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Fees for Providing Information in the Age of Digitalization

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Abstract:

The article examines the principle of transparency as a cornerstone of the rule of law and a deterrent to power misuse. Effective and efficient means must be used to ensure access to government information. However, under EU and Czech law, persons legally bound to provide information are entitled to request reimbursements of their costs. Such fees may be requested in an amount specified by law, namely for excessive information search which usually form the most significant part of the fees charged. Contrarily, the Tromsø Convention does not allow for reimbursement of extensive search. This article investigates whether these fees impede access to information. The Czech Supreme Administrative Court's and Constitutional Court's case law defining the conditions under which reimbursement of costs may be requested is analysed. Further, current administrative practice of ministries and regional authorities is compared, highlighting considerable disparities in their fee schedules. The article scrutinizes the amount of fees collected, which is rather insignificant and posits that the principle of effectiveness, which initially justified these charges, has been superseded in the digital age. The research, which has both national and EU-wide implications, concludes that it would be beneficial to abolish all fees. This recommendation also applies to other countries with a similar approach to information access. The findings of this research offer valuable insights for both the scientific community and practical applications in the field of law.

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Keywords:

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1. Introduction

Public administration transparency contributes substantially to building and maintaining the rule of law and democracy as it helps to prevent abuse of power or other types of illegal conduct. Free access to information is one of the key instruments ensuring adequate transparency and openness if the statutory laws are robust enough, are broadly interpreted by courts, and, last but not least, applied by administrative authorities properly. Several impediments may hinder the final aim of transparency. One might consist in levying fees for providing the requested information in case such fees are excessively high or burdensome in another sense. As delineated in Hamrick's research (Hamrick, 2021, p. 21), the imposition of fees serves as a deterrent for a substantial number of individuals in the pursuit of public records. The legal framework should protect from such hindering fees. However, it is not consistent. Under the provisions of European Union legislation, the decision to pursue reimbursement is delegated to the discretion of the Member States. Contrarily, the Tromsø Convention² does not allow its signatories to impose charges for extensive search.

This paper investigates the role of fees imposed by administrative bodies for information provision, their potential to deter individuals from making information requests, and their consequent effect on transparency. The case of the Czech Republic is used as a representative of Central and East European countries, as similar studies have been carried mainly for the USA. Czech law allows for imposition of commensurate with reimbursement of costs only when several statutory conditions are met. Still, when fees are levied for the extraordinarily extensive information searches as foreseen by law the total cost may in practice amount to significant sums of money. This type of charge was one of the reasons why the Czech Republic is not signatory to the Tromsø Convention. The administrative courts and the Constitutional Court case law provide for a constant restrictive interpretation emphasising that the reimbursement must not discourage the public from searching important information. However, the administrative practice is not consistent.

It can be argued that administrative practice influences the scope of information provided even more than the legal framework and court interpretation. Thus, apart from the relevant case law, the article analyzes and compares data obtained from the Czech ministries and regions and shows significant differences in tariff schedules and fees levied. Such a disparate approach may discourage individuals from requesting

² The Council of Europe Convention on Access to Official Documents (CETS No. 205) entered into force on 1 December 2020 when it reached ten signatories.

information or even inspire public distrust of public administration. Still, administrative practice should be coherent. Moreover, in the digital transformation age, most data should be obtained easily without requiring lengthy manual searches and occupation of the administrative bodies' capacities. The above is also supported by the Constitutional Court's decision requiring the legally bound entities to apply the most efficient search, saving time and money. Considering the total amount of fees levied and the number of requests dealt with, the article argues that it is no longer practical to keep these reimbursements and that the statutory laws should be changed to abolish such fees. Thus, the administrative practice would be unified and accession to the Tromsø Convention opened.

The article first provides a literature review explaining the need for transparency and why fees may hinder it. The methodology and research questions are set out in the third part. The fourth part analyzes the legal framework in international and EU law and Czech statutory laws. The Czech Constitutional Court case law and administrative courts are analyzed to explain how the law is interpreted and applied in practice. The fourth part continues with administrative practice, showing the data collected from regional offices and ministries, including the tariff schedules and the fees collected. The discussion in the fifth part provides arguments on how fees for information provision can evade transparency, the compliance of Czech law with EU standards but not the Tromsø Convention, the judiciary's role in protecting against excessive charges, the fragmented administrative practices, international comparisons, and the overall impact of high fees on transparency. The benefits of digitalization in reducing extensive manual searches are stressed. The conclusion recommends abolishing such fees for broad searches to ensure uniform and effective administrative practices.

