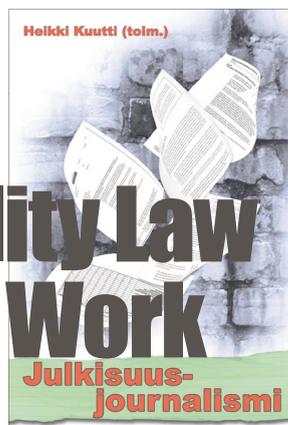


The Accessibility Law in Journalists' Work

HEIKKI KUUTTI



This chapter is based on a paper presented at the international conference “Journalism Research in the Public Interest” 19-21 November 2009, Zurich, Switzerland. The paper is relating to a two-year project *Exploitation of Official Material in Journalism* carried out at the University of Jyväskylä and financed by *Helsingin Sanomat Foundation*. The aim of the project is to explore the possibilities of expanding the use of government files and other documents in journalism (1).

The importance of official material in journalism

One of the prime tasks of journalism is to monitor and evaluate the actions of government and other power holders. This can be achieved mainly through the access of official files produced or received by authorities: paper documents, pictures, records, register entries etc. Information may be a particular part of a document, a document as whole or a collection of documents regarding a certain issue. Similarly, public information may be an entry to a register or a register as a whole (as a collection of entries).

Although documents may uncover important issues in the context of journalism, the use of documents could be more prominent in editorial work. Obtaining documents may be too time consuming, docu-

ments may be - or they may be considered to be - non-public and interpreting the bureaucratic language of documents may be difficult.

Instead of written sources the use of human sources and interviews may be more tempting to journalists. In addition to these two information gathering techniques some journalists also use (especially in investigative journalism) observation methods.

Document-based sources are extremely useful in journalism. They may consist of (indirect) information, interpretations, references and checking material for other information. In addition, they can reveal hidden connections between various topics. Officially, the work of authorities, like decisions, requires that it must be documented somewhere. Usually this kind of documentation includes background information of the issue and reveals justification, reasoning and motivation for the decision. The same information may be located in more than one place, information may be relatively detailed and refer to other interesting documents. When archived, the age of the information is not an issue for re-use.

Information in documents has been created separate to journal-

TYPE OF INFO	ADVANTAGES	DISADVANTAGES
document	official character, long life time, nonjournalistic purpose of archiving information	defects, purpose orientations, formats, exclusions in content
human source	in many cases the only source available, interpretation of information, assistance in finding information	exclusions in the memory based info, inaccurate interpretations, personal motives for revealing or hiding information
observation	personal and first hand connection, detailed and fruitful depictions	prescriptive effect to presumptions, inaccurate interpretations and generalizations, concentration on misleading issues

Information sources in journalism. Advantages and disadvantages of the three major methods of information gathering in journalism.

ists´ interests and therefore does not include any intentional PR value, which may be contained in interviews or in official notices. Documents are important especially in investigative journalism when making possible low-profile starts to investigations.

Due to their official status, documents are convenient as journalistic sources. Authorities have a certain obligation to register important information and prepare official documents - truthfully. Because of their material and print permanence, documents neither forget nor misremember matters they deal with nor “change their minds”, in the way that human sources do. Additionally, documents and memos are usually created simultaneous to the events they relate to.

On the other hand, information in the documents may have insufficient content, cover only certain parts of the events and may be recorded in a truncated format or space. Matters in the documents are not necessarily discussed according to their real names (i.e. they are coded) and therefore the contents may be confusing to an external reader.

The author of the document may have a hidden agenda to prepare the document in a certain way. For instance, some information or details of it may be missing in the final version of the document.

However, journalistic information gathering cannot rely only on documents. Documents require at least one human source for explanations and interpretations of content.

