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Access to files during and outside administrative procedures

Heruntergeladen am 07.06.2025

<https://fimportal.de/xzufi-services/343185290/L100001>

Modul	Sachverhalt
Leistungsschlüssel	99064005000000, 99064005000000
Leistungsbezeichnung I	Access to files during and outside administrative procedures
Leistungsbezeichnung II	
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Hessen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	Informationsfreiheit (064)
Verrichtungskennung	
SDG-Informationsbereich	
Lagen Portalverbund	Datenschutz, Auskünfte und Akteneinsicht (1150400)

Modul	Sachverhalt
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	29.10.2012
Fachlich freigegeben durch	Hessian Ministry of the Interior and Sport
Handlungsgrundlage	<p>**General provisions**</p> <ul style="list-style-type: none"> • Section 29 of the Hessian Administrative Procedure Act (HVwVfG) • No. 113 and 21 of the list of administrative costs relating to § 1 of the General Administrative Costs Regulation (AllgVwKostO) <p>**Special regulations (exemplary)**</p> <ul style="list-style-type: none"> • Section 72(1) of the Hessian Administrative Procedure Act (HVwVfG) • § 25 Tenth Book of the Social Code (SGB X) • Hessian Environmental Information Act (HUIG**) ** <p> https://www.rv.hessenrecht.hessen.de/bshe/document/jlr-VwVfGHE2010pP29/format/xsl?oi=WHbEPYK5Sx&sourceP=%7B%22source%22%3A%22TOC%22%7D&docAcc=true https://www.rv.hessenrecht.hessen.de/bshe/document/jlr-InnMinVwKostOHE2013V4Anlage/format/xsl?oi=WHbEPYK5Sx&sourceP=%7B%22source%22%3A%22TOC%22%7D&docAcc=true https://www.rv.hessenrecht.hessen.de/bshe/document/jlr-VwVfGHE2010pP72/format/xsl?oi=WHbEPYK5Sx&sourceP=%7B%22source%22%3A%22TOC%22%7D&docAcc=true https://www.gesetze-im-internet.de/sgb_10/_25.html https://www.rv.hessenrecht.hessen.de/bshe/document/jlr-UIGHErahmen/format/xsl?oi=Bp8uDAyNgu&sourceP=%7B%22source%22%3A%22TOC%22%7D&docAcc=true https://www.rv.hessenrecht.hessen.de/bshe/document/jlr-VwVfGHE2010pP29/format/xsl?oi=WHbEPYK5Sx&sourceP=%7B%22source%22%3A%22TOC%22%7D&docAcc=true https://www.rv.hessenrecht.hessen.de/bshe/document </p>

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Teaser

Volltext

The question of the extent to which a citizen can inspect the files kept by an authority arises in particular when a citizen wishes to clarify in an administrative procedure concerning him, as an applicant or as an other interested party, which facts an authority has based its decision on or what legal options are available to him.

As far as access to files relating to ongoing proceedings is concerned, this right to inspect files is generally governed by § 29 of the Hessian Administrative Procedure Act (HVwVfG).

In addition to this general rule, however, there are a large number of special regulations that specifically regulate the right of access to files in whole or in part for individual areas. For reasons of clarity, these special rules cannot be discussed in more detail here.

A citizen can also request access to files outside of an ongoing administrative procedure. However, the authority keeping the file then decides on the granting of access to the file at its due discretion. In this respect, a citizen is entitled to a decision on a request for inspection free of errors of assessment, insofar as he asserts a legitimate interest in access to the file.

In the following, the focus is on the inspection of files relating to ongoing proceedings. This case is also of particular interest in administrative practice.

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Erforderliche Unterlagen

As a rule, the party to an administrative procedure will not have to submit any further documents when access to the files relating to an ongoing procedure is requested, as he/she is known to the authority as a party to the proceedings. However, in individual cases it may be necessary to explain to what extent the requested access to the file is necessary to assert or defend the legal interests.

On the other hand, this is not the case in cases where access to the file is requested without this being done in the context of an ongoing administrative procedure. In this case, the person requesting access to the file must demonstrate his legitimate interest to the authority keeping the file.

Voraussetzungen

The right of access to the file exists for the parties to an administrative procedure. These are mainly:

- Applicant
- Defendant
- Addressees of an administrative act
- Contracting party to a public law contract

The right of access to the file relates only to the files relating to the proceedings and only to the extent that knowledge of them is necessary for the assertion or defence of the legal interests of the party concerned.

In the context of an administrative procedure, the right of access to the file does not include draft decisions or work on their immediate preparation until the end of the administrative procedure.

The authority shall not be obliged to allow access to the file if:

- access to the file impedes the proper performance of the Authority's tasks;
- the disclosure of the contents of the files would be detrimental to the well-being of the Federation or a Land, or
- transactions must be kept secret in accordance with

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a law or their nature, in particular because of the legitimate interests of the parties involved or third parties.

Secrecy due to legal regulations or due to legitimate interests of a third party results in particular from tax secrecy, social secrecy, data protection and the fact that trade and business secrets must be protected. Likewise, the private and intimate sphere of third private persons is inherently subject to secrecy. As a rule, this includes, for example, information on income and financial circumstances, family circumstances or medical reports.

Kosten

- Insofar as the parties have copies or copies made from the file, they shall bear the costs vis-à-vis the authority keeping the file insofar as the latter has incurred costs in doing so.
- A fee of 12.00 Euro per shipment will be charged for sending the file.

Verfahrensablauf

In principle, the file must be inspected by the authority keeping the file. The party concerned must therefore go to the relevant authority. The application is possible informally and without notice. The Authority may provide that access to the file shall be granted only in the presence of a supervising representative of the Authority. There is no entitlement to inspect files without the presence of a supervisor.

Likewise, in individual cases, the authority may, at its due discretion, also allow access to files at another location (e.g. if a party lives further away from the seat of the file holding authority). Then, at the request of the party concerned, the files may be sent to another authority and the file may be inspected there. If necessary, files may also be inspected at a diplomatic or professional consular representation of the Federal Republic of Germany abroad.

If a lawyer is involved and authorised on the side of the party to an administrative procedure with regard to these proceedings, it also applies in relation to this

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lawyer that the file is inspected by the authority. However, the authority may, at its due discretion, exceptionally determine that a lawyer is also permitted to take the files to his office or to send the files there. However, there is no entitlement to the transfer of the files.

Overall, the authority can determine the manner of file inspection at its due discretion. In particular, the authority can also determine the time of access to the file. However, access to the file must be granted under reasonable conditions.

Inspection of files includes not only documents, but also all other documents relating to a specific procedure (e.g. plans, photographs, maps or other data carriers).

Inspection of files does not just mean mere inspection. Rather, an inspection of files, especially in the case of extensive files relating to a procedure, can often only be meaningfully carried out if the party is given the opportunity to make copies or copies of the contents of the file.

In proceedings involving uniform submissions or in proceedings involving more than 50 persons in the same interest, only their representative shall have a right of access to the file, provided that representation takes place in such cases.

Bearbeitungsdauer

Frist

weiterführende Informationen

Hinweise

Rechtsbehelf

Kurztext

Ansprechpunkt

the authority keeping the file

Modul	Sachverhalt
Zuständige Stelle	
Formulare	
Ursprungsportal	Akteneinsicht in und außerhalb von Verwaltungsverfahren, Access to files during and outside administrative procedures