

THE USE OF THE RIGHT TO THE ACCESS TO PUBLIC INFORMATION BY ENTREPRENEURS IN POLAND

Jarosław Czerw*

Abstract: *This article discusses how to use the right to public information by entrepreneurs in Poland. The aim of the right to the access to public information, which was specified in Article 61 of the Constitution of the Republic of Poland of 2 April 1997 and the Act of 6 September 2001 on the Access to Public Information, was to enable citizens to have the access to public information. Currently this right is more frequently used by entrepreneurs in Poland as a tool to obtain information used in their business activity. In addition to public information obtained by entrepreneurs via the website of the Public Information Bulletin, entrepreneurs use for this purpose the procedure of a public information request.*

Keywords: *public information, entrepreneur, the Public Information Bulletin, public information request*

I. INTRODUCTION

The access to public information is a guarantee of proper functioning of a democratic state. Rules of the access to public information are regulated primarily by the national legislation of each country. Still, even among international regulations we find legal acts determining the rules of the access to information which is possessed by public authorities.

For the first time the right to information was set out in the Universal Declaration of Human Rights of 10 December 1948¹. According to Article 19 of the Universal Declaration of Human Rights, this right is understood as the right to seek, receive and spread information.

Hence, we should also take into consideration international treaties such as the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950², the International Covenant on Civil and Political Rights of 19 December 1966³, as well as the Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents (Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies)⁴.

According Article 10 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 everyone has the right to receive information without the interference by the public authority and regardless of the state border. On the other hand, Article 19 (2) of the International Covenant on Civil and Political Rights of 1966 grants the

* Dr Jarosław Czerw, PhD in law; lecturer at the Faculty of Administration and Economy in the School of Economics and Innovation in Lublin (Poland); expert in administrative law, in particular in the Polish law of the local government and the Polish right to the access to public information. Currently, also the secretary of the commune and since 2002 acouncillor of the district council. In the past, the chairman of the district council, the deputy of the district governor, the chairman of the budget committee.

¹ http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf (Cited on 28 April 2016).

² *Journal of Laws*. 1993, No. 61, Item 284, as amended.

³ *Journal of Laws*. 1997, No. 38, Item 167.

⁴ <https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Rec%282002%292&Language=lanEnglish&Ver=original&direct=true> (Cited on 28 April 2016).

right to receive any information to every human being, regardless of state borders, either orally, in writing or in print, in the form of a piece of art, or through any other way of their own choice. Also the aforementioned Recommendation Rec (2002) 2 of the Committee of Ministers of the Council of Europe on access to official documents of 2002 states that every person should be granted the access to official documents which are possessed by public authorities.

Also, the European Union law refers to the issue of the right to information. According to Article 42 of the Charter of Fundamental Rights of the European Union⁵, any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents. On the other hand, Article 15 (1) of the Treaty on the Functioning of the European Union⁶ provides that in order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible.

The aim of the right to the access to public information, which was specified in Article 61 of the Constitution of the Republic of Poland of 2 April 1997⁷ (hereinafter the Polish Constitution) and the Act of 6 September 2001 on the Access to Public Information⁸ (hereinafter the Act on the Access to Information) was to enable citizens to have the access to public information⁹. Although it was not the aim of the legislator, this right is currently more frequently used by entrepreneurs as a tool to obtain information used in their business activity. Operating on the basis of the Act on the Access to Information, entrepreneurs obtain information from the entities of the public sector concerning inter alia: tasks planned for implementation (e.g. deliveries of goods, outsourcing services or building works), amount of resources allocated for implementation of the planned tasks, the state of equipment (e.g. informatics tools), employed computer equipment, software, office materials and others. The information helps entrepreneurs to cooperate with the entities of the public sector, giving them an opportunity to present offers compatible with the needs and putting them in a competitive position in relation to other entrepreneurs.

II. PUBLIC INFORMATION AND RULES OF MAKING IT AVAILABLE

In accordance with Article 61 (1), the first sentence of the Polish Constitution, an individual citizen is entitled to obtain information about activities of public authorities and persons performing public functions. According to Article 61 (1) of the Polish Constitution, this law includes also obtaining information about activities of the economic and professional self-government entities, as well as about other persons or organizational units in terms of the extent to which they perform the tasks of public authority and manage communal assets or property of the Treasury. The right to obtain information could be fulfilled through the access to documents and entry to the sittings of the collective organs of public

⁵ Official Journal of the European Union C of 2012 No. 326.

