

# Public access to information and secrecy

The legislation in brief



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# Public access to information and secrecy

The principle of public access to information is a fundamental principle in Sweden's form of government. One of the fundamental laws, the Freedom of the Press Act, contains provisions on the right to access official documents, which is a manifestation of the principle of public access to information.

There are, however, provisions on secrecy that restrict the right to access official documents. These provisions are found in the Public Access to Information and Secrecy Act. Secrecy entails restrictions both of the right of the public to access official documents under the Freedom of the Press Act and of the right of public functionaries to freedom of expression under the Instrument of Government and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which applies as law. Secrecy also entails restrictions of the right to communicate and publish information under the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

The Public Access to Information and Secrecy Act also contains provisions on the obligation for public authorities to register official documents, on appeals against public authorities' decisions not to disclose an official document, and on the obligation for municipal enterprises and certain private bodies to apply the principle of public access to information.

This brochure contains a general outline of the right to access official documents under the Freedom of the Press Act and of the restrictions of this right under the Public Access to Information and Secrecy Act.

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# 1 The principle of public access to information

## 1.1 The various aspects of the principle of public access to information

The principle of public access to information means that the public and the mass media – newspapers, radio and television – are entitled to transparency regarding public sector activities. The principle of public access to information is manifested in various ways:

- Everyone is entitled to read the documents of public authorities (public access to official documents).
- Officials and others who work in the public sector have the right to tell outsiders what they know (freedom of expression for officials and others).
- Officials and others who work in the public sector are normally entitled to make information available to the mass media for publication or to publish information themselves (right to communicate and publish information).
- The public and the mass media are entitled to attend trials (public access to court hearings).
- The public and the mass media may attend when the chamber of the Riksdag (the Swedish Parliament), municipal assemblies, county council assemblies and other such decision-making bodies meet (access to meetings of decision-making assemblies).

## 1.2 Public access to official documents and how it is restricted

In principle, everyone is entitled to read the documents held by public authorities. However, this right is restricted in two ways.

Firstly, the public are only entitled to read official documents. Not all documents held by a public authority are in fact considered official

documents. A draft of, for example, a decision, a written communication or a similar document in a particular matter is not an official document.

Secondly, some information contained in official documents is classified as secret. This means that the public's right to read these documents is restricted. It also means that the authorities are prohibited from disclosing parts of the documents that contain such information.

The fundamental provisions on public access to official documents are found in the Freedom of the Press Act, one of our constitutional laws (see section 2).

The provisions regarding the extent to which official documents may be subject to secrecy are contained in the Public Access to Information and Secrecy Act (see section 3). The secrecy provisions entail both document secrecy and duties of confidentiality, i.e. restrictions of both the right of the public to access official documents under the Freedom of the Press Act and the right of public functionaries to freedom of expression under the Instrument of Government – another of our constitutional laws – and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### 1.3 Freedom of expression for officials and others

Under the Instrument of Government, everyone enjoys certain rights and freedoms. One of the most important of these is freedom of expression. It is defined in the Instrument of Government as the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing, or in any other way.

Under the Instrument of Government, freedom of expression may be restricted by statutes enacted by the Riksdag. One such restriction is the regulations concerning duties of confidentiality. The provisions on duties of confidentiality for public functionaries are now consolidated in the Public Access to Information and Secrecy Act.

### 1.4 The right to communicate and publish information

The right to communicate and publish information applies to everyone, including officials and others who work in the public sector. The provisions concerning this right are a component of the Freedom of the Press Act's regulations.



‘Freedom of the press’ means the right enjoyed by everyone to freely express themselves in printed matter, for instance books and newspapers. If printed matter contains something criminal, only one person may be penalised. In the case of non-periodical printed matter (books, for example), the author is generally legally responsible for the content. In the case of printed periodicals (newspapers, for example), however, it is the person legally responsible for publication who can be penalised.

All others who contribute to criminal material in printed matter are therefore, in principle, free from liability. This also applies to a person who makes information available to an author or journalist in order for it to be published in the printed matter. This is known as freedom of communication for the person providing the information. A person can also make the information public by publishing it themselves, for example.

The protection for freedom of expression in radio, TV, films, videos and sound recordings etc. is regulated in the Fundamental Law on Freedom of Expression, which is based on the same principles as the Freedom of the Press Act.

However, the right to communicate and publish information does not always apply. The Freedom of the Press Act and the Fundamental Law on Freedom of Expression contain exceptions to this right in the following three cases.

- It is not permitted to communicate or publish information if the person providing the information thereby commits certain serious offences against national security, e.g. espionage or certain other offences directed at the State.
- It is not permitted to intentionally disclose for publication an official document that contains information that is classified as secret.
- It is not permitted to intentionally breach duties of confidentiality in the cases specifically stated in the Public Access to Information and Secrecy Act.

## 1.5 Court hearings

It is laid down in the Instrument of Government that court hearings are public, i.e. that the public and the mass media may attend trials. The Riksdag may make exceptions to this general rule by enacting statutes stating that court hearings may be held behind closed doors. At such hearings only the court and the parties may be present in the courtroom.

Provisions concerning when court hearings may be held behind closed doors are contained in the Code of Judicial Procedure and other acts regulating judicial proceedings.

If information that is subject to secrecy is to be submitted or cited at a court hearing, the court may generally hold the hearing behind closed doors. In the general courts (district courts, courts of appeal and the Supreme Court), however, strong reasons are usually required to hold a hearing behind closed doors. The possibilities are greater in administrative courts (administrative courts, administrative courts of appeal and the Supreme Administrative Court) than in the general courts. If a court hearing has been held behind closed doors, the court may impose a duty of confidentiality on those who have been in attendance. If information classified as secret is presented in open court, as a general rule the secrecy of the information ceases to apply (see section 3.7.2).

## 1.6 Public access to the meetings of decision-making assemblies

As a general rule, the meetings of the Riksdag are public. This is stated in provisions in the Instrument of Government and the Riksdag Act. The same applies to municipal assemblies and county council assemblies under provisions of the Local Government Act. In exceptional cases these decision-making assemblies may meet behind closed doors.

## 2 Official documents

Chapter 2 of the Freedom of the Press Act defines the term ‘official document’ and contains provisions on the right to access such documents. It also contains fundamental provisions concerning restrictions of that right. Furthermore, the chapter contains provisions on how the public accesses official documents. An outline of these provisions of the Freedom of the Press Act is given in this section.

