What should access legislation be like in the future? – possible structures for access legislation

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Introduction and approach

The Internet is creating new possibilities and capabilities to introduce "open government" and improved access to government-held information. In this article I will discuss the information held by government, i.e. information either produced or received by a public organ.[1] In particular, I will discuss the development of national legislation in connection with such information. First, I will comment on the considerations that could be viewed as the very backbone of legislation that gives access to government-held information (section 2). I will then explain some of the basic structures and properties of contemporary Norwegian access legislation, assuming that most of these characteristics are relevant in most European jurisdictions (section 3). Then, in section 4, I will draw attention to what I believe represents a clear shift in factual information access policy, the result of creative use of Internet technology. In section 5, I combine elements from the previous sections in an attempt to propose possible structures and elements in a future, amended, access legislation. By so doing, I will question the fruitfulness of pursuing the traditional approach.

This article mainly contains a legal-political approach to the discussion of "open government". It is both "legal" and "political" in the sense that the discussions relating to preferred political solutions are founded on basic legal arguments, supporting open government and access rights, and because it is partly based on a categorisation and discussion of existing legislation within the field. The article is not political in a general sense, since non-legal arguments in favour of a certain understanding or solution are not part of my arguments. In my view, lawyers are needed in order to develop new concepts of openness, creating "handles" and room for manoeuvre for politicians. This is a first and fumbling attempt to make such a contribution.

Why access to government-held information, and at what level?

Before I discuss access rights in more detail, it is necessary to remind the reader of the main reasons for government being open with information. In this context, I will present democracy and rule of law as two main components. The democracy perspective contains the main collective arguments in favour of access to government-held information. In this perspective, access to such information is, first and foremost, a prerequisite because it gives individuals and collective entities (companies, associations

[1] This could be seen as different to "public sector information", which can be used to designate (the narrower) information concerning the public (government) sector.

etc) the ability to control the exercise of political power. Through this, and articulated by a free press, government may be made politically accountable for its malfunctions. Irrespective of this control function, however, access to government-held information can be seen as having an educational function, and may therefore be seen as a possible method for enlightening the population, thus making citizens more capable of participating in democratic decision-making processes and discussion.

While I choose to view democracy as primarily an expression of collective interests, I choose to regard the rule of law ("Rechtsicherkeit") as primarily representing individual interests in obtaining legally correct results in individual cases (cases before courts, or administrative cases). Here, access right have significance because they constitute a basis for citizens' control (with or without assistance) over the authority exercised in individual cases. Moreover, it implies a possibility for individuals to plan their lives and actions in accordance with the best opportunities embedded in the legal or political regime.

Access to government-held information can, in other words, be regarded as a necessity for controlling the exercise of public authority (political, judicial) at collective and individual levels. Furthermore, it may be seen as an important contribution to the education of individuals, and, thus, a prerequisite for an active population that may advocate the interests of social communities as well as purely private interests.

On the basis of these simple observations, we may ask if every increase in people's access to government-held information should be viewed as improved democracy and better legal protection. Does the sheer fact that, for instance, Internet exists and new government information services are introduced imply that people's ability to control and learn about government business improves? In one sense, obviously, the more files governments open and make accessible on the net (or in other ways), the more "open government" we will get. As a basis for the discussions in this article, I will, however, argue that "open government" in this simple sense should not be regarded as the objective of government information policy and information access legislation. Rather, I will argue that the aim should be an openness which could represent a *relatively* unchanged or (preferably) improved "information proportionality" between individuals and governments.

When we regard access rights to government-held information in the above mentioned control perspective, it becomes apparent that such access rights may be seen to be related to power, and the disparity between (typically) powerful government organisations and (typically) less powerful individuals and private organisations. Thus, citizens' ability to control power should – as a starting point – always be evaluated in the light of government agencies' ability to exercise power. The more efficient the exercise of government power, the more citizens' access rights are needed to retain the proportionality between the two positions. If government's ability to process information increases, citizens' rights to access and ability to process, information should be equally improved, in order to avoid changes in the power relationship.