2. Literature review

The provision of information is one of the most important means of ensuring sufficient public administration transparency. "Secrecy is a cloak for arbitrariness, inefficiency and corruption" (Addink, 2019, p. 112). Transparency helps legitimize executive power and contributes to achieving accountability in the event of abuse. It allows for public scrutiny of the public expenditures effectiveness, it sheds light on the facts underlying strategic documents preparation, policies and legislation or other measures, thus promoting dialogue regarding their final wording, and finally, it allows for an understanding of the reasons that led to the issuance of individual administrative acts. Transparency, therefore, ultimately serves to ensure honest government (Androniceanu, 2021, p. 153). It helps to build citizens' trust in the executive branch, eliminating the risk of extremist parties gaining public support (Janderová, 2022, p. 104). "Sufficiently extensive, easy and quick public access to information also positively affects citizens' trust in democratic institutions and their willingness to participate in public life (...) Conversely, situations in which the mere act of obtaining background information from the public administration makes it difficult for citizens (...) lead to a

decline in public identification with the political system, to isolationism and a gradual resignation from public affairs” (Korbel, 2005, p. 48). “In all, transparency is now an institutionalized and dominant value of modern society” (Adams, 2020, p. 2). It helps to fulfil general goals such as strengthening democracy, increasing trust in government, exercising individual rights, economic performance, and market functioning (Buijze, 2013, pp. 52-53). “Transparency is a condition in which information about the priorities, intentions, capabilities, and behaviour of powerful organizations is widely available to the global public” (Lord, 2006, p. 5). It is intended to “make working practices that are not immediately visible to those not directly involved available to demonstrate the good functioning of the institution” (Moser, 2001, p.3). In this sense, Meijer (2013) defines transparency as “the availability of information about an actor that allows other actors to observe the operation or performance of another actor” (p. 430).

However, the imposition of fees may become a deterrent for a substantial number of individuals in the pursuit of public records. Ingrams et al. (2023) explain that governments tend to hide information to avoid accountability and fees for providing information can be one of the tools used for this purpose. The cost of requests is difficult to measure. Thus, obscuration of information is made possible. Hamrick decided to categorize the requesters and showed that in the case of Florida, about 15% of requests were in the public interest, non-profit, media, academic and government (Hamrick, 2021, p. 21). She pleads in favour of the state laws being changed in line with the US federal FOIA, which, after its 1974 amendment, stipulates that fees for requests in the public interest should be waived. Cox and Haber (2020) argue that the fees create a hurdle, especially for non-profit organizations (p. 2). They also illustrate the difference in approach by the individual states in the USA, whereby some choose not to charge a fee.

Wagner and Cuillier (2023) show that requesting frequency would indeed increase if fees were eliminated. Private citizens, journalists, academics, and non-profit requesters find excessive fees a more serious problem than commercial requesters and lawyers, which, although not surprising, is problematic (p. 8). Ingrams et al. (2023) summarize reasons for fee abolishment – taxes ultimately fund public information, free flow decreases information asymmetry, and the behavior of citizens requesting the information is unexpected and complex. It is easy to use fees as a transparency avoidance tool, as the cost of a FOI request is particularly difficult to measure.

It needs to be emphasized that the purpose of the reimbursement is not to discourage useless or bullying applications, as it is sometimes argued by the public authorities. Based on the established case law of the administrative courts, and since 2023, under the provisions of Section 11a of the Act on Free Access to Information, it is possible not to process bullying requests. The need to assess the individual situation and the purpose of the request, including the obligation to justify the refusal, entails additional work. However, Lubovský (2019) mentions that the clues to assess whether the right is abused may be the reason for the request or the applicant’s implicit intention

to obtain information for a purpose contrary to the law.

Another argument favoring fees is that seeking information in printed documents may be time-consuming, and the obliged entities should not suffer these costs. As understood by the Czech administrative practice, the requirement to be practical is based on the legal requirement that public property be used economically. The obliged entity cannot act arbitrarily in claiming compensation (Furek et al., 2016, p. 1000), leading to the wish of administrative bodies to seek reimbursement covering the cost of time spent by excessive search. However, the principle of effectiveness could be interpreted in a slightly different way. Effectiveness and efficiency in the public sector mean that the required services are provided with the utmost quality, reaching the policy goal and at the least cost (Addink, 2019, p. 145). Also, the Czech doctrine explains the meaning of the principle in such a way that the means to be chosen by the administrative authority to ensure that the procedure is economical, efficient and leads to the desired objective (Černín, 2019, p. 128). As the desired objective lies in the broad provision of information securing transparency, the requirement of the reimbursement fees is at least debatable.

Nevertheless, the recent social development may solve the effectiveness argument. The trend of digital transformation of public administration is much more favorable to the increased availability of public administration data (Todorovski & Vintar, 2021, p. 515). Digitization is not a goal in itself; it is a means of achieving other goals and particular population needs (Androniceanu et al., 2022, p. 12). It helps the public's openness, accountability, and overall participation in administrative processes. The emergence of cloud computing means that data may be collected and become available on demand. E-government and technological development of public administration help develop the concept of open government (Todorovski & Vintar, 2021, p. 515). Digitalization contributes to increased performance and efficiency in the public sector and significantly influences the quality of public services (Androniceanu & Georgescu, 2023, p.8). Indeed, it is a way to increase the effectiveness and efficiency of public administration. Androniceanu and Georgescu (2023) shows that the Czech Republic, unfortunately, belongs to the group of European countries that still have room for improvement with a digital gap between them and the developed economies. However, the trend has been set, and the number of created databases is increasing. It can be inferred that digitalization could potentially be a solution to overcoming the economic obstacles to transparency caused by reimbursement fees.

