

Guidance
of the Nemzeti Adatvédelmi és Információszabadság Hatóság
(Hungarian National Authority for Data Protection and Freedom of Information - NAIH)
on the accessibility of statements of assets

I. There is an outstanding public interest linked to the possibility of accessing and checking the financial situation and enrichment of certain persons discharging public duties. A properly regulated and controlled obligation to make statements of assets is designed to facilitate the enforcement of the principles of transparency and the integrity of public life named in the Fundamental Law, the control of the management of public funds, the fight against corruption and the objectives linked to forming democratic public opinion. A great deal of criticism has been levied on Hungarian legal regulation and truly the practical efficiency of the system including, inter alia, the absence of genuine control, the lack of clarity concerning the background to enrichment can be objected to and this is a subject matter, which is of express interest for the public also according to the experiences of NAIH, which raises a number of questions in practice.

A person discharging a given public duty (or because of him, his relative) may be required by law to make a formal statement of assets in every case. If so, it is also stipulated by law who may have access to the statement of assets and in what way.

The relevant legal regulation is manifold and complex. Act CLII of 2007 on Certain Obligations to Make Statements of Assets (hereinafter: Asset Declaration Act) stipulates as a main rule that a person in public service who independently or as a member of a body is entitled to make proposals, adopt decisions or exercise control

- a) in an administrative or infringement case,
 - b) in the course of a public procurement procedure,
 - c) in the course of discharging his duties over budgetary or other funds, as well as with regard to the management of state or municipal assets and extra-budgetary funds, chapter-managed appropriations, municipal financial support funds,
 - d) in conducting procedures aimed at decisions concerning individual state or municipal aid, or
 - e) in reviewing the use of state or municipal subsidies or accounting for their use,
- is obliged to make a statement of assets.

In addition, the Asset Declaration Act sets forth an extensive and exhaustive list of other positions concomitant with such obligations, as well as jobs and responsibilities (for instance deputy secretaries of state, CEO of Magyar Fejlesztési Bank Zrt., members of the boards and supervisory boards of business organisations with a state majority holding, etc.).

However, beside the Asset Declaration Act, there are over 20 legal regulations requiring persons discharging public duties to make statement of assets. Examples include Act XXXVI of 2012 on the National Assembly for Members of Parliament, Act CLXXXIX of 2011 on the Local Governments of Hungary (hereinafter: Municipalities Act) for municipal representatives or Act CXII of 2011 on the Right to Informational Self-Determination and the Freedom of Information (hereinafter: Privacy Act) for the president and vice president of NAIH. It is important, however, that the legislator deliberately differentiated the content of the statements of assets, the range of persons subject to the obligation and the accessibility of the data.

In its decision Kvk.IV.37.388/2015/3., the Supreme Court declared that the obligation to make a statement of assets and its accessibility do not always coincide: there are positions of constitutional significance in the case of which the obligation to make a statement of assets is

enforced together with the obligation to make it public with a view to safeguarding the dignity of the constitutional legal standing and guaranteeing the integrity of public life. In other cases, the financial conditions of the person subject to the obligation cannot be qualified as data public on grounds of public interest, thus their closed, protected processing is called for. While the Asset Declaration Act stipulates the obligation to make a statement of assets generally for those subject to its personal scope, the accessibility of the statement of assets is uniquely stipulated by the law specifying the given legal standing according to public law by weighing whether the data are of public interest.

From the viewpoint of accessibility, a distinction should be made between public and non-public statement of assets.

- There are also two categories of the **public statement of assets** according to the way in which access to them is ensured in accordance with the relevant provisions of the Privacy Act.
 - A. The broadest accessibility via the Internet, which is in fact unlimited subject to the condition of dissemination tied to purpose, is associated with the statements of assets, which must be published under the rules of electronic freedom of information regulated in Chapter IV of the Privacy Act (leaders of state, judges of the Constitutional Court, members of Parliament, etc.).
 - B. The other category includes statement of assets, which are also accessible on the grounds of public interest, which need not be published but their content must be made accessible to anyone through individual request for data pursuant to Chapter III of the Privacy Act (mayors, municipal representatives, etc.).
- In the case of persons making **non-public statements of assets**, the law requiring this does not stipulate the publication of the data of the statement of assets (ordered on the grounds of public interest).
 - A. It follows that these personal data may only be accessed by a body or person authorised to do so by law (the person or body responsible for safeguarding the statements or entitled to conduct an enrichment inquiry or other authority authorised to process the data). Individual request for data on grounds of public interest cannot be performed within this category. These accessibility rules hold for instance in the case of public notaries, prosecutors, bailiffs, government officials in senior positions.
 - B. Finally, the most protected category of the non-public group from the viewpoint of accessibility includes the relatives of the persons subject to the obligation of making statements of assets. Making statements concerning one's financial situation is an obligation not only of persons undertaking public service, but also that of their relatives to some extent. The laws, however, do not qualify these documents as public because family members in this capacity do not discharge public duties, they have to make statements of assets only because of being relatives.