⁶ Official Journal of the European Union C of 2012 No. 326.

⁷ *Journal of Laws*. 1997, No. 78, Item 483, as amended.

⁸ Consolidated text, *Journal of Laws*. 2014, Item 782, as amended.

⁹ See also: SITNIEWSKI, P. M. *Dostęp do informacji publicznej*. Warszawa: LEX 2014.

authority elected in general elections with the possibility of recording sound or images (Art. 61 (2) of the Polish Constitution). The restrictions specified in the Polish Constitution on the right to obtain information may occur only due to: protection of freedom and rights of other persons and economic entities, public order, security or important economic interests of the state which are specified in the Articles (Art. 61 (3) of the Polish Constitution).

The Polish Constitution does not specify the procedure of providing information referring in this matter to the acts, but with regard to Sejm¹⁰ and the Senate¹¹ it refers to the regulations of Sejm¹² and the regulations of the Senate¹³. The most important act defining the procedure for granting information is the Act on the Access to Information.

Any information concerning public issues constitutes public information and shall be made accessible according to the principles and procedures specified in the Act on the Access to Information (Art. 1 (1) of the Act on the Access to Information). The Province Administrative Court in Rzeszów¹⁴ in its judgement of 17 January 2013 stated that “any information created or referred to public authorities, and created or referred to other entities performing public functions in the matter of management of communal assets or property of the Treasury, constitutes public information.” Also “documents used by entities to implement tasks assigned by the law, even in the case when the copyright to these documents belongs to another entity” is public information. The Supreme Administrative Court in Warsaw in its judgement of 10 October 2012¹⁵ states that the managing body of public information is obliged to provide public information only if:

- the information physically exists,
- the information has not been made available to the applicant yet,
- it does not exist in the public circuit and the person concerned does not have any other way to obtain the access to the information.

Pursuant to Art. 2 (1) of the Act on the Access to Information, the right to the access to public information is granted to everybody. The legislature, defining the group of those who have the right to the access to public information, goes beyond the group of those who are entitled to obtain the information specified in Art. 61 (1) of the Polish Constitution. Art. 61 (1) of the Polish Constitution grants the right to the access to public information to the citizens (the citizens of the Republic of Poland), whereas Art. 2 (1) of the Act on the Access to Information grants the right to the access to public information to everybody: not only to the citizens of the Republic of Poland, but also to foreigners, stateless people and natural and legal persons¹⁶. In its judgement of 11 February 2004, the Province Administrative Court in Warsaw¹⁷ notes that in Art. 2 (1) of the Act on the Access to Information the group of entities entitled to obtain information has been extended in comparison with those entitled under Art. 61 of the Polish Constitution. This group of persons en-

¹⁰ Sejm is the lower chamber of the Polish Parliament.

¹¹ The Senate is the upper chamber of the Polish Parliament.

¹² Consolidated text, Monitor Polski of 2012, Item 32, as amended.

¹³ Consolidated text, Monitor Polski of 2014, Item 529, as amended.

¹⁴ II SAB/Rz 48/12, not published.

¹⁵ I OSK 1499/12, not published.

¹⁶ See also: FLESZER, D. Zasada powszechności prawa do informacji publicznej. *Czas Informacji*. 2011, No. 1.

¹⁷ II SAB 391/03, not published.

titled to obtain public information has been extended to natural and legal persons and the organizational units without legal personality. The Province Administrative Court in Olsztyn¹⁸, in its judgement of 13 December 2012, presents similar standpoint stating that everybody (each human being /each natural person/or a private-law body) may use the access to public information in accordance with the principles specified by the Act on the Access to Information. Pursuant to Art. 2 (2) of the Act on the Access to Information, stating legal or factual interest shall not be required. This means that the entity applying for the access to public information is not obliged to justify its request, and it does not have to give the reason why it is making a public information request¹⁹. Therefore, entrepreneurs have the right to the access to public information, regardless of the purpose which they need the information for.