Viewed in this way, amending statutory access rights can be seen partly as an "information race", where significant ICT gains on the governmental side should be

balanced by similar gains on the other side. Technology which allows governments to access new types of information, to search for information in more effective ways, to analyse and manipulate information etc, may thus be seen as problematic in a control and power-relationship perspective, unless citizens information processing abilities are increased in similar ways. Therefore, even dramatically increased access for citizens to files consisting of traditional documents may not offset the fact that government is developing huge, but publicly inaccessible, databases. Even if government databases are generally open to everybody, this may not necessary generate sufficient progress in the "information race" if, at the same time, for example, government alone possesses powerful analytical tools. The measure is not change in access to government-held information alone, but changes in the proportionality between the government's and citizens' abilities to access and process information.

The statutory puzzle of access rights to government-held information

Norwegian legislation regulating access to information has developed into a rather complex body of regulations. Here, I will not encumber the reader with details, but instead select structural questions that concern access to government-held information.[2] Within the field of information access, there are three major general sets of regulations, i.e. covering public administration in general. In addition, there are several pieces of special legislation giving access rights in specific fields, for instance concerning information in the Population Register and the Central Co-ordinating Register for Legal Entities. Here, I will limit the discussion to the pieces of general legislation.

The table below shows three groups of people entitled to access government-held information. The most important group from a democratic perspective is universal access, i.e. (in principal) without regard to age, nationality or other personal characteristics. The Freedom of Information Act (FIA) of 1970 constitutes the most important body of regulation in this field. The Act gives everybody the right to access government case documents in specific cases. Certain categories may be exempted, for instance "internal documents". Access to other pieces of information is prohibited due to professional secrecy. In addition, the Personal Data Act of 2000 gives universal access rights (with some exceptions) to certain information describing data processing, where data concerning individuals are included. The Administrative Procedure Act of 1967 (APA) establishes access rights for the parties to individual cases handled by government bodies, i.e. for persons who may be directly affected by the decision in question. Professional secrecy only partly limits the rights of such parties. Thirdly, the Personal Data Act (PDA) gives access rights to persons about whom government bodies process information. Registered persons have the right both to access information about themselves, and detailed general information within areas where everybody has access rights according to the PDA, cf. above.

[2]Among the most important examples of legislation regarding access to *privatly*-held information is the Personal Data Act of 2000, which applies to both private and public sectors (see the body text of this section). In addition, access rights exists with regard to, for example, shareholder registers, certain annual settlements in limited companies etc.

Legislation	Entitled persons	Accessible material
FIA PDA	Everybody	Meta-information and case-relevant info.
APA	Parties to cases	Case relevant info.
PDA	Registered persons	Meta-information and personal data

The FIA and the PDA explicitly give access to two types of material, which may be classified as 1) meta-information and 2) target information, while the APA only regulates access to documents and pieces of information ("target information"). It is hard to make strict distinctions between the two categories of information. However, by "meta-information" I mean information people often access to approach "target information". "Meta-information" will typically have functions such as navigation and identification, and will, for example, allow the individual to decide what specific in-depth ("target") information to access. Central meta-information is found in different kinds of registers/ journals/logs, and contains information about types of cases, document titles in the case files, officers in charge, dates, names of sender and receiver etc.[3] The definition of meta-information in the FIA (journals and other registers) implies that the Government Archives Act (GAA) regulates a large proportion of such information. According to the FIA, everybody may, for example, access records. The GAA imposes a duty on government agencies to establish such registers, with certain types of information and in specific ways. The Personal Data Act, on the other hand, explicitly states the types of meta-information that everybody may access, but does not explicitly require that such information be established in advance.

According to the FIA and APA, the object of information access is a "case", while the object according, to the PDA, is "processing" (of personal data). Both objects may be hard to define: that which has been defined as "a case" in records is not necessarily that which should be regarded as a case when somebody makes an access request. Moreover, that which should be viewed as "processing" may be difficult to determine in cases where several information systems co-function in an intimate collaboration between several controllers.

