



SECRETARIAT

Commissioner of the Verkhovna Rada of Ukraine on human rights

St. Instytutska, 21/8, Kyiv, 01008 E-mail: [REDACTED]

tel. [REDACTED]

EDRPOU code [REDACTED]

Kirichenko G.M.
[REDACTED]

Dear Gennady Mykolayovych!

To your statement dated 01.05.2023 regarding disagreement with the response of the Secretariat of the Commissioner for Human Rights Compliance (hereinafter referred to as the Commissioner) based on the results of consideration of your statement dated 13.04.2023 regarding the alleged violation by officials of the State Tax Service of Ukraine (hereinafter referred to as the Tax Service of Ukraine) of the requirements of the laws of Ukraine "About access to public information" we inform.

From the application materials, it can be seen that in the application dated 04.13.2023 to the Commissioner, you requested to conduct an inspection of compliance by DPS officials with the requirements of the legislation on information in connection with the refusal to provide information on the grounds that the requested information belongs to the category of information with limited access.

In a letter from the Commissioner's Secretariat dated 04/28/2023, you were provided with an appropriate explanation and informed that no violation of the requirements of the Law was found during the consideration of your request dated 04/06/2023 by the DPS.

However, you do not agree with the answer provided by the Secretariat of the Commissioner and see in the actions of DPS officials a violation of the requirements of the Law of Ukraine "On Access to Public Information" (hereinafter - the Law).

In this regard, we inform you that the Commissioner's Secretariat considered your application dated 04/13/2023 on the merits of the issues raised in it, a thorough analysis of the materials attached to the application was conducted, in particular, the response of the State Tax Service of Ukraine dated 03/13/2023, as a result of which you It is clarified that the procedure for exercising and ensuring everyone's right to access information that is in the possession of subjects of authority, other managers of public information, is defined by the Law of Ukraine "On Access to Public Information".

In addition, the provision of the second part of Article 6 of the Law has been brought to your attention, which stipulates that the restriction of access to information is carried out



in accordance with the Law in compliance with the set of the following 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 received confidentially, 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.

Taking into account the above, the refusal to provide information is justified, if the administrator in the response to the request indicates which interests are threatened by the disclosure of the requested information, what is the significance of the harm to these interests from its disclosure, why the harm from the disclosure of such information outweighs the public's right to know this information. Otherwise, such refusal to provide the requested information is unreasonable and contrary to the Law.

The same position is supported by judicial practice. Thus, in subsection 6.1 of the Resolution of the Plenum of the Higher Administrative Court of Ukraine dated September 29, 2016 No. 10 "On the practice of application by administrative courts of legislation on access to public information" it is stated: "The requested information is confidential, secret or for official use on the basis of Articles 7, 8, 9 of Law No. 2939-VI, respectively, is not the only sufficient reason for restricting access to it. Limitation of access to specific information is allowed if by definition it is confidential or secret or for official use and subject to the application of the set of requirements of paragraphs 1-3 of the second part of Article 6 of Law No. 2939-VI (the second part of Article 6, the first part of Article 8, part one of article 9, clause 2 of part one of article 22 of Law No. 2939-VI). Similarly, only after the application of the "three-fold test" is it permissible to limit access to public information, the ban on the distribution of which is established directly by law."

After analyzing the content of the DPS letter dated 04/13/2023, you have been informed that the DPS has been provided with a justification of the reasons for restricting access to the requested information in the request dated 04/06/2023, taking into account the requirements of Article 6 of the Law, and provided a corresponding conclusion, in connection with which there are violations of the law information has not been established.

At the same time, we would like to inform you again that in case of your disagreement with the position of the DPS regarding the classification of the requested information as information with limited access, you have the right to apply to the administrative court on the basis of paragraph 7 of part one of Article 19 of the Code of Administrative Procedure of Ukraine.

In view of the above, the position of the Commissioner's Secretariat, set out in the letter dated 04/28/2023, is justified, and your arguments stated in the statement

dated 05/01/2023 do not refute it.



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In view of the above, there are no grounds for taking response measures to the application dated
May 1, 2023.

In case of disagreement with the given answer, you have the right to appeal it in accordance with
the procedure specified in Article 16 of the Law of Ukraine "On Appeals of Citizens".

Sincerely
Director of the Monitoring Department
compliance with information rights Andrii PANKOV



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