It should be noted that under the provision of Art. 2 of the Act on the Access to Information, the entities (including entrepreneurs) making the public information request do not have to give their personal data (name, surname, address or registered office). These entities do not have to sign a public information request (in the case of the written request). The Province Administrative Court in Warsaw confirmed this provision by its judgement of 23 September 2009²⁰. The Court acknowledged that including personal data by applicant in the request in the form of the name, surname, address with the postal code, town and home number, and the need of signing the request shall not be required. The Province Administrative Court in Łódź in its judgement of 10 May 2012²¹, presented similar standpoint stating that the electronic request may be considered as a public information request even if the electronic signature has not been used, because a person making a public information request does not have to be identified completely and does not have to state legal or factual interest. It should be noted that the Province Administrative Court in Olsztyn presented the opposite opinion in this matter. The Court in its judgement of 12 April 2012 stated that “the fact that everybody is entitled to the access to public information does not mean that the applicant may be anonymous. The term ‘everybody’ means a natural or a legal person, or an unit without legal personality. The minimal requirement is to provide the data which would allow the identification of the applicant. The entity obliged to provide public information is fully entitled to demand the data, which would allow to define properly the entity to whom the activities, connected with the execution of the request, will be undertaken. The powers of the entity within this range shall not be cancelled by the fact that providing public information is not made conditional on stating legal or factual interest by the applicant. The notion ‘interest’ is a category of the substantive law, whereas the designation of the applicant remains in the procedural law”²².

Pursuant to Article 3 (1) of the Act on the Access to Information, the right to obtain public information includes entitlements to:

- 1) obtain public information and to obtain processed information in the range in which it is particularly important for the public interest; the Act on the Access to Informa-

¹⁸ II SA/OI 1316/12, not published.

¹⁹ TARNACKA, K. Prawo do informacji w Polsce. *Państwo i Prawo*. 2003, No. 5.

²⁰ II SAB/Wa 57/09, not published.

²¹ II SAB/Łd 46/12, not published.

²² See also: KARSZNICKI, K. Kryteria dostępu do informacji publicznej. *Prokuratura i Prawo*. 2015, No. 11.

tion does not define the term of processed information, it does not define the term of public interest either. The Province Administrative Court in Szczecin in its judgement of 10 January 2013²³ defined the term of processed information and stated that this is “public information prepared by the obliged entity with the use of additional forces and resources, on the basis of its data, in relation to the request of the applicant and on the basis of the criteria indicated by the applicant. In other words, this is the information which shall be prepared ‘specially’ for the applicant, according to the criteria specified by him.” However, pursuant to the judgement of 7 December 2011 of the Province Administrative Court in Warsaw²⁴ the requirement of special significance of the public interest will be fulfilled if obtaining particular information and publishing it is the interest not only of the applicant but also other citizens. The requirement to demonstrate special significance concerns all the entities making the public information requests on processed information. In its judgement of 14 April 2011 the Province Administrative Court in Warsaw²⁵ noted that the applicant making public information requests on processed information is not obliged to prove that the required information constitutes the processed information. The entity obliged to provide public information is to determine whether the information covered by the request constitutes the processed information. This entity should refuse to provide such information if the applicant does not demonstrate special significance of public interest.

- 2) the access to official documents; pursuant to Art. 6 (2) of the Act on the Access to information, the official document is the text of declaration of will or knowledge, established or signed by a public official in any form within the meaning of the provisions of the Act of 6 June 1997 – the Code of Penal Procedure²⁶, within its competence and addressed to another entity or submitted to the case file.
- 3) the access to the meetings of collective organs of public authority formed by general elections.

The entities which are obliged to provide public information are the public authorities and other entities performing public tasks, especially these are:

- 1) public authorities,
- 2) the economic and professional self-government organs,
- 3) entities representing the Treasury,
- 4) the entities representing state legal persons or legal persons of the territorial self-government and the entities representing other state organisational units or organisational units of the self-government,
- 5) the entities representing other persons or organizational units, which implement public tasks or allocate public property, and legal persons, in which the Treasury, organisational units of the territorial self-government or the economic and professional self-government organs are at a dominant position in the meaning of the provisions

²³ II SAB/Sz 51/12, not published.

²⁴ I OSK 1505/11, not published.

²⁵ II SAB/Wa 22/11, not published.

²⁶ *Journal of Laws*. 1997, No. 88, Item 553, as amended.

of competition and the consumer protection (Art. 4 (1) of the Act on the Access to Information)²⁷.

The above catalogue is an opened catalogue, a sample enumeration. It does not precisely show all the entities obliged to provide public information.