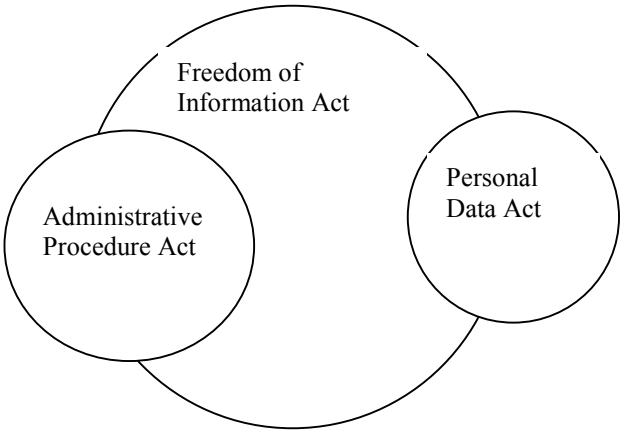
Knowledge about the objects (cases, processing) is obtained through access to certain "documents" and/or "pieces of information" (target information). Documents are bearers of information, typically containing modestly structured and formalised information, for example, a paragraph of text video or audio recording etc. The concept of "document" is defined independently of the type of medium used, i.e. it also covers "electronic documents". In common with the concept of "case", it can be problematic to delimit what should be regarded as a "document", particularly when the document is "electronic". Pieces of information are typically structured and formalised, for instance linked to specific definitions, restrictions, selections etc. Access rights are thus described as linked to documents and/or widely defined pieces of information, except certain (more narrowly defined) pieces of information.

[3] Norwegian legislation states the right to access a rather vague category of such "registers", but internet logs etc are regarded as falling outside statutory right to access.

What I have tried to account for above, are three different sets of general legislation which establish access rights for people in different:

- positions (everybody, party, registered), related to different
- objects (case, processing), giving access to different information
- levels (meta-information, target information), realised by means of different
- units of information (document, piece of information).

Often, two or three sets of legislation will be of equal interest to persons wishing to access information. Everybody falls under the category "everybody"(!), and many people will, in addition be "registered" (data subject), and sometimes even "party" to a case. Moreover, people being party to a case will (almost) always be "registered". Each body of statutory regulation gives access to information that only partially overlaps.



Viewed from the citizen's perspective, this is not a satisfactory situation. Each of the Acts are complicated enough in themselves to dispirit most people. The three acts have not been drafted in context, and, combined they represent a body of text which (at best) can be described as rather impervious.

When the Personal Data Act was prepared, the Ministry of Justice realised that the total picture of access legislation was complex, something that would involve a great need for assistance and guidance. Thus, every controller of personal data has an obligation, according to PDA, Section 6, Subsection 2, to give guidance to data subjects with regard to alternative statutory access rights. Such advice shall be given by the controller, unprompted, and should clarify whether other statutory rights to access information than the PDA, would give access to more information. This obligation applies to all controllers, both in the public and private sectors. With regard to situations where people seek information from a government agency, it implies that the agency (being the "controller"), is required to have knowledge about access rights according to the three major pieces of legislation, and, in addition, any other relevant pieces of access legislation. The obligation to give advice may, to a certain degree, ease the problems created by statutory complexity. On the other hand, expectations should not be too high with respect to government agencies' ability to guide people in such matters. Sometimes, the questions to be answered are far from trivial, and general access legislation is outside the specialised field of government agencies. Below, in

section 5 of this article, I return to the question of amending general access legislation as an alternative solution. However, before entering into discussions regarding amendment, other developments linked to governmental information services should be brought to the readers' attention, and considered as arguments in favour of a renewed approach.

Government-held information: From access request to publication

In Norway, rights to access information have traditionally been based first and foremost on statutes that give citizens the right to *claim* access to documents in specific cases. The process of gaining access to information is in other words, initiated by the individual citizen. Government agencies have not themselves been expected to take the first step, although they may know that certain groups of citizens or the media would show great interest in a case/document. Obviously, this division of initiative has been based on a number of well-founded practical reasons. More importantly, however, is the fact that citizen-initiated access to information implies that the "agenda" is defined by the citizen and not by government. This is quite a reasonable arrangement because, in order to exercise effective control, the citizen must be able to choose what cases to control, select relevant documents in each case etc. In order to enable individuals, and in particular the media, to exercise an independent role as controllers, our legislation has not only established access rights to government documents, but, in addition, access rights to meta-information, i.e. "information about the information".

