Studia Sieci Uniwersytetów Pogranicza | 2025 | 9
DOI: 10.15290/sup.2025.09.20

Patrycja Joanna Suwaj
- Jacob of Paradies University in Gorzow Wielkopolski
- e-mail: psuwaj@ajp.edu.pl
- ORCID: 0000-0001-9807-8110

# BETWEEN OVERSIGHT AND OVERLOAD: STRATEGIC USE OF PUBLIC INFORMATION LAW (BY NGOS) IN POLAND

## Abstract

- *Goal* – The article investigates the growing tension between democratic oversight and procedural exploitation in the implementation of Poland's public information access regime, particularly by non-governmental organisations (NGOs). It aims to clarify how the constitutional right to information, while essential for accountability, can be strategically misused to burden administrative institutions and distort participatory governance.
- *Research methodology* – The study employs a combination of doctrinal legal analysis, empirical audit data on information requests, and comparative examination of foreign access-to-information frameworks. This mixed approach allows for identifying patterns of instrumental use and assessing their compatibility with the constitutional and European transparency standards.
- *Score* – The findings reveal three interrelated forms of misuse: quantitative overload, qualitative manipulation, and procedural weaponisation, all of which undermine administrative functionality and erode the intended participatory role of transparency law. To address these issues, the article develops a purpose test designed to differentiate legitimate civic oversight from tactical exploitation. Two normative variants of the test are proposed: a codified legislative model and a judicial interpretive model, each offering distinct institutional safeguards.
- *Originality/value* – The article contributes a new conceptual and policy framework for balancing transparency with administrative sustainability. It reframes the debate from a dichotomy of openness versus restriction toward a proportional recalibration of access rights, preserving democratic accountability while mitigating systemic abuse.

**Keywords:** public information law, transparency, NGOs, procedural abuse, access to information, strategic litigation, purpose test, administrative capacity

## 1. Introduction

The constitutional right to public information [Article 61 of the Polish Constitution] represents a cornerstone of democratic oversight, enabling civil society to monitor governmental operations. However, the practical implementation of this right through the 2001 Public Information Access Act (UDIP) has generated unintended consequences – the weaponisation of transparency mechanisms by certain NGOs. This study posits that while UDIP provisions remain essential for democratic governance, their procedural guarantees are increasingly exploited by organisations pursuing non-substantive goals ranging from financial gains to administrative pressure tactics.

The research employs legal-dogmatic analysis of administrative court rulings [2019–2024] and empirical case studies of NGO request patterns identified through NIK audits. It addresses two research questions: (1) How do Polish courts interpret abuse thresholds in public information cases? (2) What systemic reforms could prevent instrumentalisation while preserving civic oversight?

## 2. The legal architecture of public information access in Poland: constitutional imperatives and operational challenges

The Polish legal framework governing access to public information represents a complex interplay between constitutional ideals and administrative realities. Article 61 of the Constitution, which establishes not merely an individual right but what the Constitutional Tribunal in judgment K 7/01 characterised as "a structural principle of democratic statehood", lies at its normative foundation. This constitutional anchoring creates a unique tension – while the provision mandates maximum openness, its implementation through ordinary legislation must accommodate competing public interests ranging from data protection to administrative efficiency.

The operationalisation of Article 61 occurs primarily through the 2001 UDIP, the drafting process of which reflected Poland's post-communist transition ethos. The Act's revolutionary aspect lies in its presumption of disclosure (§3(2)), reversing traditional administrative secrecy paradigms. The statutory framework imposes three core obligations on public entities: the duty to provide information ex officio through Public Information Bulletins (§9), the requirement to respond to individual requests within 14 days (§13), and the obligation to maintain orderly

records facilitating access (§5a). These provisions collectively create what the European Court of Human Rights in Magyar Helsinki Bizottság v. Hungary [2016] recognised as one of Europe's most progressive transparency regimes.

However, the practical operation of the system reveals significant structural tensions. The broad subjective scope of the Act – allowing any natural or legal person to submit requests without demonstrating a legal interest – in practice creates conditions conducive to abuse and institutional overload. Such phenomena can be critically examined through the lens of the so-called "transparency paradox," described in the organisational literature as a situation in which increased access to information, rather than enhancing oversight and effectiveness, may lead to the fragmentation of knowledge, diffusion of responsibility, and the cultivation of strategic ignorance [Stohl et al., 2016; Tsoukas, 1997]. Although this concept was originally developed in the context of information management within organisations, its application to the relationship between public administration and civil society is well justified. In conditions of excessive information demands, mechanisms designed to promote transparency can – paradoxically – destabilise institutional functioning and obstruct genuine public understanding of state activity.

While designed to maximise accessibility, this approach creates opportunities for strategic actors to exploit procedural mechanisms. Audit reports from the Supreme Audit Office (NIK) and civil society watchdogs suggest that a disproportionate share of public information requests is directed at a small subset of public bodies – particularly those responsible for economically sensitive areas such as public procurement and spatial planning. Although precise national statistics are limited due to inconsistent registry practices, NIK's findings indicate a concentration of requests in institutions that handle high-stakes administrative decisions. This imbalance underscores how the legal architecture, while normatively inclusive, can be operationally skewed in practice.

The legal framework further intersects with competing regulatory regimes in complex ways. The General Data Protection Regulation's (GDPR) Article 6(1)(e) presents a key point of the tension between data protection obligations and transparency mandates. Supreme Adminsitrative Court (NSA) has taken a nuanced approach in this area. In its decisions such as III OSK 4266/21 [15 December 2021] and III OSK 1129/21 [24 March 2022] the court affirmed that salary information (including amounts and components) of public officials constitutes public information, given that it's financed from public funds and linked to official duties. At the same time, the court recognised that when salary components are

not related to official functions but rather to personal circumstances, the "serious harm" test under Article 5(2) of the Data Protection Act may justify redaction or refusal. Similarly, trade secret protections under the 2018 Act on Combating Unfair Competition continue to pose interpretive challenges, particularly in relation to contractual documentation in public-private partnerships.