Apart from the entities listed in Art. 4 (1) of the Act on the Access to Information, there are other entities obliged to provide public information:

- 1) the representative union and employers' organisations, in the meaning of the Act of 6 July 2001 on the Trilateral Commission for Social and Economic Affairs and Regional Committees for Social Dialogue²⁸ and
- 2) political parties (Art. 4 (2) of the Act on the Access to Information)²⁹.

As pointed out by M. Kłaczyński we can distinguish three categories of entities obliged to provide public information:

- 1) public authorities understood as public entities connected with having the legislative, executive and judicial power including: the Sejm and the Senate, the President of the Republic of Poland, the Council of Ministers, ministers, the President of the Council of Ministers, provincial governors, municipal, district and province authorities, and their auxiliary structures and agencies, which are not separate legal entities listed in the provisions of the Act on Access to Public Information,
- 2) other entities performing public tasks, regardless of the form of their activity; this category can include, for example: housing cooperatives, Polish Allotment Federation in the range associated with administering their public assets,
- 3) trade unions and political parties³⁰.

In accordance with Art. 4 (3) of the Act on Access to Information, the abovementioned entities owning such information are obliged to provide public information. The Province Administrative Court in Białystok in its judgement of 6 October 2011³¹ states that the entity owning public information is obliged to provide this information only if this information has not been provided previously and does not exist in the public circulation, which does not allow the applicant to get to know the content of this information in any other way than as a result of the public information request.

Pursuant to Art. 5 (1) of the Act on the Access to Information the right to obtain public information is restricted in the range and on the principles specified by the regulations on the protection of classified information and the protection of other statutory-protected secrets. Moreover, in accordance with Art. 5 (2) of the Act on the Access to Information, the right to the access to public information is restricted due to the privacy of the natural

²⁷ See also: BERNACZYK, M. Problem systematyki podmiotów władzy publicznej. In: BERNACZYK, M. *Obowiązek bezwioskowego udostępniania informacji publicznej*. Warszawa: Oficyna, 2008.

²⁸ *Journal of Laws*. 2001, No. 100, Item 1080, as amended.

²⁹ See: CHMAJ, M. Komentarz do art. 4 ustawy o dostępie do informacji publicznej. In: BIDZIŃSKI, M., CHMAJ, M., SZUSTAKIEWICZ, P. *Ustawa o dostępie do informacji publicznej*. Warszawa 2010, pp. 51–66.

³⁰ KŁACZYŃSKI, M. Komentarz do art. 4 ustawy o dostępie do informacji publicznej. In: KŁACZYŃSKI, M., SZUSTER, S. *Komentarz do ustawy z dnia 6 września 2001 r. o dostępie do informacji publicznej (Dz.U.01.112.1198)*. Warszawa: LEX/el., 2003.

³¹ II SAB/Bk 6/11, not published.

person or a secret of the entrepreneur. The restriction does not apply to the information about persons performing public functions and related to these functions including the conditions of entrusting and performing these functions. The restriction does not also apply where the natural person or the entrepreneur waives their right. The access to public information in cases decided by the state organs, especially in the administrative, penal or civil procedure, shall not be limited due to the protection of the party's interests if the procedure concerns public authorities or other organs implementing public tasks, or persons performing public functions – in the area of their tasks or functions (Art. 5 (3) of the Act on the Access to Information)³².

The refusal to grant the access to public information by the public authority organ shall take the form of a decision (Art. 16 (1) of the Act on the Access to Information).

Art. 6 of the Act on the Access to Information gives a sample checklist of information and documents that constitute public information to be provided by the obliged entities (listed in Art. 4 of the Act on the Access to Information). It is information:

- about domestic and foreign policy,
- about public authorities and other entities implementing public tasks obliged to provide public information,
- about conditions of functioning of the public authorities and other entities implementing public tasks obliged to provide public information,
- about public data (inter alia the content and the form of official documents),
- about public property³³.

