



MINISTRY OF DIGITAL TRANSFORMATION OF UKRAINE

St. Dilova, 24, Kyiv, 03150, tel. [REDACTED]

E-mail: [REDACTED], сайт: www.thedigital.gov.ua, код згідно з ЄДРПОУ [REDACTED]

від _____ 20__ р. № _____ На № _____ від _____ 20__ р

Ministry of Environmental Protection and natural resources of Ukraine

The Ministry of Digital Transformation of Ukraine processed the letter of the Ministry of Environmental Protection and Natural Resources of Ukraine (hereinafter - the Ministry) dated 18.07.2024 No. 25/8-14/9436-24 regarding the provision of clarifications regarding the existence of legal grounds for restricting access to data sets specified in appeals of the NGO "SaveDnipro" dated 04/30/2024

PRE/ACCC/C/2024/210 (Ukraine) to the Committee on Compliance with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Matters Relating to the Environment, and reports.

In accordance with the second paragraph of paragraph 1 of the Regulation on the Ministry of Digital Transformation of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 18.09.2019 No. 856 "Issues of the Ministry of Digital Transformation", the Ministry of Digital Affairs is the main body in the system of central executive bodies that ensures the formation and implementation of state policy, in particular in the field of open data.

Part one of Article 101 of the Law of Ukraine "On Access to Public Information" (hereinafter - the Law) provides that public information in the form of open data is public information in a format that allows for its automated processing by electronic means, free and free access to it, and as well as its further use.

We also inform you that Article 50 of the Constitution of Ukraine guarantees everyone the right to free access to information about the state of the environment, about the quality of food products and household items, as well as the right to its dissemination. Such information cannot be classified by anyone.

According to the first part of Article 9 of the Law of Ukraine "On Protection of the Natural Environment", every citizen of Ukraine has the right, in particular, to: a natural environment that is safe for his life and health; free access to information about the state of the natural environment (environmental information) and free receipt, use, distribution and storage of such information, except for limitations established by law.

In addition, in accordance with Clause 3 of Article 2 of the Convention on Access to Information, Public Participation in the Decision-Making Process and Access to Justice on Environmental Matters (hereinafter - the Aarhus Convention), ratified by the relevant Law of Ukraine dated 07/06/1999 No. 832-XIV, "ecological information" means any information in written, audiovisual, electronic or any other material form about:

a) the state of such components of the environment as air and atmosphere, water, soil, land, landscape and natural objects, biological diversity and its components, including genetically modified organisms, and interactions between these components;

b) factors such as substances, energy, noise and radiation, as well as activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programs, which affect or may affect the components of the environment mentioned above in subparagraph a).

Thus, information, in particular about the level of radiation background, is ecological in the sense of the Aarhus Convention, and free access to information about the state of the environment is guaranteed by the Constitution of Ukraine.

We also note that in accordance with the provisions of Article 64 of the Constitution of Ukraine, in the conditions of martial law, additional restrictions of individual constitutional rights and freedoms may be established, with the exception of those provided for in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 Constitution of Ukraine.

In addition, in paragraph 3 of the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" No. 64/2022, approved by the Law of Ukraine "On the approval of the Decree of the President of Ukraine "On the introduction of martial law in Ukraine", it is determined that in connection with the introduction of In Ukraine under martial law, the constitutional rights and freedoms of a person and a citizen, provided for in Articles 30–34, 38, 39, 41–44, 53 of the Constitution of Ukraine, may be temporarily limited during the period of the legal regime of martial law, as well as temporary restrictions on rights and legitimate interests may be introduced legal entities within the limits and to the extent necessary to ensure the possibility of introducing and carrying out measures of the legal regime of martial law, which are provided for by the first part of Article 8 of the Law of Ukraine "On the Legal Regime of Martial Law".

We also inform you that in accordance with Article 21 of the Law of Ukraine "On Information", it is prohibited to refer to information with limited access, in particular, information about the state of the environment, the quality of food products and household items.

At the same time, Article 13 of the Law of Ukraine "On Information" provides for an exception from the specified list according to which information on the location of military facilities may be subject to restrictions.

At the same time, we note that the second part of Article 6 of the Law of Ukraine "On Access to Public Information" stipulates that the restriction of access to information is carried out in accordance with the law in compliance with the following set of requirements:

1) exclusively in the interests of national security, territorial integrity or public order in order to prevent riots or crimes, to protect public health, to protect the reputation or rights of other people, to prevent the disclosure of information obtained in confidence, or to maintain the authority and impartiality of justice ;

2) disclosure of information may cause significant damage to these interests;

3) the harm from publicizing such information outweighs the public interest in obtaining it.

From the analysis of the above norms, it can be seen that information, in

particular about the location of military facilities, is subject to access restrictions if the disclosure of the requested information can cause significant damage to the protected interest (with an indication of which one) and this damage outweighs the public interest in obtaining information.

Thus, in the conditions of the legal regime of martial law, the right to access and disseminate information about the state of the environment, about the quality of food products and household items cannot be subject to any restrictions, except for information about the location of military facilities, and the timely publication of such information in the form of open of data will contribute to the protection of the environment, detection of caused or possible damage to the environment, public awareness of the actual state of the environment and the factors affecting it.

Contact person: Lyubiva Yanina Serhiyivna, chief specialist of the expert group for the development of the field of open data of the electronic services development directorate of the Ministry of Digital Transformation of Ukraine.
Email: [REDACTED].

First Deputy Minister Oleksiy VYSKUB

Yanina Lyubiva [REDACTED]