



The Information Commissioner of the Republic of Croatia

Report to the European Commission on the Availability of Public Sector Information for Re-use and the Conditions under which it is made available and the Redress Practices – Croatia

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Foreword

This report was prepared by the Information Commissioner of the Republic of Croatia according to Article 35(3) of the Law on the Right of Access to Information and Article 13(2) of the Directive on the reuse of public sector information.

For the purpose of drafting this report, on 12 June 2017 the Information Commissioner sent a group of public authorities the Questionnaire on the Implementation of Legal Provisions on the Re-Use of Information, Open Data and Good Practices. The questionnaire was sent to 219 public authorities (state bodies, Government offices, state administration bodies, agencies, professional chambers, local governments – counties and larger cities). The questionnaire was filled by information officers in cooperation with the relevant organizational units and persons who are responsible for preparing and publishing data on the Open Data Portal, if they are named. The questionnaire contained 24 questions on availability, conditions for re-use, charges, requests and exclusive rights. After rushing in June and July 2017, the questionnaire was submitted by 190 public authorities (87%), although for 3 specific bodies it was subsequently agreed that it was not necessary for them to submit the Questionnaire because they were not responsible for conducting data sets.

Other sources include the Information Commissioner's databases, reports of public bodies, and publicly available information on the re-use of public sector information in Croatia.

The legal framework

The PSI Directive is transposed by the Law on the Right of Access to Information (Official Gazette *Narodne novine* 25/2013, 85/2015).¹ The Law transposing the PSI Directive of 2003 (2003/98/EC) was adopted in February 2013 (in force since 8 March 2013), while the PSI Directive amendments of 2013 (2013/37/EU) were transposed by Law amendments in July 2015 (in force from 9 August 2015).

The Law includes the definitions of the re-use of public sector information (Article 5, point 10), the definitions of machine-readable format, open format and open standard (Article 5, points 10-12), regulates the obligation to provide data for re-use and to publish the asset list (Article 10), and regulates the specific issues of the re-use of information in chapter VI (Articles 27-34; the request, the practical arrangements, exclusions, conditions, charges, exclusive arrangements, special provisions on libraries, museums and archives in relation to charges and exclusive rights). For all matters that are not specifically regulated in chapter VI, other provisions of the Law apply, including the principles of the Law (the principle of equality and non-discrimination, the principle of publicity and free access, the principle of timeliness and accuracy of information, the principle of free disposition, the principle of mutual respect and cooperation), procedural provisions relating to the submission of the request and procedural steps, provisions on appeal, provisions on inspections procedure, etc. Also, the Law on General Administrative Procedure and the Law on Administrative Disputes apply with regard to procedural issues and court procedure and decisions.

The Law includes an emphasis on the proactive publishing of information by public bodies. According to the amended Law which came into the force in August 2015, public sector bodies have to make their documents available (where possible and appropriate) in open and machine-readable open format together with their metadata, as well as publish it on the Open data portal. The scope of public bodies covered by the Law is broad and includes state authorities, state administration and agencies, local government, judiciary, legal entities and bodies vested with public authority, legal entities established by the State and local governments, legal entities performing public services, legal entities funded by public budgets or from public resources (direct taxes, contributions, etc.), and majority-owned state or local companies.

The open data portal is maintained by the Central State Office for the Development of Digital Society, while the Information Commissioner is charged with a supervisory role (appeal procedure, petitions examination, investigation, monitoring of the application of the Law, reporting). The Minister of Administration is responsible for the adoption of by-laws and for the drafting the Law itself.

The Minister of Administration issued two ordinances: the Ordinance on the Content and Manner of Keeping the Official Register of Exclusive Rights to the Re-Use of Information (Official Gazette 20/2016 of 4 March 2016; in force from 12 March 2016; the Exclusive Rights

¹ http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_25_403.html; http://narodne-novine.nn.hr/clanci/sluzbeni/2015_08_85_1649.html; English version of the Law is available here: <http://www.pristupinfo.hr/en/pravni-okvir/>

Ordinance)² that regulates the content of the register of exclusive rights agreements, and the Ordinance on Licences for the Re-use of Public Sector Information (Official Gazette 67/2017 of 12 July 2017; in force from 20 July 2017; the Licences Ordinance)³ which established the Open Data Licence Croatia.

Other by-laws related to access to information also apply to the re-use of information: the Ordinance on the Organisation, Content, and Manner of Keeping the Official Register on Exercising the Right of Access to Information and the Re-use of Information (issued by Minister of Administration, Official Gazette 83/2014, of 11 July 2014; in force from 19 July 2014; the Register Ordinance)⁴ which determines the content of the register of requests and provides the templates for requests and template for the register; and the Criteria for Determining the Amount of Reimbursement of the Actual Material Costs and Information Delivery Costs (issued by Information Commissioner, Official Gazette 12/2014 of 31 January 2014, in force from 8 February 2014; the Cost Criteria)⁵ which determine criteria for charging according to the marginal costs method.

In addition, the criteria for the application of the cost recovery method are in preparation and will be adopted by the Government in February 2018.

It has to be noted, however, that the re-use of public sector information was only introduced in Croatia in 2013 when the PSI Directive had been transposed (before the EU membership on 1 July 2013). Thus, public awareness, as well as the awareness and skills of public authorities for preparing and publishing data for re-use, still have to be built and strengthened. A more active approach had not been taken before 2014, and especially in 2015 (open data portal) and 2016 with various training and awareness raising activities. In the earlier annual reports of the Information Commissioner, the demand side was assessed as critical for the exploitation of the potential of open data. In addition, the Information Commissioner, as a supervisory body which is also in charge of promotional activities, struggled to built its institutional capacities, especially in the period 2014-2016.

However, positive developments have been recognised, and therefore Croatia was assessed as a trendsetter in the 2017 Open Dana Maturity analysis.

Open data policies

Currently, there is no specific open data policy which would be adopted by the government or other levels of government or public bodies. However, it is very likely that the open data policy will be adopted at the central level in 2018, as a specific measure envisaged in the new Open Government Partnership Action Plan (expected to be adopted in the first half of 2018). In addition, a draft template of the open data policy for local governments has been drafted by the Information Commissioner and will be disseminated in the first half of 2018.

Also, the specific strategic and policy documents endorse the principles of the Open Data Charter and envisage the publication of open data and the re-use of public sector information,

² https://narodne-novine.nn.hr/clanci/sluzbeni/2016_03_20_582.html

³ https://narodne-novine.nn.hr/clanci/sluzbeni/2017_07_67_1577.html

⁴ https://narodne-novine.nn.hr/clanci/sluzbeni/2014_07_83_1614.html

⁵ https://narodne-novine.nn.hr/clanci/sluzbeni/2014_01_12_231.html

most importantly *The Strategy of Public Administration Reform 2015-2020*,⁶ with *The Government Action plan for 2017-2020*,⁷ *The Strategy e-Croatia 2020* with the *Action plan 2020*,⁸ and *The Anti-Corruption Strategy 2015-2020*.⁹

Regarding the action plans already implemented, we would like to emphasize that the re-use of information and open data was one of the key areas of the Open Government Partnership Action Plan 2014-2016¹⁰, in the sense of strengthening the proactive disclosure of information and opening up public authorities' data. The aforementioned Action Plan provided for activities related to re-use which with their implementation led to a key shift in ensuring the re-use of information that was held by the Ministry of Administration and the Information Commissioner. This particularly applies to the opening of the Open Data Portal (2015), the legal regulation of exclusive rights records (2016), the design and implementation of an information and open-source re-use education module (from 2015 onwards), the implementation of public hearings on opening priorities (in 2016, three local workshops were held on the priorities for opening data at the local level), the defining of a list of priorities, open disclosure guidelines, the publication of the Information Commissioner's List of Public Bodies in a machine readable format,¹¹ etc. In the first half of 2018, the adoption of the new Open Government Partnership Action Plan 2018 – 2020 is expected. The Action Plan Draft envisages a special chapter on open data with various activities (events, hackathons, education, online education, publications etc.) with continuous publication of open data at the state and local level.