### 2.1 What is an official document?

A document is a presentation in writing or images, or a recording that can be read, listened to or apprehended in some other way only using technical aids. The word ‘document’ thus refers not only to writing or images on paper but also, for example, to a tape recording, email or text message. It could be said that a document is any object that contains information of some kind.

A document is official if it is:

- held by a public authority; and
- considered under specific rules to have been received or drawn up by such an authority.

#### 2.1.1 The term ‘public authorities’

The term ‘public authorities’ refers to bodies that are part of the central government and local government administration. The Government, the administrative authorities, the courts and the municipal boards are public authorities. By contrast, companies, associations and foundations are not public authorities even if central government or local government wholly owns or controls them. The Riksdag, the county council assemblies and municipal assemblies are not public authorities either, but the Freedom of the Press Act expressly equates these decision-making

assemblies with public authorities. The provisions of the Freedom of the Press Act regarding the right to access official documents also apply to other bodies, e.g. companies over which a municipality or county council exercises legally decisive influence (see section 3.2).

### **2.1.2 The term ‘held by’**

It is often easy to establish that a document consisting of writing on paper is ‘held by’ a certain public authority. In other instances it is more difficult to say where a document is held. This applies, for example, to information stored on a computer. The actual computer containing the information may be found at one authority, while another authority has access to the information on its own computer screens or can obtain printouts of it directly on its own equipment.

For a document to be held by an authority, the authority must be able to read, listen to or in some other way apprehend it with technical aids that the authority itself uses. Special rules apply to compilations of information from a recording for automated processing. Such compilations are only considered to be held by the authority if the authority can extract them using routine measures. Furthermore, such compilations of information stored on computers are not considered to be held by the authority if they contain personal data and, under an act or ordinance, the authority does not have the power to make the compilation available. The underlying purpose of this provision of the Freedom of the Press Act is to ensure that the public cannot use the principle of public access to information to request compilations of personal data that, for reasons of personal privacy protection, the authority cannot produce.

A recording is not considered to be an official document at a public authority whose function is technical processing or storage of a recording on behalf of another authority or a natural or legal person. Backup copies, i.e. documents held by a public authority for the sole purpose of recreating any information lost in the authority’s regular IT system, are not considered official documents either.

### **2.1.3 The term ‘received’**

A document has been ‘received’ by a public authority when it has arrived at the authority or is in the hands of a competent person, e.g. the official dealing with the matter to which the document refers. The document does not have to be registered in order to be an official document.

The Freedom of the Press Act also contains specific provisions concerning letters and other messages that are not addressed to an authority directly but to one of the officials at the authority. If such a message relates to the authority's activities, as a general rule it is an official document even if it was addressed to a specific person at the authority. However, if a municipal commissioner or trade union representative, for example, receives letters in their capacity as a politician or union representative concerning issues for which the municipality or authority is responsible, the letters do not become official documents.

#### **2.1.4 The term 'drawn up'**

The Freedom of the Press Act contains a number of provisions relating to when a document is considered to have been 'drawn up' by a public authority. The principle is that a document created at a public authority is an official document when it takes on its final form. A document is considered to be drawn up when an authority dispatches it (sends it out). A document that is not dispatched is considered to be drawn up when the matter to which it relates is closed by the authority. If the document does not relate to any specific matter, it is considered to be drawn up when it has been finally approved or otherwise completed.

For certain kinds of documents other rules apply concerning when they are considered to be drawn up. For example, registers, records or similar documents that are kept on an ongoing basis are considered to be drawn up as soon as the document is completed so as to be ready for use. Judgments and other decisions, and related records, are considered to be drawn up when the ruling or decision has been pronounced or dispatched. Other records and similar documents are generally considered to be drawn up when the authority has finally approved or otherwise completed them.

Preliminary outlines and drafts (for example, of an authority's decision) and memoranda (notes) are not official documents if they have not been retained for archiving. The term 'memorandum' refers to an aide-mémoire or other notation that is made during the preparation of a matter and does not introduce any new factual information.

## **2.2 Restrictions on public access to official documents**

Under the Freedom of the Press Act, the right to access official documents may only be restricted if this is necessary with regard to:

- national security or Sweden's relations with a foreign state or an international organisation;
- Sweden's central fiscal policy, monetary policy, or foreign exchange policy;
- the inspection, control or other supervisory activities of a public authority;
- the interest of preventing or taking measures against crime;
- the public economic interest;
- the protection of the personal or financial circumstances of natural or legal persons; or
- the preservation of animal or plant species.

Under the Freedom of the Press Act, restrictions of the right to access official documents must be scrupulously specified in the Public Access to Information and Secrecy Act. It is also possible to include provisions restricting this right in other acts, provided that a provision in the Public Access to Information and Secrecy Act refers to them. In other words, the Public Access to Information and Secrecy Act must specify all the instances when the right to access official documents is restricted. However, in a number of provisions of the Public Access to Information and Secrecy Act, the Government is empowered to issue supplementary regulations. Such regulations are contained in the Public Access to Information and Secrecy Ordinance.

### 2.3 How is access to official documents obtained?

A person who wishes to access an official document should contact the public authority holding the document. If the document does not contain information that is classified as secret, the entire document is public. In this case, the person has the right to read the document on the premises of the public authority. If it cannot be read or apprehended in some other way without using technical aids, the authority must make such equipment available. This could mean a media player, if the document is a digital sound recording, for example. A public document may also be transcribed, photographed or recorded. If some information in a document is classified as secret, the parts of the document that do not contain such information must still be disclosed. There are exceptions to the rules described here regarding accessing the document on the premises, for example where this 'causes serious difficulty'.



Those wishing to access official documents are also entitled to receive a transcript or a copy of the document for a fee. As a general rule, authorities are not obliged to disclose an official document in electronic form, but they are nevertheless often able to do so as a service, where appropriate.

Those who wish to access official documents do not have to describe the document particularly precisely, e.g. state its date or registration number. However, authorities are not obliged to make extensive inquiries in order to produce documents if the person who wants to access them cannot or will not provide details about them.

A request to access an official document must be examined promptly by the authority. However, if at the time of the request an official is busy, for example with another matter or on a break, they do not have to immediately interrupt what they are doing at that time. The important thing is that the question of disclosure of the document is handled as soon as possible.

One reason for some delay in disclosing an official document may be that the authority must examine whether the information contained in the document is classified as secret under any of the provisions of the Public Access to Information and Secrecy Act. Sometimes it is an authority other than the one where the document is held that must examine the question of secrecy. In that case, the request for disclosure of the document should be submitted at once to the authority that will decide on the matter.

