

PART II
Chapter 8

Public Disclosure

In this study, the term “public disclosure” is used when information is provided to regular citizens, whereas simple “disclosure” applies to cases where information is provided to competent authorities only. The issue of the admissibility of public disclosure is highly contested; however, there is a growing trend towards greater public disclosure of information about public officials. It is not the intention here to explore all of the legal concerns related to the making of information about a person’s income and assets available to the public. Suffice it to say that both among the Western European and former socialist countries there is a great variety of approaches to that issue.

Pointing to an example, an earlier SIGMA paper mentioned the serious weight given to privacy concerns in the United Kingdom, where – according to a text already quoted earlier – there is “the reluctance to require the disclosure of personal and family income and assets and the publication of such declarations. The UK has no general requirements to declare income and assets, and the reason for this is to avoid the invasion of privacy that these requirements imply” (OECD/SIGMA, 2007). Such reluctance is by no means peculiar to that country alone.

On the other hand there are examples of extremely broad public disclosure, as in Norway where the general income and property level of all taxpayers rather than just public officials is available and searchable on the Internet.¹

8.1. Scale of disclosure

Full public disclosure means that all information provided in declarations is made available for open public scrutiny. This is more often characteristic of declarations/registers that cover a relatively limited scope of information and a smaller circle of higher officials. An example is the case of registration of employment and economic interests of members of parliament and ministers in Denmark.² Full information also appears to be publicly disclosed in countries such as Bosnia and Herzegovina for elected officials,³ Montenegro⁴ and Romania. Also in the UK parliament, the Register of Members’ Financial Interests (as well as that of Interests of Members’ Secretaries and Research Assistants) and the Register of Lords’ Interests (as well as that of Interests of Lords Members’ Staff) are available to the public.

Limited disclosure – There are major debates in a number of countries over how public disclosure of income and assets affects the right to privacy. In most cases the issue is finding the right balance between public disclosure and protection of privacy; in Germany the controversy ended up in the hands of the Federal Constitutional Court. No international standard contains an obligation to ensure public disclosure of declared information, and probably there never will be a universal standard prescribing the exact balance between disclosure and privacy. Thus legal and social traditions of particular countries remain a key factor in determining the most appropriate policy.

In countries where extensive data are required, disclosure to the public is often limited – i.e. certain categories of data are exempt from disclosure. This is for example the case in Latvia and Estonia, where data is published without any personal identification code, address or data concerning close relatives and close relatives by marriage (see questionnaire). Similar restrictions apply in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kyrgyzstan, Lithuania and Macedonia. In many of these cases personal data protection laws determine the limits of public disclosure.

Examples of this kind are also found in Western Europe. For example, information submitted by members of the German Bundestag about their income is published in a simplified form only (one of three pre-defined levels of income is indicated rather than exact amounts). In Portugal the public have free access to asset declarations, but that access may become limited to those with a relevant motive (*e.g.* rights and interests of third parties) pending a decision of the Court.⁵

Another way of limiting public disclosure is to define certain categories of public officials whose information shall not be available to the public, as is the case for officials of security services in Latvia and civil servants in Macedonia. Exempt categories of officials are also defined in the United States.⁶ Alternatively, certain categories of public officials can be defined whose declarations are published, which is the case with certain senior officials in Estonia, Lithuania and Ukraine. Regarding other officials in Lithuania, their data can be published upon the motivated decision of the Chief Official Ethics Commission. In countries examined in this report, it appears that the public disclosure of personal data of individuals related to public officials (relatives, etc.) is required rarely if at all.⁷

Access to verification results – A little-discussed detail concerns public disclosure of verification/audit results about the income and wealth of public officials. At first glance, it appears only logical that such results be publicly disclosed if the initial declaration (which is then being verified) containing such data was already submitted for public scrutiny. Nevertheless, the Latvian example shows that that is not necessarily the case. Although income and property data from public officials' declarations are freely available online, in cases of doubt their audit has been carried out according to procedures established for any physical person/taxpayer. According to the tax legislation, the results of such audits are confidential and the public can be left with the deficient information provided in the public official's declaration. No data are available as to whether such problems have been encountered in other countries as well. However, this remains a relevant detail to be checked when assessing the transparency of any public officials' declaration system.