In relation to the Anti-Corruption Strategy 2015 – 2020, the current *Action Plan 2017-2018*¹² (adopted in by the Government in June 2017) includes 16 measures aiming at opening specific datasets in machine readable format (expected to be opened during 2018):

- no. 17 – the Database of Local Public Companies,
- no. 23 – the Database of Electronic Public Procurement Bulletin,
- no. 29 – the Database of State-Owned Public Companies,
- no. 33 – Data on Sponsorships and Donations of Local Public Companies,
- no. 49 – the Database of Working Groups for Drafting Legislation,
- no. 52 – the Database of Civil Society Organisations' Projects,
- no. 66 – the Renewable Energy Register,
- no. 68 – the List of Donations and Grants for SME and Crafts,
- no. 69 – the Register of Public Bodies' Grants,
- no. 77 – the Register of Concessions,

⁶ The Strategy was adopted by the Croatian Parliament and published in the Official Gazette Narodne novine no. 70/2015 of 24 June 2015, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2015_06_70_1329.html

⁷ Strategy for Public administration Reform and Government Action Plan 2017-2019 <https://uprava.gov.hr/UserDocsImages//novosti//Akcijski%20plan%20provedbe%20Strategije%20razvoja%20javne%20uprave%20za%20razdoblje%20od%202017.%20do%202020.%20godine.pdf>

⁸ Strategy e-Croatia 2020 <https://vlada.gov.hr/UserDocsImages//Sjednice/2017/05%20svibanj/38%20sjednica%20VRH//38%20-%2010.pdf>, Action Plan: <https://uprava.gov.hr/UserDocsImages//e-Hrvatska//Akcijski%20plan%20za%20provedbu%20Strategije%20e-Hrvatska%202020.pdf>

⁹ The Strategy was adopted by the Croatian Parliament and published in the Official Gazette Narodne novine no. 26/2015, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2015_03_26_545.html

¹⁰ OGP Action Plan 2014-2016 More on OGP in Croatia <https://www.opengovpartnership.org/countries/croatia>

¹¹ [Popis tijela javne vlasti / The List of Public Bodies](#)

¹² [The Government Anticorruption Action Plan 2017-2018](#)

- no. 86 – the Land Register Information System,
- no. 109 – the Register of School Donations and Grants,
- no. 111 – the Science and Research State Aid Register,
- no. 112 – the Sports Information System,
- no. 125 – the Energy Certificates Database,
- no. 126 – the Renewable Resources Companies Database

In the former Anti-Corruption Action Plan 2015-2016¹³, several activities aiming at enhancing the re-use of public sector information were listed. Among others, with the purpose of enhancing the implementation of the Act on the Right of Access to Information, the Information Commissioner published two databases (applications): the List of Public Bodies¹⁴ and the Searchable Database of Decisions and Opinions,¹⁵ which included the option to extract the database (List of Public Bodies) or to export metadata (Decisions Database).

In the Questionnaire on re-use that was sent to 219 public authorities (out of which 190 responded) one of the questions related to presence of the open data policy in the public body. 10 public authorities responded affirmatively, 173 negatively, while 7 bodies did not respond at all, which means that 180 bodies (95%) have not adopted an open data policy (see Table 1).

Table 1: Have you adopted an open data policy?

Public Bodies	Yes	No
State bodies	0	6
Government and government offices	0	7
Central state administration (ministries, state offices)	2	27
State administration in counties	0	20
Agencies	5	54
Professional chambers	0	18
Local governments	3	34
Other legal persons	0	7
Total	10	173

¹³ [The Government Anticorruption Action Plan 2015-2017](#)

¹⁴ [Popis tijela javne vlasti / The List of Public Bodies](#)

¹⁵ [Tražilica odluka i mišljenja TOM / Searchable Database of Decisions and Opinions](#)

Key stakeholders

The key stakeholders in the implementation of the re-use of public information and open data policies include the Ministry of Administration,¹⁶ The Central State Office for the Development of Digital Society¹⁷ and the Information Commissioner.¹⁸ Also, at the institutional level, the Government Office for Civil Society,¹⁹ the Ministry of Justice²⁰ and the Ministry of Foreign and European Affairs make a significant impact as the authorities responsible for the particular strategy or action plan. Within the framework of the strategic documents mentioned above, civil society organisations, including business associations and academic institutions, take part in drafting policies and ensuring implementation.

Current developments

The Republic of Croatia started to implement the legal framework for the re-use of public sector information in 2013 with the adoption of the Law on the Right of Access to Information, which transposed the PSI Directive of 2003, and came into force in March 2013. This was the first legal document that included public bodies' obligation to ensure that their data is fit for re-use by users. The full implementation of the Law started in November 2013 after the first Information Commissioner was appointed. The amendments to the Law in July 2015 transposed the PSI Directive of 2013, while the bylaws were enacted in 2016 (on exclusive rights database) and 2017 (on open data licence)

From the moment of the transposition of the PSI Directive of 2013, namely from July 2015 until 2017, the activities relating to the fostering of the re-use of information and open data publication, especially those related to the drafting of open data and other policy documents (e.g. OGP, Anti-Corruption, etc.), the implementation of the specific measures envisaged in the plans (e.g. opening up of the specific datasets) and the preparation and adoption of the by-laws were affected by the frequent changes in government (parliamentary elections in November 2015, parliamentary elections in September 2016, the reconstruction of the Government in June 2017, combined with the local elections in May 2017), and especially in stakeholder institutions (in the period July 2015-July 2017 there were four ministers of administration and four ministers of justice, while the State central office for the development of digital society changed the position within the system three times, as well as the heads).

¹⁶ The Ministry of Administration: <https://uprava.gov.hr/>

¹⁷ The Central State Office for the Development of Digital Society <https://rdd.gov.hr/>

¹⁸ The Information Commissioner <http://www.pristupinfo.hr/en/>

¹⁹ The Open Government Partnership Croatia <https://udruge.gov.hr/partnerstvo-za-otvorenu-vlast-271/271>

²⁰ The Ministry of Justice – Anticorruption <https://pravosudje.gov.hr/antikorupcija/6154>

1. Availability of information

1.1. Data portals/APIs

National portal

The Open Data Portal [<https://data.gov.hr>] was launched in March 2015 with minor updates in 2016, and so far it contains 510 datasets published by 68 data publishers, of which 41.4% are published in open formats such as CSV, JSON, XML, in accordance with the "Recommendations on adjustments of datasets for public disclosure and the reuse of information" (hereinafter: Recommendations) published by the Directorate for eCroatia of the Ministry of Administration.²¹ The Open Data Portal is administered and maintained by the Central State Office for the Development of Digital Society and the Ministry of Administration, Directorate for eCroatia. In 2018, the Portal will be updated with additional features. Additionally, since the portal is CKAN based, API is available and it exposes all core features.

The Open Data Portal offers several useful features:

- The Portal offers the possibility of accessing and downloading datasets as well as searching in file format or domain, and requesting (suggesting) a dataset <https://data.gov.hr/data-request>
- The Portal offers users the possibility of tailoring automated messages that they could receive on the availability of new data (RSS feeds)
- The Portal includes examples of the re-use of datasets <https://data.gov.hr/apps>
- Users are able to give feedback on each dataset with free text form, and within the form it can explain and report errors for the dataset. Feedback is forwarded by the admin of the portal to the relevant dataset publisher in order to make corrections and adjustments. For example: <http://data.gov.hr/dataset/e-gradjani-statistika>
- The Portal includes additional content, such as guidelines and a library https://data.gov.hr/library_content ; <https://data.gov.hr/glossary>

The datasets mostly have a 3-star quality or more. 40.9% of the datasets are published in XLS format with a 2-star quality, but are easily convertible to higher quality formats, while 17.7% of the datasets are not available in formats that are fit for re-use (mostly unstructured data). Some datasets offer access to API or other web services which can be helpful for developers to get raw data.

Every Public Sector Data Holder in central administration appointed two civil servants responsible for uploading data. Users can login to the portal using national e-ID. Civil servants are always in touch with the open data team, and there is single point of contact by e-mail to the open data team's contact support.

Some institutions developed automatic publishing to the portal. One part of the data is automatically harvested from other local portals, and one part accounts for automatic publishing. Data is harvested twice a month, and some of institutions have developed their

²¹ <https://data.gov.hr/sites/default/files/library/Preporukezaobjavu.pdf>

own tools for publishing data (some of them reuse already-developed solutions). Every portal is CKAN based and API that exposes all core features is available.

Figure 1: The Open Data Portal



The datasets on the Open Data Portal that are of most interest to users, by subject, are: society (21.3%), finances (11.1%), agriculture, forestry and fishery (7.8%), environment (7.8%), education and communication (7.8%), politics (6.4%), employment and work conditions (3.1%), transport (2.6%), business and competition (2.6%), and economy (2.1%).

Top 10 mostly visited datasets on the Portal are:

1. Quantity of Water Supply and Drainage (collection and purification) of Wastewater by Category - City of Rijeka
2. Quantities of Drainage by JLS and Categories - City of Rijeka
3. Directory of Customs Administration - Customs Administration
4. Directory of Public Libraries by County - National and University Library
5. Directory of Elementary Schools - City of Rijeka
6. Addresses of Regional Construction Inspection Offices - Ministry of Construction and Physical Planning
7. The Political Parties Directory - Central State Office for the Development of the Digital Society
8. Directory of Current Bodies of Legislative, Executive and Judicial Authorities, Public Sector Institutions, Diplomatic Representatives, Trade Unions of Special State Interest and Local and Regional Self-Government Bodies - Central State Office for the Development of Digital Society
9. Directory of County Institutions for Physical Planning - Ministry of Construction and Physical Planning
10. Directory of Social Welfare Institutions - Ministry of Social Policy and Youth

Generally speaking, datasets that are most often downloaded are:

- Number of patients by every Primary Health Care Practice
- e-Citizens System statistics
- Register of Cultural Goods
- Political Parties Register
- Temporary Work Agencies
- State Budget User Register
- Tourist Objects List
- Art Organizations List
- Public Bodies List
- Air Quality

and the least downloaded ones are:

- Defence Departments List
- Veterinary Medicines List
- Accreditation Agency Sanctions Register
- Finance Account Statistics
- Credit Institution Statistics.

It should be noted however that the top lists listed are highly variable and represent the factual situation at the time of insight into the data. Also, the categorization of the subject data sets does not contain a parameter of dates of the setting up of individual sets of data on the portal, and therefore this information should be taken with reservation.