The role of computer assisted reporting

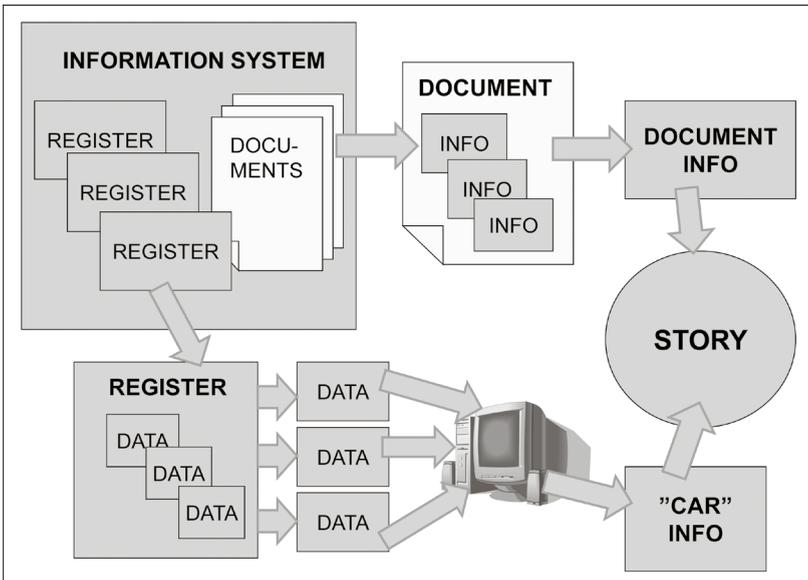
Information management technologies have created a new approach to journalism called *computer assisted reporting*, CAR. This new working method consists of analyzing large databases by spreadsheets or database software programs. Information data may be searched, categorized, arranged, counted, compared and cross indexed rapidly and precisely.

Information created this way gives journalists “new horizons” in their work. CAR enables journalists to build new kinds of entities and to see the broader patterns of the covered topics. With CAR journalists

can uncover the connections and reasons to seemingly separate issues which could not be revealed only on the basis of individual data. CAR abolishes the monopoly of authorities to register data and to deliver information only in certain small bytes. The expertise of journalists increases when they are no longer dependent on interpretations by the authorities but can do their own interpretations.

However, in spite of its advantages, CAR is currently a rare phenomenon in journalism. The US-based NICAR (*National Institute of Computer Assisted Reporting*) supports CAR-style journalistic practices, teaches journalists in using analytical programs and administers large collections of official databases for sale to the media (2).

Classic examples of CAR scoops include the discovery of correlations between undergraduate teachers and criminals convicted of sexual crimes, or school bus drivers and convicted drunken drivers. With the help of CAR many deceased people have been proved to be active and registered voters. Also, with CAR journalists have been able to view how much and from whom all the candidates have received



Document information and CAR-based new information. The comparison between the traditional and the CAR-based way of preparing a story based on official information.

financial support in elections.

However, problems of journalism are not basically technical but based on “journalistic thinking”. Journalism is not purely statistics and CAR is nothing more than an analytical tool used to help write a story. CAR requires parallel use of other sources to explain and interpret the outcomes of CAR's computer runs.

Traditionally, journalists are looking for separate and detailed information in documents and write their stories based on these. A CAR-based approach means journalists receive the entire register or database from an authority and do their own computer runs of the data in those registers.

A brief overview of the Finnish accessibility law

Finland has a long tradition of open access to government files. As a Swedish-governed territory, the 1766 Access to Public Records Act also applied to Finland. After coming under Russian control in 1817, Finnish ‘open’ policy continued through a series of laws and decrees. These were periodically adopted and overruled until Finland gained its independence in 1917 (3). The *Accessibility Law*, officially known as *The Act on the Openness of Government Activities* which came into effect 1999 replaced the previous *Act on Publicity of Official Documents*.

The renewed act (4) sets the principle that documents are to be in the public domain unless there is a specific reason for withholding them. Every person has the right to access any official document in the public domain held by public authorities and private bodies that exercise public authority. Those members of the public asking for information are not required to provide reasons for their request or to verify their identity unless they are requesting personal or otherwise secret information. Responses to requests must be made within 14 days. Petitioners, appellants and others persons who are party to a matter have an extended right of access to documents not in the public domain.