Restricted data – Some countries still adhere to the principle of confidentiality. For example, the status of restricted access is applied to information declared in Belarus, Kazakhstan and Kosovo. In Slovenia as well, the law declares that data obtained during supervision of the financial situation of functionaries and other data determined by the Commission for the Prevention of Corruption must be treated as confidential. Examples of restricted approach are also found in Western Europe. In France, the declarations of ministers, members of parliament and civil servants are not publicly disclosed (The World Bank, 2010).

8.2. Conditions of disclosure

Proactive publication – In many cases where declared information is disclosed to the public, it is published either in paper format, *e.g.* an official bulletin, or – increasingly – on the Internet. Accordingly, no conditions are imposed on access to this information (an overview of the forms of disclosure based on questionnaires is provided in Table 8.1).

Table 8.1. **Form of public disclosure**

	Paper publication	Electronic publication	Access to individual files upon request
Albania			X
Azerbaijan		No public disclosure	
Belarus		No public disclosure (except for election candidates)	
Bosnia and Herzegovina	X*		X*
Bulgaria		X	
Croatia		Missing data	
Estonia		X (Certain senior officials)	
Georgia		X	
Kazakhstan		No public disclosure (information about senior officials and election candidates can be disclosed under certain conditions)	
Kosovo		No public disclosure	
Kyrgyzstan		X	
Latvia		X	
Lithuania	X (Certain senior officials and politicians)	X (Certain senior officials and politicians)	
Macedonia		X (Except civil servants)	
Montenegro		X	
Romania		X	X
Slovenia		No public disclosure	
Tajikistan		No public disclosure	
Ukraine	X (Certain senior officials)		

* Bosnia and Herzegovina runs two systems of declarations, each with a different form of public disclosure. Public disclosure on the Internet is also used in a number of Western European countries – Denmark, Germany, the United Kingdom, etc.

On demand from citizens/media – In some countries such information is available on demand only. Access upon demand may be unconditional or bound to specific conditions. Some conditions may govern the procedure of access, *e.g.* the requirement to identify the requester so it is clear who had an interest in obtaining the data, and the duty to pay a fee in order to recover administrative costs. Others are meant to limit certain uses of the information, *e.g.* the requirement to publish the data obtained in full only or the prohibition to use the information, for example, for commercial purposes (the United States) or in order to introduce it as evidence in court (Albania). Most conditions of this kind are imposed in order to protect certain legitimate interests of the declarant. However, it appears that overall systems, which provide for public disclosure of officials' declarations, tend to refrain from the imposition of conditions.

In the United States the public accessibility of public officials' declarations (reports) is bound with following rules/conditions:

- inspection of reports is permitted or copies furnished to any person requesting;
- a reasonable fee may be required to be paid to recover the cost of reproduction or mailing;

- a report may not be made available to any person except upon written application by such person, stating:
 - ❖ their name, occupation and address;
 - ❖ the name and address of any other person or organisation on whose behalf the inspection or copy is requested;
 - ❖ that the person is aware of the prohibitions on the obtaining or use of the report.
- Any application shall be made available to the public throughout the period during which the report is made available to the public.⁸

Further conditions apply to the use of reports – i.e. they shall not be used for any unlawful purpose; for any commercial purpose, other than by news and communications media for dissemination to the general public; for determining or establishing the credit rating of any individual; or for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.⁹

Another example of a conditional approach is mass media access to information declared by judges in the Russian Federation. All-Russian mass media can request information about judges' income and property. Such information shall be released only if the application indicates the purpose of publishing the data as well as acknowledging the obligation to publish the information in full and in the following issue of the publication (or no later than in seven days). Moreover, if it is found that the publication can exert pressure on the judge in relation to a concrete case, or can lead to an infringement on the judge's independence, the application shall be turned down.¹⁰

8.3. Form of public disclosure

Public disclosure of declarations can take different forms. They can be published in electronic format (paper format appears to be increasingly rare). In some countries only the declarations of a certain circle of senior officials are published online. Moreover, access can be provided to the actual declaration files, be they paper or electronic. The summary of country systems based on questionnaire results is provided below.