As a general rule, an authority may not demand that a person wishing to access an official document identify themselves or state what the document will be used for. However, if the document contains information that falls within the scope of a provision of the Public Access to Information and Secrecy Act, in certain cases the authority must know who wants the document and what it will be used for in order to determine whether the document may be disclosed. In that case, the applicant may either identify themselves and state what the document will be used for (for example, research) or relinquish any possibility of accessing it.

Under certain circumstances, an authority has the possibility of disclosing a document subject to conditions ('reservations') restricting the possibilities to use the information contained within the document. The authority may, for example, forbid the applicant to publish the information or to use it for purposes other than research.

Under the Freedom of the Press Act, a person whose request to access a document has been rejected, or granted subject to reservations, is normally entitled to request that the matter be examined by a court. The Public Access to Information and Secrecy Act contains provisions concerning when reservations may be imposed and which court appeals should be addressed to.

The decision of an authority to disclose an official document cannot be appealed against, however.

# 3 The Public Access to Information and Secrecy Act

## 3.1 An outline of the contents of the Act

The Public Access to Information and Secrecy Act is divided into seven parts.

- Part I contains introductory provisions. These refer to the contents of the Act (Chapter 1), its scope (Chapter 2), and definitions (Chapter 3).
- Part II contains provisions on authorities' handling of official documents. These provisions refer to general measures to facilitate searches for official documents (Chapter 4), registration of official documents and marking as secret (Chapter 5) and disclosure of official documents and information, appeals, etc. (Chapter 6).
- Part III contains general provisions on secrecy (Chapters 7 to 14). Chapter 13 contains explanatory provisions on the relationship between the right to communicate and publish information, and the secrecy provisions.
- Part IV contains secrecy provisions protecting the public interest (Chapters 15 to 20).
- Part V contains secrecy provisions protecting information about the personal or financial circumstances of natural or legal persons (Chapters 21 to 40).
- Part VI contains specific provisions on secrecy at particular bodies. These refer to the Riksdag and the Government (Chapter 41), the Parliamentary Ombudsmen, the Office of the Chancellor of Justice, the Commission on Security and Integrity Protection, commissions of inquiry (Chapter 42) and the courts, etc. (Chapter 43).
- Part VII contains provisions on when duties of confidentiality under provisions contained in acts other than the Public Access to Informa-

tion and Secrecy Act restrict the right to communicate and publish information.

Provisions on the extent to which a duty of confidentiality prescribed by the secrecy provisions limits the right to communicate and publish information are included at the end of each chapter in Parts IV to VI of the Act.

### 3.2 Scope of the Act (Chapter 2)

The Public Access to Information and Secrecy Act governs virtually all secrecy in public sector activities. However, provisions on when courts can hold hearings behind closed doors are found in the Code of Judicial Procedure and other acts governing judicial proceedings (see section 1.5).

Secrecy provisions are primarily to be applied by public authorities (see section 2.1.1). Under the Freedom of the Press Act, central and local government decision-making assemblies, i.e. the Riksdag, county council assemblies and municipal assemblies, are equated with public authorities. Furthermore, limited companies, partnerships, for-profit associations and foundations over which municipalities or county councils exercise legally decisive influence are equated with public authorities. This applies both to the application of the Freedom of the Press Ordinance's provisions on the right to access official documents held by authorities and to the application of the Public Access to Information and Secrecy Act.

State-owned limited companies, for-profit associations and foundations are only obliged to apply the principle of public access to information and the Public Access to Information and Secrecy Act if the body in question is listed in the appendix to the Act and, in such cases, only for the activities listed in the appendix. Other private law bodies can also be included in the appendix to the Public Access to Information and Secrecy Act. They are then obliged to apply the principle of public access to information. One reason for including a state-owned company or a private law body in the appendix may be that it engages in administrative tasks that involve the exercise of public authority in relation to natural or legal persons. For example, the Swedish Sports Confederation is equated with a public authority with respect to its activities involving the allocation of government grants to sporting activities.

The secrecy provisions contained in the Public Access to Information and Secrecy Act also apply to persons who are employees, contractors or under an obligation to serve at authorities and other bodies to which the Act is applicable. Secrecy must also be observed after employment or an equivalent relationship has ceased. The collective term usually used for such persons is ‘public functionaries’. For a public functionary to be obliged to observe secrecy, they must have obtained the information in question in the course of their work, assignment, etc. What public functionaries may have learned elsewhere is thus not subject to secrecy under the Public Access to Information and Secrecy Act.

Other acts prescribe duties of professional confidentiality for persons who are not public functionaries (e.g. lawyers, clergy and physicians in private practice).

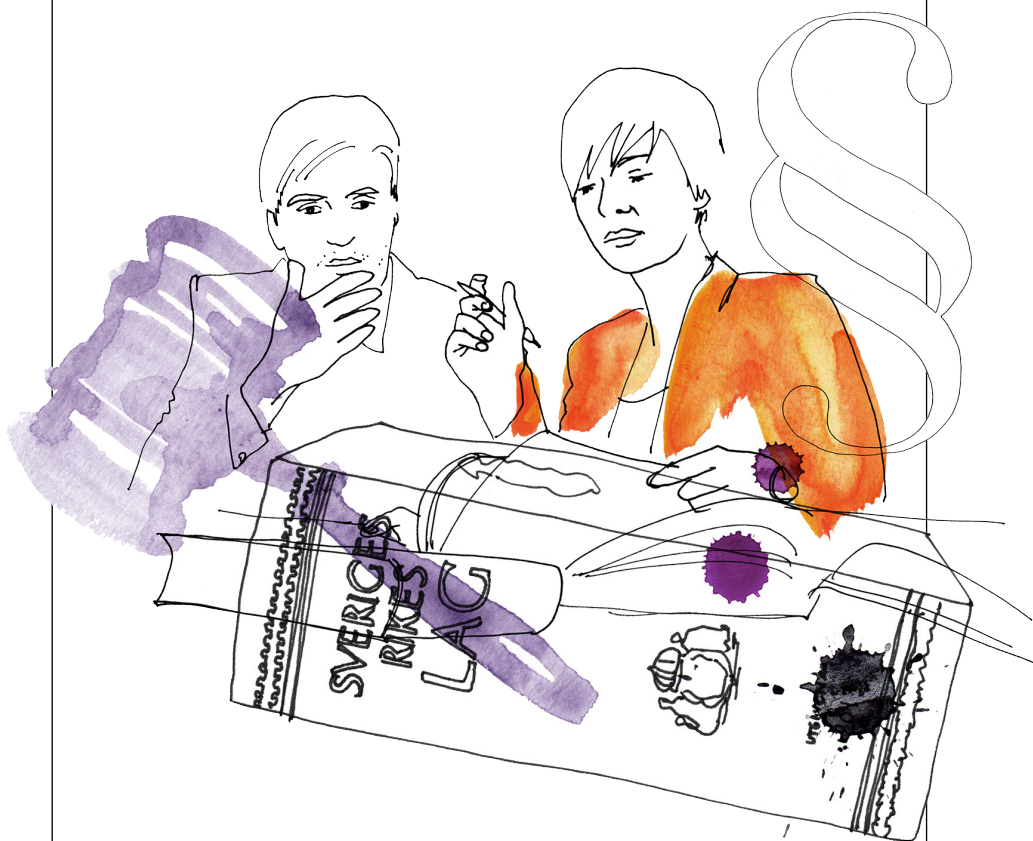
### 3.3 Definitions (Chapter 3)