Access is limited to non-official documents and documents not in the official domain such as private notes and internal discussions which

may not be archived. Documents which contain information on decision-making must be stored. Preparatory documents are to be entered into the public domain at the time of any decisions, if not earlier.

The Finnish Accessibility Law codified 120 existing secrecy provisions into 32 categories of secret documents that are exempt from release according to a variety of potential harm tests depending on the type of information. These include documents relating to foreign affairs, criminal investigations, the police (including tactical and technical plans), the security police, military intelligence and the armed forces unless it is obvious that access will not compromise those interests, business secrets, and personal information including lifestyle and political convictions except for those in political or elected office.

Documents are kept secret for 25 years unless otherwise provided by law except for personal information which is closed for 50 years after the death of the individual. If the release would “obviously cause significant harm to the interests protected”, the Government can extend the classification for another thirty years.

Government authorities are also required to publish information about their activities and government meetings are open to the public. Indices of documents must be maintained. The authorities must plan their document and computer systems to ensure easy access to information.

Outcomes of the interview research

One part of the project was an interview research program of journalists and authorities (N=120) carried out by the students at *the Accessibility law* - course in autumn 2008.

According to the interviews of journalists there seems to be several restrictions to the access of public information. Problems partly arise from inconsistent legal interpretations of public and non-public issues, partly from negative attitudes of the authorities providing information requested and partly from journalists and journalism practices. The causes that can impede applying for and gaining information are diverse. For instance, confidential information may cause certain

problems to public or private interests, documents may be produced for authorities' internal use only or they may contain both public and non-public information.

In many cases, journalists are not aware of their rights to access information. Also, media deadlines do not give opportunities for long-term information gathering or for complaining when information is not provided. In some cases authorities have not been able to sufficiently justify their refusal for giving information. For instance, one explanation has been "it is non-public, because it is".

One problem to the access of information is that authorities have a major role in defining what is public and what is not. When the initial negative interpretation is not tested in the court, it may remain as "the ultimate truth" in the case even if there would be no judicial restrictions to the access of information. This kind of broad permit for interpretations may lead to the situation where almost any kind of public issue can be withheld on some grounds.

Reasons for withholding information may also be "technical". The amount of information requested may be too vast or the documents may only be partially public and separating the public part from the secret would be too difficult. Moreover, authorities say they do not have enough time to look for the information, or the format of the information is problematic for access or the archives are not organized enough to find the information requested.

Contrary to the Finnish accessibility principle, in journalists' opinion documents are considered to be secret from the starting point. They can be seen by the public only after being "declared to be public" in the courts-of-law. When requesting information, journalists are required to prove the public characteristics of the documents even if the task of the authorities is to make objective interpretations of the accessibility of documents.

When authorities are uncertain whether the information is public or not, they usually refuse to provide access, just to be on the safe side. If an individual official happens to give out non-public information they may face criminal charges. On the other hand, by withholding public information, an official has only used their legal right to define the nature of the document. This kind of refusal is not an "accessibility crime".

The practices of authorities to inform all the media at the same time weakens journalists' possibilities for scoops. Authorities do not nec-

essarily respect journalists' right to develop exclusive news based on their own ideas and information gathering. As soon as an authority finds out that a journalist is working on a sizzling news story, a bulletin of the same topic is sent to the media purposefully trying to dilute the scoop. When the power of the scoop-effect is eliminated in this way, official information of the topic is published in the media in a truncated form.

Among the biggest problems for journalists are difficulties in gaining information about issues in preparation. Even if the authorities are required to inform about their activities and future plans there is wide disagreement about which topics are to be informed and how widespread should the informing be. In this kind of situation, authorities are required to inform about "issues of public interest" but the definition of *public interest* is unclear. For instance access to information about preparations has been problematic especially if there are no documents available or the documents are incomplete. However, official preparations are important in terms of *watchdog journalism* and public evaluation of forthcoming plans of the authorities.