III. METHODS OF OBTAINING PUBLIC INFORMATION BY ENTREPRENEURS

In Art. 7 (1) of the Act on the Access to Information, the legislature specified the following ways of providing public information³⁴:

1) by publishing public information, including official documents, in the Public Information Bulletin; it is the basic way of providing public information. Pursuant to Art. 8 (1) of the Act on the Access to Information, the Public Information Bulletin (hereinafter: BIP) is the teleinformatic place of publication in the form of harmonized system of sites in the teleinformation net. The entities obliged to publish public information in BIP are all the entities obliged to provide public information specified in Art. 4 (1) and (2) of the Act on the Access to Information (Art. 8 (2) of the Act on the Access to Information). These entities are obliged to publish in BIP public information:

- a) about domestic and foreign policy, including:
 - intentions of activities of the legislative and executive power,
 - designing normative acts,
 - programmes in the area of implementing public tasks, the way of implementing, performing and results of these tasks,

³² See: SIBIGA, G. Dostęp do informacji publicznej a prawa do prywatności jednostki i ochrony jej danych osobowych. *Samorząd Terytorialny*. 2003, No. 11.

³³ See: SZUSTER, S. Komentarz do art. 6 ustawy o dostępie do informacji publicznej. In: KŁACZYŃSKI, M., SZUSTER, S. *Komentarz do ustawy z dnia 6 września 2001 r. o dostępie do informacji publicznej (Dz.U.01.112.1198)*. Warszawa: LEX/el., 2003.

³⁴ See: POLAŃSKI, P. Dostęp obywateli do informacji publicznej. *Gazeta Prawna*. 2005, No. 18.

- b) about public authorities and other entities implementing public tasks (Art. 4 (1) of the Act on the Access to Information) including:
- the legal status or legal form,
 - the organization,
 - the object of activities and competence,
 - the organs and persons performing functions in the public authorities and their competence,
 - the ownership structure of the entities representing, inter alia, the Treasury, state legal persons, legal persons of the territorial self-government, and other state organizational organs,
 - the property that they allocate,
- c) about the principles of functioning of these entities, including:
- the procedures of the functioning of public authorities and their organizational units,
 - the procedures of functioning of the state legal persons and legal persons of the territorial self-government in the area of implementing public tasks and in the area of their budgetary and extra budgetary activities,
 - the ways of establishing official acts,
 - the ways of accepting and dealing with the issues,
 - the status of accepted issues, the order of dealing with the issues or deciding on them,
 - the registers and archives and ways and principles on providing the data that they consist of,
 - the recruitment of candidates for vacant posts in the area specified in separate regulations,
 - competitions for higher posts in the civil service in the area specified in separate regulations,
- d) about the public data including:
- the documentation and effects of the inspection and speeches, positions, requests and opinions of entities carrying out the inspection,
 - the content of other speeches and assessments by the entities of public authorities,
 - the information about the status of the state, self-governments and their organizational units,
- e) about the public property, including inter alia: the property of the Treasury and the state legal persons, the property of territorial self-government units and professional and economic self-governments and the property of legal persons of the territorial self-government (Art.8 (3) sentence 1 of the Act on the Access to Information).

In addition to the information mentioned above, the entities obliged to publish public information in BIP are also allowed to publish other public information in BIP (Art. 8 (3) sentence 2 of the Act on the Access to Information). Moreover, these entities are obliged to publish in BIP the information concerning the way of the access to public information that they have and which has not been published in BIP before (Art. 8 (4) of the Act on the Access to Information)³⁵. The entities obliged to publish public information in BIP create their own website in the Public Information Bulletin on which they publish information

that is intended to be provided in that way (Art. 9 (2) of the Act on the Access to Information). The structure of the main website of BIP, the structure standards of the BIP subject websites, the extent and procedure of conveying the information to be published on the main website of BIP to the Minister for informatization, the requirements concerning the protection of the content of public information that is published in BIP are specified in the Regulation of the Minister for Internal Affairs and Administration of 18 January 2007 on the Public Information Bulletin³⁶.

- 2) by providing at the request; this form is complementary to publishing public information in BIP and concerns public information which has not been published in BIP or in a central repository. The Supreme Administrative Court in Warsaw in its judgement of 23 September 2008³⁷ confirms this provision stating that only the information that has not been published in BIP can be provided at the request. The Province Administrative Court in its judgement of 7 March 2012³⁸ noted: “publishing public information in the Public Information Bulletin excludes the obligation to make the information available again at the request, even if the publication of the information in BIP occurred after the request had been made”. Pursuant to Art. 13 (1) of the Act on the Access to Information providing public information on the request should be implemented without undue delay; however, not later than within 14 days from the day of the request. If the public information cannot be made available within 14 days from the day of the request, the entity obliged to provide the information has to give the reasons for the delay within the time limit and inform about the planned date of publishing the information; however, not longer than within 2 months from the date of the request (Art. 13 (2) of the Act on the Access to Information). It should be highlighted that the public information request, specified in Art. 13 (1) of the Act on the Access to Information, should be written only if public information cannot be immediately published orally or in writing. In its Judgement of 23 September 2009³⁹, the Province Administrative Court in Warsaw notes that the provisions of the Act on the Access to Information do not specify a particular form of the request, which means that the public information request could be in any form⁴⁰. On the other hand, the Province Administrative Court in Gdańsk in its judgement of 18 June 2014⁴¹ states: “written public information request submitted under the provisions of the Act on the Access to Information does not have to apply to any specified formal requirements. It does not constitute an application in the meaning of Art. 63 of the Act of 14 June 1960 - Administrative Procedure Code⁴², because the provisions of the Administrative