8.4. Provision of information to other officials and public agencies

In systems where the declared information is publicly disclosed (in full or large part), access for other public agencies usually does not represent an issue of concern. However, in such cases it can be important for these other agencies to access information from parts of statements that are not disclosed.

As far as restricted information is concerned, access can be granted to a narrower or broader circle of authorities. These can be law enforcement agencies, public prosecutor's offices, courts, tax authorities, etc. More rarely, such access is also provided for supreme political officials such as the prime minister in Latvia.

Access can be subject to further conditions – for example, it can be granted in order to investigate tax violations only, as is the case in Kazakhstan regarding requests from law enforcement agencies and courts.¹¹ It can also be granted to law enforcement agencies on condition that a criminal case has been opened (for example in Kyrgyzstan). Otherwise it can be required that requesters simply provide grounds for their request (for example in Latvia).

Where declarations or parts of the declared information are confidential, the superiors of public officials are not usually included among the persons who can access the information (save for systems where the superiors themselves collect and store the data). While this is certainly a way to limit infringement of the privacy of declaring officials, some of the usefulness of declarations to monitor conflicts of interest is lost. Otherwise it appears that there are few real barriers when it comes to investigating bodies accessing any and all data contained in public officials' declarations.

8.5. Protection of information on public officials

While the general trend worldwide seems to be increasing public disclosure of public officials' declarations, some countries maintain arrangements whereby the privacy and/or security of public officials are protected. This study does not enter into detailed analysis of how privacy considerations are to be weighed against the public's right to access information. However, privacy and security concerns related to public disclosure of information about officials or their property represent two major arguments against public disclosure. Therefore, even some countries that allow for public disclosure have protection of some sort for officials. Apart from the restricted scope of information subject to disclosure (described above), two main kinds of protection are found:

- *The consent of the public official in question* – At least formally, this is a strong protection because the information cannot be released to the public against the will of the official. However, in some countries while the law may say that disclosure to the general public is voluntary upon consent of the official, the culture of openness may be so strong that the disclosure is *de facto* mandatory or else the official would face social indignation.¹² In Estonia this principle is embedded in the provision that public officials are allowed to disclose the contents of their declarations publicly if they wish to do so (this concerns only those officials whose declaration are not *ex officio* publicly disclosed).
- *Requirement to identify the requester* – This much weaker protection, mentioned above in Section 8.2, aims to gather information about the person(s) requesting the data (for example in the United States). In principle this should prevent people from abusing the data thus obtained.
- *Ad hoc assessment* – It is not common to provide a procedure for *ad hoc* assessment of security concerns related to particular officials. An example here is the US Ethics in Government Act, which does not require the immediate and unconditional availability of reports filed by judicial employees or judicial officers if a finding is made by the Judicial Conference, in consultation with the US Marshals Service, that release of personal and sensitive information could endanger that individual or a family member of that individual.¹³ Apparently, due to the potentially complicated and ambiguous task of such assessment, such provisions are found in few countries. A somewhat similar rule regarding judges is found in the Russian Federation (see Section 8.2).