The traditional approach outlined is, in many ways, sympathetic, since it is the citizen as controller who takes action and decides the issues at stake. On the one hand, the approach is rather time-consuming for the individual, and thus creates thresholds, which may be hard to cross over. By and large, only the very well informed and very angry citizen is likely to use their legal right to access relevant information. In this way, access rights may first and foremost have value in cases of significant political or private interest, where the media or influential people take action on behalf of the public. On the other hand, such practical barriers may be viewed as sufficient, as lower thresholds would only annoy government agencies with citizens' many nitty-gritty problems, and prevent government from doing its "real job". Clear legal rights to access information, in combination with appropriate practical thresholds, may thus be viewed as representing "the right balance". However, judged from the perspective that access to information is intended to have a popular-educational effect, every threshold will be regarded as undesirable.

Presages of conflict are, in many ways, embedded in the Norwegian Act regarding access to government-held information. The law is intended to define clear boundaries between information to which citizens have a clear-cut right, cases where government may give discretionary access to information, and cases where access to information is prohibited. Long-winded definitions of "internal documents" for instance, seem to anticipate discussions between insistent citizens and reluctant government officials. The legislation may, in other words, be regarded as a compromise between conflicting interests.

An antagonistic relationship between government and citizens fits well with the mood of the 1950s and 1960s, when this legislation was prepared, and when legislation, to a large extent, came into existence to protect individuals from an ever stronger government. Forty years on, other aspects of government receive much more attention. Today, government is regarded more as being at the service of their citizens. Citizens are not merely the subjects of power, but increasingly playing the role of customer and user of government services. Where such service-orientation has met Internet services, new advantageous information services directed at the general public, have popped up in more than 90 percent of Norwegian central government agencies, and in more than 70 percent of local government.

The web-based information services offered by Norwegian public agencies range from average to excellent in quality. Of particular interest in this context, in this author's view, is that the best services are provided by local governments. The reason is, *inter alia*, that local government is responsible for a spectrum of services for its citizens. Thus, local government web-based information services cover a broad field, implying that these services take a much more holistic approach than that of most specialised central government agencies. Moreover, the best local government services supply citizens with everything from general information about budgets, plans, services for citizens etc, to detailed information regarding which political representatives were present at which meetings, and scanned text of every document in every case not subject to professional secrecy.

There are many aspects to these web-based information services that deserve a closer presentation and discussion. Nevertheless, I will limit myself here to a discussion regarding the publishing of case documents, which constitutes an important element in most such information services. The essential point here is that all those case documents, which anybody may access through their local government web-service were previously (i.e., a couple of years ago) only accessible on request according to the Freedom of Information Act or the Administrative Procedure Act. Certainly, chances are that selected, embarrassing documents are withheld and not displayed on the Internet. Thus, the point is not that no document is left at the back of desk drawers, so that citizens need to formally request access. However, compared to the traditional situation of most documents being locked the offices of reluctant bureaucrats, today's user-oriented "publish-as-much-as-you-can" services seem to make the traditional rights to access on request an issue of reduced importance.

Access to government-held information at this stage of the internet and in these times of service-orientation by governments, is not really about the kind of techniques that our traditional legislation is build upon, i.e. it is not about access on request. It is rather about supplying citizens with information on the bases of their measured or assumed interests, and on the basis that maximum openness is a democratic ideal. The main recent development in the field of openness has, in other words, occurred in the field of access by publication, rather than access on request. Compared to the latter, the publication of government case documents etc is, to a much lesser extent, regulated by law. Apart from the general framework of rules concerning protection of personal data and professional discretion, there are no regulations explicitly concerning such publication. On the other hand, however, rather complicated statutes regulate

information access on request. Thus, the creative constructions of local governments' web-based information services have, to a large extent, been possible without the constraints of legislation.

