

**Табиғи ресурстар  
және экологиялық  
құқық**

**Природоресурсовое  
и экологическое  
право**

**Natural  
resources and  
ecology law**

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**Some questions the right of the public to obtaining ecological information**

Access to information, public participation in decision making and access to justice guaranteed by the Constitution of the Republic of Kazakhstan . Existing legislation of the Republic of Kazakhstan gives the public the right to obtain information , including environmental information , public access to decision-making and justice.

**Key words:** the law, the right of access to environmental information , public , environmental protection , public access to decision-making and justice.

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**Некоторые вопросы права общественности на получение экологической информации**

Вопросы доступа к информации, участия общественности в принятии решений и доступа к правосудию гарантированы Конституцией Республики Казахстан. Существующее законодательство Республики Казахстан дает общественности право на получение информации, в том числе экологической, на доступ общественности к принятию решений и правосудию.

**Ключевые слова:** закон, право, доступ к экологической информации, общественность, охрана окружающей среды, доступ общественности к принятию решений и правосудию.

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**Жұртшылықтың экологиялық ақпарат алуға құқығының кейбір сұрақтары**

Ақпаратқа кіру, шешімдер қабылдау процесіне жұртшылықтың қатысуы және қоршаған ортаға қатысты мәселелер бойынша сот әділдігіне қол жеткізу Қазақстан Республикасы Конституциясымен кепілдендірілген. Қазақстан Республикасының заңнамасы ақпарат алуға, оның ішінде экологиялық ақпаратпен, қоғамның шешім қабылдауға деген қолжетімділігі мен сот төрелігін жүзеге асыруға құқық береді.

**Түйін сөздер:** заң, құқық, жұртшылық, экологиялық ақпаратқа қолжетімділігі, қоршаған ортаны қорғау, жұртшылықтың қатысуы және қоршаған ортаға қатысты мәселелер бойынша сот әділдігіне қол жеткізу.

As guarantees of direct realization of the right of citizens on freedom of receiving and information distribution the Constitution of RK establishes:

– the rights and freedoms of the person belong to everyone from the birth, admit absolute and inalien-

able, define the contents and application of laws and other normative legal acts (item 2 of Art. 12);

– everyone has the right to inviolability of private life, personal and family secret, protection of the honor and dignity (item 1 of Art. 18);

– everyone has the right to confidentiality of

personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages. Restrictions of this right are allowed only in cases and as it should be, directly established by the law (item 2 of Art. 18);

– Responsibilities for all state bodies, public associations, officials and mass media, providing to each citizen opportunity to study documents, decisions and information sources (item 3 of Art. 18) mentioning his rights and interests;

– all laws, international treaties to which the Republic is published. Official publication of the regulations relating to the rights, freedoms and duties of citizens, is an indispensable condition of their application (item 4 of Art. 4);

– citizens of the Republic of Kazakhstan have the right to apply in person and submit individual and collective appeals to state bodies and local governments (item 1 of Art. 33);

– concealment by officials of facts and circumstances endangering the life and health of the people responsible in accordance with the legislation of the Republic of Kazakhstan (item 2 of Art. 31);

– freedom of expression and creativity are guaranteed. Censorship is forbidden (item 1 of Art. 20);

– everyone has the right to receive and extend freely information any means, not forbidden law in the way (subitem 2 of Art. 20);

– in court everyone has the right to be listened (subitem 4 of item 3 of Art. 77);

– nobody is obliged to give evidences against himself, wife (husband), and close relatives, as defined by law. The clergy are not required to testify against those who confided in him in confession (subitem 7 of item 3 of Art. 77).

In the process of realization of the constitutional right to information as consumers (users) of information acts citizens, foreigners and stateless persons, as well as state bodies, public associations and other legal entities. The right to information, as noted earlier, is regulated in a number of administrative laws, namely the Law "On administrative procedures" on November 27, 2000, the Law "On the Procedure of consideration of physical and legal entities" dated January 12, 2007 and the Law "on Information" from January 11, 2007. Last regulates the right of individuals and legal entities to free access to public e-government information resources.