The financial implications of compliance introduce additional complexity. Unlike many European systems, Poland's UDIP enshrines a strict principle of cost-free access (§15), exempting only the actual reproduction expenses. While this approach ensures broad accessibility, it generates substantial hidden costs. According to data cited in a 2022 report by the Supreme Audit Office [NIK, 2022], the cumulative annual expense of processing information requests runs into tens of millions of PLN, with small municipalities spending up to 8% of their legal departments' budgets on compliance. These findings have prompted concerns about the proportionality and sustainability of the current model.

Jurisprudential developments reflect growing judicial awareness of these systemic pressures. Several rulings of the Supreme Administrative Court – such as I OSK 759/14 [12 February 2015] and III OSK 1129/21 [22 March 2022] have affirmed the "processed information" doctrine, allowing public bodies to reject requests that require substantial analytical or aggregative effort. However, this doctrine is not applied uniformly across judicial panels. As Kościuk and Kulikowska-Kulesza [2020] emphasise, Polish administrative courts demonstrate "interpretive doubts" when distinguishing between simple retrieval and transformation of data, resulting in inconsistent jurisprudence and legal uncertainty.

## 3. The dual role of NGOs in Poland's transparency framework: between democratic oversight and systemic exploitation

The participation of non-governmental organisations in Poland's transparency mechanisms represents a profound conceptual dichotomy at the heart of contemporary democratic governance. While constitutional and statutory frameworks position NGOs as essential actors in maintaining governmental accountability through public information access, empirical evidence reveals increasingly complex operational dynamics that challenge this idealised vision. This analysis examines the evolving jurisprudence and policy landscape surrounding NGO activities in the transparency domain, with particular focus on emerging patterns of instrumentalisation that test the boundaries between legitimate oversight and systemic abuse.

The theoretical foundation for NGO involvement in transparency mechanisms derives from deliberative democracy theory, particularly Habermas's conceptualisation of the public sphere as a space for communicative action between state institutions and civil society [Habermas, 1996]. The Polish constitutional order institutionalises this principle through Article 12's guarantee of collective participation in public affairs, reinforced by the Public Benefit Activity Act's provisions granting NGOs privileged procedural standing in information requests. This legal architecture reflects a broader normative assumption found in post-communist transitions: that civil society empowerment through broad access to public information is essential to consolidating democratic institutions and reversing authoritarian legacies [Mendelson & Glenn, 2002; Gwiazda, 2020].

However, the practical implementation of these theoretical constructs has generated significant operational tensions. Without clear statutory distinctions between genuine public interest activities and organisational self-interest, a regulatory gray zone opens up. Entities formally registered as public benefit organisations frequently act as legal entrepreneurs – employing transparency instruments in ways misaligned with their declared missions. This is especially noticeable when NGOs use mass information requests within broader legal or commercial strategies, rather than as part of accountable oversight.

Moreover, underlying financial incentives may distort transparency's democratic purpose. A growing number of NGOs focused on "transparency monitoring" appear to derive a significant share of their funding from litigation-related activities. This dynamic gives rise to what one might call a "transparency-industrial dynamic," in which organisational sustainability hinges on generating high volumes of information requests and appeals – even when these efforts may not advance true public interest objectives.

The recent civil society research underscores the emergence of precisely such exploitative dynamics. A 2024 report by Watchdog Poland documents multiple cases in which mass requests, often submitted by a limited number of individuals or nominal NGOs, are used not to obtain meaningful public data, but rather to provoke administrative gridlock or pursue financial compensation through litigation. In one documented case, a local councilor submitted over 2 000 requests in less than a year, many of which were clearly repetitive or incomprehensible. In another, a journalist demanded the full content of 15 000 court rulings in raw format, prompting severe institutional overload.

These examples reveal that procedural weaponisation is not a theoretical risk but a growing empirical reality – one that further blurs the distinction between

civic oversight and systemic misuse of transparency frameworks [Watchdog Poland, 2024: 12–17].

The case of transparency-focused NGOs frequently illustrates a broader pattern: many of these organisations appear to rely heavily on litigation-related revenue. While specific financial dependencies vary, in several instances the bulk of an NGO's legal aid income is linked to public information disclosure cases. This suggests the emergence of a transparency-industrial dynamic, in which organisational sustainability becomes disproportionately tied to the volume of requests and appeals – regardless of whether these interventions lead to substantive public-interest outcomes.

## 4. Institutional and judicial responses to transparency mechanism exploitation

Judicial practice in recent years has begun to recognise the procedural consequences of such patterns. In multiple cases involving a single applicant formally claiming to represent a watchdog NGO and active across numerous jurisdictions in Poland, administrative courts explicitly noted the serial and mass-character of requests. Referring to Article 206 of the Law on Proceedings before Administrative Courts (p.p.s.a.), the courts declined to award legal representation costs, expressing doubt as to whether the primary objective of the litigation was to remedy administrative inertia or rather to obtain procedural compensation. Such reasoning was articulated in judgments including III SAB/Gd 47/24 [12 December 2024], II SAB/Wa 209/24 [24 June 2024], I SAB/Sz 209/24 [20 February 2025], I SAB/Sz 187/24 [13 March 2025], and III OSK 824/24 [28 March 2025], in which courts identified a pattern of strategic large-scale filings. These rulings underscore how the boundary between civic oversight and instrumentalised litigation can become blurred under the current transparency rules. These judicial observations resonate with broader concerns raised by civil society monitors. The 2024 Watchdog Poland report systematically analysed administrative court rulings and identified a trend towards invoking implicit "purpose-based" reasoning in decisions involving mass or burdensome requests. For instance, in the Białystok case II SA/Bk 191/20 [26 May 2020], the court declined to process a highly repetitive request, noting the applicant's apparent intention to disrupt rather than inform. However, as the report emphasises, such judgments often occur without explicit statutory grounding, relying instead on inferred abuse criteria that remain undefined in the Polish law.