The following is a list of datasets ranked by frequency for a particular public authority:

1. The City of Rijeka (21.04%)
2. The State Statistics Office (17.7%)
3. The City of Zagreb (7.8%)
4. The Croatian Agency for Environmental Protection and Nature (7.3%)
5. The Ministry of Administration (4.0%)
6. The Croatian Central Bank (4.0%)
7. The Agency for Mobility and EU-Funded Programs (4.0%)
8. The City of Pula (3.5%)
9. The Croatian Agency for the Supervision of Financial Services (2.8%)
10. The Croatian Health Insurance Institute (2.6%).

Statistics on Visits to Open Data Portals:

- 3500 visitors per month
- within last 12 months it had around 50 000 users, with more than 160.000 views
- an average of 24% of visitors come from outside of Croatia
- 81% of Portal users browse using their personal computers, while 19% of users browse on their mobile phones and tablets.

All datasets contain a CC-BY Creative Commons licence (<https://creativecommons.org/licenses>) or Open Licence Croatia, which has been available since July 2017 (<http://data.gov.hr/open-licence-republic-croatia>)

Local portals

Besides Croatian's Open Data Portal there are also 3 local open data portals:

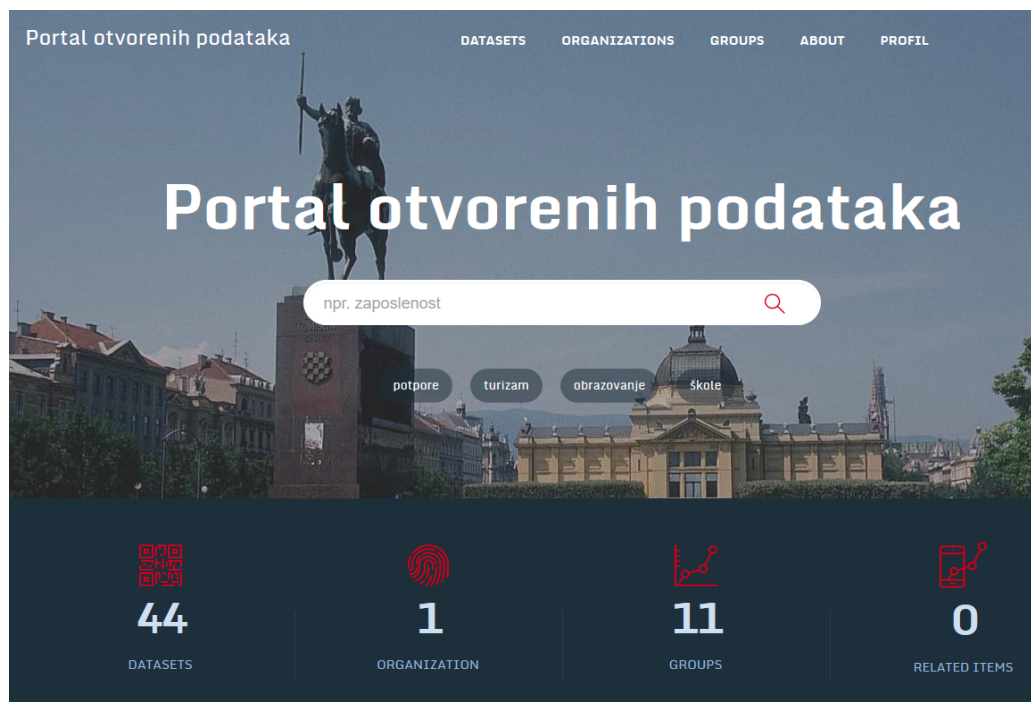
- The Open Data Portal of the City of Zagreb at <http://data.zagreb.hr>
- The Open Data Portal of the City of Rijeka at <http://data.rijeka.hr>
- The Open Data Portal of the city of Virovitica at <http://opendata.virovitica.hr>

It is expected that several cities will launch their open data portals soon:

- City of Varaždin
- City of Velika Gorica
- City of Križevci

The Open Data Portal of the City of Zagreb at <http://data.zagreb.hr> counts 44 open data datasets, out of which 43 or 97,7% are published in CSV format.

Figure 2: The City of Zagreb Open Data Portal



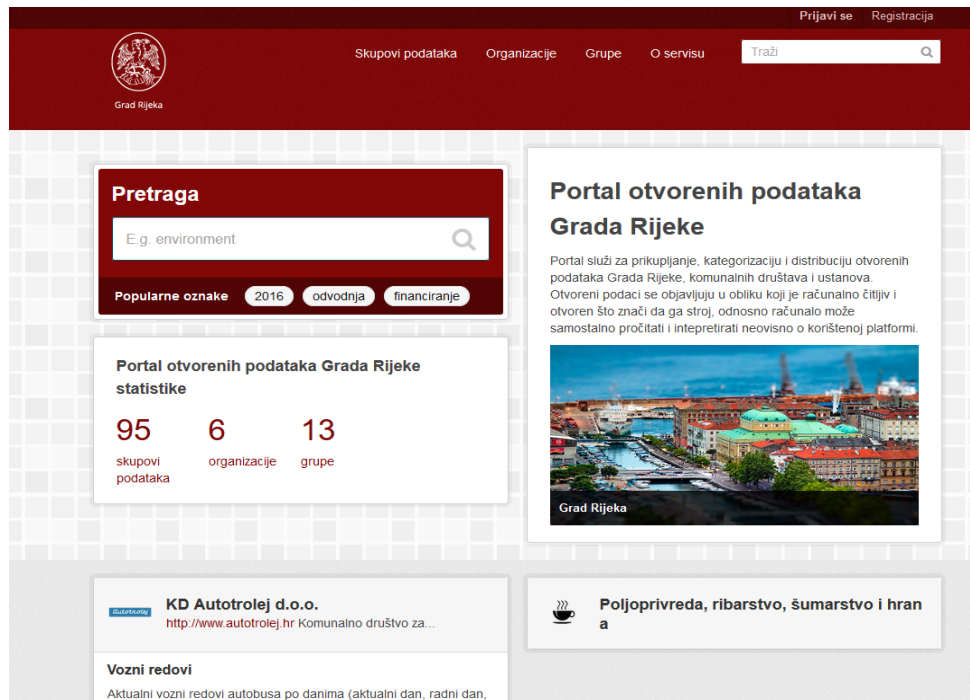
The users are mostly interested in the following datasets:

- Education (13,6%)
- Address books (13,6%)
- Infrastructure (11,4%)
- Financial aid (9,1%)
- Business (9,1%).

All datasets contain CC-BY Creative Commons licence (<https://creativecommons.org/licenses>)

The Open Data Portal of the City of Rijeka at <http://data.rijeka.hr> counts 94 open data datasets with 50 (or 53,2%) datasets published in open formats such as CSV, JSON, XML (3-stars quality), while 9 datasets (41,5%) are published in XLS format (2-stars quality) with the possibility of conversion in open format. Only 5 datasets (5,3%) are published in PDF format.

Figure 3: The City of Rijeka Open Data Portal



The users are most interested in following datasets:

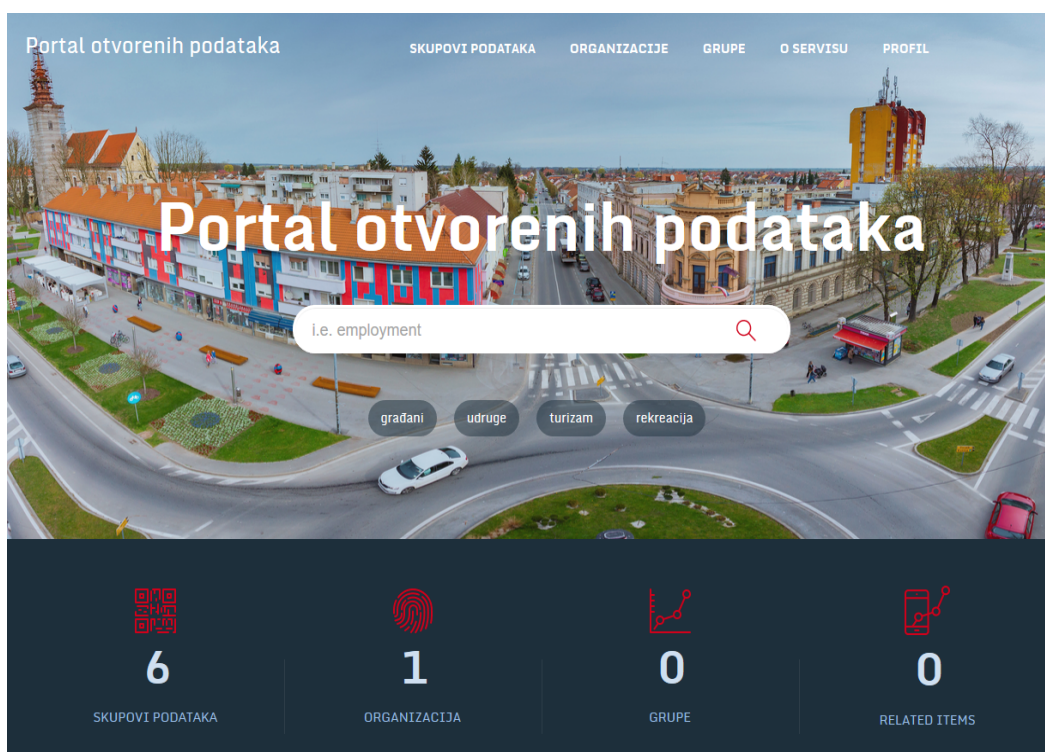
- Environment (25,8%)
- Housing and society (23,6%)
- Economy and finance (21,3%)
- Education, culture and sport (14,6%)
- Regions and cities (11,2%).