One might ask if we should have statutory regulations regarding how government publishes case documents etc. In my view, such a need clearly exists, and the reason is twofold. There are good reasons to ask whether or not the factual publication practices of local and central government agencies are an argument in favour of establishing new minimum standards in the field of making case documents publicly available. The issue is not whether to establish a common standard that reflects the most excellent information services, but whether or not a minimum standard should be defined and established by law. One sub-question is, for instance, whether or not statutes should mandate every local government at municipality and county level to have web-services directed towards their own populations.[4] With regard to the various branches of central government administration, similar decisions may be made in statute law or by means of instruction. A year ago, when the number of government web-sites was considerably lower than at present (70 and 90 per cent for local and central government respectively), such a development would have been rather dramatic, and may not necessarily have represented a feasible measure. However, with the high and still rising number of web-sites of 2001, a duty to establish certain government information services for citizens will, first of all, function as a correction for latecomers among government agencies. Furthermore, it will signal the transition from the experimental stage of the previous century, to a phase where such services are institutionalised as part of government's basic communication repertoire vis-à-vis the citizens.

A possible legal regulation of web-based government information services should obviously go beyond merely mandating the existence of such services. It should, in addition, define some of the types of material that should always be available. Here, I will not go into details with regard to the various materials that should be considered, but only mention some examples. For instance, it should be considered whether all meeting agendas of elected bodies and the decisions in each case should be published, provided it does not conflict with statutory discretion. In Norway, quite a few cases at local and central government level, including draft legislation, are distributed to a list of parties, which are expected to have an interest in the issue at stake. A possible requirement would be that all such written hearings in government cases be published on the government's web-pages. Another field to consider is documents about financial aspects of government activities, and to what extent accounts, budgets and related activity plans should be published and made universally accessible.

I will end my example-dropping here, and at the same time emphasise that these are examples of the necessity for a political and administrative debate before such propositions may become of actual interest. Moreover, it should be remembered that mandatory publication of several of the document types mentioned would not necessarily imply a revolution, since several government bodies already have such publication practises. Thus, my examples would partly stave in open windows, partly keep open windows open, and partly open new windows where the need for insight is

[4] I.e. separate to services directed towards tourism, industrial and commercial development etc.

recognised but insufficiently realised. The objective should thus be to reaffirm, consolidate and change.

Legal regulation should not only comprise the question of what to publish, but even (on a general and technology neutral level) include answers to questions regarding how such information services should be organised and run. Here, I will point to some of the relevant organisational/operational issues that should be addressed. When governments select case documents for publication, the choice of documents is taken at government's own discretion. This may result in an incomplete and sometimes biased selection. A lack of fixed criteria that define the content of an information service, can allow a political determination regarding which case documents should be released to the public. For example, the selection of internal reports from a ministry may be controlled by political choices. It may be a problem if the administration has unfettered discretion to withhold certain reports and documents, particularly if these files contradict the selected and accessible material.

The risk that the machinery of government will be able to use the Internet in a manner that gives them a dominate position in the public debate concerning its own role and actions, can be minimised through "declarations of content". I have already mentioned the possibility of establishing a publishing duty, linked to certain types or series of documents. As an adjunct to such duties, the formulation and publication of pre-decided criteria for the selection of documents should be considered. This implies that "rules" describing the contents of government information service should always be formulated and published. In addition, a deadline for the publication of documents should be established, and, in a similar way, possible "out-dating routines", i.e. routines for removal or deletion of documents. In this way, it would be difficult to control publication practice through subjective, political, and tactical deliberations.