1. obligation of government bodies (officials) to provide necessary information to individuals,

thus the state strictly regulates the range of information that can't be classified;

2. publications of the regulations adopted by government bodies;

3. creating sites of public authorities, which highlights all their activities;

4. active interaction of government bodies with mass media;

5. the introduction of an integrated information system, through which is possible to obtain information anytime and anywhere;

6. development of the special computer programs, allowing to avoid the facts of corruption and to simultaneously monitor public activity of state bodies and departments;

7. transparency of financial flows and transactions conducted by government agencies and national companies [1, c.64-69].

The main implementer of the right to information is the inquiry. "The inquiry is a request of the person for providing information on interesting questions of personal or public character"[2]. The inquiry is a classical way of obtaining official information, its legislative basis. It carries a double burden. First, as a way of obtaining necessary information, and, secondly, as "a basis of implementation of public control over activity of public authorities, local governments, public, political and other organizations, as well as the state of the economy, the environment and other areas of public life"[3, c.209]. In practice, the inquiry allows physical and legal entities to address in any government body, for the purpose of obtaining any interesting information without explanation and the receiving purposes.

In order for effective and efficient information for supporting of physical and legal entities, and also government bodies and the organizations, the state assumes a duty of formation, protection, updating and use of the state information resources. The list of types of documentary information and the electronic documents provided without fail for formation of the state information resources, and also order of their registration is defined by the government of RK[4]. The agency of informatization and communication of the Republic of Kazakhstan keeps the state register of information resources and information systems. Data of the State register on information resources and information systems, in part, does not contain information with restricted access, are widely available for posting on the Internet on the web-site "State Register of Information

Resources and information systems of the Republic of Kazakhstan."

According to the Law RK "About informatization" the duty of creation of electronic information resource is assigned to government bodies concerning the activity and activities of the structures subordinated to them, as well as ensure their preservation, renewability and free access to citizens. "The state electronic information resources are formed for ensuring information requirements of government bodies, physical and legal entities, and also for electronic services"[5]. The state reserves the right to define the status of information and to dispose of electronic information resources. The list of information provided on a paid and gratuitous basis is defined by the government resolution.

Physical and legal entities, are entitled to free access to information resources containing information about them, and also specification of this information for ensuring its completeness and reliability. Government bodies are obliged to provide within the competence access to physical and legal entities (users) to the information resources containing data concerning their rights, freedoms and legitimate interests, to their safety and other questions concerning them directly or representing public interest. Data belong to such information: about a salary and other sources of the income; health status and results of the medical examination; about property and property rights of the person; about the social rights and their realization; about a condition of the bank accounts; about the copyright and consequences of their realization; about the confidential information (codes, ciphers, numbers of documents and so forth) and also the right to get acquainted with materials of criminal case or the case considered in a civil and procedural order, concerning it directly. Besides, the citizen has the right to receive information about their relatives if it doesn't contradict the law and interests of relatives.

The legislation defined the list of information which isn't subject to a classification (The law RK "About the State Secrets" of March 15, 1999), the list of information which has to be without fail presented to mass media (The law "About Mass Media" of July 23, 1999). Besides, access to confidential information can't be limited concerning the acts establishing legal status of government bodies, the organizations and public associations, and also the right, a duty of citizens and an order of their realization. Point 5 of article 14 of the Law "About In-

formatization" defines that "can not be restricted to government information resources, containing:

1. legal acts, except for the regulations containing the state secrets;
2. data on emergency situations, natural and technogenic catastrophes, weather, sanitary and epidemiologic and other conditions necessary for safety of citizens, settlements and production objects;
3. official data on activity of government bodies;
4. the data accumulated in open information systems of government bodies, libraries, archives and other organizations"[5].

In case the citizen requests information representing the state secrets, he needs to undergo procedure "the admission to the state secrets" which represents "procedure of registration of the right of citizens on access to the data making the state secrets, and the organizations – on work with use of such data"[5].

In the course of obtaining information the citizen has the following rights:

- to choose a form of giving of inquiry – written, oral, or electronic, assured by the electronic and digital signature;
- not to explain motives and the reasons of giving of inquiry;
- to receive the answer to inquiry in writing form.

Refusal in providing information, providing incomplete information or obviously false information by government bodies can be appealed by the citizen in an administrative and judicial order. In this case, citizens are obliged to observe requirements of the relevant legislation of the Republic of Kazakhstan.