The term ‘secrecy’ and several other key terms used in the Public Access to Information and Secrecy Act are defined in Chapter 3 of the Act. ‘Secrecy’ means a prohibition on divulging information whether orally, by disclosing an official document, or in some other way (for instance through the disclosure of a document that is not an official document, or the production of an object). Secrecy thus expresses two different sides of the same coin: if the public is not entitled to access an official document on grounds of secrecy, the authorities and public functionaries are also prohibited from disclosing the document or divulging its contents in some other way. It could be said that secret information in documents is protected by both document secrecy and the duty of confidentiality. Information held by a public authority that is not in an official document may also be subject to secrecy.

### 3.4 Handling of official documents (Chapters 4 to 6)

#### 3.4.1 Measures to facilitate searches

The Public Access to Information and Secrecy Act states that authorities must take account of the principle of public access to information when handling official documents. In particular, authorities should ensure that official documents can be disclosed with the promptness required under the Freedom of the Press Act, and that automated processing of infor-





mation at an authority (i.e. the handling of information in the authority's computer system) is arranged in a manner that takes into account the interest that natural and legal persons may have in using technical aids themselves to search for and access official documents. To facilitate searches for official documents, the authorities are also obliged to draw up a description that provides certain information about the authority's activities and organisation, the means of searching available, etc.

The Archives Act also contains provisions that must be taken into account when handling official documents. This includes a provision stating that when producing and registering official documents, account must be taken of archive maintenance. A reminder of this is included in the Public Access to Information and Secrecy Act.

### **3.4.2 Registration of official documents**

An official document received by an authority or drawn up there must, as a general rule, be registered. However, the following documents do not have to be registered: documents that are obviously of little importance to the authority's activities (for example press cuttings, circulars and advertising material); documents that do not contain information that is subject to secrecy and are kept in such a manner that it can easily be ascertained whether they were received by the authority or were drawn up there; documents that are found in large numbers at an authority and that the Government has exempted from the registration requirement through special regulations in the Public Access to Information and Secrecy Ordinance; and recordings for automated processing (i.e. information in an IT system) that are available at the authority through electronic access to them from another authority.

To allow the public ready access to read the registers of authorities, such registers should, in general, not contain any information that is subject to secrecy. However, authorities may to a certain extent keep registers containing information that is classified as secret, either as a supplement to the public registers or pursuant to provisions of the Public Access to Information and Secrecy Ordinance.

### **3.4.3 Marking as secret**

If it can be assumed that information contained in an official document should not be disclosed on grounds of secrecy, the authority may indicate this with a 'secrecy marker' (often referred to in the past as a 'secrecy

stamp’). In the case of a paper document, this is noted directly on the document. If the document is electronic, a note is made in the document or in the IT system in which it is processed. The note must specify the relevant secrecy provision, the date when the note was made and the authority that made the note.

Official documents that are of exceptional importance to national security must be marked as secret if, under the Ordinance, the question of disclosing information in a document to a natural or legal person may only be examined by a certain authority. In such cases, the marker must indicate which authority is empowered to examine whether the document may be disclosed.

If a person requests access to a document that is marked as secret, the question of disclosing the document must be examined in the normal manner. The fact that a document is marked as secret does not, therefore, release the authority from the obligation to conduct such an examination, but merely serves as a warning signal.

#### **3.4.4 The obligation for public authorities to provide information**

On the request of a private party, the authorities shall provide information from the official documents held by the authority that are not subject to secrecy. This duty is in addition to the duty to provide the document itself (see Part 2 regarding the latter obligation). The authorities must also assist private parties with the special information needed in order to obtain recordings for automatic data processing that comprise official documents at the authority.

The authorities must on request also provide each other with such information at their disposal that is not subject to secrecy.

A prerequisite for the duty to provide information is that it may be done without impeding the usual functioning of the authority.

#### **3.4.5 Who considers questions of disclosure?**

The question of whether a document can be disclosed is examined in the first instance by the official responsible for the care of the document, e.g. a registrar or a case officer for the matter. In case of doubt, the official should refer the matter to the authority, if this does not delay examination of the matter. The matter must also be referred to the authority at the request of the person who wants to access the document if the official refuses to disclose the document or discloses it subject to a reserva-

tion (see section 2.3). The applicant must be advised that they may make such a request and that a decision by the authority is necessary for it to be possible to appeal against a decision. The authority's work procedure usually determines who is authorised to make a decision on behalf of an authority.

### **3.4.6 Appeals**

If an authority has rejected a request to access a document or if it has disclosed an official document subject to a reservation (see section 2.3), the applicant is generally entitled to appeal against the decision. Such a decision is usually appealed to an administrative court of appeal. Decisions of an administrative court of appeal may be appealed to the Supreme Administrative Court. If the court discloses the document without any reservations, however, the decision may not be appealed.

If a request from a central government authority has been rejected by another central government authority, the decision is appealed to the Government rather than an administrative court of appeal.

## **3.5 General provisions (Chapters 7 to 14)**

### **3.5.1 Fundamental provisions**

If secrecy applies to information, then the information may not be used outside the activities where it is subject to secrecy (e.g. for stock exchange speculation).