³⁵ See: SZUSTER, S. Komentarz do art. 8 ustawy o dostępie do informacji publicznej. In: KŁACZYŃSKI, M., SZUSTER, S. *Komentarz do ustawy z dnia 6 września 2001 r. o dostępie do informacji publicznej (Dz.U.01.112.1198)*. Warszawa: LEX/el., 2003.

³⁶ *Journal of Laws*. 2001, No. 10, Item 68.

³⁷ I OSK 416/08, not published.

³⁸ II SAB/Wa 365/11, not published.

³⁹ II SAB/Wa 57/09, not published.

⁴⁰ See also: NOWAK, M. J. Udostępnianie informacji publicznej, *Gazeta Samorządu i Administracji*. 2011, No. 17.

⁴¹ II SAB/Gd 50/14, not published.

⁴² Consolidated text, *Journal of Laws*. 2013, Item 267, as amended.

Procedure Code do not apply at this stage of the procedure. It is not necessary to justify the request since Art. 2 (2) of the Act on the Access to Information exempts the person implementing the right to information from the obligation to present public or factual interest (the exception concerns obtaining proceeded information – Art. 3 (1) point 1 of this act). However, the minimal requirements concerning the public information request should contain a clear specification showing what the subject of the public information request is, because it is necessary to demonstrate that the required information constitutes public information”. Pursuant to Art. 14 (1) of the Act on the Access to Information, providing public information on the request shall occur in the procedure consistent with the request, unless the technical measures at the disposal of the entity obliged to provide the access do not allow providing the information in the way and form specified in the request. If the public information cannot be provided in the way and form specified in the request, the entity obliged to provide public information shall inform the applicant about the reasons for the impossibility of providing the information in the written form and in accordance with the request. The entity is also obliged to specify the possible way of providing the information immediately. In such case, if the applicant fails to submit a public information request in the procedure specified in the notification within 14 days from the notification, the procedure of providing the information is cancelled (Art. 14 (2) of the Act on the Access to Information). However, the Province Administrative Court in Warsaw in its judgement of 18 April 2011⁴³ stated: “the access to public information is primarily made by the review of official documents.” It means that: “a person interested in obtaining the access to the specified public information can exercise their right by visiting the entity in order to review the content of these documents. It can also happen in another way specified by the applicant, e.g. by issuing photocopies of the documents”⁴⁴.

- 3) by the entry to the sittings of collective organs of public authority elected in general elections and providing materials, including audiovisual and IT materials, being evidence of the sittings;
- 4) by publishing in the central repository.

Among the procedures of providing public information described above, entrepreneurs most frequently obtain public information by the websites of the Public Information Bulletin and by using the procedure of the public information request.

The access to public information is free of charge (Art. 7 (2) of the Access to Information). The exception is specified in Art. 15 (1) of the Act on the Access to Information. In accordance with this article, if the entity obliged to provide the information has to incur additional costs connected with the way of publishing the information specified in the request (e.g. photocopy of the documents) or with the need of transforming the information into the form specified in the request, the entity may charge a fee within the range equal

⁴³ II SAB/Wa 6/11, not published.