Beyond individual litigation strategies, Poland's legal framework itself contains structural provisions that may inadvertently enable such practices. Article 46(3) of the p.p.s.a., for instance, permits cost recovery even in unsuccessful appeals – an arrangement originally designed to support public-interest litigation. However, when coupled with high-volume, low-success filings, it may create unintended incentives for procedural exploitation. Recent judicial efforts invoking Article 206 p.p.s.a. to counteract these dynamics represent important signals of restraint, yet the underlying statutory design remains permissive.

These concerns have also been acknowledged in policy discourse. A Watchdog Poland 2024 report [www 1], reviewed by the Polish Parliament's Petitions Committee, warned that the legal framework lacks clear criteria to distinguish legitimate civic oversight from instrumental litigation. The report emphasised that without further statutory refinement, transparency rights may be co-opted in ways that generate administrative overload and erode public trust in access regimes.

Polish administrative courts have gradually developed jurisprudential mechanisms to address the strategic overuse of transparency rights. While the legal framework does not explicitly define what constitutes abuse of the right to public information, courts have relied on the category of processed information to filter requests that would place disproportionate burdens on the administration.

In several landmark judgments, including I OSK 89/13 [5 April 2013], I OSK 1347/05 [17 October 2006], and III OSK 4058/21 [1 October 2021], the Supreme Administrative Court has gradually articulated an interpretive approach to information requests that require complex processing. Specifically, it has affirmed that when a request necessitates aggregation, analysis, or synthesis of dispersed public data, it may be classified as a request for processed information. Under such circumstances, public authorities are entitled to deny access unless the applicant convincingly demonstrates that the request serves a particularly justified public interest. Although this doctrinal development is grounded in Polish statutory language, it performs a normative function similar to that of a purpose test – permitting courts to differentiate between legitimate oversight and procedural instrumentalisation.

Legal scholarship has further developed this line of reasoning. Parchomiuk [2018] argues for the formal recognition of the abuse of rights doctrine in administrative law, noting that procedural entitlements must not be allowed to obstruct the effective functioning of public institutions. Although Polish legislation does not explicitly codify an abuse threshold in the context of transparency, judicial observations concerning repetitive and disproportionate requests – particularly those with questionable connection to public interest – point to an emerging doctrinal structure.

This domestic evolution reflects broader European trends in administrative jurisprudence. In Germany, the doctrine of Rechtsmissbrauch, firmly established under the Federal Freedom of Information Act (Informationsfreiheitsgesetz), authorises public authorities to deny access to information when requests are manifestly abusive. Although Polish courts have not formally incorporated this doctrine, the German Federal Administrative Court's decision in BVerwG [7 C 19.18] has attracted interest among scholars exploring cross-jurisdictional principles of proportionality and procedural integrity [BVerwG, 2020].

The increasing complexity of transparency litigation in Poland – marked by strategic use of access tools and growing procedural volume – raises normative questions about how to balance the right to information with the functional integrity of public administration. In light of these developments, this article considers the purpose test: a conceptual framework for assessing whether a request for public information genuinely serves democratic oversight or instead represents an instrumental use of access law.

Although the test is not codified in the current Polish legislation, it draws on doctrinal insights and evolving jurisprudence related to "processed information", as well as comparative experiences from European administrative law, such as the Rechtsmissbrauch doctrine in Germany [BVerwG, 2020]. Its aim is not to restrict transparency, but to introduce proportional safeguards against systemic misuse.

The purpose test rests on three analytically derived indicators. Firstly, a pattern of repetitive or substantially identical requests submitted across multiple administrative units – or concentrated against a single institution – may indicate an intent to burden rather than to oversee. Polish courts have already recognised this logic when declining to award legal representation costs in such cases. Secondly, there are cases in which the disclosed information is diverted into commercial channels – for instance, by legal intermediaries or data resellers – rather than being used for public scrutiny or civic engagement. Thirdly, procedural instruments such as appeals and complaints are at times deployed *en masse* to exert pressure, rather than to remedy administrative inaction, undermining the procedural purpose of transparency law.

These indicators are not exhaustive, but they help delineate the boundary between legitimate oversight and tactical exploitation. As such, the purpose test could function both interpretively and normatively. From a *de lege ferenda* perspective, it could be incorporated into the Public Information Access Act (UDIP) as a formal standard guiding both administrative decision-making and judicial review.

Importantly, any statutory recognition of the purpose test would require narrow tailoring to safeguard constitutional rights [Konstytucja RP, 1997, Art. 61]. Application should be contextual and based on objective, demonstrable factors – such as consistent mass-filing behaviour or clear market-based motives. The aim is not to allow arbitrary refusals, but to introduce procedural filters that align access claims with their underlying democratic function.

This article's normative proposal – the consideration of a structured purpose test – is reinforced by civil society recommendations. The 2024 Watchdog Poland report urges the Polish legislature to clarify the boundary between acceptable and abusive requests. It warns that, in the absence of clear legal criteria, public bodies and courts risk either suppressing legitimate scrutiny or tolerating strategic obstruction. A well-defined purpose test, grounded in proportionality, procedural good faith, and institutional feasibility, could serve as a principled tool for navigating this tension [Watchdog Poland, 2024: 31].

Institutionalising such a calibrated tool would bring the Polish transparency law closer to the established European standards while maintaining fidelity to democratic ideals. Ultimately, this article does not advocate for limiting access to information but for recalibrating its procedural architecture – ensuring that transparency remains a means of public oversight, not a tool of administrative disruption.

Jurisprudential trajectory illustrates a subtle but important balancing of constitutional values. Polish courts continue to affirm the inviolability of Article 61 – guaranteeing access to public information – while recognising that an absolute interpretation might undermine the law's purpose when deployed for objectives unrelated to transparency [Konstytucja RP, 1997]. As has been occasionally noted in judicial reasoning, constitutional rights should not operate as blank cheques enabling practices that erode public trust in both public institutions and civil society watchdogs [Parchomiuk, 2018].

The practical articulation of these principles is gradually developing through case law, particularly those addressing systemic and strategic use of information requests. While no formal doctrine has been established, some rulings have implicitly incorporated elements of what could be termed the purpose test, by assessing not only the content but also the context of requests – such as volume, repetitive targeting, and overall procedural behaviour (also in this context detailed analysis of jurisprudence presents [Watchdog Poland, 2024: 38–39]. A few courts have also touched on whether applicants acted in procedural good faith, requiring plausible indications that each inquiry served a genuine oversight goal rather than indiscriminate data fishing.