If secret information is disclosed by one authority to another, one of the basic principles in the Public Access to Information and Secrecy Act is that the secrecy does not generally attach to the recipient authority. This is because the need for secrecy and the interest of transparency vary between different authorities and activities, and it is not possible to generalise how these opposing interests are to be balanced. There are two general exceptions to the main rule, whereby the information remains secret at the recipient authority if secrecy is prescribed by:

- a secrecy provision that is directly applicable at the recipient authority ('primary secrecy'); or
  - a specific provision on transfer of secrecy ('secondary secrecy').
- If neither of these conditions apply, the information is public at the recipient authority.

Secrecy provisions often include many conditions, or ‘requirements’, that must be satisfied for secrecy to apply in a particular case (see section 3.6.2). If someone requests the disclosure of information at an authority and the information falls under several different secrecy provisions applicable at the authority in question, an examination must thus determine whether secrecy under these provisions also applies in the individual case. If, upon such an examination, it is found that the information is public under some provisions and classified as secret under others, the general rule is that the provisions under which secrecy applies take precedence. This means that the information in such cases is to be kept secret.

When applying this general rule regarding competition between several secrecy provisions, it does not matter whether the competing provisions are directly applicable at the authority in question (primary secrecy provisions) or whether the matter involves secrecy provisions that are applicable as a consequence of a provision on transfer of secrecy (secondary secrecy provisions) (see section 3.5.5).

### **3.5.2 For whom does secrecy apply?**

If information is subject to secrecy this means that the information may not be provided to individuals, corporations, associations, etc., except in those cases stated in the Public Access to Information and Secrecy Act, or in another act or ordinance to which the Act refers.

Furthermore, secrecy also means that information may not be provided to other Swedish authorities in cases other than those stated in the Public Access to Information and Secrecy Act or in an act or ordinance to which the Act refers. To a certain extent, secrecy also applies within an authority, specifically between different operational branches within an authority where these are considered to be independent in relation to each other.

The reason why there are provisions allowing the disclosure, under certain conditions, of information that is classified as secret to a person or to another authority or independent operational branch is that there are situations where the authority’s interest in disclosing certain information or a person’s or another authority’s interest in accessing this information is deemed to outweigh the interest that the secrecy provision generally protects (see sections 3.5.4–3.5.6).

Finally, secrecy means that information may not be disclosed to foreign authorities or international organisations except if the disclosure is

made in accordance with a specific rule contained in an act or ordinance or under certain other conditions specified in the Public Access to Information and Secrecy Act.

### **3.5.3 Certain restrictions in other legislation**

One of the principles underlying the regulations contained in the Public Access to Information and Secrecy Act is that duties of confidentiality within public sector activities must always be stated in the Act, either directly or through reference to another act. Because of this, references to restrictions of the possibilities of using or divulging information pursuant to other acts are included in the Public Access to Information and Secrecy Act, e.g. the restrictions that apply under the Act on Penalties for Abuse of the Market when Trading with Financial Instruments (2016:1307) to persons in possession of insider information.

### **3.5.4 Provisions that override secrecy, etc.**

A provision that overrides secrecy means that information that is otherwise classified as secret may nevertheless be disclosed on certain conditions.

There are rules that override secrecy in favour of both persons and authorities. Secrecy does not, for instance, prevent information being disclosed to another authority or to a person if this is necessary in order for the disclosing authority to carry out its own activities. If necessary, an authority may thus, for example, consult an independent expert, even if this involves providing information that is classified as secret to that expert.

Secrecy to protect a natural or legal person does not generally apply in relation to that person. Secrecy can be completely or partially waived by the person, both in relation to other authorities and in relation to other persons. A person individual who waives secrecy in relation to another person can also require that the authority impose a reservation when the information is disclosed. Such a reservation means that the recipient cannot use the information freely. They may be prohibited from publishing the information or using it for anything other than research purposes, for example. Anyone who makes use of information in contravention of a reservation may be penalised for breach of duty of confidentiality (Chapter 20, Section 3, Swedish Criminal Code). A person who requests access to an official document does not have to be content

with receiving the document subject to a reservation, but rather can appeal and have the reservation considered by a higher authority (see section 2.3).

An authority or a person that is a party in a case or matter before a court or other authority is, as a general rule, entitled to access all information in the case or matter (parties' right of access). Only in exceptional cases can something be kept secret from a party that has that right. Judgments and decisions can always be provided to the parties. If information that is classified as secret is provided to a party, a reservation may be made when the information is disclosed.

Secrecy does not apply to environmental information if it is obvious that the information is of such importance from an environmental perspective that the interest of public awareness of the information takes precedence over the interest that the secrecy is intended to protect. Some secrecy provisions do not apply to information regarding environmental emissions.

It is possible for the Government to decide in a particular case to grant an exemption from secrecy applying to information in an item of government business. The Government may also decide to grant other exemptions from secrecy in a particular case, if there are exceptional grounds to do so. If the matter involves secrecy applying to an item of information held by the Riksdag or some other authority reporting to the Riksdag, it is the Riksdag that is entitled to grant an exemption. An exemption granted for a person may be combined with a reservation.

There are also provisions that override secrecy that only apply for the benefit of authorities, or that only apply for the benefit of natural or legal persons.

### *Provisions that override secrecy for the benefit of authorities*

The Public Access to Information and Secrecy Act contains provisions under which secrecy does not prevent information from being provided to another authority in certain specific situations. This includes situations in which information is needed for a trial of an official for an offence in office, for review of a decision of the authority holding the information, or for supervision or audit of the authority holding the information.

Furthermore, secrecy does not prevent information being provided to another authority as long as there is a provision in an act or ordinance



prescribing that the information should be provided to that authority. One example of such an obligation to provide information is the obligation to testify under the Code of Judicial Procedure.

Legislators cannot anticipate all situations where it may be necessary to provide information that is classified as secret to another authority. For this reason, a 'general clause' was introduced. Under this provision, secrecy does not prevent information being provided to another authority if it is obvious that the interest of the information being provided takes precedence over the interest that the secrecy is intended to protect. However, there are exemptions from this provision. It may not be applied with respect to matters of secrecy within health and medical care or social services, for example. Provisions in other acts and ordinances that state the cases in which information of a particular kind may be provided to other authorities can also exclude the application of the general clause.

#### *Provisions that override secrecy for the benefit of private parties*

A person who is suspected of or charged with an offence in office may provide information that is classified as secret to their defence counsel, provided that this is necessary in order to protect their rights. A corresponding restriction of secrecy applies in comparable legal proceedings, e.g. disciplinary cases.

