosed only if clients had not requested nondisclosure on the part of the NVI. For other clients, the Court found that they were not covered by secrecy under the provision.

- **11(3)**; if a public authority, in the course of its research activities, obtains information that is subject to a secrecy provision, said provision will also apply to the receiving authority.
- **24(5)**; secrecy applies at universities and higher education institutes for information relating to an individual's commercial or operating conditions, inventions or research results submitted or received as a result of contract research conducted in collaboration with an individual, if it must be assumed that the individual has participated in said collaboration on the understanding that the information will not be disclosed.

Research cooperation is characterised by a collaboration agreement on equal terms of mutual give and take. Protected information need not come directly from the individual themselves, it may be obtained from a third party to the collaboration, for example a participating overseas university.

- **24(8)**; secrecy applies to such activities conducted at the public authority as the preparation of statistics for tasks relating to an individual's personal and financial conditions, and that can be attributed to the individual.
- **31(16)**; secrecy applies to information regarding the individual's commercial and operating conditions when entering into commercial agreements with the public authority if, for specific reasons, it can be assumed that the individual will suffer harm if the information is disclosed.
- **31(20)**; secrecy applies to matters relating to patent applications for inventions or business secrets, unless otherwise stated in the Swedish Patents Act (SFS 1967:837).

4. PERSONAL DATA IN THE REGISTER

As the register contains personal data, consideration must be given to the Swedish Personal Data Act (SFS 1998:204). The purpose of the Personal Data Act is to protect the individual against the violation of their personal integrity by processing of personal data.

According to Chapter 5 of the Public Access to Information and Secrecy Act, as a public authority KTH is obliged (with certain exceptions) to register documents that are received or drawn up by the authority. As a general rule, the register should not include personal data over and above that required pursuant to Chapter 5 § 2 of the Public Access to Information and Secrecy Act, i.e. registration number and (if the information is not subject to secrecy) information on who submitted the document or to whom it was dispatched, and a brief description of the subject matter.

Personal identity numbers may only be handled without the consent of the data subject in specific cases specified in the Personal Data Act. Praxis and interpretation regarding this provision is restrictive and therefore you should not write personal identity numbers in any case text or memoranda.

In principle, § 13 of the Personal Data Act prohibits the processing of sensitive personal data (health, sexual life, ethnicity, political opinions and religious or philosophical convictions) and, therefore, no such information should be included in the register.

Examples of cases in which sensitive personal data may be included are disciplinary proceedings (suspected cheating in exams, etc.) and cases regarding sick pay, work-related injuries, student expulsions and requests

for the release of official documents.

5. RELEASING OFFICIAL DOCUMENTS

5.1 General

According to the Freedom of the Press Act, any individual or company is entitled to request the release of official documents. The official in possession of the document(s) is generally the person who decides whether a document is official and if it can be released.

5.2 Anonymity

The individual requesting the release of an official document normally has the right to remain anonymous and need not divulge the intended use of the document (as long as this is not required in order to review the need for secrecy, something that should be decided in consultation with the Legal Department).

A disclosure request must be handled without undue delay.

5.3 Are we required to provide information in digital form?

When requested to release official documents from its system, a public authority is under no obligation to do so in digital form. A printout is entirely adequate. This does not mean that we are prohibited from releasing information on digital media or via file transfer. Information from Ladok may only be released in digital form in those cases specifically listed in the Swedish Ordinance on Reporting of Studies and Other Matters at Universities and Colleges (SFS 1993:1153), also known as the Ladok Ordinance. If no specific register ordinance exists to regulate a digital disclosure, a review must be conducted to assess whether the digital disclosure in question complies with the Personal Data Act.

5.4 Are we required to fax documents if so requested?

According to the Parliamentary Ombudsmen (JO), a judgement must be made for each individual case based on the scope, work involved, content of the documents, etc. If no such direct obstacle exists, it should be in line with our service obligations to fax the documents in question to those who so request (JO 1994/95: 63). However, there is no obligation to provide documents in electronic form.

If no disclosure is made?

If an official decides that a document should not be released or should only be released with reservations or some other restriction, they must inform the applicant that they have the right to "refer the matter to the authority" and thereby receive an appealable written decision. If the applicant requests an appealable written decision, contact the Legal Department which will prepare the matter for a decision by the Head of Legal Affairs (cf. Public Access to Information and Secrecy Act Ch. 6 § 3).