Currently developing another method and form of giving and receiving the necessary information from government and other sources, namely appeal by electronic sites. The majority of government bodies and the organizations have the constantly updated sites on which the main information about the activities taken by regulatory legal acts, information on planned activities and more. Citizens and legal entities have the right "to send" information, to request data and to ask questions.

In addition, one of the measures to ensure an effective and transparent public administration is that the country underwent a major operation on the creation and introduction of the e-government. This system works in our country for nearly six years.

This kind of unified information networks exist and function successfully in a number of countries in Europe and Asia, from CIS countries of the most progressive it is considered the electronic government of Belarus. Kazakhstan took practice of Malaysia for arms. The formation program of "the electronic government" is intended for the Republic of Kazakhstan to create the uniform system connecting all links and levels of government bodies that will allow to receive, transfer and analyze necessary information instantly. It allows you to repeatedly reduce paper work, respectively, the time and financial resources, and the return on investment of funds foreseen for 8 years after the implementation of the project. Introduction of "electronic government" in Kazakhstan is directed on improvement of quality and reduction of terms of granting by government bodies of services to citizens and the organizations, ensuring access to information bases of activity of government bodies, in the long term taking into account improvement of a management system creation of effective and optimum government on structure. The main priorities of creation of "the electronic government" are ensuring access to Internet communication, education level increase in the sphere of information and communication technologies, and also carrying out modernization of system of public administration"[6].

At the same time it should be noted and that fact that the legislation and measures taken by the state for providing guarantees for realization of the right of individuals and society to information and information resources are not fully solve the problem. Often, the norms of the law are just a declaration. Many government bodies seek not to allow disclosure though any information.

The Republic of Kazakhstan has no single law on access to information, and this area is regulated by various laws and regulations. The need for a special law regulating the access of citizens to information, ripened long ago, but its adoption is postponed. Legislating the right of access to information, including environmental and begins with the basic law of the Republic of Kazakhstan – the Constitution. Article 18, paragraph 3 of the Constitution establishes the right of access to information which directly affects the rights and interests, "Government bodies, public associations, officials and mass media are obliged to provide to each citizen opportunity to study documents, decisions and information sources mentioning their rights and interests".

Besides, according to Art. 20 of item 2 of the Constitution of RK "everyone has the right to freely receive and impart information by any means not prohibited by law"[7].

Thus, the legislation fixes opportunity to receive and impart information as the citizens of Kazakhstan and who aren't. In addition, based on the scope of the Law "On the procedure of consideration of physical and legal entities" (Art. 3) treatment can be made by individuals and legal entities.

The main legal act defining the mechanism of the right of access to information is the Law of the Republic of Kazakhstan of January 12, 2007 No. 221-III "On the order of consideration of physical and legal entities". This law regulates the general procedure for processing applications, contains definitions of the main concepts, the rights and obligations of the parties of the public relations connected with giving and consideration of addresses of physical and legal entities for realization and protection of their rights, freedoms and legitimate interests[9].

The issues of public access to environmental information have been reflected in a number of international environmental conventions ratified by the Republic of Kazakhstan. Most important of them is a Convention of the European Economic Commission of the UN on access to information, participation of the public in decision-making process and access to justice on the questions concerning environment (hereinafter – the Aarhus Convention).

Kazakhstan ratified this international legal document in 2000. The convention establishes high requirements for work of government bodies and officials with public requests for receiving by ecological information which have to be observed in Kazakhstan.

The definition of "environmental information" given in point 3 of Article 2 of the Aarhus Convention, and covers the following types of information:

- about a state of environment, including its separate elements (air, water, the earth, the soil, landscapes and natural objects, the biological diversity, genetically modified organisms, etc.) and their interactions;
- about factors of impact on environment (polluting substances, noise, radiation, etc.);
- about activity or measures, including policy, the legislation, programs and plans that may have an impact on the environment;;
- about a state of health and safety of people, objects of culture and buildings in connection with

influence or potential impact on them of ecological factors[10].

A similar definition of the concept "ecological information" is given in point 1 of article 159 of the Ecological code.

Ecological information available to the public, except some cases provided by laws of the Republic of Kazakhstan. Access to certain information and data components, composing public ecological information, is carried out by inquiries of physical and legal entities, distributions in mass media, in special editions, available on the Internet, as well as with the use of other publicly available information and communication tools.