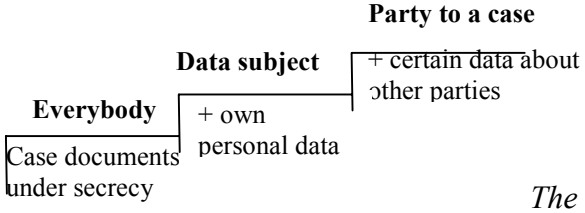
Looking back on the development within the field of government web-based information services during the last five years, it is rather astonishes to see how positive and innovative many actors within the machinery of government have been, and what great results many agencies have achieved - particularly if we compare this to the rather reluctant (or at least prudent) attitudes demonstrated by important parts of bureaucracy in relation to the traditional right to make requests for information access. However, the two approaches to openness obviously produce different effects for civil servants. Here, I will only mention one aspect.

One plausible effect is the result that web-services produce joint benefits, not least for officials. A service to citizens is obviously also a service to members of government agencies. Considerable proportions of the information that has been made accessible on the Internet has not been generally, or easily, accessible to the officers in the relevant government agencies, and (even more so) hardly available to officers in co-operating government agencies. Thus, government internet-based information services have not only eased an information deficit among the general population, but also an internal government problem of access to information. Accepting this observation as true may make this information revolution somewhat less "pathetic", though obviously of no less significance to the man in the street.

Amending information access legislation: approaching a new conceptual view?

Previously, I have explained and discussed a statutory information access regime, which suffers from a lack of coherence and holistic view of open government. Furthermore, I have pointed to a factual development of advanced government information services employing Internet technology, which have developed alongside the existing access legislation, inspired by user-orientation. In this section, I will try to bring together and shape these observations and points into proposals for basic elements in a renewal of access legislation for the government sector. In other words, my aim is to illustrate how current legislation may be co-ordinated and restructured into one body of access rights.

Entitled groups: Entitlement to access information is linked to certain roles, e.g. the role of being a citizen ("everybody"), data subject ("registered") or a party to a case. Often, the same persons may choose several roles, and thus several legal bases for information access. If we consider all general access rights within the government sector as a whole, we find a picture of a cumulative approach relating to each of the three roles. On this "access ladder", certain rights to access a wide range of general information are given to everybody, while data subjects may access information about themselves. In addition, as a party to a case, you have the right to access case-relevant information about other parties. The higher up on the access ladder, the more sensitive the information may be.



The access ladder

My simple point is that analysis of existing access legislation seems to show that it contains a certain coherent logic. This coherence is only partly a result of direct, overall analysis. I am thus not claiming that inconsistencies do not occur if existing access rights, linked to the various roles, are analysed as a whole. However, regardless of the statutory systematics of various pieces of access legislation, an "internal logic" between them must exist if the possibility of applying all rights at the same time is to be more than a supposition. Whether we retain the current access legislation divided into three laws, or we establish an overall access law for government sector, a comprehensive analysis will be necessary. The results of a holistic analysis will, however, be easiest for people to comprehend if it results in one body of general legislation.

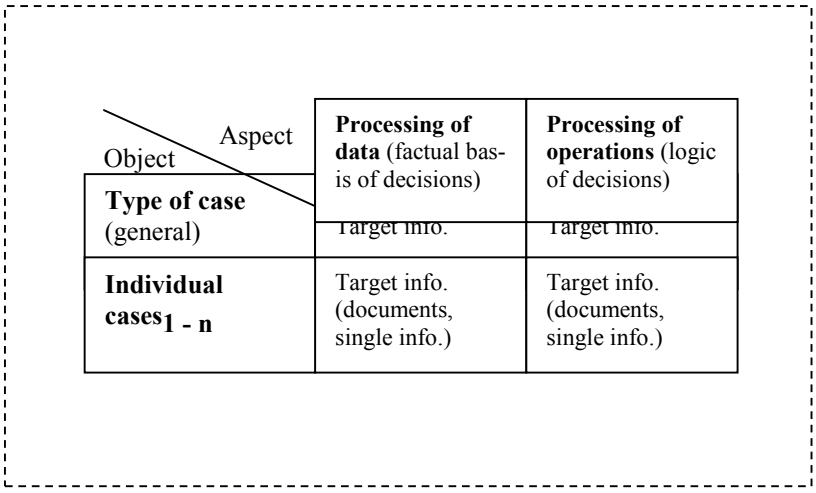
Initiative: Traditional access legislation places the right to take initiative at the level of the individual. Nevertheless, innovative development and use of government's web-sites have created a situation where it is the government, rather than individuals who take this initiative. Even if this new situation may seem contradictory with regard to some of the considerations underlying access legislation, and which emphasise the public's ability to decide what to investigate and control, it has created a positive change with a marked increase in openness concerning government affairs. Thus, revised

access legislation should acknowledge access to published documents and access on request as complementary statutory elements.