Journalists and authorities have different views about public matters. Authorities may be too cautious to reveal information even about public issues. Consequently journalists view authorities as shortsighted. When trying to define the accessibility of documents, authorities may take the role of journalists. Authorities try to conclude what is newsworthy and what is not and make their own "journalistic estimates" about the importance of the issues journalists cover. Sometimes authorities want to know from journalists the motives of information gathering and the future use of the information requested. A key point for authorities in estimating the consequences of accessibility is the likely negative consequences for the subject of the document if the information is revealed. Authorities make these estimates and may refuse to give information in order to protect the objects in those documents. In journalists' opinions, private companies exert strong influence to defining accessibility of their own matters.

Official interpretations about the accessibility of documents may vary depending on the authority and individual officials. The "right person" may give information that the "wrong person" would not do. Journalists have pretty fair chances to get information unofficially if they have working relations with individual officials. However, in Finnish journalism *leaks* are quite unusual because of the workplace culture

and “controlling mechanisms” of authorities. In many cases, leaking is considered to be “unpatriotic”. Another problem is the so-called *syndrome of missing officials*. The official administering the information and entitled to define its accessibility may be “on vacation”, “travelling” or “sitting in a long meeting”.

Many journalists have a feeling that authorities perceive their task of informing journalists as an extra burden in addition to their normal work. The starting point in appeals is the less you tell the better. The previously made and publicity promoting case in an administrative court is not sufficiently binding for the current case even if both cases are almost identical. A new appeal is recycled in the court for security reasons even if the final judgement is unquestioned.

In spite of its importance, CAR-style journalism in requesting and acquiring database information from official registers is quite rare in Finland. Journalists who participated in this research have only occasional experiences in gaining register information. Even less common is to get the whole register or part of it in electronic format and to run the data content en masse on computers in their news rooms. Register data has been received usually as a result of computer runs by authorities themselves and by a separate request. The common problem is that many registers contain confidential information which is problematic to detach from the public part or the whole register must be kept secret by some other law.

Some journalists are extensively familiar with the authorities and the information they administrate. However, in many cases the starting point of information gathering is too broad for some journalists. While journalists may formulate their requests too vaguely (to broaden the net of information) authorities are demanding more detail in the requests. Authorities do not necessarily assist in finding the right information and therefore journalists get back only what they have asked for or been wise enough to ask. For instance, all kinds of background research or details of the topics journalists cover may be concealed in this kind of situation.

Journalists alike and also authorities have encountered problems in defining the content of the requests. According to the authorities, journalists do not know what kind of information the authorities administrate and what kind of documents and other material authorities usually prepare on the basis of that information. Every now and then journalists' requests may relate to non-documented information.

Regardless of all the problems, journalists do not usually complain about information refusals. Partly this results from journalists´ ignorance of the accessibility principle and partly from the hurry inherent to the news work. In some cases, journalists do not want to argue with the authorities in order to maintain good relations for future news gathering. In many cases journalists have been satisfied with the material they have received because they do not have sufficient understanding of what they could have received. Insufficient knowledge of the accessibility law and rights to access information has created problems to journalists also in getting public material.

One problem might be relatively high expenses of document copies. According to the law expenses may be based on the cost prices only. In some cases authorities have been forced to return the extra payments they have taken from the media. However, in many cases authorities provide copies of the documents for free.

Authorities interviewed in this research have received publicity - or have been the subject of prolonged negative media attention - in quite diverse ways. Usually the publicity has been relevant and fair. Usually, the more important the role and work of an authority is, the more wide-ranging is the publicity. Naturally, the media value of a story effects journalists´ interests in the documents. Usually authorities cannot estimate either the amount or the quality of any forthcoming media publicity. All kinds of problematic issues are likely to strike authorities unexpectedly.

During the last few years information production has become an industry among authorities. Nowadays, information dissemination is organized, planned, diverse, synchronized and usually placed in separate communication offices. However, specific information dissemination, the content and scale for instance in preparations has been left as the responsibilities of the individual officials concerned. To gain publicity is not considered to be the main task of authorities. Therefore, journalists are required to have a lot of initiative in information gathering.

A lot of journalists are suspicious whether authorities actually inform about the “right issues” when executing *conveyer belt information dissemination*. The “real news” may be lost in large scale information production. In addition, authorities may brand themselves when informing only about positive issues and withholding the negative ones that might create public criticism against them.