While the fee scenario in the USA and Western European democracies has been the subject of at least some studies, the influence of such fees in Central European countries remains largely unexplored. In their scholarly monograph, "The Laws of Transparency in Action: A European Perspective," Dragos and colleagues offer a comprehensive analysis of the operation of public information access, its codification in Freedom of Information Acts (FOIAs), and its pragmatic execution across various European Union administrative justice systems, all within the overarching framework

of European Union law. Nevertheless, the subject of associated costs was not the primary focus of their investigation. This opens a research avenue to explore how fees impact transparency in EU administrative justice systems. Understanding this could enhance public information accessibility and system accountability.

3. Methodology

The article examines the significance of fees for providing information levied by administrative bodies, their potential to discourage from filing information requests, and finally, their impact on transparency. Such studies have been carried out for the USA but not for the Central European area. The Czech Republic serves as a case study for the purposes of this article. It can be argued that the approach to access to information may be similar in other Central European and East European countries, and the research results may also be used by policymakers in these countries.

The research questions are as follows:

1. Does Czech law, particularly its judicial interpretation, safeguard against the imposition of excessively high or burdensome fees for providing requested information?
2. To what extent is the administrative practice of levying fees standardized (thanks to the case law)?
3. Could any of the fees charged potentially deter requesters from seeking information?
4. If the practice of collecting fees has the potential to deter requesters and thus to impact transparency, what are the possible solutions to improve the existing administrative practice?

The research is based on an inductive framework combined with an empirical framework. Thus, the research uses both qualitative and quantitative methods. Several different methods were applied that were relevant to the purposes of the qualitative part. First, a comprehensive overview of the principle of transparency and fees for providing information is carried out through a literature review and using a normative-analytical method. The author systematically analyzes the EU legislation, the Act on Free Access to Information, and relevant clauses concerning reimbursement of costs.

Furthermore, the article analyses the limits set by the case law of the administrative courts and the Constitutional Court to determine the conditions under which such reimbursement can be requested to ensure that access to information is not unnecessarily limited. Administrative courts' role in protecting the right to access information is extremely important, as they interpret unclear statutory law provisions such as those allowing the administrative bodies to require only reimbursement of costs in a reasonable amount. The courts' decisions are usually based on their desire to preserve this fundamental right as much as possible (Kadečka et al., 2019, p. 473). This

analysis aims to determine the EU and national law requirements so that the fees do not obstruct transparency, how the courts set the appropriate level of payments, what their legal nature is, and the impact of this nature in practice.

Secondly, for the quantitative part of the research, the author uses data gathered from the ministries and regional offices regarding the applications for information dealt with by these administrative authorities in 2016-2020. These data were obtained through individual requests addressed to these administrative bodies concerning the number of applications, the number of requests complied with, and finally, the level of reimbursement. Furthermore, the tariff schedules of these administrative authorities, which they publish on their official boards, i.e., also on their websites, are analyzed.

All Czech regional authorities and ministries were selected for this analysis and subsequent comparison. These were chosen from among the administrative authorities to identify the practice of comparable authorities so that the sample would be sufficiently large and indicative of administrative practice in the Czech Republic. At the same time, the authorities operating at the national and regional levels were selected to obtain data on the functioning of regional administrative authorities throughout the country. The data were collected from the administrative authorities' websites and upon individual requests.

4. Results

4.1 Analysis of legal framework - fees for providing information under international and EU law

The legal analysis needs to start with the international law. The Council of Europe Convention on Access to Official Documents, Tromsø, 18 June 2009, is the first binding international legal instrument to recognise the right of everyone to access official documents held by public authorities. The Convention is seen as a significant step towards greater transparency, good governance, and participatory democracy, and it facilitates the exercise of other human rights and fundamental freedoms. The Czech Republic has not yet signed and ratified it. However, most of the requirements regulated by this Convention are already covered in the statutory laws – namely in the Act No. 106/1999 Coll., on Free Access to Information, as amended (from now on, the “Act” only). For this article, it is vital to note that the Convention does not allow the signatories to levy fees for extraordinarily extensive information searches. Therefore, such a fee must either be deleted from the Act or the Czech Republic must make a reservation (Furek et al., 2016, p. 10).

The EU regulation is more complex and covers access to information produced by EU institutions and documents produced by national authorities. Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast), already transposed into Czech law

by the Act, limits fees to the marginal costs incurred in reproducing, disclosing, and disseminating information (Article 6), while stipulating that the fees should be transparent (Article 7). The total revenue from the provision and authorisation of the re-use of documents over an appropriate accounting period must not exceed the costs of collecting, creating, reproducing, disseminating, and storing the data, considering a reasonable return on investment, as well as any anonymisation of personal data and any measures taken to protect confidential business information. Documents should be made available for re-use, in principle, without charge and, where necessary, such charges should, in principle, be limited to marginal costs.

Levying fees for extraordinarily extensive searches for information is perceived in the Czech Republic as subsumed under ‘disclosure’ of information. According to point 36 of the Directive, where “public sector bodies carry out exceptionally extensive searches for requested information or exceptionally costly changes to the format of requested information, either voluntarily or as required by national law, the marginal costs may cover the costs associated with these activities.”

At the same time, the preamble to the Directive (point 39) states that the fee cap set by the Directive is without prejudice to Member States’ right to levy lower or no fees.