These gradual shifts in jurisprudence – visible since the development of the "processed information" doctrine between 2007 and 2021 – occur against the backdrop of an increasingly urgent debate over the future of public information access in Poland. Comparative analysis suggests that the Polish framework remains notably permissive: unlike Germany's Freedom of Information Act (§ 8 IFG) or Sweden's Transparency Ordinance (Chapter 3), it does not include formal public interest balancing tests [Banisar, 2006; Bundesverwaltungsgericht [BVerwG], 2020]. While this regulatory openness was initially driven by Poland's post-authoritarian democratisation efforts, it now faces critical reassessment in light of documented instances of systemic misuse.

Recent trends in administrative jurisprudence show tentative but meaningful attempts to introduce contextual oversight, particularly through evolving interpretations of "processed information" and references to procedural good faith [Naczelny Sąd Administracyjny [NSA], 2013; NSA, 2021]. These tools, however, remain indirect and fragmented, underscoring the need for more robust normative foundations.

Addressing the structural dynamics enabling the instrumentalisation of access rights would require targeted legislative reform. In terms of NGO's as they also play a role of applicant, these could include revisiting the funding structures of watchdog NGOs, refining cost-recovery mechanisms in administrative litigation, and introducing statutory criteria for distinguishing legitimate civic oversight from opportunistic procedural gaming. These recommendations aim to protect the integrity of transparency mechanisms without weakening the constitutional right to information.

Such a recalibration would not restrict access but enhance its legitimacy and sustainability by ensuring its exercise aligns with public interest objectives rather than strategic exploitation. It would also support the constitutional imperative of maintaining a functional public administration in a democratic state governed by the rule of law [Parchomiuk, 2018]. As noted by Piskorz-Ryń [2022], the access to public information must remain functionally aligned with the core democratic purposes – namely, public trust, transparency, anti-corruption and administrative efficiency. Requests that do not serve at least one of these normative functions, she argues, risk qualifying as abusive and deviant from the legal intent of transparency frameworks.

Recent empirical evidence from official audits paints a compelling picture of mounting operational strain on public administration due to the increasing volume and intensity of NGO-driven information requests. According to a 2022

audit by the Supreme Audit Office (NIK), covering the selected municipalities and regional offices, the number of public information requests rose significantly between 2019 and 2021. In several cases, hundreds of inquiries were filed annually across various sectors, with the burden disproportionately affecting institutions managing economically sensitive data such as procurement or land use. Some local governments, particularly those with limited legal infrastructure, reported that the procedural obligations associated with transparency compliance consumed a substantial share of their operational capacity. In extreme cases, this strain led to delayed or suspended public infrastructure projects [NIK, 2022a].

These developments closely reflect the dynamics captured in Lipsky's [2010] theory of street-level bureaucracy, in which well-intentioned legal frameworks, when appropriated by strategic actors, distort institutional priorities and impose cumulative pressures on frontline governance.

Responding to these challenges calls for more than blunt regulatory fixes. For instance, fixed quotas on information requests may appear administratively appealing but risk violating constitutional guarantees and delegitimising genuine civic oversight. The Helsinki Foundation for Human Rights (HFHR), among other civil society organisations, has consistently advocated for preserving broad access to information as a democratic safeguard, particularly in contexts where public trust in institutions is fragile or contested.

To advance the debate, this article proposes a normative and policy-oriented conceptual framework for addressing disproportionate use of information rights – one that avoids simplistic "pro-transparency vs. anti-NGO" narratives. This approach aligns with concerns raised by Polish scholars such as Bernaczyk, who point out that in the absence of formal statutory tests, courts increasingly invoke a quasi-altruistic rationale to assess access rights – an interpretive drift that risks eroding legal certainty [Bernaczyk, 2014]. Rather than restricting access, the goal is to design calibrated legal instruments that uphold the constitutional value of transparency while insulating public administration from procedural sabotage.

This approach builds on comparative lessons from other jurisdictions, such as the use of tiered fee structures for resource-intensive queries, declarations of public interest for frequent requesters, and procedural safeguards against vexatious claims. These models share a common goal: to preserve transparency's normative core while acknowledging the real-world administrative limits of state institutions. By rooting this model in both empirical patterns and normative proportionality, the framework contributes to a more sustainable and rights-consistent regulation of access to public information.

The Polish legal regime on access to public information, though constitutionally robust and grounded in democratic oversight principles, increasingly reveals patterns of procedural exploitation by certain civil society actors. This raises important normative and practical questions about the balance between transparency and the operational sustainability of public administration.

Empirical observations gathered in official audits indicate that a disproportionate share of freedom of information (FOI) requests is initiated by a narrow group of highly active entities, many of which identify as public interest NGOs. According to a 2023 report by the Supreme Audit Office [NIK, 2023], some public bodies – especially at the municipal level – receive multiple requests weekly, many of which are near-identical in form and scope. Smaller municipalities, often lacking legal or administrative capacity, are particularly vulnerable. The report notes that in extreme cases, FOI-related tasks consume a substantial percentage of their legal budgets, sometimes delaying infrastructure investments.

These developments resonate with broader administrative law concerns about the abuse of procedural rights. Scholars such as Kozynets and Stechenko [2021] describe how mechanisms intended to protect access and fairness can be repurposed for strategic or dilatory objectives. In the FOI context, this manifests as procedural instrumentalisation, where legal rights are wielded not to enhance oversight but to impose administrative burden or to create leverage. The resulting "procedural pollution" arises when government capacity is diluted by template-based or marginally relevant requests, undermining the civic utility of transparency.

Polish courts have increasingly taken note of such patterns. As previously discussed, administrative judgments have applied cost-allocation principles to disincentivise mass-litigation behaviour lacking clear public interest motivation. This evolving judicial stance illustrates a cautious but growing awareness that civic accountability mechanisms must not be allowed to degrade into opportunistic or obstructive procedural routines.