However, the publication of case documents by the government should, to a larger extent, be controlled by citizens and/or made part of a systematic and declared practise. Firstly, every grant to access information on request should lead to automatic publication of the document in question on the web-pages of the government agency in question. In this way, individuals will partly decide which documents are to be published by government. Secondly, every government web-page should publish case documents etc according to certain fixed criteria, which they establish and announce. Apart from possible demands for minimum information services (cf. section 3), the agencies themselves should decide the concrete content of their information services. Such selection criteria should state the types of information they will publish, when they will publish, and when they will delete or archive the various types of information. An approach where access on request and by publication is combined with a user and systematic approach would, in my view, give the general public acceptable control over government's publication practises.

Objects of access: As previously explained, current access rights are linked either to a specific "case" or a specific "processing" of personal data, i.e. it is documents or pieces of information connected to such cases or processings that may be accessed. "Case" may easily be associated with an object or objects and occurrences as a whole. "Processing" has a more dynamic content, with an emphasis on events and performed operations. Both concepts have their strengths and describe somewhat different aspects of the same phenomenon of "processing cases". Moreover, both concepts may be used in both a general and an individual sense. "Processing" may designate the procedures etc that are followed in a certain type of process (decision-making, information access etc) or the process followed in an individual case. In the same way, "case" may refer to a type of decision/action or to a specific incident.

If we see the possible connections between the approaches of "case" and "processing", it might be fruitful to make a joint model where both concepts are specified as a combination of certain "objects" and "aspects":



The figure above illustrates a possible coherence between "objects" (type of case and individual cases) and certain "aspects" of these objects (processing of data and operations). It contains four possible "addresses" to which meta- and target information may belong, e.g. documents concerning processing of operations in a specific case, and documents concerning the processing of data in a specific type of case. However, in many cases it will not be possible or fruitful to ask for specific objects or aspects, and the person who claims access will instead request information on a general basis.

Levels of information: Current access rights are linked to 1) meta-information, 2) documents, and 3) pieces of information, the two last categories being "target information". Meta-information is selected information, defined and selected with the aim to decide which target information to access. As explained in section 3, the Norwegian Administrative Procedure Act does contain no explicit right to access information about relevant case documents.[5] Such meta-information should, however, always be defined in relation to each statutory access right. Moreover, the current fragmented approach to meta-information, i.e. where such information is described separately, without any reference to other similar rights, is an obstacle to the realisation access rights' full potential. When someone contacts a government agency, they should always have the right to access all meta-information linked to processing of cases. A party to a case should, for instance, have an automatic right to access meta-information, regardless of status as an entitled person, i.e. also have the right to access meta-information about the processing of personal data and sets of public case documents. Obviously, a government agency will have its own specific view regarding what should be considered part of a specific case to which a person is a party. Quite another matter is what a person, being party, views to be relevant and useful in actual future situations. The likelihood is high that meta-materials that may be accessed independently of status as party, may be regarded as interesting even in the context of a specific case.

If access legislation is amended in line with these arguments, i.e. if accessible meta-information is defined as one entity, another task would be to control and consider to what extent the meta-information, currently produced in accordance with archiving legislation etc, is sufficient and adequate. For instance, it may be feasible to have access rights to files of precedent cases of relevant government bodies in situations where parties wish to question the decision in a specific case.