It is also foreseen that obliged entities must cover the costs of their activities. “The requirement to generate revenue from which public sector bodies cover a substantial part of their costs relating to the performance of their public tasks or the range of public interest services entrusted to public undertakings is not necessarily laid down by law but may result, for example, from administrative practice in the Member States. Such a requirement should be kept under regular review by Member States” (Preamble to the Directive, paragraph 36). In summary, EU law favours the free provision of information, but recognises the need for Member States to cover the costs of searching. In this respect, the Czech legislation is in line with European legislation. During the amendment of the Act, in the context of the comment procedure, specific objections were raised precisely regarding the compatibility of payment for exceptionally extensive searches for information. In the end, however, the prevailing view was that it could be subsumed under the cost of ‘making information available’ in the sense that the EU Directive uses the term, and this conclusion can be accepted. However, on 11 September 2023, a reference for a preliminary ruling was published in the Official Journal of the European Union by the Visoki upravni sud Republike Hrvatske (Croatia) on 26 May 2023 (Case C-336/23, HP - Hrvatska pošta). The preliminary question seeks clarification of the notion of ‘re-use of information’ within the meaning of Article 2(11) of the Directive. However, it is accompanied by related questions relating to the definition of the obliged entities and exemptions. It is, therefore, possible that at least the obiter dictum, the CJEU will also address the definition of what costs can be claimed, and then the binding interpretation of the concept used in the Directive will make things more transparent.

4.2 Analysis of the legal framework - fees for providing information under Czech law

The Czech FOIA imposes a double obligation on administrative authorities—to actively publish certain information and to respond to requests for information. However, the proactive part is often worded as quite general, which leads to a quite limited publicity obligation. The right to submit an information request then plays a significant role. The law requires providing all available information except for some exemptions, e.g., all budget information may be obtained through a request (Sedmířadská, 2015, p. 604). However, these broad transparency requirements may be limited due to applicable charges.

The entity legally bound to provide information is entitled to claim the reasonably incurred costs from the person requesting information. Under the provisions of Section 17 of the Act³, this reimbursement may not exceed the following costs: the making of copies, the measures of technical data carriers and the costs associated with sending the information to the applicant; and the costs associated with an exceptionally extensive search for information. The details are set out in implementing regulation⁴. The legally bound entity must publish its tariff schedule. Its publication is a condition for eligibility for reimbursement. However, the regulation foresees that the tariff schedule might set (a) an amount up to which the applicant shall not be required to pay the costs incurred based on a single information request and (b) other cases in which the applicant will not be required to reimburse costs incurred based on a single request.

When the legally bound entity requires reimbursement of the information costs, it shall notify the applicant in writing of this fact, together with the amount of the payment, before providing the information. The notification shall clarify on what basis and how the fee has been calculated. The notification shall include an indication of the possibility of lodging a complaint against the request for payment of the reimbursement. Should the legally bound entity fail to comply with its notification duty, it loses its right to reimbursement, and the applicant shall be provided the requested information for free.

The exact level of reimbursement must be calculated based on rates pre-determined in the published tariff schedule. The Constitutional Court ruled in its judgment file No. I. ÚS 1083/16 (Czech Constitutional Court, 2019), that the legally bound entity must notify the determined reimbursement in writing within the time limit set for processing the request (i.e., 15 days), under the sanction of losing the right to reimbursement. The notification must contain, among other things, the amount of the reimbursement determined and the grounds based on which facts and how the amount was calculated.

3 Act No. 106/1999 Coll., on Free Access to Information, as amended

4 Government Regulation No. 173/2006 Coll., on Principles for Determining Fees and Royalties for the Provision of Information under the Free Access to Information Act

The cost of paper copies or CDs is usually not too high, although sending the information electronically via e-mail saves even these costs. A relatively high reimbursement may be calculated for the so-called exceptionally extensive information search. However, the exceptionally extensive search for information is a vague legal concept - the legally bound entity must assess in the context of the specific factual circumstances whether the specific factual situation can be classified within the scope of this vague legal concept. It follows from the judgment of the Supreme Administrative Court file No. 6 As 326/2016-32 (Supreme Administrative Court, 2017) that the court must be able to examine whether the interpretation and application of the vague legal concept by the administrative authority as per the law, what grounds the administrative authority has gathered for its decision, whether it has done so to the extent that it has been able to decide the matter correctly, and whether its findings are not logically inconsistent with those grounds. When calculating the exact reimbursement level, it is necessary to justify on what basis the administrative authority concluded that the case involved an exceptionally extensive search for information.

As a rule, therefore, it will be an exceptionally extensive search if the legally bound entity must allocate a staff member who then has to extract information from the individual files, which they must manually go through. As it follows from the judgment of the Supreme Administrative Court file No. 8 As 244/2018, it is only in the case “where the internal information system of the obliged entity does not allow to search for the requested information (decision) based on a specific criterion [...] the search for such information (decisions) in individual files of the obliged entity is especially extensive within the meaning of Section 17(1) of Act No. 106/1999 Coll., on Free Access to Information.”

