

# **Emergence of public information commissioners in Europe. Ombudsman of a new type or special appeal bodies?**

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## **Abstract**

Access to public information, transparency and openness of the public administration became one of the main pillars of democratic governance. For past decades, the legislative requirements in this matter have expanded internationally. The catalogs of information to be disclosed proactively by public bodies have been developed. Protection of citizens' right to information has been fostered by procedural safeguards, in particular the right to appeal the refusal of access to information. Several comparative reviews and international rankings have been launched in order to set intentional benchmarks and enhance the reforms in this area (e.g.: Open Data Index, Global Right to Information Rating, OECD's OURData Index).

Another dimension of this growing interest and commitment towards transparency is the emergence of specialized bodies providing independent oversight in this area. For the purposes of this study, these bodies are labeled as public information commissioners (PIC), though the title, organizational setup, scope of independence and mandate may differ considerably across the countries. Such bodies have been established in e.g. Australia, Canada, or India. In Europe, the 2009 Council of Europe Convention on Access to Official Documents (Tromsø Convention), as the only international treaty dedicated to transparency and freedom of information issues, explicitly provides for an option to create such an independent and impartial body as an alternative to judicial review of acts refusing access to public information. Already prior to the adoption of the Tromsø Convention, several European countries set up PICs and provided them with various functions in the area of freedom of information, ranging from considering remedies against refusals of access to information to monitoring, advice and awareness-raising functions.

This article provides the review of this type of institution in the Member States of the Council of Europe, based on the review of relevant national legislation. The main objective of this article is to map European PICs and capture the essential characteristics of these institutions, in particular the organizational setup, mandate and powers. The major research question relates to the nature of the European PICs, i.e. whether it is one of the numerous thematic (specialized) Ombudsman Institutions or rather a special type of administrative appeal body providing a non-judicial or pre-judicial review of administrative actions in individual cases regarding access to public information. Review is based on the legal analysis of a set of basic parameters included into legislation regulating each institution. This review will fill in an important gap in the current research that focused solely on analysis of the individual PICs or small groups of them.