Even if some authorities consider cooperation with the media to be

positive, some of them have faced annoying experiences of media excesses. The media has tried "to make news from scratch" and therefore authorities would expect there to be more transparency in journalistic practices. The importance of the topic has been exaggerated, cases have been brought to a head and unreliable information has been published as facts. Media usually stresses the negative aspects of the issues, which are loaded against some authorities whom the media are ready to accuse for any reason. According to the authorities, journalists have not arranged their questions clearly and have not defined the backgrounds of the issues they cover. Occasionally journalists have behaved too aggressively, required information immediately and not paid attention to privacy issues.

The authorities do not recognize any problems in prevailing public information practices. They emphasize openness in their work and say that all the possible public information will be given when requested. Confidential and other non-public information is not usually provided to outsiders who include journalists. However, even if concealment must have judicial grounds and interpretations the problem is still one of defining non-public information in diverse cases when the practices have not been established.

The excuses, which authorities give for 'access refusals' in this research program, are similar to previous studies' findings (5).

As a whole, media and authorities have relatively conflicting interests. Authorities try to inform specifically about themselves and are very cautious what they say to journalists. On the other hand, journalists want to "smooth down the curves" and make their stories easy to "chew on".

THE ACCESSIBILITY LAW IN JOURNALISTS´ ...

"The case you are interested in is uncompleted"	Documents as a part of uncompleted issue are public when ready for use, information about uncompleted documents may be given orally
"We do not understand what you are looking for"	Authorities must help to find the right information and limit the appeals to the right documents
"The official in case is on vacation"	Authorities must arrange their replacements to find the information requested
"We have no time to help you, too much hurry"	Appeals to access information must be discussed with no delay, only excessive hindrances are accepted for refusals
"Document seems to be confidential, the subject of the document has required to keep it confidential"	Document can be kept secret only by the law, demands or requests of the subject do not matter
"Non-public parts in the document would be uncovered at the same time"	Non-public and public parts in a document must be separated and the public part of the document must be provided
"Document you are asking for seems to be a private message"	Documents and private messages ("non-documents") are separated by the law, possible non-filing of the message has no effect on the public character of the document
"Our internal rules deny to give that document"	Publicity principles must have been taken into account in internal guidelines, refusal to access must be specified and justified by facts
"Access to the document is denied because we are afraid of the negative publicity it may cause"	This kind of refusal is abuse of discretion and in addition the violation of media freedom and people's right to know
"We are not used to provide documents"	Documents can be kept secret only according to the law
"Providing the document would cause too much trouble for us"	Authorities must serve the public giving all the public information people ask
"We are uncertain whether the document is public or not"	An authority must define the public character of the document it administers
"Providing the information may be too expensive for you"	Authorities are allowed to invoice only cost prices of the information they provide. Estimates of the costs must be done according to that principle
"We have lost the documents you are looking for"	Documents and computer systems must be up-dated and ensure easy access to the information requested

A collection of excuses by authorities and answers by journalists based on the accessibility law and the accessibility principle (Ahvenainen-Räty 1999: Julkisuuslainsäädäntö).

Notes

- (1) Material provided by the project has been collected on the web site www.julkisuuslaki.fi "Accessibility Law" consisting of an internet portal of court conclusions regarding public access of official documents, several research reports about practices of the accessibility law and teaching material of the Accessibility law -course at the Jyväskylä university.
- (2) See the large-scale web-site of NICAR at www.nicar.org
- (3) See the country page of Finland on the online network of freedom of information advocates at www.freedominfo.org
- (4) An unofficial translation for the Act on the Openness of Government Activities can be found in net at: <http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf>
- (5) See the following research findings in Finnish: *Julkisuuslainsäädäntö* by Taisto Ahvenainen and Tapio Rätty 1999, *Periaatteessa julkista* by Asko Häneninen 2000 and *Mikä Suomessa salaista* by Jukka-Pekka Takala and Timo Konstari 1982.