Since the applicant can decide, after they have become familiar with the requested reimbursement, whether they will still require the information even under this condition (i.e., whether they will be willing to pay), it would not be efficient to seek all the information first and determine the amount of the reimbursement according to the actual effort. A qualified estimate is sufficient to determine the amount, as is also apparent, for example, from the Constitutional Court's ruling in case No I. ÚS 1083/16 of 21 May 2019 (Czech Constitutional Court, 2019). However, the claimant should be informed of the exact amount and how the legally bound entity determined the amount. The notification must, therefore, describe the procedure for calculating the reimbursement and grounds for the exact amount. The grounds should indicate what individual steps are necessary to find the information and how much time will be required to find the information to the extent that the reasonableness, expediency, and proportionality of the calculation of the fee are reviewable since a complaint may challenge the amount of the fee and later by way of administrative action.

The legally bound entity should seek the most efficient way to search for the information. If it can be obtained as data that the entity records electronically, then it should search the data set by a relatively simple and quick procedure. Therefore, the information will not be searched for ‘manually’, even though such a procedure would

lead to the same result in a disproportionately more prolonged time. If, however, the entity does not do so cost-effectively, it should bear the costs and charge the applicant only that part of the reimbursement related to the most cost-effective procedure. In this respect, the judgment of the Supreme Administrative Court of 21 June 2017, file No. 6 As 326/2016-32 (Supreme Administrative Court, 2017), may be cited: "...if, however, the search for information took disproportionately longer than was objectively necessary to find the information, and only because of the manifestly inappropriate procedure of the legally bound entity, this fact cannot be blamed on the applicant for information. In other words, the reimbursement of an exceptionally extensive search cost must also be reasonable. The applicant cannot be required fairly to pay for the activities of the legally bound entity which clearly go beyond what is objectively necessary to obtain and provide the information."

Most recently, the Constitutional Court reached a similar conclusion in its ruling of 29 June 2021, case No. III ÚS 3339/20 (Czech Constitutional Court, 2021), which dealt with the case of a journalist who had asked the Police of the Czech Republic to provide a list of data on all crimes recorded in the five years preceding the request, requesting a series of data for each crime. The police found that dealing with the request would involve an exceptionally extensive search for information. Therefore, based on section 17 of the Act, a qualified estimate of almost CZK 26 million (a sum slightly exceeding EUR 1 million) was made. The Constitutional Court found that the police had unjustifiably chosen the most complex possible method of processing the request, claiming that they had to search every detail manually and estimating that they would need four minutes for each crime. Thus, the Constitutional Court found this payment determination procedure unreviewable and highly irrational. "The frustration of information seekers when they are subjected to unlawful and, in effect, unconstitutional practices of a public agency, without then obtaining redress at least in the administrative justice system, subsequently becomes a source of distrust and unnecessary tension in society toward this public agency." The Constitutional Court, therefore, concluded that, given the requirements of Article 4 par. 4 of the Czech Charter of Fundamental Rights and Freedoms, care must be taken to examine the justification for setting a fee for the provision of information not only in terms of its amount but also in terms of its effectiveness and rationality.

In fact, the legally bound entity should look for ways to comply with the request as much as possible instead of creating reasons that would prevent compliance. Where it is clear that information can be obtained with disproportionate ease if, for example, an applicant waives a requirement for one sub-aspect that is not generally monitored by the legally bound entity or if the structure of the information report devised by the applicant is slightly altered, the legally bound entity should bring this to the applicant's attention and discuss with the applicant whether the altered format would be a satisfactory solution for the applicant. Often, the applicant does not know the internal processes of the legally bound entity and how it handles data. Therefore, they often just try to define their idea, which must not necessarily be dogmatic and can be modified in

a reasonable discussion. The Supreme Administrative Court also stated the above in its judgment file No. 8 As 244/2018-82, dated 14 November 2019 (Supreme Administrative Court, 2019): "...a request for information is not meant to be a game of blind faith between the applicant and the legally bound entity. Suppose the applicant for information requires a certain type of information, which, although the legally bound entity does not have exactly, it has information like that requested by the applicant. In that case, it should communicate this to the applicant so that the applicant can modify his/her request if necessary." (Similarly, the judgment of the Supreme Administrative Court file No. 9 As 257/2017-46 (Supreme Administrative Court, 2018).

4.3 Administrative practice

If we analyze the practical amount of payment for the exceptionally extensive provision of the information set out in the tariff schedules as an hourly rate, we can find a relatively large dispersion of fee amounts. The above is true even among administrative bodies on equal levels in the public administration organizational structure. Thus, as shown in Table 1 comparing all ministries, we can find a range from CZK 200 per hour for searches (Ministry of Justice and Ministry of Transport) through the middle values of CZK 251 per hour (Ministry of the Interior, Ministry of Culture), CZK 260 per hour (Ministry of the Environment), up to CZK 370 per hour in the case of the Ministry of Finance and even up to CZK 500 per hour in the case of the Ministry of Industry and Trade.

Table 1:

Fees for providing information according to the ministerial tariff schedules.