5.5 Should we accept payment for copies?

In addition to the right to read official documents on site, there is also a right to obtain copies (printouts via ADP) or transcripts of documents. There is also a right to have copies (printouts via ADP) or transcripts delivered.

If an order is for 10 or more pages, a fee may be charged for copies. The fee for an order for 10 pages is SEK 50. For each additional page, the fee is SEK 2. The cost of postage shall also be charged if the package weighs more than 20 grams. The fee for an order of 10 or more pages also applies to orders sent by fax (cf. §§ 16-22 of the Swedish Fees Ordinance (SFS 1992:191)).

5.6 Official documents must not be weeded out (thrown away)

All handling of official documents is strictly regulated whenever the principle of public access to information applies to an organisation. An official document must not be weeded out/thrown away without due consideration for applicable legislation and regulation.

5.7 Process for registering official documents at KTH

KTH registers its official documents in a specialised electronic case management system, W3D3. Registration is carried out by each of the university's archiving units (University Administration, individual schools). The individual opening the post is always obliged to decide whether or not a document requires registration. This applies to both papers received through the post and e-mails. Every employee therefore bears the responsibility for ensuring that documents are registered in accordance with applicable procedures.

KTH does not register all of its official documents. Legislation allows exceptions from the registration requirement on condition that documents are kept systematically arranged so that it can be established whether they have been received by or drawn up within the authority. Which documents must be registered is stated in KTH's various governance documents and document management plans.

Pursuant to Chapter 4 § 1 of the Public Access to Information and Secrecy Act, official documents must be arranged in a manner that offers private parties good opportunities to search for and obtain official documents.

According to Chapter 5 § 1 of Public Access to Information and Secrecy Act, documents containing information subject to a secrecy provision must always be registered.

It is not only documents that are received as hard copies that must be registered. Information reaching KTH by other means, e.g. by telephone or e-mail, may also need to be documented and registered. All new factual information that may be important to the outcome of a matter must be linked to other case documentation (cf. Administrative Procedure Act § 15). This is most easily accomplished by preparing and registering an official note.

Further information can be found, for example, in KTH's Document Management Plan and internal regulation 7/2008.

5.8 Marking official documents as secret

According to Chapter 2 § 16 of the Freedom of the Press Act, a note concerning obstacles to the release of an official document may only be made on a document covered by a secrecy provision.

A notation regarding secrecy is not binding regarding the issue, but rather serves as a reminder to carefully review the need for secrecy in the event that someone requests the release of the document in question. A secrecy review should be carried out on each separate occasion that disclosure is requested.

Links to websites and source material

Swedish Public Access to Information and Secrecy Act in full (Swedish)

www.notisum.se/rnp/sls/lag/20090400.htm

Swedish Public Access to Information and Secrecy Act, Government Offices of Sweden information brochure in English

<http://www.regeringen.se/contentassets/2c767a1ae4e8469fbfd0fc044998ab78/public-access-to-information-and-secrecy-act>

Swedish Freedom of the Press Act in full (Swedish)

www.notism.se/rnp/sls/lag/19490105.HTM

Swedish Freedom of the Press Act, unofficial English translation

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44628/73451/F1101493786/SWE44628EnglishBasic.pdf>

The Swedish Data Protection Authority

www.datainspektionen.se/

E-delegationen

www.edelegationen.se/sida/riktlinjer-for-myndigheters-anvandning-av-sociala-medier

Swedish National Agency for Higher Education report *Rättssäker information* (legally certain information)

www.hsv.se/download/18.5dc5cfca11dd92979c480001361/0836R.pdf

Office of the Chancellor of Justice (JK)

www.jk.se/

Parliamentary Ombudsmen (JO)

www.jo.se/Page.aspx

Swedish National Agency for Higher Education

www.hsv.se/regleroch tillsyn/vanligafragorochsvar/allmannahandlingar.4.5593f6be118cbb45b1b8000134.html

The Association of Swedish Higher Education

Övergripande principer för offentlighet och sekretess i integritetskänslig forskning (Overall principles for publication and secrecy in integrity-sensitive research)

www.suhf.se/web/3a99a6d2-1797-4fc1-8dbd-fc3415bb0458.aspx .