This trend has also led to measurable delays in administrative proceedings. NIK documented specific examples where routine decisions – such as permit issuance or investment approval – were significantly delayed or suspended as administrative personnel struggled to comply with overlapping information demands [NIK, 2022a].

This phenomenon reflects what comparative scholars have described as "administrative fatigue": a defensive posture within institutions that, paradoxically, undermines transparency by encouraging bureaucratic risk-aversion, excessive proceduralism, and the inflation of internal documentation standards [Schwartz

& Johnson, 2021]. Indeed, a growing number of Polish municipalities now report adopting defensive administrative behaviours, such as creating redundant multi-tier approval processes for routine disclosures and standardising overly cautious recordkeeping, as a means of insulating themselves from potential litigation or criticism [NIK, 2022b].

These adaptive behaviours, while intended as safeguards, can ultimately distort institutional priorities and weaken effective governance. As noted in the Supreme Audit Office's findings, the procedural costs of excessive transparency-related workloads have begun to shift local governance from a model of proactive policymaking to one of reactive compliance—an outcome clearly at odds with the normative goals of access to public information legislation [NIK, 2022a].

The instrumentalisation of public information access mechanisms reveals distinct yet overlapping patterns that challenge the balance between legitimate oversight and administrative capacity, particularly in small municipalities. These are systemic phenomena, not isolated incidents, and this article outlines three interrelated forms of procedural misuse within Poland's transparency regime.

Quantitative Overload involves the submission of large volumes of substantively identical or only slightly modified requests. Official audits by the Supreme Audit Office [NIK, 2022a; 2022b] confirm that municipalities frequently receive dozens of such FOI applications weekly, causing administrative bottlenecks that divert staff time from core public services.

Qualitative Manipulation covers practices in which formally compliant requests are used strategically – to influence administrative timelines, gain procedural leverage, or advance corporate interests. Polish courts have addressed certain aspects of this pattern through the application of the "processed information" concept, which allow more restrictive handling of requests that require aggregation, analysis, or interpretation.

Procedural Weaponisation describes litigation strategies that rely on serial appeals or burdensome filings not meant to obtain information, but to disrupt administration or extract procedural costs. Although the current Polish framework lacks a specialised doctrine, courts have shown growing awareness of these practices and signalled a willingness to adapt procedural responses – without undermining transparency rights. For example, in III OSK 824/24 [28 March 2025], the NSA declined to award procedural costs under Article 206 of the Law on Proceedings before Administrative Courts (p.p.s.a.), citing concerns that the repeated filings constituted strategic litigation disconnected from actual transparency objectives. These rulings reveal growing judicial sensitivity to practices that

may weaponise transparency rights for procedural advantage. As it was indicated by NSA, such strategic use of information rights for adversarial legal advantage – e.g., obtaining insight into opposing legal arguments – constitutes a misuse of the access regime and has no connection to legitimate public oversight [I OSK 89/09, 16 March 2009].

Collectively, these forms constitute procedural instrumentalisation. Addressing them necessitates nuanced legal mechanisms that uphold constitutional access rights while preserving public administration's operational integrity.

## 5. Comparative models

Comparative models offer potential guidance. In Germany, the doctrine of Rechtsmissbrauch (abuse of rights) recognised under the Freedom of Information Act (IFG) allows authorities to deny manifestly abusive requests. The German Federal Administrative Court's ruling in BVerwG [7 C 19.18] affirmed that repetitive filings may justifiably be rejected if they impose disproportionate burdens with minimal public value. While Poland lacks a statutory equivalent, these developments offer an interpretive reference point for aligning domestic safeguards with broader European administrative law principles focused on proportionality and good faith.

The typology reveals an overarching tension between formal compliance and substantive legitimacy in transparency regimes. While each abuse pattern manifests differently, they collectively underscore the need for legal frameworks that incorporate both ex ante preventive measures and ex post remedial mechanisms. The evolution of jurisprudence in this domain suggests an increasing judicial recognition that unqualified access rights, when divorced from their democratic rationale, can paradoxically undermine the very governance values they were designed to protect. This normative rationale is echoed by Cybulska [2018], who argues that statutory regulation should explicitly allow for the restriction of access rights in cases of abuse, while simultaneously defining the mechanism for such restriction. According to Cybulska, the purpose of the right to public information lies not in fulfilling private or commercial needs, but in advancing public good, transparency of governance, and the openness of administrative activity [Cybulska, 2018]. Legal recognition of this purpose, she contends, would help reconcile access rights with institutional resilience. The same tension is highlighted in other domestic literature, in which some scholars warn that the absence of

a legal definition of abuse invites judicial arbitrariness and weakens the safeguards against either over-compliance or under-enforcement of transparency obligations [Bernaczyk, 2014; Jaśkowska, 2020; Lebowa, Fermus-Bobowiec, 2022]. As Wilk and Sześciło [2022] caution, however, any legislative attempt to address abuse must be carefully calibrated to avoid unintended consequences. They emphasise that the right to information often involves compelling the administration to disclose data contrary to its own political interests. Under such conditions, invoking the notion of "abuse" may serve not as a safeguard, but as a procedural strategy exploited by public authorities to evade scrutiny. They warn that codifying additional grounds for restricting access may actually reinforce arbitrariness, granting administrations another argumentative tool to justify opacity. This realisation is gradually reshaping transparency paradigms across European administrative systems, though the precise equilibrium between access and protection remains contested in both legal doctrine and policy implementation.

From a comparative legal perspective, the Columbia Global Freedom of Expression report, Transparency in the Spotlight [2023], highlights how courts around the world have grappled with the challenge of ensuring proportionality when balancing access rights with other public interests. The report underscores the importance of narrowly tailored exceptions and well-articulated legal standards to prevent abuse – either by the state or by private actors exploiting access regimes for strategic or commercial gain.

This broader discourse reinforces a more nuanced understanding of transparency as a legal and political value. While transparency serves democratic legitimacy, it is not absolute. As the jurisprudence of the European Court of Justice has consistently affirmed, access rights must be reconciled with principles of proportionality, protection of legitimate public interests, and institutional functionality [C-213/15 P, Breyer v. Commission, 2018]. The challenge lies in calibrating legal frameworks, so they protect civic oversight without enabling administrative dysfunction or procedural exploitation.