Ministries	Reimbursement for exceptionally extensive information retrieval/ CZK	Costs of A4 copies/CZK	Costs of technical data media storage – CD/CZK
Ministry of Interior	251.00	1.50	6.00
Ministry of Labour and Social Affairs	235.00	2.00	8.00
Ministry of Regional Development	300.00	2.00	10.00
Ministry of Health	350.00	3.00	10.00
Ministry of Finance	370.00	2.00	8.50
Ministry of Defence	290.00	2.10	7.00
Ministry of Justice	200.00	2.00	10.00
Ministry of Foreign Affairs	235.00	1.50	6.00
Ministry of Industry and Trade	500.00	1.00	20.00
Ministry of Transport	200.00	2.00	20.00
Ministry of Education, Youth and Sports	302.00	1.00	10.00
Ministry of Agriculture	300.00	2.00	10.00
Ministry of Environment	260.00	1.08	5.93
Ministry of Culture	251.00	1.50	15.00

Source: web pages of all 14 ministries

Similarly, in the case of the regions as shown in Table 2, there is a variance from CZK 100 per hour in the case of the Karlovy Vary Region to CZK 200 per hour in the

case of the Pardubice and Hradec Králové Regions, CZK 242 per hour in the case of the Olomouc and Moravian-Silesian Regions, CZK 300 per hour in the case of the Zlín Region, and even CZK 390 per hour in the case of the Vysočina Region. The City of Prague can then demand CZK 250 per hour of searching according to the fee schedule.

Table 2:
Fees for providing information according to the regional tariff schedules

Region/ capital city	Reimbursement for exceptionally extensive information retrieval/ CZK	Costs of A4 copies/ CZK	Costs of technical data media storage – CD/ CZK
Capital City of Prague	250.00	2.00	6.00
Central Bohemia	198.00	1.50	6.00
South Bohemia	250.00	2.00	20.00
Pilsen	260.00	3.00	8.00
Karlovarský	100.00	2.00	50.00
Ústí nad Labem	113.00	1.60	8.00
Liberec	202.00	2.00	according to current prices
Kralovehradecký	200.00	3.00	18.00
Pardubice	200.00	1.00	10.00 – 30.00
Vysočina	390.00	1.50	6.00
South Moravian	324.00	0.50	6.10
Zlínský	300.00	1.00	8.00
Olomouc	242.00	0.70	4.80
Moravian-Silesian	242.00	0.50	5.00

Source: web pages of all 13 regions and the capital city, Prague

The total number of requests for information sent to individual ministries and regions annually is in the lower hundreds, as shown in Tables 3 and 4. The proportion of rejected applications varies considerably, but more are always complied with. The demand for information from the public is relatively stable, and administrative practice has been established; thus, the workload of administrative authorities related to information requests is predictable throughout the year.

Table 3:

Number of requests for providing information complied with and rejected by the ministries

	REQUESTS COMPLIED WITH					REJECTED REQUESTS				
Ministries	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020
Ministry of Interior	363	255	334	241	250	45	55	60	45	37
Ministry of Labour and Social Affairs	187	209	199	214	216	43	48	37	13	19
Ministry of Regional Development	196	190	146	108	115	6	5	9	7	10
Ministry of Health	183	206	213	176	457	35	45	47	39	163
Ministry of Finance	284	294	227	256	215	87	116	119	81	86
Ministry of Defence	109	148	268	230	210	19	14	29	20	23
Ministry of Justice	721	546	558	503	504	11	11	7	4	4
Ministry of Foreign Affairs	96	126	130	145	134	21	22	14	32	14
Ministry of Industry and Trade	120	154	203	225	215	92	62	27	7	17
Ministry of Transport	308	240	301	383	327	73	57	45	65	41
Ministry of Education, Youth and Sports	446	232	167	171	133	24	27	16	22	14
Ministry of Agriculture	147	176	160	154	145	10	14	16	27	14
Ministry of Environment	80	120	127	93	112	35	36	36	33	30
Ministry of Culture	129	152	110	180	128	7	11	7	13	14

Source: information provided upon request by all 14 ministries

Table 4:

Number of requests for providing information complied with and rejected by the regions /capital city

	REQUESTS COMPLIED WITH					REJECTED REQUESTS				
Regions / capital city	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020
Capital City of Prague	402	387	417	583	566	62	377	130	170	138
Central Bohemia	214	170	249	263	248	20	16	46	42	33
South Bohemia	114	107	97	99	131	8	7	11	11	13
Pilsen	70	64	76	56	84	33	24	20	21	19
Karlovarský	68	68	89	82	110	1	10	3	6	2
Ústí nad Labem	98	114	117	117	128	18	37	21	29	80
Liberec	82	59	58	78	73	5	7	19	3	6
Kralovehradecký	192	106	152	87	116	8	16	8	14	2
Pardubice	94	64	80	65	94	7	14	10	8	4
Vysočina	71	130	78	49	77	19	17	8	25	22
South Moravian	171	118	112	137	103	139	93	79	139	145
Zlínský	114	76	79	97	117	26	13	20	18	22
Olomouc	120	140	98	129	119	26	12	21	24	20
Moravian-Silesian	131	127	149	119	136	28	32	38	34	16

Source: information provided upon request by all regions and the capital city, Prague

Secondly, it is appropriate to analyze whether the total fees collected are of such an amount that waiving collection would have any impact on the cost-effectiveness of public administration. As shown in Table 5, the total annual collection of reimbursements for the regions is in the order of thousands of CZK, except for the Liberec Region, which reports CZK 96,000 for 2020, while many report a net zero. At the ministries, the situation is similar, as shown in Table 6, the annual number of applications submitted is most often below 300 (except the Ministry of Health in 2020 when it reports a total of 620 applications), rejected applications are in the units or lower tens, the highest amount collected in reimbursements in the period 2016-2020 is reported by the Ministry of Interior at the level of 69,000CZK in 2017, and above 60,000 CZK only once by the Ministry of Defence. It can, therefore, be summarized that the amounts collected are negligible concerning the budgets of the individual administrations analyzed.