Most downloaded data are local business premises and real estate, spatial data, traffic data, financial data and civil society financing data.

All datasets published at the Open Data Portal of the City of Rijeka are automatically published on the national Open Data Portal with harvesting of data once per week. All datasets contain CC-BY Creative Commons licence (<https://creativecommons.org/licenses>)

Portal of the city of Virovitica at <http://opendata.virovitica.hr> counts 6 open data datasets and all 6 (100%) are published in XLS format (2-stars quality) with the possibility of conversion in open format. All datasets contain CC-BY Creative Commons licence (<https://creativecommons.org/licenses>)

Figure 4. The City of Virovitica Open Data Portal



1.2. Asset lists of main documents with relevant metadata

Despite a clear legal obligation to publish asset lists with relevant metadata, public bodies mostly do not publish their asset lists.

Examples of good practice include:

- The Agency for Environmental Protection <http://iszo.azo.hr/Pretraga.aspx> and <http://www.azo.hr/BazePodataka18>
- The Ministry of Justice <https://pravosudje.gov.hr/registri-i-baze-podataka/6348>
- The State Intellectual Property Office <http://www.dziv.hr/en/e-services/on-line-database-search/>

The Guidelines of the Information Commissioner on Proactive Publication published in December 2016 include recommendations on the publication of the asset lists.²²

The Draft guidelines on the Re-Use of Public Sector Information of the Information Commissioner include specific recommendations on asset lists and will be published in the first quarter of 2018.

²² <http://tom.pristupinfo.hr/pregledfilter1.php?izb=915> (point 5)

1.3. Availability of data in open and in machine-readable formats

Since the adoption of the Law on Access to Information in 2013, the Republic of Croatia has started to actively encourage the publication of information for re-use and the establishment of Open Data Portals. In this regard, a national open data portal was established as were three local open data portals, and a series of measures for publishing individual sets of data is provided through strategic documents (Anti-Corruption Strategy 2015-2020, OGP Action Plan, Strategy eCroatia 2020, Strategy of Public Administration Reform 2015-2020), set up by the Information Commissioner and Ministry of Administration in cooperation with the State School for Public Administration for public sector employees and public events for the promotion of open data (conferences, round tables, workshops, hackathons and other events).

Since the issue of open data in Croatia is still relatively new, additional efforts are needed to raise the level of knowledge and awareness of the importance of open data, whose re-use still contains insufficient economic potential and social benefits for users. Continually arising is the need to adopt a comprehensive and long-term open data policy in accordance with good European practice and standards, which will effectively stimulate and secure the opening of data and sensitize users, especially entrepreneurship, to exploit data for the purpose of developing new products and opening up jobs. In the new OGP Action Plan whose adoption is expected soon, an emphasis was placed on encouraging the opening of data at the local level and on setting priorities at the national level.

With regard to prioritizing the opening of data sets, the Anticorruption Action Plan 2017 – 2018 contains 16 activities aimed at opening specific data sets, and a large number of similar activities are included in the OGP Action Plan Draft 2018 – 2020. (see Introduction).

Also, workshops were held to determine local governments' priority data sets which are published in the Information Commissioner's Annual Report on the Implementation of the Law on the Right of Access to Information²³ and presented in the Croatian Parliament. Also, based on workshops on open data priorities held in Zagreb, Rijeka and Osijek, on the monitoring and handling of applications, as well as on information about proposals from the Open Data Portal, the Information Commissioner has identified a series of local data sets that are set as a priority for publication in an open, machine-readable format. The Commissioner pointed out the need for the following data sets to be published by counties:

property registers, databases on real estate sale prices, records of realized revenues and expenditures from the management and disposal of real estate, development projects in the county, capital investments/ assistance, entrepreneurial zones/entrepreneurship support institutions, mining areas (for particular counties only), data on water supply, drainage, electrification, gasification and energy management; while local units (municipalities and cities) must publish the following information: leased and vacant business premises, initial unit rental prices for business premises owned by the city, a review of the contracts concluded, the register of public procurement contracts, the budget, budget users, properties owned by local units (local companies), subsidies and donations to associations, subsidy statistics for entrepreneurs, plan allocating funds for public program programs in culture/for communal priorities in the area of local committees/public needs in technical culture/remittance funds, statistics of approved cases per cadastral municipality, results of election by local committees,

²³ <http://www.pristupinfo.hr/dokumenti-i-publikacije/>

area, population, technical culture facilities within the city, sports facilities, sports federations and chambers of judges, sports teams, national minorities councils, projects and programs in elementary schools, EU projects, lists of managers of city-owned buildings, health and social care projects and programs, address books of educational establishments (kindergartens, elementary schools, secondary schools, student dorms), medical institutions, a list of hospitals, ambulances and doctors, followed by street and house numbers, recycling yards, municipal waste, chimney concessions, address books of religious communities, catering facilities, unclassified buildings, tourist agencies and guides, city-owned companies, the number of accommodation facilities of the city, a list of air carriers, timetables, bicycle routes, a list of bus, taxi and other carriers, taxi stands etc.

Some local governments placed their open data archives also on their websites, such as the City of Pula <http://www.pula.hr/hr/rad-gradske-uprave/otvoreni-podaci-arhiva/>. It was also announced by the Association of the Croatian Counties and the Association of Cities that activities aimed at the creation of open data portals will be a priority in the following period.

The Information Commissioner regularly conducts transparency and openness analyses of public bodies at the state level. In the analysis conducted in 2016, 6 areas were analysed: war veterans, administration, culture, employment, tourism and state property, with the establishment of 34 datasets that are already published in open format as well as recommendations for opening the remaining datasets in open format or ensuring the extraction of data from the application in machine readable format. In the analysis conducted during 2017, the same recommendations were made in the field of health, social care and science, and education and sport, where 29 open datasets were identified. For the remaining databases, recommendations are given for publication in open format or ensuring the extraction of data from applications in machine readable format. Also, in both analyses the datasets that do not fulfil legal requirements for the publication because they contain personal data are listed. The third analysis, which is currently in the process of being drafted, covers environment and energy, and traffic and economy. The recommended databases that are expected to be open include, for example, those in the area of culture (register of broadcasters and portals, catalogue of Croatian filmography, database of subventions, register of archives), land registers, state real estate register (companies, shares, land, forests), regulated professions registers, several registers in the area of environmental protection and renewable energy resources, register of humanitarian aid actions, tourist agencies register, etc. Many of these datasets were opened in the meantime.

2. Conditions for the re-use of public sector information

2.1. The Legal Framework for Licences

In principle, as prescribed by Article 31 of the Law on the Right of Access to Information, public bodies shall provide re-users with the information for re-use without restrictions, for free use, and in open format. In justified cases, the public body may lay down the conditions for re-use, and they may not unjustifiably restrict the possibilities of re-use, nor may they be used so as to restrict market competition. Also, the conditions for the re-use of information may not be discriminatory for the same or similar types of information, or for commercial or non-commercial use. The same conditions apply to the public authority body that re-uses its own information as the basis for commercial activities that do not fall within the scope of its public activities, as for other beneficiaries.

The Law on the Right of Access to Information in Article 31(5) authorised the minister of administration to issue an ordinance regulating the types and the content of licences for the re-use of public sector information in line with standard open licences.

Based on the provision of the Law on the Right of Access to Information, The Ordinance on Licences for the Re-Use of Public Sector Information was adopted and published in the Official Gazette 67/2017 on 12 July 2017.²⁴

The Republic of Croatia decided to design and promote its own open data licence, which is compatible with open data licences in the United Kingdom, France, Germany or Italy, and with the CC-BY licence.

As a rule, the Ordinance envisages that all datasets published on the websites by public bodies or that are available upon request are provided under the Open Licence (Open Data Licence). It is defined as a licence that allows for the free re-use of information for commercial or non-commercial purposes, which includes reproduction, distribution, and making the information available to third persons with the obligatory source attribution. Each dataset must contain the Open Licence logo and the link to the Open Licence. Metadata is always published under the Open Licence.

The Open Licence is published on the Ministry of Administration's website and on the Open Data Portal,²⁵ as well as on the Information Commissioner's website.²⁶

As an exception, relative to the type of information or the way the information is created or the purpose for which it is collected, the public body could apply its own or a standard open licence. Whatever licence is used, the public body must take into account the provisions of the Law on the Right of Access to Information requiring that their content and application may not unjustifiably restrict the possibilities of re-use, nor may it be used so as to restrict market

²⁴ Ordinance in Croatian: https://narodne-novine.nn.hr/clanci/sluzbeni/2017_07_67_1577.html

Open Licence in English: <http://data.gov.hr/open-licence-republic-croatia>

²⁵ Open Data Portal: <http://data.gov.hr/otvorena-dozvola> <http://data.gov.hr/open-licence-republic-croatia>

²⁶ Croatian website: <http://www.pristupinfo.hr/otvorena-dozvola/>; The English version: <http://www.pristupinfo.hr/en/otvorena-dozvola/>

competition (Article 31(3) of the Law). Also, it must bear in mind that for the purpose of re-use, information shall be available without restriction, freely and in open format (Article 31(1) of the Law). The decision to apply other licences instead of the Open Licence established by the Ordinance is subject to the Information Commissioner's review, upon petition or in the appeal procedure. The public body is obliged to publish the licence on its website.