The growing operational complexity of public information systems in Poland has renewed calls for more structured and context-sensitive frameworks to assess the legitimacy of information requests. While courts have taken steps to develop interpretive tools grounded in proportionality and good faith, the absence of explicit legislative criteria may continue to expose the system to strategic exploitation by high-frequency applicants.

Relevant international models provide valuable guidance. In the United Kingdom, the Information Commissioner's Office (ICO) has issued binding guidance

outlining how authorities can manage excessive or vexatious requests under the Freedom of Information Act 2000. The ICO recommends a case-by-case evaluation of indicators such as the burden imposed by the request, the applicant's prior behaviour, and the extent to which the request advances a clearly defined public interest. This approach has allowed British institutions to reject filings that, although procedurally valid, demonstrably serve disruptive or commercially motivated aims.

At the European level, the Court of Justice of the European Union (CJEU) has emphasised in its case law that access to information must be balanced against the operational autonomy and decision-making capacity of public institutions. In Bayer CropScience SA v. Commission [C-442/14 P], the Court ruled that information rights must not be exercised in ways that obstruct administrative efficiency or compromise regulatory integrity. This principle aligns with broader trends in EU administrative law, in which transparency is interpreted in conjunction with the values of proportionality, effectiveness, and institutional resilience.

This normative evolution resonates with broader trends in European administrative law, in which the principle of proportionality is increasingly interpreted as a safeguard not only for individual rights but also for institutional functionality. As Lenaerts and Gutiérrez-Fons [2020] argue, the general principles of EU law must be applied in a way that preserves the equilibrium between effective governance and the rights conferred by the Union law. In the context of access to information, this requires careful attention to cumulative administrative burdens and the risk of instrumentalisation, particularly when transparency mechanisms are employed in ways that impair the capacity of public bodies to fulfil their core duties.

These comparative insights offer practical pathways for Polish lawmakers seeking to reform the access-to-information regime. Possible directions include adopting a tiered framework that allows differentiated treatment of high-frequency applicants, implementing pre-disclosure filters based on stated public interest rationales, or formalising cost-balancing rules to disincentivise procedural overload. Rather than undermining the constitutional guarantee of openness, such reforms would safeguard its meaningful application in the face of evolving systemic pressures.

Although the Polish law does not yet formally incorporate such proportionality assessments in transparency disputes, recent jurisprudence reflects growing judicial awareness of the underlying dilemma. This includes the development of interpretive standards that emphasise purpose, frequency, and impact, laying the groundwork for a more balanced approach to access rights enforcement.

Legislative reform efforts might draw on these developments to establish a tiered procedural model, differentiating between ordinary civic oversight and strategic exploitation, thereby strengthening the resilience of Poland's transparency regime.

## 6. Conclusions

The systemic challenges posed by the instrumentalisation of information access rights call for a multifaceted institutional response involving both judicial interpretation and legislative initiative. In light of mounting pressures on Poland's transparency infrastructure, a recalibration of the current access paradigm appears increasingly necessary. This process should rest on three interrelated pillars: the evolution of judicial doctrine, the development of administrative countermeasures, and the pursuit of targeted policy reforms – each aimed at reconciling the constitutional guarantee of transparency with the imperative to shield public administration from systemic abuse.

Firstly, judicial doctrine must evolve to provide clearer interpretive standards that distinguish legitimate transparency demands from procedural exploitation. Polish courts have begun this process by recognising the "processed information" concept – most notably in I OSK 89/13 [5 April 2013] – allowing authorities to treat complex, aggregation-heavy requests differently. Still, greater clarity is needed: a coherent judicial framework could adopt principles from comparative law, such as Germany's Rechtsmissbrauch doctrine, embedding proportionality and good faith into domestic jurisprudence [BVerwG 7 C, 19.18, 2020].

Secondly, administrative countermeasures must be institutionalised to proactively mitigate overload. Supreme Audit Office (NIK) reports [2022a; 2022b] document that dozens of near-identical information requests each week put unwarranted pressure on municipal operations. In response, public bodies should adopt routine triage systems – such as identifying bulk requests and flagging them for managerial review – while bolstering transparency training and procedural risk-awareness among staff. These steps would help operationalise "procedural filters" without impairing access rights.

Thirdly, policy reforms are needed to rebalance access with administrative sustainability. Comparative models suggest several avenues: incorporating declarations of purpose, fee differentiation for commercial usage, and audit-ready reporting on processing costs. Although Poland has no formal legislative mechanism in place, EU dialogues – such as the European Commission's recurring scrutiny

over Poland's RRP and transparency obligations – highlight political appetite for reform [European Commission, 2022]. Embracing such reforms could enhance accountability, ensure cost recovery, and discourage strategic misuse of access rights.

Together, these three pillars – judicial evolution, administrative infrastructure, and legislative innovation – form a comprehensive approach to defending democratic transparency while protecting public institutions from exploitation. It is only by aligning courtroom doctrine, bureaucratic practice, and policy design that Poland can sustain meaningful access to information in the face of growing procedural pressures. Codifying such principles into law – rather than relying on fragmented case law – may provide a clearer normative baseline and reduce the discretionary scope of public bodies when assessing the legitimacy of requests.

Judicial developments occur against a broader backdrop of intensifying debate – both academic and institutional – regarding the proper limits of transparency in contemporary governance systems. While the principle of access to public information remains a cornerstone of democratic accountability, its practical implementation has increasingly intersected with competing administrative, privacy, and efficiency concerns.

From the other hand, civil society organisations have voiced growing apprehension over how new constraints on access might affect democratic oversight. As Zaborska points out, the emergence of the concept of abuse of the right to public information in legal doctrine and case law has also been met with clear criticism from the civil society organisation Watchdog Poland [Zaborska, 2024; Watchdog Poland, 2024]. ARTICLE 19, for instance, in its 2021 statement on the Polish context, warned that any vague or discretionary limitations on the right to information risk undermining media independence and civil society's watchdog role, particularly in politically sensitive cases [ARTICLE 19, 2021]. The Helsinki Foundation for Human Rights (HFHR) has similarly cautioned against regulatory proposals that would permit public authorities to deny access based on arbitrary assessments of applicant motivation or presumed intent – pointing out the dangers such measures could pose to journalistic and civic activities [HFHR, 2023].