Table 5:
Total actual reimbursements for providing information by ministries in CZK by years

MINISTRIES	2016	2017	2018	2019	2020
Ministry of Interior	44 925	69 489	753	0	0
Ministry of Labour and Social Affairs	0	1 644	25 410	16 023	6 815
Ministry of Regional Development	0	1 200	0	1 500	0
Ministry of Health	10 600	2 000	23 200	7 700	5 250
Ministry of Finance	10 212	6 904	2 800	30 402	22 920
Ministry of Defence	49 120	59 111	61 540	24 594	9 837
Ministry of Justice	45 200	17 750	33 940	4 850	1 200
Ministry of Foreign Affairs	0	0	0	0	0
Ministry of Industry and Trade	18 500	9 500	11 500	26 500	5 000
Ministry of Transport	1 400	3 200	12 800	33 513	3 800
Ministry of Education, Youth and Sports	10 721	14 647	17 214	0	3 020
Ministry of Agriculture	1 151	1 953	3 222	1 894	0
Ministry of Environment	5 751	0	0	0	2 405
Ministry of Culture	0	112	5 020	753	0

Source: information provided upon request by all 14 ministries

Table 6:

Total actual reimbursements for providing information by regions in CZK by years

REGION/ CAPITAL CITY	2016	2017	2018	2019	2020
Capital City of Prague	17 738	33 699	8 417	9 545	20 020
Central Bohemia	3 762	115 957	0	28 710	26 400
South Bohemia	0	0	0	0	0
Pilsen	0	0	0	0	0
Karlovarský	0	0	0	1 300	0
Ústí nad Labem	0	0	1 921	1 792	1 582
Liberec	16 237	367 348	11 037	45 286	96 169
Kralovehradecký	2 224	253	294	5 108	0
Pardubice	0	9 720	0	3 351	203
Vysočina	0	6 003	0	0	14 435
South Moravian	8 603	7 051	5 803	1 705	20 684
Zlínský	3 800	0	907	0	0
Olomouc	0	0	233	4 300	0
Moravian-Silesian	0	0	0	0	0

Source: information provided upon request by all regions and the capital city, Prague

By comparing data relating to the level of payment for exceptionally extensive searches within each of the two groups and between them, it was found that administrative practice needs to be more consistent.

5. Discussion

The literature review revealed that fees can readily serve as a mechanism to evade transparency, given the inherent challenge of quantifying the cost of a request. The Czech law analysis showed that it allows for levying fees for providing the requested information under certain conditions to the extent that these reimburse the costs of the legally bound entities. Therefore, it complies with the requirements of the EU. However, the Tromsø Convention does not allow for reimbursement of extensive search costs, which is a predominant reason for the Czech Republic not being one of its signatories. The analysis of case law affirms the courts' consistent rulings, interpreting the right to request reimbursement in a rather restrictive manner.

Moreover, the legally bound entity should strive to fulfill the request to the greatest extent possible rather than devising justifications that hinder compliance. Hence, it can be inferred that the judiciary safeguards individuals from being levied with disproportionate or onerous charges for acquiring requested information. However, this stringent protection is only extended when an individual's rights have been demonstrably compromised, as the courts do not appear to exert the necessary pre-

emptive influence. The administrative practice is highly fragmented regarding the scheduled fees and the amounts collected in practice, as follows from the collected data. Thus, the case law is unable to unify the administrative practice. The notable discrepancies in tariff schedules arise from the complexity of determining the unit price, as the hourly rate calculation can vary significantly. Authorities may incorporate various factors into the costs that influence the hourly rate.

Consequently, the data analysis in the Czech case corroborates previous studies (Ingrams et al., 2023), which found that the cost of an FOI request is particularly challenging to quantify. Despite established case law emphasizing that reimbursement should not deter applicants, the ambiguity surrounding the actual cost can be exploited to impose fees as a means of avoidance. Indeed, public authorities sometimes argue that such fees are necessary to protect them against frivolous or vexatious requests. It has been shown above that the law allows for the rejection of such requests. However, the decision to reject a request still needs to be well-reasoned. There is always a possibility of appeal and a court review later, which require the public authorities' further attention and efforts. Therefore, it is preferable if the requester is deterred from their intention from the outset.

Providing information is a public service. Previous research on the correlation between service costs and citizen satisfaction has yielded inconsistent results. Some claim that introducing costs for an individual may mean better satisfaction as the individual expects better quality (Warner & Hefetz, 2008). Some researchers argue that citizens approach public services with inherent quality expectations, regardless of whether these services are free or fee-based, and that services with fees may be rated poorly (Van Ryzin & Immerwahr, 2007). However, these studies primarily focus on established Western democracies. It can be contended that Central and Eastern European countries, with their history of free service provision, may have citizen expectations aligning more closely with the second study's findings. This article does not examine citizen perceptions directly.

