

Provision of information pursuant to Act No. 106/1999 Coll., On Free Access to Information

According to Act No. 106/1999 Coll., On Free Access to Information, until 2019 OTE assumed that it was not an obliged entity pursuant to the Act. This interpretation was supported by some of the Constitutional Court's findings concerning other state-owned companies and by the course of a single legal proceeding in which the applicant for information, namely Oživení, o. s., Challenged OTE's refusal to provide information. In particular, it was the judgment of the Supreme Administrative Court of 12 December 2017, ref. 7 As 311 / 2017-39. However, this judgment was set aside by judgment of the Constitutional Court of 2 April 2019, ref. II. ÚS 618/18, which implies that OTE, a.s., is an obliged entity in providing information pursuant to Act No. 106/1999 Coll., On Free Access to Information. However, this does not change OTE's obligation to protect proprietary information pursuant to Act No. 458/2000 Coll., The Act on Business Conditions and the Exercise of State Administration in the Energy Sectors and on Amendments to Certain Acts (Energy Act), as well as trade secrets pursuant to Act 89 / 2012 Coll., Civil Code.

With regard to the obligation to provide information on the provision of data in the annual report, we present the mandatory information below:

- In the course of 2019, a total of 2 requests for information pursuant to Act No. 106/1999 Coll. Both applications were refused with reference to the fact that it was protected information under the Energy Act (information required in the CS OTE system concerning exclusively private entities, specifically the amount of electricity generated in specific power plants in specified periods was required). Regarding the requests for information submitted in the course of 2019, which were rejected by OTE, this refusal was not challenged either in the manner foreseen by Act No. 106/1999 Coll. or in court proceedings.
- For the sake of completeness, however, it should be noted that the original application of the association Oživení, os from 22 September 2016 was decided in court only in the course of 2019; II. ÚS 618/18 and the related judgment of the Municipal Court in Prague No. 8 A 215 / 2016- 97 of 22 October 2019, which was already based on the fact that OTE, a.s. is an obliged entity pursuant to Act No. 106/1999 Coll. Given that the Municipal Court in Prague also did not evaluate the information provided as a trade secret, the relevant information, respectively. the entire wording of a specific contract of 2004 with blackening of only personal data was provided to the applicant by letter dated 22 November 2019.
- Furthermore, OTE states that during 2019 there were no complaints about its handling of complaints, nor was any license granted to the information provided.
- For the sake of completeness, we quote the fundamental conclusion of the aforementioned Judgment of the Constitutional Court of 2 April 2019, ref. II. ÚS 618/18:
 - *“In this situation, the Constitutional Court concludes that there is a legal opinion according to which a public institution under the Freedom of Information Act is any commercial company*

wholly owned by the state or a public corporation. This conclusion is now taken by the Chamber of Appeal, in particular by the following considerations“.

- Consequently, we quote from the judgment of the Municipal Court in Prague No. 8 A 215/2016 - 97 of 22 October 2019:
 - *“The Court therefore agrees with the plaintiff that the entire contract should not be subject to commercial secrecy without further reasoning and if, therefore, the defendant has not provided it for that reason without duly substantiating it, its decision is not reviewable for lack of reasons“.*
- In view of the above, OTE, a.s. no procedural costs were incurred during the year in respect of requests for information submitted during 2019. With regard to the proceedings on the above application from 2016, OTE, a.s. was obliged to cover the costs of the successful party in the amount of CZK 19,456, costs of legal representation service in the amount of CZK 23,793, - excl. VAT, costs of own administrative activities including wage costs of OTE employees was negligible in the period under consideration, given the scope of this activity as well as external legal representation.

Prague 28th February, 2020