Secrecy under certain provisions does not prevent an authority providing information to the trade union representatives of public employees if the authority has a statutory obligation to provide information, as is the case, for example, under the Act on Codetermination at Work and the work environment legislation. If the person who receives the information is employed by the authority, they must observe the secrecy provision applicable to the authority. If the trade union representative is not employed there, the authority can impose a duty of confidentiality upon them by imposing a reservation. Regardless of this duty of confidentiality, a trade union representative may pass information on to a board member of their trade union organisation. The trade union representative must then inform the board member about the duty of confidentiality and, in turn, the board member becomes bound by the same duty of confidentiality. A trade union representative may also use information to stop the operation of a dangerous workplace, for example, provided that they do not divulge the information.

In addition to the possibility of imposing reservations in relation to individuals as mentioned in this section, there is a general provision that makes it possible for an authority to impose a reservation when information is provided to an individual. For the general provision on reservations to be applicable, the matter must relate to information that is classified as secret in accordance with a secrecy provision containing a requirement of damage (see section 3.6.2). If the conditions imposed by the reservation eliminate the risk of damage that prevents the information from being disclosed, the authority must disclose the information and impose the reservation. Use of the information in contravention of the reservation may entail criminal responsibility. Moreover, the party on whom the reservation is imposed is entitled to appeal and have the reservation considered by a higher authority (see section 2.3).

### **3.5.5 Transfer of secrecy**

The provisions in the Public Access to Information and Secrecy Act on transfer of secrecy are of two main kinds, and are exceptions to the general rule in the Act that secrecy does not attach to information provided to another authority.

One category of provisions on transfer of secrecy are aimed at particular bodies or particular activities that normally obtain information from a large number of different activities. In these cases, general provisions on transfer of secrecy were introduced whereby essentially all secrecy that applies to information at other authorities is transferred when the information is provided to the particular body or activity. Supervisory activities and audit activities are examples of activities to which secrecy is transferred. Archive authorities and courts are examples of bodies to which secrecy is transferred.

The other category of provisions on transfer of secrecy aims to cover certain information that is considered to be particularly sensitive. In such cases, secrecy is attached to the information regardless of which authority the information is provided to. One example of information that is subject to such a transfer of secrecy provision is information about an individual's personal circumstances in a matter under the Act on Fictitious Personal Data.

Transfer of secrecy provisions that refer to secrecy under all or a large number of secrecy provisions are gathered in Part III (Chapter 11) of

the Act, or in Part VI, in the case of provisions that refer to the specific bodies dealt with there, including the Parliamentary Ombudsmen, the Office of the Chancellor of Justice, and the courts. The provisions on transfer of secrecy that only refer to individual secrecy provisions in Part IV or V of the Act are instead located directly after the relevant secrecy provisions contained in those Parts.

In the event of competition between several secrecy provisions that are applicable at an authority, the general rule is that secrecy provisions under which information is classified as secret in a specific case take precedence over secrecy provisions under which the information is not classified as secret. Provisions on exemptions from this general rule were introduced for the provisions on transfer of secrecy in Chapter 11 of the Act and the provisions on transfer of secrecy to courts in Chapter 43 of the Act. These exemptions mean that secrecy provisions in Parts IV and V of the Act that apply directly to the activities or body in question – for example a court – generally take precedence over transferred secrecy. This applies regardless of whether the directly applicable secrecy is stronger or weaker than the transferred secrecy. If, for instance, information that is subject to health and medical secrecy has been provided by a health and medical care authority to a court in a particular case or matter and there is a secrecy provision that is directly aimed at such cases and matters, then a request for the disclosure of information at the court must be considered under the latter provision.

### **3.5.6 Secrecy in relation to a natural or legal person**

Secrecy to protect a natural or legal person does not generally apply in relation to that person and can be completely or partially waived by them in relation to both other authorities and other individuals (see section 3.5.4). In a few exceptional cases, the individual does not have any right to control secrecy that protects them. Thus, for example, medical records may be kept secret from a patient if their condition would deteriorate seriously if they were allowed to read them.

As a general rule, secrecy to protect a minor applies even in relation to their custodian. However, such secrecy does not apply in relation to the custodian insofar as, under the Children and Parents Code, the custodian is entitled, and has an obligation, to decide on matters relating to the personal affairs of the minor. If secrecy does not apply in relation to the

custodian, the secrecy protecting the minor is controlled by the custodian alone or, depending on the age and maturity of the minor, by the custodian together with the minor.

### **3.5.7 Criminal responsibility**

If a person who is obliged to keep secret information or a secret official document secret discloses it, it may be a criminal offence. The central criminal provision on breach of duty of confidentiality is found in the Swedish Criminal Code (Chapter 20, Section 3). In a case of an intentional breach of duty of confidentiality, the penalty is a fine or imprisonment for a maximum of one year, and in the case of a breach due to negligence, a fine. A person who commits a minor act through negligence is not guilty of an offence.

## **3.6 The secrecy provisions (Chapters 15 to 40)**

### **3.6.1 The organisation of the secrecy provisions**

Secrecy provisions to protect public interests, e.g. the public financial interest or the interest of preventing and taking measures against crime, are gathered in Part IV of the Public Access to Information and Secrecy Act (Chapters 15 to 20).

Secrecy provisions to protect information about a person's personal or financial circumstances are gathered in Part V of the Act. The secrecy provisions that provide a minimum level of protection of personal privacy of individuals throughout the entire public sector are gathered in the first Chapter of this Part (Chapter 21). These provisions are supplemented with a large number of secrecy provisions with restricted scope, i.e. provisions that only apply in a certain type of activity, in a certain type of matter or at certain specified authorities (Chapters 22 to 40).

### **3.6.2 The structure of the secrecy provisions**

Secrecy provisions often include a number of conditions, or 'requirements', that must be satisfied if secrecy is to apply in a particular case. These provisions are introduced with the words 'secrecy applies' in combination with the words 'to information'. The information referred to is of some specific kind, for example, 'Sweden's relations with another state' or 'the financial circumstances of a natural or legal person'. Secrecy usually applies to information found in a specific context, e.g. in certain

matters, in certain activities or at certain authorities, which are described with varying levels of detail in the provisions.

Some secrecy provisions do not lay down any specific conditions for secrecy to apply to the information and context they describe. This is usually described as ‘absolute’ secrecy. However, the vast majority of secrecy provisions stipulate that some particular condition must be satisfied if secrecy is to apply. The condition is usually formulated as a ‘requirement of damage’. Such a requirement means that secrecy applies provided that some stated risk of damage arises if the information is disclosed. In such cases, the question of secrecy is determined following an examination of damage. There are two main types of requirement of damage: straight and reverse.