The following alternative formulations may guide legal and institutional reform, striking a balance between preventing instrumentalisation and preserving the constitutional core of access rights: legislative model (Hard Law Approach) and interpretive model (Soft Law Approach)

Legislative Model (Hard Law Approach) would assume that a structured purpose test could be codified within the Access to Public Information Act (UDIP) as a narrowly framed legal basis for rejecting requests that clearly diverge from

the public oversight function of the right. The test would not ask applicants to prove their intentions but would allow authorities to deny requests that are manifestly disproportionate, abusive in volume, or lacking any discernible connection to democratic transparency. To ensure legal certainty, such a clause should be accompanied by procedural safeguards – such as an obligation to justify the finding of abuse in writing, a right of appeal to the administrative courts, and a presumption in favour of access in doubtful cases. The legislative amendment could mirror standards already present in other parts of the Polish law, such as the concept of abuse of rights in civil procedure or the principle of good faith in administrative conduct. As alternative the Interpretive Model (Soft Law Approach) delivers a cautious and constitutionally sensitive model that could rely on interpretive tools already embedded in the Polish law. Without introducing a formal abuse clause, public authorities and courts could apply a proportionality-based balancing test – examining the scale, frequency, and administrative burden of a request, especially when coupled with observable patterns of instrumentalisation.

This "soft purpose test" would not be a ground for automatic refusal but rather an evaluative criterion used to justify limited procedural defenses, such as prioritisation, time extensions, or, in exceptional cases, refusal of clearly vexatious requests. Such an approach respects the presumption in favour of access while acknowledging the need to protect institutional functioning against deliberate overload.

The comparative landscape further highlights Poland's distinct regulatory trajectory. Germany's Informationsfreiheitsgesetz (IFG) incorporates a public interest override before disclosing personal or sensitive information, allowing authorities to weigh access against competing legal protections. The United Kingdom's Freedom of Information Act (FOIA) goes further by explicitly permitting the refusal of "vexatious" requests, offering administrative safeguards against strategic misuse [Information Commissioner's Office [ICO], 2019]. Sweden, meanwhile, has undertaken transparency reforms aimed at clarifying the public interest thresholds for complex or burdensome queries [OECD, 2024]. In contrast, Poland's UDIP maintains a notably low threshold for access, reflecting its post-authoritarian legal culture and constitutional commitment to transparency.

The challenges posed by the strategic use of transparency mechanisms underscore the need for a careful recalibration of Poland's public information framework. Rather than adopting wholesale restrictions that might undermine constitutional guarantees, any future reforms should pursue a proportional approach that

protects the integrity of civic oversight while ensuring the operational sustainability of public administration. This requires a deeper engagement with empirical data on request patterns, institutional capacities, and litigation outcomes, as well as broader consultation with both civil society and administrative practitioners. A mature transparency regime should not only safeguard access but also recognise that democratic accountability is best served when procedural rights are exercised in good faith and aligned with the public interest. Democratic transparency must remain accessible, but not exploitable.

## References

### Legal acts

Article 19, 2021, November 9, *Poland: Access to Public Information Must Not Be Constrained*, https://www.article19.org/resources/poland-access-to-public-information-must-not-be-constrained [date of access: 1.07.2025].

Konstytucja Rzeczypospolitej Polskiej, 1997, Dz.U. 1997 nr 78 poz. 483.

### Case law

Court of Justice of the European Union, 2017, *Bayer CropScience SA v Commission*, Case C-442/14 P, EU:C:2017:614.

Court of Justice of the European Union, 2018, *Breyer v. European Commission*, Case C-213/15 P, ECLI:EU:C:2018:231.

Naczelny Sąd Administracyjny [NSA], 2005, *Wyrok I OSK 1347/05 z dnia 27 kwietnia 2006 r.* https://orzeczenia.nsa.gov.pl [date of access: 1.07.2025].

Naczelny Sąd Administracyjny [NSA], 2013, *Wyrok I OSK 89/13 z dnia 25 września 2013 r.* https://orzeczenia.nsa.gov.pl [date of access: 1.07.2025].

Naczelny Sąd Administracyjny [NSA], 2021, *Wyrok III OSK 4058/21 z dnia 1 października 2021 r.* https://orzeczenia.nsa.gov.pl [date of access: 1.07.2025].

### Other documents

Helsinki Foundation for Human Rights, 2023, *Uwagi HFPC do proponowanych zmian w ustawie o dostępie do informacji publicznej*, https://www.hfhr.pl [date of access: 1.07.2025].

Helsinki Foundation for Human Rights, (n.d.), Access to public Information and Civic Space in Poland, https://www.hfhr.pl/en [date of access: 1.07.2025].

Information Commissioner's Office, 2019, *Dealing with Vexation Requests*, *Section 14 of the Freedom of Information Act 2000*, https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf [date of access: 1.07.2025].

Information Commissioner's Office, 2019, *Dealing with Vexation Requests under the Fredom of Information Act (FOIA)*, "ICO Guidance", No. 22, https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf [date of access: 1.07.2025].

Organisation for Economic Co-operation and Development, 2024, *OECD Anti-Bribery Convention Phase 4 Report on Sweden*, https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/12/oecd-anti-bribery-convention-phase-4-report-on-sweden_ac496ae1/77dec27d-en.pdf [date of access: 1.07.2025].

Supreme Audit Office, 2022, *Realizacja przez jednostki samorządu terytorialnego zadań dotyczących udostępniania informacji publicznej*, P/22/076, https://www.nik.gov.pl/plik/id,27721,vp,30541.pdf [date of access: 1.07.2025].