Nevertheless, to foster public trust, it is crucial that fees are perceived as fair. The research indicates that the fairness of these fees is, at best, questionable. The requesters should be equal, and the service price should not differ for a requester seeking information about their region, depending on which region they live in. Thus, the reimbursement level should not differ depending on which authority the request for information is sent to. It is difficult to find any justification for such fundamental differences in administrative practice. The public may feel a certain embarrassment, if not outright distrust, of the public administration. It can be argued that where the scheduled fees are higher, especially in the case of extensive searches, it may deter the public from requesting information and, in turn, negatively affect the transparency of public administration. The number of requests is not excessively high. This study is limited as data on the number of individuals who have decided not to claim information due to the potential cost are unavailable. Furthermore, the categories of requesters

dividing them into groups searching for information for public or private interest was not carried out for the same reason. The above can be conducted in further research.

This finding of tariff schedule fragmentation is due to the statutory concept of reimbursement as a private-law payment that each obliged entity can claim based on the rates it publishes. Setting a unified set of fees by a single tariff issued, for example, by government decree, could thus be a solution to this fragmentation. Nevertheless, the possibility of not charging fees would be even more favorable to public administration transparency. Providing information does not entail high financial burdens for the public authorities. In some European legislations, including Switzerland and Germany, non-commercial requests are typically made exempt from fees in most situations. Also, requesting documents from the EU Commission is without any charges covering costs. The research above has shown that the principle of effectiveness and efficiency often claimed by public authorities charging fees would not be violated. The solution taken by some USA states not to charge fees for searches upon requests in the public interest does not seem reasonable for the Central European space. Although the study did not show the number of private businesses seeking information, it can be expected that they will be significantly lower compared to the group acting in the public interest.

As the digitalization of public administration progresses, there will be fewer situations in which information needs to be searched manually and, thus, fewer exceptionally extensive searches. An efficient information search is one that is done by electronic means, does not require extensive manual searches and saves public administration and citizens' resources. If the state has some gaps in digitalization, it should work hard to address them, and the public should not bear the negative consequences of delays.

Providing information free of charge could convince obliged entities to increase their efforts to keep all data electronically. Even when the public budgets are stretched, the data analyzed above proved that total collected fees are so insignificant that they cannot be improved. The fact mentioned above of the absence of such a fee in the Tromsø Convention also adds to the set of arguments in favor of the conclusion to abolish the payment for exceptionally extensive searches. It can be inferred that digitalization could potentially be a solution to overcoming the economic obstacles to transparency caused by reimbursement fees.

Even though the data have been collected from the Czech Republic, the results may be generalized for other Central and East European Countries with a similar digitalization progress and approach to free access to information.

It needs to be added that the research design and conclusions of this study have several limitations. Firstly, the study lacks data on individuals who decided not to request information due to potential costs, which restricts a comprehensive understanding of the deterrent effect of fees. Additionally, the research did not categorize requesters by public or private interest, which could have provided more nuanced insights into how different groups are affected by fees. This categorization

could be addressed in follow-up research to enhance the understanding of the impact of fees on various requester groups. Also, public officials' viewpoints could help clarify whether they would find the proposed change of current practice feasible. All these limitations leave space for further research. Another potential weakness is the generalizability of the findings. While the study suggests that its conclusions could be applied to other Central and Eastern European countries, the specific legal and administrative contexts of these countries might differ, potentially limiting the applicability of the results. These differences would have to be studied first.

6. Conclusions

This article explored the impact of fees for information requests on the transparency and openness of public administration, using the Czech Republic as a case study. The findings, which may apply to other countries with similar laws and administrative practices, were derived from qualitative and quantitative analyses of the legal framework, case law, and administrative practices related to charging fees for information access. The qualitative analysis highlighted that proactive and free provision of information is essential for ensuring transparency, a cornerstone of democratic governance. It also revealed that while both EU and Czech laws permit fees to cover costs, the Tromsø Convention prohibits fees for extensive searches. The analysis argued that such fees could deter the public from seeking information, undermining transparency. The quantitative analysis uncovered significant discrepancies and inconsistencies in the tariff schedules and fees imposed by various Czech ministries and regions. This inconsistency could erode public trust in the executive branch and the state as the requesters are unequal and may perceive the differences as unfair to them.

Additionally, the analysis showed that the fees collected are neither substantial nor crucial for the authorities' financing, suggesting that most data are electronically stored and easily accessible without the need for manual searches. Based on these findings, the article recommended abolishing fees for comprehensive information searches, deeming them unnecessary and ineffective. It argued that such fees could hinder transparency and openness in public administration and called for uniform administrative practices. The article also suggested that these results could be generalized to other Central and Eastern European countries with similar levels of digitalization and approaches to free access to information. The article's contribution to theory lies in demonstrating how fee structures can impact transparency and public trust, while the policy recommendation to abolish fees for broad searches aims to enhance uniformity and effectiveness in administrative practices.

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