A straight requirement of damage is found in Chapter 30, Section 1 of the Public Access to Information and Secrecy Act, for example. Under this provision, in the activities of the Swedish Competition Authority that consist in supervision and investigation, secrecy applies to information concerning the business or operational circumstances, inventions or research findings of a natural or legal person if it can be assumed that the person will suffer loss if the information is divulged. A straight requirement of damage means that as a general rule, secrecy does not apply and the information may be disclosed.

A reverse requirement of damage, however, assumes secrecy to be the general rule. An example of this type of requirement of damage is found in Chapter 26, Section 1 of the Public Access to Information and Secrecy Act. Under that provision, in the activities of the social services, secrecy applies to information about an individual’s personal circumstances unless it is clear that the information can be divulged without damage to the individual or any close relative of the individual.

As indicated by these two examples, the words ‘loss’ and ‘damage’ are both used for the requirement of damage. As regards secrecy to protect natural or legal persons, the word ‘loss’ refers to financial damage that someone may suffer because information about their financial circumstances has been disclosed to, for example, a business competitor. The word ‘damage’ primarily designates various kinds of violations of privacy that may arise when information about someone’s personal circumstances is disclosed. A legal person, e.g. a corporation, cannot suffer ‘damage’ within the meaning of the Public Access to Information and Secrecy Act. ‘Damage’ includes both physical injury and mental distress. The

disclosure of information that is not normally sensitive (e.g. a person's address) may also sometimes involve a risk of damage, for example if it may be assumed that the person who receives the information will use it to subject the other to violence or harassment. To some extent, 'damage' also includes the consequences of a person's private financial situation being disclosed.

In addition to the requirement of damage, the secrecy provisions sometimes also contain other conditions as a requirement for secrecy, for instance that the person has requested that secrecy apply.

Rules on time limits are frequently employed in the Public Access to Information and Secrecy Act to restrict the scope of secrecy. Such provisions on secrecy periods only relate to information in official documents. However, the provisions on time periods for document secrecy may also have an impact on secrecy in general. For instance, it cannot reasonably be claimed that duties of confidentiality apply regarding information contained in a document that has become public as a consequence of the secrecy period having elapsed. The period of document secrecy therefore often determines the question of how long duties of confidentiality apply. The secrecy period is usually formulated as a maximum period that the information in an official document may be kept secret. As most secrecy provisions contain a requirement of damage, it can be expected that the risk of damage will have often ceased before the secrecy period expires. The secrecy period varies from 2 to 70 years, depending on the interest to be protected. For the protection of an individual's personal circumstances, the secrecy period is usually 50 or 70 years, while for the public interest or natural or legal persons' financial circumstances it is often 20 years. One of the fundamental provisions of the Act contains a general rule concerning the starting date when calculating the secrecy period. For most documents the starting date is the date the document was created. For records, registers, etc. that are kept continuously, the period is counted from when the information was entered into the document. Some secrecy provisions also contain other deviations from the general rule



## 3.7 Specific provisions for particular bodies (Chapters 41 to 43)

### 3.7.1 Secrecy for the Government, the Riksdag and others

The real secrecy provisions contained in Parts IV and V of the Act are sometimes applicable to the Government and Government Offices (the ministries). Furthermore, there are some provisions on transfer of secrecy that are directly aimed at the Government. Under one of these provisions, secrecy that applies to information transfers to the Government in cases where the Government must decide whether the information may be disclosed. This could, for example, concern a situation where one central government authority has appealed against a decision of another central government authority not to disclose information to it (see section 4.6) or where the Government has to examine a request for an exemption from secrecy (see section 3.5.4).

The same applies correspondingly to the Riksdag. Secrecy within the Riksdag is, however, limited as regards matters that have been discussed in the chamber, and concerning information in records, commission and committee reports and similar documents.

Secrecy is also largely limited with respect to the Parliamentary Ombudsmen and the Office of the Chancellor of Justice. This particularly applies to information provided by natural or legal persons. Decisions of the Parliamentary Ombudsmen that lead to a matter being closed are always public.

There are also specific provisions on restrictions on secrecy at the Commission on Security and Integrity Protection.

### 3.7.2 Secrecy at the courts

Part VI of the Act contains a provision on the transfer of secrecy to courts. However, there are some exceptions to this general rule. One of these exceptions means that secrecy provisions contained in Parts IV and V of the Act that are directly applicable at the courts generally take precedence over transferred secrecy.

As a general rule, if a court hearing in a case is held in public, any secrecy that had applied to information submitted or cited at the hearing ceases. If the hearing is held behind closed doors (see section 1.5), the general rule is that secrecy is maintained. When the court subsequently

adjudicates in the case the secrecy ceases, unless the court specifically decides that it must be maintained.

Secrecy does not apply to information that is included in a judgment or other decision made by a court, unless the court specifically decides that secrecy must be maintained. Verdicts and corresponding parts of other decisions may only be marked as secret in rare, exceptional cases.

### 3.8 Restrictions of freedom of communication

Under the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, the right to communicate and publish information is restricted (see section 1.4) in that it is not permitted to:

- communicate or publish information if the person providing the information thereby commits certain serious offences against national security or certain other offences directed at the State;
- intentionally disclose an official document that is classified as secret for publication; or
- intentionally breach a duty of confidentiality in cases specifically stated in the Public Access to Information and Secrecy Act.

The Public Access to Information and Secrecy Act contains provisions regarding the cases where a duty of confidentiality pursuant to the secrecy provisions contained in the Public Access to Information and Secrecy Act limits the right to communicate and publish information, and the cases where a duty of confidentiality under other statutes limits that right. As indicated above, the right to communicate and publish information is also directly restricted by provisions of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. This means that in certain cases it is permitted to provide information that is classified as secret verbally for publication in a newspaper, for instance, but that it is never permitted to disclose the official document that contains the information. Nor is it permitted to disclose information if doing so entails committing an offence referred to in these fundamental laws.

The reason for this is, among other things, that the provisions on secrecy do not always provide sufficient scope to enable public functionaries to provide a basis for public debate and to be able to participate in that debate to the extent that is desirable. Since the right to communicate and publish information may to a certain extent be exercised with

respect to information that is classified as secret, the possibilities for unsatisfactory situations in society to be publicly highlighted and discussed increase. The right to communicate and publish information does not mean that public functionaries are obliged to provide information to the mass media, only that they have the possibility to do so if they consider that the interest of public transparency regarding the authorities' activities outweighs the interest protected by the secrecy.