Documents and pieces of information are typically the bearers of target information, i.e. the information that is of primary interest to the person claiming access.[6] A problem may be what to regard as a document or piece of information, separate to other documents and pieces of information. In my view, however, this is a limited problem. One argument is that, no matter how we divide data into documents or other units, they will in many cases be closely related to other documents. This is, to an extreme degree, the case with email. Each message may be viewed as a document, but each such document may have little information value until a series of messages has been

[5] This does not, however, imply that parties to cases are, in practise, denied access to correspondence logs etc if they ask.

[6] This does not imply that meta-information could not be regarded as target information in specific cases, for instance if one wishes to examine the contact pattern between various parties to a case, and records are used to map this information.

completed. Similarly (but less extreme), connections exist between a report, its background material, relevant attachments, decisions based on the report etc. Irrespective of what we regarded as a "document", the main thing is that every part of the information content has an "address", and that all such addresses (names and reference numbers of documents etc) are linked to other addresses (of documents) that are part of the same decision-making or information exchange process. The division of units that are bearers of information is, in other words, not decisive. More important is that all individual information units and the relationship between such units are unambiguously defined. Whether or not each email in a series of messages is defined as one document, or one chooses to define the entire series as one document, is not the main issue as long as each message and its relationships to other messages is defined.

Particular pieces of information constitute the lowest level of target information. As opposed to information in documents, this is (typically) highly structured and formalised information, i.e. linked to meta-information and specific definitions and constraints. Pieces of information are traditionally linked to documents as exceptions; for example, access is given to a document, except for information about "health" (according to a definition of this concept). With contemporary data base technology, it is hard to maintain "document" as the main concept, if even information entered in databases is to be covered by access legislation. More and more of the information about our society exists as compilations of pieces of information in databases. Thus, future access legislation must contain rights that specifically include databases, implying that not only single pieces of information, but even *patterns* of such information be available. A person should, in other words, have the right to determine which relationship between pieces of information he wishes to examine. A person, who wants to find out how many people in a certain district, under the age of 18, are receiving child support, should be able to do so, provided that such data is available in a searchable government database.[7]

Documents and pieces of information may be seen as constituting a representation and description of certain actions/functions that must be executed in order to reach a specific result. This is particularly true with regard to rules (legal and others). From this perspective, it may be appropriate to ask whether or not access rights should also comprise the execution of *functions*, i.e. access to computer systems that execute the functions described in a certain text. Such rights are probably not realistic, unless such routines already exist and are available from the relevant government agency. Joint needs for to access to such computerised routines for both government and the general public may, however, increase the likelihood that such services will come to exist in the future.

Conclusion and a further question

In this article I have presented some perspectives and proposals concerning both currant and possible future access legislation. Most of the discussions above has been of a rather tentative nature, i.e. having the characteristics of preliminary thoughts. My general point, of which I am quite certain, is that future discussions around access

[7] For practical purposes such rights should, however, probably only be established if they may be based on a published database and made generally available on the Internet.

legislation should not be rooted in the single access traditions, but, as much as possible, integrate various ways to achieve a more open government administration. This view is, in one sense, inspired by advanced government web-pages where access to information may be obtained by publication, on request in single cases, on request in series of cases (cf. subscription), as access to automatic functions for simulating operations on data sets etc. Such web-services are, in other words, so complex with regard to the achievement of open government, that they seem to challenge traditional legislation.

There are certainly many questions relating to the issues discussed in this article, which I have not touched upon. The most obvious (and difficult) question is the link between access rights in the private versus the public sector. The Data Protection Directive (46/95/EU) establishes a joint data protection regime for the two sectors, implying that even access rights are similar. One obvious idea is to investigate whether or not it is possible, and desirable, to make joint access legislation, i.e. without regard to the question of access to "processing of personal data" or a "case". My view is that this is both possible and desirable. At the same time, putting forward such thoughts may be said to demonstrate this author's lack of realism with regard to political and legislative processes. Both this last point of view, and the entire set of arguments in favour of amending access legislation that I have formulated in this article, are probably not feasible unless special circumstances occur. My guess is that factual innovation and application of web-based information access technology, is about to create such a situation, which may make the heavy machinery of government move in the direction of a more ICT compatible and up-to-date information access legislation.