2.2. The Open Licence

The Open Licence authorises the re-user to exploit information and metadata both commercially and non-commercially, so they can be:

- reproduced, distributed and made available to third persons
- adapted and combined with the Re-user's own or the third person's data to create new datasets
- exploited through integration into internal and external business processes, products and applications in public and non-public electronic networks

The re-user must, when re-using the information:

- acknowledge the source of the Information by including an attribution statement as specified by the Information Provider/Producer, and include the date of its last update
- if the Information Provider does not provide a specific attribution statement, the following must be used: "Contains public sector information licensed under the Open Data Licence", and provide a link to this licence
- provide a link to the relevant data set (URI) if the Information has been released publicly.

Any amendments, editing, redesign or changes made must be indicated as such in the attribution statement.

The Open Licence does not authorise the re-user to re-use the information so as to suggest an official endorsement of the re-user or the manner of use of the information by the public body providing the information.

The logo of the Open Licence Croatia:



2.3. The application of licences in practice

It has to be taken into account that under Croatian Law, public authorities do not have ownership of the data they produce. Article 8(2) of the Copyright Law explicitly stipulates that the official texts of legislative, executive and judicial bodies and other official works and their collections which are made publicly available for the purpose of information are not protected by copyright. With regard to databases, they mostly do not enjoy copyright protection because of the lack of originality and creativity, given the fact that the content and the structure of elements is usually defined by the legislation establishing the obligation to set up a certain database. Also, the risk of investment of resources which could constitute an argument for the copyright of the database is mostly not possible given the fact that most public bodies are funded from public budgets.

Prior to the adoption of the national open data licence, the practice of the public authorities was usually either to apply the CC-BY licence or to publish data without any licence whatsoever. In exceptional cases, public authorities applied their own licences (e.g. geospatial data, statistical data). This practice still applies, given the fact that the application of the Open Licence is still in the initial phase. However, public bodies are encouraged to apply the Open Licence and a more proactive approach is taken for the promotion of the Licence through education and training programs.

The Law on the right of access to information envisages a misdemeanour for the re-user which re-uses information contrary to the conditions set in the licence. The fine ranges from 130 to 6,700 EUR for a natural person and 260 to 13,400 EUR for a legal person. This sanction has never been applied.

Information on the use of licences from the questionnaire

One part of the questionnaire pertains to the question of the conditions for the re-use of information (licenses). Only 11 public bodies (less than 6% of the respondents) responded that they used licences for the re-use of information. All bodies stated that they used licences from Creative Commons, more specifically, the CC-BY (Creative Commons Attribution) standard open licences. The remaining bodies (94%) stated that they do not use licences for open data, rather they merely publish the data, without any form of licence. In addition, some bodies reported that they used copyright transfer agreements (Croatian Conservation Institute). Other bodies claimed they used no licences for open data at all, but that the published data could only be used with a mandatory reference of the data source, which is basically compatible with the CC-BY (State Metrological Service).

Some examples of using the CC-BY are:

Public body	Licence
Agency for mobility and EU programs	https://data.gov.hr/dataset/distribucija-korisnika-financijskih-potpورا-agencije-za-mobilnost-i-programe-eu.)
Agency for Science and Higher Education	https://www.azvo.hr/hr/o-nama/pristup-otvorenim-podacima
State Statistical Office	https://data.gov.hr/dataset/podaci-o-poslovnim-subjektima , https://data.gov.hr/dataset/popis-stanovni-tva-2011-prema-prostornim-jedinicama-za-statistiku-2-razine-i-upanijama , https://data.gov.hr/dataset/etvena-povr-ina-u-hektarima
Ministry of Justice	http://data.gov.hr/publisher/ministarstvo-pravosudja
Ministry of Administration	https://uprava.gov.hr/o-ministarstvu/ustrojstvo/uprava-za-modernizaciju-javne-uprave-e-hrvatska/pristup-otvorenim-podacima-ministarstva-uprave-933/933
National and University Library	https://data.gov.hr/dataset/adresar-narodnih-knjiznica
Central State Office for the Development of Digital Society	https://rdd.gov.hr/otvoreni-podaci/94
Government Office for human rights and national minority rights	https://data.gov.hr/dataset/adrese-i-kontakti-upanijskih-koordinacija-za-ljudska-prava
Government Office for Civil Society Organisations	http://data.gov.hr/dataset/podaci-o-financiranju-udruga

In the second part, additional information was sought on the existence of datasets whose use is allowed but with certain limitations, as well as on which licences are then used (for example, with permits that are more restrictive than the CC-BY license, i.e. only for non-commercial use, without further sharing, etc.). In this case, almost 95% of the bodies responded that such data sets do not exist. However, some bodies (10) have identified certain usage limitations:

- *The State Geodetic Service* named the Gazetteer of Geographical Names as one such example (http://cgn.dgu.hr/UvjetiKoristenja_RGI.pdf)
- *The Croatian State Archives* argued that the use of digitized material collections was limited to non-commercial use and does not allow for further sharing
- *The Air, Maritime and Railway Traffic Accidents Investigation Agency* stated that part of the data from the National Database was not publicly available, but that it is possible to request it in writing. However, the purpose of usage of the data must be indicated.
- *The Croatian Chamber of Commerce* states that the CCC's database is available only through individual user searches and only for the amount of data that an individual search can make available. For any use other than for personal purposes, for extracting data for further public disclosure or commercial exploitation, as well as extracting more data than usual for special needs, the user must obligatorily contact the CCC beforehand.
- *The State Meteorological and Hydrological Service* stated that the use of such sets of data was regulated and published in the SMHS's products and services' Data Catalogue and Price List. The data published on the website is free, while data on demand come at a fee. Certain subjects can receive free information (ex. state bodies, scientific institutions) with a one-time fee of 20 euros, and the director decides on each individual request, on the terms and on the volume of free information. The user must send a copy of the work they used the data for, can only use it for the purpose that they have indicated, and may not pass it on to third parties.

3. Charging for the re-use of public sector information

3.1. Rules on charging, policies and recommendations

The rules on charging are defined in Article 32 of the Law on the Right of Access to Information.

Information for re-use published on websites or on open data portals (open data) are free and available to everyone for use. Public authorities may not charge a fee for open data. A zero charge policy is applied for the re-use of open-data.

In accordance with the PSI Directive, when providing information for re-use based on the beneficiary's request, a public authority may only charge marginal costs; in other words, the actual material costs of the re-use of information arising from their reproduction, provision and delivery. The criteria for the cost of access to information are set out in Article 19, paragraph 3 of the Law and they also apply to the delivery of information upon the request for the re-use of information. The criteria were set by the Commissioner and published in the Official Gazette no. 12/2014.²⁷ The cost of portable USB sticks or postal delivery are covered by the Criteria.

The public authority may only charge a fee above the marginal costs in two cases (Article 32 of the Act)

- if the public authority body is primarily financed from its own revenues, or
- if the beneficiary requests information with which the public authority body secures adequate revenues to cover the costs of its collection, development, reproduction and release, or in other words, it funds the collection and maintenance of its information by setting a fee for its dissemination.

In these cases, the public authority body will determine the fee for the re-use of information, in line with objective, clear and verifiable criteria for the calculation of the cost of the re-use of information, as laid down by a regulation of the Government of the Republic of Croatia; and in accordance with the principle of transparency, must publish it on its website. The regulation is in the process of being adopted²⁸ and it is expected that it will be issued in February 2018. In principle, the regulation will determine the way of applying the cost recovery method with the obligation of the public authority to calculate the costs of the database, to assess the demand for a particular database, to determine the charges and make them publicly available, as well as to conduct an annual review of the charges. The regulation will adopt the approach defined by the EC Guidelines on recommended standard licences, datasets, and charging for the re-use of documents (OJ C240/1 of 24 July 2014).

²⁷ https://narodne-novine.nn.hr/clanci/sluzbeni/2014_01_12_231.html

²⁸ As mentioned in the introduction of this report, the adoption of the by-laws regulating special issues regarding the re-use of information has been aggravated because of the changes in government (three governments and four ministers of administration from July 2015 to 2017).

3.2. Charging in Practice

Methods of collecting data on charging for re-use include regular data collection from public authorities submitting annual reports, data collection as part of the inspection procedure, as well as data based on a questionnaire on re-use.

a) Regular data collection - annual reports and inspections

Compared to the annual reports for 2015 and 2016, public authorities have reported that in total they have charged 128.41 EUR in 2015, and 42.70 EUR in 2016 (Table 1). These amounts were reported by three public authorities (a municipality, an educational facility and a tourist association). At the same time, the public bodies charged users 1,590.40 EUR in 2015 and 7,434.20 EUR in 2016 for access to information. The reported data must be taken with caution: public authorities do not grasp the concept of open data and are not always able to distinguish between regular services on the one hand (e.g. issuing certificates) and access to information or the re-use of information on the other. At the same time, several public authorities which most certainly disclose information for re-use believe that this obligation is imposed on them by their sector regulations (e.g. geospatial data, statistical data) or their business model (e.g. financial data), so they do not perceive their practices as failing under re-use rules. Similar practices are recognised within the inspections procedures.