Access to the government information resources (information databases) ecological information is provided by means of formation and maintenance of public registers and inventories of ecological information.

Providing access to documents and the information resources containing information and data with limited access is carried out in an order established by the legislation of the Republic of Kazakhstan.

Ecological information includes information and data about:

1. state of environment and its objects;
2. factors of impact on environment, including its pollution;
3. software-based, administrative and other measures which have or may have an impact on the environment;
4. ecological standards and ecological requirements to economic and other activity;
5. planned and realized actions for environmental protection and their financing;
6. the activity making or capable to make impact on environment, process of decision-making and results of inspection ecological checks on it, including the calculations considered thus, analyses and other data concerning environment;
7. the impact of the environment on health, safety and living conditions of the population, cultural facilities and buildings.

Ecological information can be expressed in written, electronic, audiovisual or other form.

Activities of government bodies and other legal entities for formation and distribution of ecological information.

Collecting, the account, storage and distribution of ecological information by government bodies and other legal entities are carried out for information support of activity of government bodies, plan-

ning and performance of actions for environmental protection and realization of the right of citizens on favorable for life and health environment. The ecological information which is subject to obligatory collecting, the account and storage by government bodies and other legal entities, is defined by the legislation of the Republic of Kazakhstan.

The obligation to check and record the specially authorized government bodies, which can make considerable impact on environment, as well as any emergency situations of natural and technogenetic disasters that pose a serious threat to the environment, life and health.

For systematization of ecological information and improvement of access to government bodies form and maintain electronic inventories of ecological information.

Government bodies according to their competence, spread by posting on the Internet and applications of other public information and communication tools the following types of ecological information:

1. reports on a state of environment;
2. projects and texts of regulations and international treaties concerning environmental protection;
3. projects and texts of the documents concerning a state policy, programs and plans in the field of environmental protection;
4. reports on results of control and inspection and law-enforcement activity in the field of environmental protection;
5. information carried to the list of basic services of the electronic government in the field of environmental protection.

For distribution of ecological information government bodies can attract individuals and legal entities in an order provided by the legislation of the Republic of Kazakhstan about government procurements and the state social order.

The centralized collecting, the account and storage of ecological information are carried out by the State fund of ecological information. Management of the State fund of ecological information is carried out by the organization subordinated to authorized body in the field of environmental protection. Information resources of the State fund of ecological information include materials and documents:

- 1) represented without fail by government bodies and legal entities;
- 2) transferred by physical and legal entities on a voluntary basis.

The structure of the State fund of ecological in-

formation includes the following types of ecological information:

1. inventories of natural resources;
2. register of emissions and transfer of pollutants and other registers of ecological information;
3. list of ecologically dangerous productions;
4. data of environmental monitoring;
5. materials of an assessment of impact on environment and the state environmental assessment with the consent of the customer of planned activity;
6. regulations and normative and technical documents in the field of environmental protection and use of natural resources;
7. reports on performance of the research and developmental works connected with environmental protection;
8. scientific and technical literature in the field of ecology and environmentally friendly technologies;
9. other materials and the documents containing ecological information.

For system and evident providing ecological information the complex scientific and help collection of cartographic materials – the National ecological atlas is formed. Development and the publication of the National ecological atlas will be organized by authorized body in the field of environmental protection.

Physical and legal entities have the right of a free access to public state information resources of ecological information. Government bodies, and also the officials who are carrying out the state functions, or the physical and legal entities providing to the population on the basis of the public contract of service, concerning to environment, are obliged to provide open access to ecological information, including on inquiries of physical and legal entities.

Other physical and legal entities that are carrying out activity in the territory of the Republic of Kazakhstan are obliged to provide the ecological information relating to impact on life and health of citizens by inquiries of persons. Physical and legal entities have the right to obtaining ecological information from persons, in a required form if there are no bases to provide it in other form.

In cases when the government body has no the required ecological information, the received inquiry will be forwarded to the competent public authority within the time prescribed by the legislation of the Republic of Kazakhstan.

The terms and procedure for providing environmental information by government bodies established by the legislation of the Republic of Kazakhstan on administrative procedures and on the order of consideration of citizens. Physical and legal entities, provide required ecological information no later than one month from the date of receiving inquiry.

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