Supreme Audit Office [NIK], 2022a, *Wystąpienie pokontrolne: Analiza kosztów obsługi wniosków o informacje publiczną przez JST*, Najwyższa Izba Kontroli, https://www.nik.gov.pl/kontrole/wyniki-kontroli-nik/pobierz,lpo-p_22_076_20220221331571645533117.pdf [date of access: 1.07.2025].

Supreme Audit Office [NIK], 2022b, *Po informację publiczną – z przeszkodami*, https://www.nik.gov.pl/aktualnosci/administracja/dostep-do-informacji-publicznej-w-nbsp-samorzadach-jeszcze-nieidealny.html [date of access: 1.07.2025].

Supreme Audit Office [NIK], 2023, *Realizacja zadań w zakresie dostępu do informacji publicznej. Informacja o wynikach kontroli (Nr ewid. 567/2023)*, Najwyższa Izba Kontroli, https://www.nik.gov.pl/plik/id,29240,vp,31919.pdf [date of access: 1.07.2025].

## Literature

Banisar D.,2006, *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*, "Privacy International", https://www.article19.org/data/files/pdfs/publications/foi-around-the-world.pdf [date of access: 1.07.2025].

Bernaczyk M., 2014, *Prawo do informacji publicznej w Polsce i na świecie*, 2014, pp. 368–369.3) *Bundesverwaltungsgericht [*BverwG], 2020, *Urteil vom 08.07.2020 – BVerwG 7 C 19.18*, https://www.bverwg.de/080720U7C19.18.0 [date of access: 1.07.2025].

Columbia Global Freedom of Expression, 2023, *Transparency in the Spotlight: Global Case-law on Access to Public Information*, Columbia University, https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/04/Transparency-in-the-Spotlight-3.pdf [date of access: 1.07.2025].

Cybulska R., 2018, *Nadużycie prawa do uzyskania informacji publicznej*, *"Społeczeństwo i Edukacja. Międzynarodowe Studia Humanistyczne"*, No. 2(29), pp. 207–212, https://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-issn-1898-0171-y-

ear-2018-issue-2_29_-article-8bc30aab-799a-31d3-9a8a-c89aab82bb9a [date of access: 1.07.2025].

FragDenStaat. (n.d.). *Weitere Ablehnungsgründe – Rechtsmissbrauch und Informationsfreiheit*, https://fragdenstaat.de/recht/handbuch-informationsfreiheit/weitere-ablehnungsgrunde [date of access: 1.07.2025].

Gwiazda A., 2015, *Democracy in Poland: Representation, Participation, Competition and Accountability since 1989*, https://www.taylorfrancis.com/books/mono/10.4324/9781315680118/democracy-poland-anna-gwiazda [date of access: 1.07.2025].

Jaśkowska M., 2020, *O pojęciu informacji publicznej raz jeszcze*, "Zeszyty Prawnicze", No. 20(3), pp. 205–236, DOI: 10.21697/zp.2020.20.3.08.

Kościuk D.J., Kulikowska-Kulesza J.E., 2020, *The Right to Public Information: Selected Interpretation Doubts in the Doctrine and Jurisprudence of Administrative Courts*, "Studia Iuridica Lublinensia", No. 29(1), pp. 129–143, DOI: 10.17951/sil.2020.29.1.129-143.

Kozynets I.H., & Stechenko K.L., 2021, *Abuse of Procedural Rights in Administrative Proceedings*, "Actual Problems of Native Jurisprudence", No. 1(1), pp. 88–91.

Lebowa D., Fermus-Bobowiec A., 2022, *Prawo do informacji publicznej a jego nadużycie – rozważania na gruncie orzecznictwa sądów administracyjnych*, "Annales Universitatis Mariae Curie-Sklodowska", Vol. 69, No. 2 (2022), https://journals.umcs.pl/g/article/view/13872 [date of access: 1.07.2025].

Lenaerts K., & Gutiérrez-Fons J.A., 2020, *The Constitutional Allocation of Powers and General Principles of EU Law*, "Common Market Law Review", No. 57(6), pp. 1629–1660.

Lipsky M., 2010, *Street-level Bureaucracy: Dilemmas of the Individual in Public Services*, Russell Sage Foundation.

Mendelson S.E., & Glenn J.K. (eds), 2002, *The Power and Limits of NGOs: A Critical Look at Building Democracy in Eastern Europe and Eurasia*, New York 2002.

Parchomiuk J., 2018, *Nadużycie prawa w prawie administracyjnym*, "Państwo i Prawo", No. 4, pp. 16–31.

Piskorz-Ryń A., 2022, *O nadużyciu prawa dostępu do informacji publicznej. W 20 lat ustawy o dostępie do informacji publicznej – podsumowane i perspektywy ustawowej regulacji prawa do informacji publicznej*, pp. 89–98, DOI: 10.5281/zenodo.6618084.

Schwartz R., Johnson T., 2021, *Administrative Fatigue in FOI Systems: Implications and Remedies*, "Journal of Public Administration Research and Theory", No. 31(2), pp. 203–218, DOI: 10.1093/jopart/muaa035.

Stohl C., Stohl M., Leonardi P.M., 2016, *Managing Opacity: Information Visibility and the Paradox of Transparency in the Digital Age*, "International Journal of Communication", No. 10, pp. 123–137.

Tsoukas H., 1997, *The Tyranny of Light: The Temptations and the Paradoxes of the Information Society*, "Futures", No. 29(9), pp. 827–843.

Watchdog Poland, 2024, *Nadużywanie prawa do informacji. Analiza orzecznictwa, praktyk i możliwych ścieżek reform*, Warszawa, https://informacjapubliczna.org/wp-content/uploads/raport-naduzywanie.pdf [date of access: 1.07.2025].

Wilk B., Sześciło D., 2022, *Nadużywanie prawa do informacji publicznej w orzecznictwie sądów administracyjnych*, Warszawa.

Zaborska S., 2024, *Dylematy w orzecznictwie sądów administracyjnych w zakresie wykorzystywania nadużywania prawa do informacji publicznej*, "Radca Prawny", pp. 149–163, DOI: 10.4467/23921943RP.23.042.19511.

www 1, https://informacjaPubliczna.org [date of access: 1.07.2025].