Table 2: Charges in 2015 and 2016

Types of public bodies	2015	2016
State bodies	0.00	0.00
State administration (ministries, central offices)	0.00	0.00
Local government	0.00	2.70
Judiciary	0.00	0.00
Agencies	0.00	0.00
Public institutions	126.66	40.00
Public companies	0.00	0.00
Associations	1.65	0.00
Other	0.00	0.00
Total (EUR)	128.31	42.70

b) Questionnaire

The third part of the Questionnaire contained questions regarding the reimbursement of the costs of re-use of information. Only two bodies have stated that they charged a fee for the period 2014 – 2017 (the State Electoral Commission – 33.6 EUR; the Croatian Audit Chamber – 3.333 EUR), while the other 188 public authorities (almost 99%) stated that they did not charge any re-use costs.

Out of the bodies that charged fees over marginal costs which charge a fee according to specific criteria and pricelists, the questionnaire also sought them to provide a rulebook, decision, price list or other general act based on the cost of providing information for re-use,

which was done by 3 public authorities: the Croatian National Archives, the Financial Agency and the State Geodetic Directorate.

The Croatian National Archives reported that the charging of fees is in accordance with the National Archive's Price List issued by the Minister of Culture²⁹. In 2015, 1,270 EUR was collected, in 2016 the amount was 5,230 EUR and in the first half of 2017 a total of 2,220 EUR was charged. However, the price list applies to a variety of different archive services and it is unclear which services pertain to the re-use of information.

The Financial Agency (FINA) reported that it did not charge fees for re-use and that it offers its information from registers, databases and records based on special regulations and not on the Law on the Right of Access to Information. For example, information on the financial position and performance of an entrepreneur are delivered from the Record of Annual Financial Statements under the Accounting Act, with a fee based on the Fees Regulations issued by the Minister of Finance. For the delivery of data and information from FINA's Information System, the prices are defined in the Ordinance on Fees i.e. according to FINA's pricelist³⁰. The following rules apply:

- (1) Ordinance on the Content, Terms of Use, Scope of Data and Compensation for Delivery of Documentation and Data from the Record of Annual Financial Statements (OG 1/16)³¹,
- (2) Ordinance on the Types and Amount of Fees for Performing the Duties Prescribed in the Law on Execution of Enforcement on Money Laundering (OG, 105/2010, 124/2011, 52/2012 and 6/2013), for data and information from the blocking system from the Unique Registry Account,
- (3) Ordinance on Register Enrolment Fees (OG 77/2006),³²
- (4) Ordinance on the Types and Amount of Fees for Performing Activities Related to the Sale of Real Estate and Movables in Foreclosure (OG 156/14).³³

The State Geodetic Directorate reports that it did not charge a fee for re-use. However, there is a particular document based on which fees are charged, and that is the Ordinance on the Determining of the Amount of the Actual Cost of Data Use from the State Survey and Real Estate Cadastre (OG 148/08, 75/09, 51/13)³⁴ issued by the Director of the State Geodetic Directorate based on a special law which takes on the INSPIRE Directive.

In addition to the authorities that reported a special regulation on charging, the State Statistical Office applies EU rules on statistics and Croatian Law on Official Statistics (NN 12/2013). Part of the data was published on the State Statistical Office website, while providing confidential information for scientific purposes and access to confidential information is regulated by special regulations.³⁵

²⁹ Available in Croatian at: <http://www.arhiv.hr/O-nama/Dokumenti/Cjenik-usluga>

³⁰ All applicable rules are available in Croatian at: <http://www.fina.hr/Default.aspx?art=10294> and at the website of the Ministry of Finance <http://www.mfin.hr/hr/pravilnik-o-vrstama-i-visini-naknada>

³¹ Available in Croatian at: https://narodne-novine.nn.hr/clanci/sluzbeni/2016_01_1_3.html

³² Available in Croatian at: https://narodne-novine.nn.hr/clanci/sluzbeni/2006_07_77_1856.html

³³ Available in Croatian at: https://narodne-novine.nn.hr/clanci/sluzbeni/2014_12_156_2944.html

³⁴ [Pravilnik o određivanju visine stvarnih troškova uporabe podataka dokumentacije državne izmjere i katastra nekretnina](#) (NN 148/08, 75/09, 51/13)

³⁵ Available in Croatian at: https://www.dzs.hr/Hrv/about_us/Legals/Pravilnik%20o%20uvjetima%20i%20nacinu%20koristenja%20

The State Metrological Service applies special rules on charging,³⁶ but also makes several datasets publicly available.³⁷

Publication of charges

Within the questionnaire, public authorities were supposed to respond to whether they published the Commissioner's Criteria for Marginal Expenditures on their website i.e. their own criteria/price lists (and provide the link), where out of the 190 bodies, 97 or 51% did not publish the Commissioner's Criteria or their own criteria (pricelist) for charging and cost calculation. State bodies, the Government and ministries have done so in 65% of cases, agencies in 44% of cases, and the surveyed local units in 57% of cases.

The above information points to several key problems in respect of re-use fees, particularly in the application of cost recovery methods.

First, many public authorities do not understand the concept of the re-use of public sector information. Thus, the information they submit is often unreliable and inaccurate, given that the provision of data that would be considered re-useable is not considered to be re-usable by them, while they often consider other services they provide as re-use.

Second, some public authorities apply their own rules for providing information based on special laws. Therefore, they do not consider providing information in machine-readable formats as a re-use of information and do not apply the appropriate the Law on the Right of Access to Information standards, and hence the PSI Directive. It has been noted that most often this is the case with the bodies that possess information that is included in the EC Guidelines as priority data sets. Therefore, the issue of the harmonization of domestic legislation, but also compliance with European regulations (ex. INSPIRE and PSI directives) is being raised. In the 2016 Annual Report, the Information Commissioner warned: "However, as a result of user's dealings and information, it has been made clear that the bases that represent the European Commission Guidelines' priority bases (financial reports and other data on legal entities, geospatial data, statistical data) represent the highest cost to users and which public authorities do not state in their reports, leading to their own special regulations and thus not respecting the rules on access to information."

Public authorities that could fall under the application of article 6.2 of the PSI Directive include (but not exclusively) those presented in Table 3. However, most of the institutions are funded from the public budget (State Geodetic Directorate, State Meteorological Service, State Statistical Office) and the final list actually depends on a thorough examination of the applicability of Article 6(2)b)

[Opovjerljivih%20statistickih%20podataka%20za%20znanstvene%20svrhe.pdf](http://www.dzs.hr/Hrv/about_us/Legals/Pravilnik%20o%20pristupu%20povjerljivim%20statistickim%20podacima.pdf) and https://www.dzs.hr/Hrv/about_us/Legals/Pravilnik%20o%20pristupu%20povjerljivim%20statistickim%20podacima.pdf

³⁶ Available in Croatian at: http://klima.hr/razno/katalog_i_cjenikDHMZ.pdf

³⁷ http://klima.hr/razno.php?id=usluge_podaci_proizvodi¶m=xml

Table 3: The recovery cost method – public bodies

Public body	Type of data	Website	Funded by state budget
Financial Agency	Financial data	www.fina.hr	No
State Metrological Service	Hydrographical and weather information	http://meteo.hr/index_en.php	Yes
State Geodetic Service	Geospatial data	http://www.dgu.hr/	Yes
Croatian Geological Institute	Geological data	http://www.hgi-cgs.hr/	Partially
Hydrographical Institute	Maritime data	http://www.hhi.hr/	Partially
State Statistical Office	Statistical data	www.dzs.hr	Yes
Croatian Electric Company	Electricity data	www.hep.hr	No
Croatian Commercial Chamber	Business information	www.hgk.hr	No
Croatia Airlines	Traffic information (flights)	www.croatiaairlines.hr	No
Other public companies			No

4. Redress practices

4.1. Redress mechanism

The re-use of public sector information is actualised by ensuring the availability of information in two ways: (1) Through information which is in a re-usable form that is proactively published on a public authority's website or in an open data portal, and (2) Through the submission of a request for the re-use of information.

The bodies covered by the Law include around 6,000 public authorities in the Republic of Croatia at all levels (state bodies, state administration and agencies, judiciary, local government, public institutions, associations vested with public authority, public companies), and it is the Information Commissioner who manages the list thereof. This list is publicly available on the following link: <http://tjv.pristupinfo.hr> and accessible in the form of an application or as a reusable dataset.

The procedure for submitting the request and the review mechanism is regulated by chapter VI of the Law on the Right of Access to Information. For all matters not specifically regulated by this chapter, the remaining provisions of the Law apply accordingly. The request procedure is deemed an administrative procedure with the possibility of submission of an appeal to the Information Commissioner as an independent appellate body. The appeal can be submitted in case of refusal and in the case of silence of administration. In addition, for all matters not regulated by the Law, the Law on General Administrative Procedure (Official Gazette Narodne Novine 47/2009) applies accordingly to both first instance and second instance procedure, including extraordinary legal remedies. The decisions have to include instructions on legal remedies. The Commissioner's decision is binding. Both parties (the re-user and the public authority) have the right to initiate a court procedure before the High Administrative Court against the Commissioner's decisions. The initiation of the court procedure has a suspensory effect with regard to the Commissioner's positive decision. Both the appellate procedure and the court procedure are completely cost-free for the re-user (no administrative or court fees). As a rule, each party bears its own expenses. However, the amendments of the Law on Administrative Disputes in April 2017 envisage that attorney's fees fall on the party that does not succeed. Since the other party in the court procedure is the Commissioner, who is not represented by an attorney, the re-user cannot be charged on that ground (but the Commissioner could potentially end up bearing the costs of the attorney that represents the re-user). The rules on charging according to the method of marginal costs apply (the criteria are regulated by the Commissioner's Criteria, see the chapter on charging).