Statements of assets of mayors, deputy mayors and municipal representatives

Every year, NAIH receives a large number of complaints or questions concerning this range of persons, hence a more detailed presentation of the relevant rules is called for.

Pursuant to Section 39(3) of the Municipalities Act *“the statement of assets is recorded and checked by the committee designated for this in the operational and organisational rules*

(hereinafter: committee for the review of statements of assets). With the exception of identification data provided for checking, the statement of assets of the municipal representative shall be accessible on grounds of public interest. Following the submission of the statement of assets of the municipal representative and his/her relative made in the given year, the committee for the review of statements of assets shall return their statement of assets pertaining to the preceding year. The statement of the relative of the municipal representative shall not be accessible, it can only be inspected by members of the committee for the review of statement of assets for the purposes of checking it.”

Furthermore, based on the Municipalities Act the rules concerning the submission of statement of assets shall also apply to the mayor and the deputy mayor, i.e. they have to make statements of assets upon their election and thereafter annually in a way identical with the municipal representatives.

The Asset Declaration Act specifies the duration of processing the personal data in the statement of assets, so that the person responsible for the safekeeping of the statements has to return the copy of the statement of assets held in his custody to the obligee within 8 days from the cessation of the obligation to make a statement of assets or if the obligee made a new statement of assets.

The statements of assets of the mayor, the deputy mayor and the municipal representatives must be made accessible to anyone by way of data request.

Annex 1 to the Privacy Act (General Publication Scheme) currently does not provide for the mandatory publication of the statements of assets of municipal representatives. At the same time, there is no provision that would prohibit municipalities to order the publication of statements of assets in an Individual Publication Scheme. The legal provision referred to fundamentally serves the purpose of allowing anyone to have access to the statements of assets of municipal representatives without limitation. In view of the fact that publication in the Internet enables a simpler enforcement of the citizens' right to information and is in line with the intention of the legislator, this mode of publication is allowed for municipalities but they may make use of this possibility only if the data subjects (the members of the body of representatives) create an Individual Publication Scheme with their active consent.

Statements of assets of committee members who are not representatives

Pursuant to the Municipalities Act, members who are not municipal representatives may also be elected as members of a committee. The rights and obligations of the member who is not a municipal representative are the same as those members who are municipal representatives at the meetings of the committee.

It is important to note that in the course of discharging their duties, the external committee members may be in a position to make recommendations, decisions and carry out investigations identical with those members of the committee who are representatives from which it follows that the non-representative members of the committee are also under an obligation to make statements of assets.

Pursuant to the information provided by the Ministry of the Interior, Section 40 of the Municipalities Act, which sets forth special rules for the external committee members, does not provide expressly for their obligation to make statements of assets and as earlier mentioned, Section 39 of the Act regulating the statement of assets places directly the obligation to make public statement of assets only on the municipal representative, the mayor and the deputy mayor. In the case of committee members, this regulation leads to the deduction that the

representative member of the committee meets his obligation to make a public statement of assets in his capacity as representative and not in relation to being a member of the committee.

The Fundamental Law and the Municipalities Act set forth the fundamental rules of the operation of municipalities. Based on the rules of the Municipalities Act and considering the equal legal treatment of the committee members as set forth in the Act, it can be established that there is an obligation for external committee members to make statements of assets in general, but access to the statement of assets can be excluded. As there are no special provisions in the Municipalities Act to be applied to such a situation, the provisions of Section 3(3) of the Asset Declaration Act should be regarded as governing, which stipulates the obligation for making non-public statement of assets for those in positions of particular significance and discharging such tasks with a view to the integrity of public life even if not being employed in the public sector, for those who would not be under this obligation based on separate legal regulation.

Considering the legal regulations referred to, it can be established that the representative member of the committee is subject to the obligation of making a public statement of assets, while the external committee members are subject to the obligation of making non-public statement of assets.

Representatives of national minority self-governing bodies

Articles 103(1) and (3) of Act CLXXIX of 2011 on the Rights of National Minorities provide only for the accessibility of the statements of assets of representatives in national minority self-governing bodies, but these provisions do not require their publication. Consequently, it can be established that the documents referred to belong to the second category of public statements of assets accessible through request for data in the public interest.

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