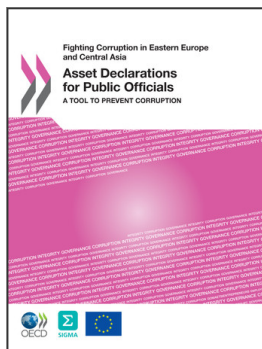
Notes

1. Tax Lists 2008 (Skattelister 2008), <http://skattelister.aftenposten.no/skattelister/start.htm>.
2. Regulations on the Voluntary Registration of the Engagements and Economic Interests of the Members of Folketing (Regler om frivillig registrering af folketingsmedlemmernes hverv og øko-nomiske interesser), www.ft.dk/Folketinget/Medlemmer/findMedlem/6Hverv.aspx.
3. Declarations governed by the Election Law.

4. The Law on Preventing Conflict of Interest in Exercising Public Functions, Article 21.
5. “Key Aspects of Asset Declarations in Portugal”, presentation at the seminar “Asset Declarations for Public Officials as a Tool against Corruption” in Belgrade, Serbia, 15-16 October 2009. Note that there are also declarations of interest in Portugal, for which different rules apply.
6. The Ethics in Government Act, Section 105(a).
7. The situation seems to be different on the global scale. According to a study by The World Bank and the United Nations Office of Drugs and Crime that covered 74 countries selected from most parts of the world, the declarations of spouses and children are publicly available in 40% of countries with a declaration framework; those of civil servants in 51% of such countries; those of MPs in 51%; those of ministers in 56%; and those of heads of state in 63%. See Burdescu et al., 2009, p. 43.
8. The Ethics in Government Act, Section 105(b).
9. The Ethics in Government Act, Section 105(c).
10. The Federal Law “On Amending Particular Legislative Acts of the Russian Federation due to the Adoption of the Federal Law ‘On Counteraction to Corruption’” (Федеральный закон “О внесении изменений в отдельные законодательные акты Российской Федерации в связи с принятием Федерального закона ‘О противодействии коррупции’”), 25 December 2008, Section 1, Clause 12.
11. Kazakhstan’s answer to the questionnaire: Declarations are available only upon request by the following bodies:
 1. law enforcement bodies within their competence regarding the fulfillment of tax obligations by persons who committed tax-related violations and crimes in order to investigate their actions;
 2. courts in the review of cases about the determination of the tax duty of a taxpayer or liability for tax-related violations and crimes;
 3. court bailiffs within their legally-established competence when enforcing executive orders with court approval and executive orders issued based on court decisions that are in force – without court approval;
 4. the authorized state body for financial monitoring;
 5. tax or law-enforcement bodies of other countries, international organisations in accordance with international treaties (agreements) about mutual co-operation between tax and law-enforcement bodies where the Republic of Kazakhstan is a party as well as agreements that the Republic of Kazakhstan has concluded with international organisations.
12. Only relatively recently in Macedonia, the law allowed the State Anti-Corruption Commission to publish the asset declarations without a letter signed by the person concerned authorising the Commission to do so. See: The Former Yugoslav Republic of Macedonia 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2008-2009 {COM(2008)674}, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2695:FIN:EN:PDF>.
13. Section 105(b)(3)(A).

Bibliography

- Burdescu, R., G.J. Reid, S. Gilman and S. Trapnell (2009), *Stolen Asset Recovery – Income and Asset Declarations: Tools and Trade-offs*, The World Bank, the United Nations Office of Drugs and Crime.
- OECD/SIGMA (2007), “Conflict-of-Interest Policies and Practices in Nine EU Member States: A Comparative Review”, Sigma Paper No. 36, 18 June, p. 18, [www.oilis.oecd.org/oilis/2006doc.nsf/linkto/gov-sigma\(2006\)1-rev1](http://www.oilis.oecd.org/oilis/2006doc.nsf/linkto/gov-sigma(2006)1-rev1).
- The World Bank (2010), “Public Accountability Mechanisms: France”, <https://www.agidata.org/pam/Profile.aspx?c=69&cc=1>.



From:

Asset Declarations for Public Officials **A Tool to Prevent Corruption**

Access the complete publication at:

<https://doi.org/10.1787/9789264095281-en>

Please cite this chapter as:

OECD (2011), “Public Disclosure”, in *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264095281-11-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.