Part III of the Public Access to Information and Secrecy Act contains a chapter with general provisions on the right to communicate and publish information (Chapter 13). It contains provisions on information concerning the relationship between the regulations in the fundamental laws and the rules in the Public Access to Information and Secrecy Act, and also a provision on enhanced protection for persons communicating information who are employees and contractors at certain private law bodies that are required to apply the principle of public access to information.

The end of each chapter of Parts IV to VI of the Public Access to Information and Secrecy Act states the extent to which duties of confidentiality prescribed by the secrecy provisions in the Chapter, or by reservations imposed under provisions in the Chapter, limit the right to communicate and publish information.

Part VII of the Act contains provisions on the extent to which duties of confidentiality under provisions of a statute other than the Public Access to Information and Secrecy Act limit the right to communicate and publish information.

Most duties of confidentiality that take precedence over freedom of communication apply to public functionaries. However, in certain cases freedom of communication is also restricted for individuals with a duty of confidentiality, for example members of the Swedish Bar Association and physicians in private practice.

## 4 Secrecy examinations

In order for a public authority to refuse to disclose information in an official document to a natural or legal person, or any kind of information to another public authority, in principle the information must be subject to secrecy. The examination that must typically be undertaken to determine whether given information can be disclosed or not consists of several stages.

Firstly, the public authority must examine whether there is any secrecy provision that may cover the information in question. If there is not, the information is public in all circumstances and must be disclosed.

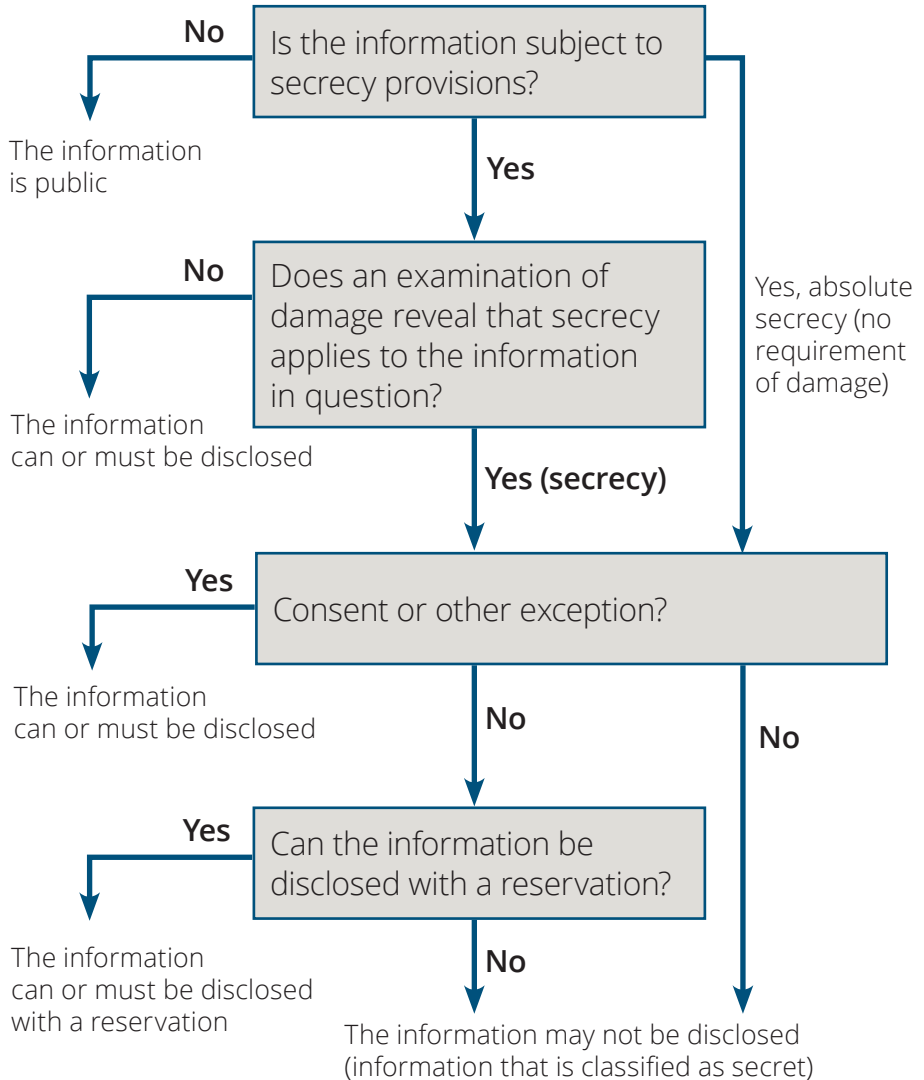
If there is a secrecy provision that applies either directly at the public authority or due to a provision on transfer of secrecy, the authority must, in the second stage, conduct the required examination of damage. This means that the authority must determine whether the information can be disclosed in the specific situation in question.

If the public authority establishes that any damage caused would be such that the secrecy provision prevents the information from being disclosed, the third stage is the question of whether the information can be disclosed anyway due to a provision that overrides secrecy.

If it is a question of disclosing information to a natural or legal person there is a fourth stage, with a further possibility to be considered by the authority. It may be that the damage that would be caused by disclosure can be eliminated by restricting the recipient's possibilities to divulge the information or use it in some other way. In that case, the information must be disclosed with a reservation. This means that the person receiving the information is bound by a duty of confidentiality.

The line of reasoning above is illustrated in the following flow chart.

## The information to be examined for secrecy



## 5 Acts and ordinances

- Freedom of the Press Act (SFS 1949:105)
- Fundamental Law on Freedom of Expression (SFS 1991:1469)
- Instrument of Government (SFS 1974:152)
- Riksdag Act (SFS 2014:801)
- Public Access to Information and Secrecy Act (SFS 2009:400)
- Public Access to Information and Secrecy Ordinance (SFS 2009:641)
- Archives Act (SFS 1990:782)
- Local Government Act (SFS 2017:725)

### Websites

- Swedish Code of Statutes
- [svensksforfattningssamling.se](http://svensksforfattningssamling.se)
- Government Offices legal databases [rkrattsbaser.gov.se](http://rkrattsbaser.gov.se)



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