Requests for the re-use of information

In requests for the re-use of information, the applicant must indicate (Article 29, paragraph 1, and Article 18, paragraph 3) the following:

- the name and address of the public authority body to which the request is submitted
- the name, surname and address of the natural person submitting the request, company name, i.e. name of the legal entity and its address
- the information it wishes to re-use, including the form in which it wishes to receive the information
- the manner in which it wishes to receive the information
- the purpose of the use of the information (commercial or non-commercial purpose)

The request may be submitted in written form, including e-mail, or orally (by phone or in person). The public authority body will act upon the Decision for the re-use of information via electronic communication means, wherever possible and appropriate (Article 29, paragraph 3). If the re-user has submitted a request to the public authority that does not pose the information, it should transfer it to the public authority that does pose the information and is not allowed to refuse the request or require that the re-user re-submit the request.

The templates for the request and the appeal can be downloaded from the Information Commissioner's website ([re-use templates](#) in Croatian). Also, Article 10(1) of the Law requires all public bodies to publish the templates on their websites. The requests have to be registered in the Official Register of Requests (Article 14 of the Law).

For the purpose of re-using information, the public body is not obliged to develop information or adapt or separate parts of information if a disproportionate amount of time or funds is required, nor can the public authority body be requested to continue to update, upgrade and archive information solely for the purpose of re-use.

The public authority body will decide on the request for the re-use of information by issuing a Decision within 15 days of the date of submission of an orderly request. In legally prescribed cases, the deadline for issuing a decision on the request may be extended by 15 days (Article 22, e.g. voluminous requests, dispersed information, etc.).

The public authority may refuse to disclose the information in cases where the information relates to exclusions. The exclusions enumerated in the Article 30 of the Law correspond to the exclusions mentioned in Article 1(2) of the PSI Directive.

The Decision must contain the type of permission which stipulates the conditions of re-use and the amount of costs and manner of their calculation. Hence, the re-user is allowed to challenge the decision on the licence or on the charges before the Commissioner.

In addition to the appeal, the re-user has the possibility of submitting a petition to the Information Commissioner claiming that the public body is failing to respect the Law, most often by failing to publish the information on their website. The inspectors proceed upon the complaint by requesting the reports or conducting investigations and are authorised to issue orders to the public body. The inspector must inform the petitioner of the procedure upon the petition.

In the Questionnaire on re-use that was sent to 219 public authorities (out of which 190 responded) **one** of the questions related to the person in charge for open data. In 85 public authorities, open information is handled by the information officer, in 33 bodies the nominee is a special employee, while in 69 bodies no one is in charge of open data. Several bodies did not answer at all, and several said that open information was provided by both the information officer and a special employee.

Table 4: Who is in charge of open data?

	Information officer	Other employee	No one
State bodies	4	2	0
Government and government offices	3	4	1
Central state administration (ministries, state offices)	9	10	10
State administration in counties	10	2	9
agencies	34	5	22
Professional chambers	10	4	3
Local governments	14	5	19
Other legal persons	1	1	5
Total (percentage)	85 (44,74%)	33 (17,37%)	69 (36,32%)

4.2. Statistical data

The redress mechanism in Croatia was set up in 2013 when the new Law on Access to Information (Official Gazette 25/13) which transposed the 2003 PSI Directive appointed the Information Commissioner, an independent information access control body, as the body authorized to decide on appeals concerning the re-use of information. In that sense, a later transposition of the Directive's revision of 2013 amended by the Act of 2015 (NN 85/15) did not require any changes.

The surveillance system has been in operation since November 2013, when the Commissioner began her function. The Commissioner also collects data on the received requests for re-use which public bodies submit each year in January for the previous year in their annual report.

According to the data from public authorities' annual reports as well as to the Information Commissioner's records and reports for a period of three years (2014 to 2016), public authorities received a total of 2,087 requests for the re-use of information; 839 in 2014, 895 in 2015 and 353 in 2016. This data should be taken with caution, as it has been noticed that public authorities, especially in the first two years of the application of the law, did not really understand the difference between access to information and the re-use of information. Therefore, it cannot be established with certainty whether the number of requests has decreased or if this is a downward trend. The number expressed in 2016 can be considered more realistic in terms of displaying the demand for open data.

In the Questionnaire on re-use that was sent to 219 public authorities (190 responses were received) the fourth part referred to the number of requests received for re-use in the period from 2014 to June 2017 and to the outcome of the procedure, i.e. the number of requests based on which re-use was enabled. The bodies that submitted the Questionnaire indicated that they received a total of 702 requests for re-use, re-use being enabled in 417 of the cases (59,40%).

Table 5: Number of requests for the re-use of information 2014 – 2017

	Requests	Dataset released
State bodies	41	40
Government and government offices	7	4
Central state administration (ministries, state offices)	210	62
State administration in counties	53	14
Agencies	299	290
Professional chambers	9	1
Local governments	83	6
Other legal persons	0	0
Total (percentage)	702	417 (59,40%)

In that same three-year period (2014-2016), a total of 65 complaints were filed to the Information Commissioner³⁸, with 44 complaints (67.7%) related to silence of administration, i.e. cases when the re-user lodged an appeal because the public authority did not decide on his request within 15 days. Such appeals were most numerous in 2015 (79.55%), and in the remaining two years less than half of all appeals dealt with re-use. The share of complaints due to the silence of administration in relation to the re-use of information matches the share of complaints in access to information items, which ranged between 60 and 67%. The reasons for delays have already been analysed in the Information Commissioner's Annual Reports and pertain mainly to the shortness of the deadline (15 calendar days including weekends and holidays), and also to public authorities' poor understanding of the re-use of information.

Out of the total number of complaints (65), one third (32.3%) of the appeals were related to decisions by the public authorities refusing the request for the re-use of information, and 4 cases were related to objections to the notice. The information commissioner decided on the merit of 17 cases, including 1 case in 2014, 9 cases in 2015 and 7 in 2016.

Table 6: the redress mechanism in numbers

Year	Requests	Appeals	Silence of administration appeals	Court decisions
2014	839	7 (0.83%)	3 (42.86%)	-
2015	895	44 (4.92%)	35 (79.55%)	-
2016	353	14 (3.97%)	6 (42.86%)	-
Total	2,087	65 (3.17%)	44 (67.7%)	0

With regard to the complainants, complaints were mainly made by natural persons and associations, predominantly volunteers from the request submission portal imamopravoznati.org³⁹. It follows that a relatively limited number of people are aware of the

³⁸ Moreover, in the first half of 2017, 3 appeals and 2 petitions were filed.

³⁹ <https://imamopravoznati.org/> is a request submission portal developed by the Code for Croatia civil society organisation, an NGO that works on open data, and GONG, an NGO focused on transparency,

possibility of re-use, and consequently of how to protect their rights through appeals. Also, there is a lack of appeals from private entrepreneurs.

Appeals were filed against the actions of various public authorities, such as the Government, ministries, agencies, and local companies. For example, re-users requested the List of Registered Plant Protection Products, the Register of Non-Profit Organizations, the Directory of Cultural Institutions, the Concession Register, the Croatian Civil Aircraft Register, the Database of Technological and Development Research Centres, the Registry of Auditing Companies, the Register of Doctors and Health Institutions, the Register of Sporting Activities, the List of Authorized Veterinary Organizations, the Register of Authorized Authorities for Performing Construction Activities, the Database on Damage to Forest Ecosystems in the Republic of Croatia, the Register of Privileges for Carrying Out Commercial Fishing at Sea, the National Database on Bathing Water Quality, (re-use of information). The majority of the above-mentioned databases are published on the bodies' websites upon the initiation of the appeals procedure due to silence of administration or to representation.

The Information Commissioner made a decision on all 65 appeals (8 in 2014, 12 in 2015, 40 in 2016 and 5 in 2017). In the cases brought before the Commissioner on the basis of silence of administration, the Commissioner either ordered the public body to issue a decision or suspended the procedure (because the public authority had in the meantime resolved the request or the re-user abandoned the appeal). Out of 17 cases in which an appeal was filed against a decision rejecting a request for re-use, in one case the Commissioner dismissed the appeal as untimely, in 9 cases dismissed the appeal as unfounded, in 6 cases annulled the decision and returned the case to the body of the public authority for resolution, and in 1 case ordered the body of public authority to allow re-use.

One of the most significant cases resolved in appeals proceedings which was led by the Information Commissioner and the only subject in which the Information Commissioner has brought in a merit solution which requires the provision of a re-usable dataset is an appeal against the request for delivery to the Company Register (Court Register) in a machine readable form. The first request by the Gong NGO was denied by the Ministry of Justice due to the protection of the procedure prescribed by a special law (Article 2 of the Law on Court Register). The Information Commissioner made the decision by which the user was partially given the right to re-use the database of the court register, which was publicly published via the web site Sudreg.pravosudje.hr, by providing the said database in a machine readable form, except in the part related to the residence addresses associated with companies as members of society, founders etc., and the Ministry of Justice was ordered to act within 30 days of the date of receipt of the decision according to the Commissioner's order. The Ministry of Justice initiated an administrative dispute against this decision and the High Administrative Court rendered a verdict confirming the Information Commissioner's decision. The Ministry of Justice has provided the user with the database and announced that the database will be opened as open data during 2018.