⁴⁴ BERNACZYK, M. *Obowiązek bezwioskowego udostępniania informacji publicznej*. Warszawa: Oficyna, 2008.

to the incurred costs. In accordance with Art. 15 (2) of the Act on the Access to Information, the entity obliged to provide the information should inform the applicant about the amount of the fee within 14 days from the date of the submission of the public information request. Providing the information in accordance with the request should occur after 14 days from the date of informing the applicant, unless the applicant in the request makes changes concerning the way or form of providing the information or cancels the request⁴⁵. The Province Administrative Court in Kielce in its judgement of 12 December 2012⁴⁶ noted that specified in Art. 15 (1) of the Act on the Access to Information costs must be the real costs incurred by the entity connected with the way of providing the information specified in the request. The fee for providing public information cannot be a flat-rate fee. This provision was confirmed by the judgement of 12 September 2012 of the Province Administrative Court in Poznań⁴⁷. On the basis of the judgement of 5 October 2012 of the Province Administrative Court in Łódź⁴⁸, it should be stated that collecting the fee for providing public information is arbitrary. According to Art. 15 (1) of the Act on the Access to Information there is a possibility but not an obligation to collect such fees and it is the entity providing public information that is to make a decision on this issue⁴⁹.

Apart from the procedures of providing public information specified in Art.7 (1), the legislator specifies additional procedures of providing public information in Art. 11 of the Act on the Access to Information:

- 1) in the procedure of putting or displaying the information in publicly accessible areas,
- 2) by the devices installed in publicly accessible areas enabling people to get to know the information (e.g. through informants and Internet kiosks)

These ways of providing public information are complementary and implementing them does not exclude the obligation to publish public information in the Public Information Bulletin or to provide the information at the public information request⁵⁰. These ways are rarely used by entrepreneurs.

Pursuant to Art. 23 of the Act on the Access to Information, the entity obliged to provide public information that fails its obligation shall be subject to a fine, the penalty of restriction of liberty or the punishment of imprisonment of up to one year. The Supreme Court in its judgement of 20 July 2007⁵¹ noted that this provision “penalizes the behaviour of not providing any information, not only public information, which is more important”. This means that the entities that do not provide any public information that they have been obliged to provide incur criminal liability.

⁴⁵ See also: POLANOWSKI, J. Finansowe aspekty udostępnienia informacji publicznej na wniosek. *Administracja*. 2015, No. 2.

⁴⁶ II SA/Ke 755/12, not published.

⁴⁷ IV SA/Po 475/12, not published.

⁴⁸ II SA/Łd 824/12, not published.

⁴⁹ See also: SZUSTER, S. Komentarz do art. 15 ustawy o dostępie do informacji publicznej. In: KŁACZYŃSKI, M., SZUSTER, S. *Komentarz do ustawy z dnia 6 września 2001 r. o dostępie do informacji publicznej (Dz.U.01.112.1198)*. Warszawa: LEX/el., 2003.

⁵⁰ See also: SZUSTER, S. Komentarz do art. 11 ustawy o dostępie do informacji publicznej. In: KŁACZYŃSKI, M., SZUSTER, S. *Komentarz do ustawy z dnia 6 września 2001 r. o dostępie do informacji publicznej (Dz.U.01.112.1198)*. Warszawa: LEX/el., 2003.

⁵¹ III KK 74/07, not published.

IV. CONCLUSION

As follows from the above analysis, the right to the access to public information can be an effective tool to obtain public information by entrepreneurs; information that is used in their business activity. Entrepreneurs use the Public Information Bulletin to obtain information. They also submit requests for public information. These activities facilitate cooperation with public sector entities. Hence, they give them an opportunity to present public institutions some offers which are in accordance with the needs. In this way, entrepreneurs who obtain public information gain a competitive position in relation to other entrepreneurs in the economy⁵².

Taking the aforementioned analysis into consideration, we should emphasize the positive impact of regulations of the Act on Access to Public Information on the economic situation of entrepreneurs. However, due to the fact that entrepreneurs use the access to public information for commercial purposes, it should be mandatory for these entrepreneurs to bear the costs of making information available. Therefore, as a *de lege ferenda* proposal I suggest adding, to the Act on Access to Public Information, the regulation on the basis of which the entrepreneur who will obtain public information for commercial purposes will incur the costs of making it available⁵³.

⁵² See also: DOLNICKI, B.(ed.). *Jawność w samorządzie terytorialnym*. Warszawa: Lex a Wolters Kluwer, 2015.

⁵³ See: SITNIEWSKI, P. M. Potrzeba zmian w ustawie o dostępie do informacji publicznej - uwagi *de lege ferenda*, *Samorząd Terytorialny*. 2015, No. 4. See also: SIBIGA, G. O reformę przepisów o dostępie do informacji publicznej. *Samorząd Terytorialny*. 2015, No. 4.