Apart from appeals, the Information Commissioner also resolves the filed complaints, as well as performs inspectional monitoring over the implementation of the Law on the Right of Access to Information. The inspectional monitoring also monitors the application of procedures and

good governance and the fight against corruption. Similar portals are present in other countries, and in the EU as well (<https://www.asktheeu.org/en> developed by Access Info)

requirements for re-use, and there is also an emphasis on the proactive disclosure of information on the website of the supervised body of public authority through the verification of whether the data is published in a machine-readable form that is suitable for the re-use of information.

The most common reason for submitting petitions is the omission of the disclosure of information prescribed by Article 10 of the Law on the Right to Access Information, due to lack of databases, registries, lists and address books in electronic form and suitable for re-use. For example, applicants have requested the publication of statistical information on the amount of glass, paper, plastic and metal collected, the number of employees per sector in the City of Zagreb, statistics on the number of cyclists by location and by date, data on criminal offenses, traffic accidents and misdemeanours, information recognized in the e-treasury of payments from the State Budget by suppliers, maps of projects implemented locally and regionally, on the Register of Institutions from the Higher Education System, the Register of Scientific Institutions, the Register of Road Transport Companies, the Register of Privileges, the Directory of Entrepreneurial Centres, the Address Book of County Libraries, the Directory of Health Institutions of the Republic of Croatia, a list of schools in electronic form, a list of kindergartens in electronic form, the Database of Coupon-Users for Seasonal Work in Agriculture, a list of authorized associations that provide free legal aid, and so on.

In sum, the redress mechanism is an effective instrument that provides incentive for public bodies to publish data in a machine-readable format, as open data. In order to prevent frequent submissions of similar requests and under the pressure of the appeal procedure (often initiated after the public body's failure to respond within 15 days), public bodies tend to publish the data on their website. This practice contributes to the principles of openness and of the equal treatment of users. However, for some key datasets the procedure proves to be time-consuming, but offers the possibility of a positive outcome for the user.

5. Exclusive arrangements

5.1. Legal framework

The Croatian Law on Access to Information regulates the issue of exclusive rights and forbids discrimination through Article 34, in accordance with the PSI Directive.

One of the basic principles of re-use is user non-discrimination, which means that it should be available and allowed under the same conditions to all applicants and that the public authority cannot authorize the applicant to re-use information which would prevent a re-use by other users, nor may it restrict the provision of information to a number of users (Article 34, paragraph 1 of the Law).

However, in accordance with the Directive, the Law allows that in certain cases there is a need to grant an exclusive right to re-use (paragraph 2) or to limit the use to one or more users, but only if it is necessary to contract or authorize a third person to use the information in order to ensure the provision of certain public services or public interest services, by concluding a contract (or adopting a decision) granting a third party exclusive use, and at the same time restricting the right of others.

Such contract or other act by public authority body must be published on its website and must be delivered within 15 days of the date of its conclusion or adoption by the Commissioner, who maintains publicly available records of exclusive rights and verifies the justification of the reasons for granting exclusive rights every 3 years.

With regard to the exclusive rights to digitalisation in culture (paragraph 4), the period of time over which the contract is concluded may be no longer than 10 years, and if the period is longer than 10 years the justification of the reasons for granting exclusive rights and extending the time-limit is to be examined by the Commissioner in the 11th year, and again every 7 years.

Based on the Article 34(7) of the Law, the Minister of Administration issued The Ordinance on the Content and Manner of Keeping of the Official Register of the Exclusive Rights to the Re-use of Information (Official Gazette no. 20/2016 of 4th March 2016).⁴⁰The Ordinance authorises the Information Commissioner to keep the Official Register of the Exclusive Rights (the database of exclusive arrangements). The Register must be made publicly available on the Commissioner's website in machine-readable format.

The Register contains the information on the public authority which concluded the contract granting the exclusive arrangement, the beneficiary of exclusive arrangement, the title of the document granting the exclusive right, the period of exclusivity, the information subjected to the exclusive right, the charges applied, other conditions, and the date of review of the exclusive right.

⁴⁰ Ordinance (in Croatian): https://narodne-novine.nn.hr/clanci/sluzbeni/2016_03_20_582.html

5.2. The database of exclusive arrangements

The content and method of keeping records of exclusive rights to re-use is regulated by the Ordinance on the Content and Manner of Keeping the Official Register of Exclusive Rights to the Re-Use of Information. The record was established and is published on the Commissioner's website in an open, XLS format, without any signed contracts for the time being⁴¹.

Methods for collecting data on exclusive rights include public authorities' independent reporting on the existence of such contracts in accordance with legal obligation, collecting data by submitting annual reports to public authorities, collecting data within the inspection procedure, as well as the Information Commissioner's active proceeding by sending invitations to public authorities or by sending questionnaires.

a) Reporting by public bodies

Despite the legal obligation which is further elaborated and defined by the said Ordinance, public authorities did not report to the Commissioner on the existence of contracts on exclusive rights.

b) Annual reports of public bodies

Every year, in the process of collecting annual reports from public authorities, the Information Commissioner seeks information on the existence of exclusive arrangements. As part of the collection of annual reports for 2015 and 2016, 59 public authorities (23 in 2016 and 36 in 2015) reported on the existence of contracts on exclusive rights, but the Information Commissioner subsequently found that this was not an exclusive arrangement as they were IT maintenance contracts which kindergartens, social welfare centres, utility companies, some ministries and agencies, and towns and municipalities wrongly qualified as exclusive arrangements.

c) Inspections

At the same time, in the inspections procedures the Information Commissioner verifies whether there are such contracts. During 2015, 2016 and 2017, 58 in-situ inspection procedures were carried out without any registered exclusive arrangements. In summary, as part of annual reports and inspections, the Information Commissioner did not learn of the existence of such contracts, given that public authorities generally report on the existence of web site maintenance contracts, on the creation of software or on the maintenance of their own databases.

d) Invitation letter

In January 2017, the Information Commission sent official letters to public authorities, by which it was required of them to identify, publish and send notification of such contracts. The call for the delivery of valid decisions and contracts by which the exclusive right to re-use information was approved to particular legal or natural persons was sent to 126 public authorities at the national level (ministries and state administration offices, state bodies, agencies, professional chambers), with the aim of strengthening the implementation of the legal obligations prescribed by the Law on Access to Information and the completing of the Records of Exclusive Rights,

⁴¹ <http://www.pristupinfo.hr/iskljuciva-prava/>

and the Information Commissioner, as an independent body responsible for the protection, monitoring and promotion of the right of access to information and the re-use of information, verifies the justification of the reasons for the approval of such exclusive rights. However, not a single body has provided information on the existence of a contract on exclusive rights. Not a single body has submitted such a contract.

e) Questionnaire

In relation to the questionnaire sent to the public bodies in June 2017 with the purpose of collecting the data on the implementation of the re-use of public sector information legislation,⁴² 33 public bodies (17%) reported a wide range of contracts in the area of IT services, including contracts for website maintenance, software development for e-services, e-service or database development and maintenance and similar, which do not qualify as the exclusive rights agreements, since ownership of the database remains in the hands of the public body and the database is published on the public body website. However, all IT contracts fall under the regime of the public procurement regulation, which is aligned with EU rules. Most of the contracts are concluded for a period of 1 to 3 years. Several contracts that have been reported are now under Commissioner's revision (National Archives, Croatian Agency for Environmental Protection and Nature Preservation).

The great number of reported cases does not however indicate the overwhelming presence of exclusive rights arrangements, but rather points to an insufficient understanding of the concept.

A special issue is whether the practice to authorise the contracted private provider of the IT services to the public body with the right to charge the public body for the extraction of the re-usable data could constitute an exclusive arrangement. Namely, it is noted that some private contractors that maintain applications and databases tend to charge the public authority for data extraction when the extraction is requested by the public authority for their needs or because the user has submitted a request for the re-use of the information.

Another issue is the practice to authorise public companies to collect and publish public data which is not available in a re-usable format free of charge (e.g. Financial Agency, Narodne novine – the company that publishes the Official Journal).

Basically, we believe that obstacles to a clear implementation of the rules on exclusive rights are the lack of understanding of what exclusive rights are (since they are not precisely defined in the PSI Directive), how can they be contracted (open or concealed contracting), and how do they differ from the regular services of designing and maintaining software, databases and IT systems. We also believe that there is a great possibility that among 6000 public authorities in Croatia, some of them have concluded exclusive rights arrangements. However, the main challenge in Croatia is not the existence of exclusive arrangements, but rather the general availability of data connected to the technical conditions and resources of public authorities.

⁴² The letter included the invitation to report on the contracts granting exclusive agreements for the reuse of public sector information and other agreements relating to the collection, maintenance and distribution of data.

The Information Commissioner of the Republic of Croatia

Report on the Availability of Public Sector Information for Re-use and the Conditions under which it is made available and the Redress Practices – Croatia

Zagreb, December 2017.