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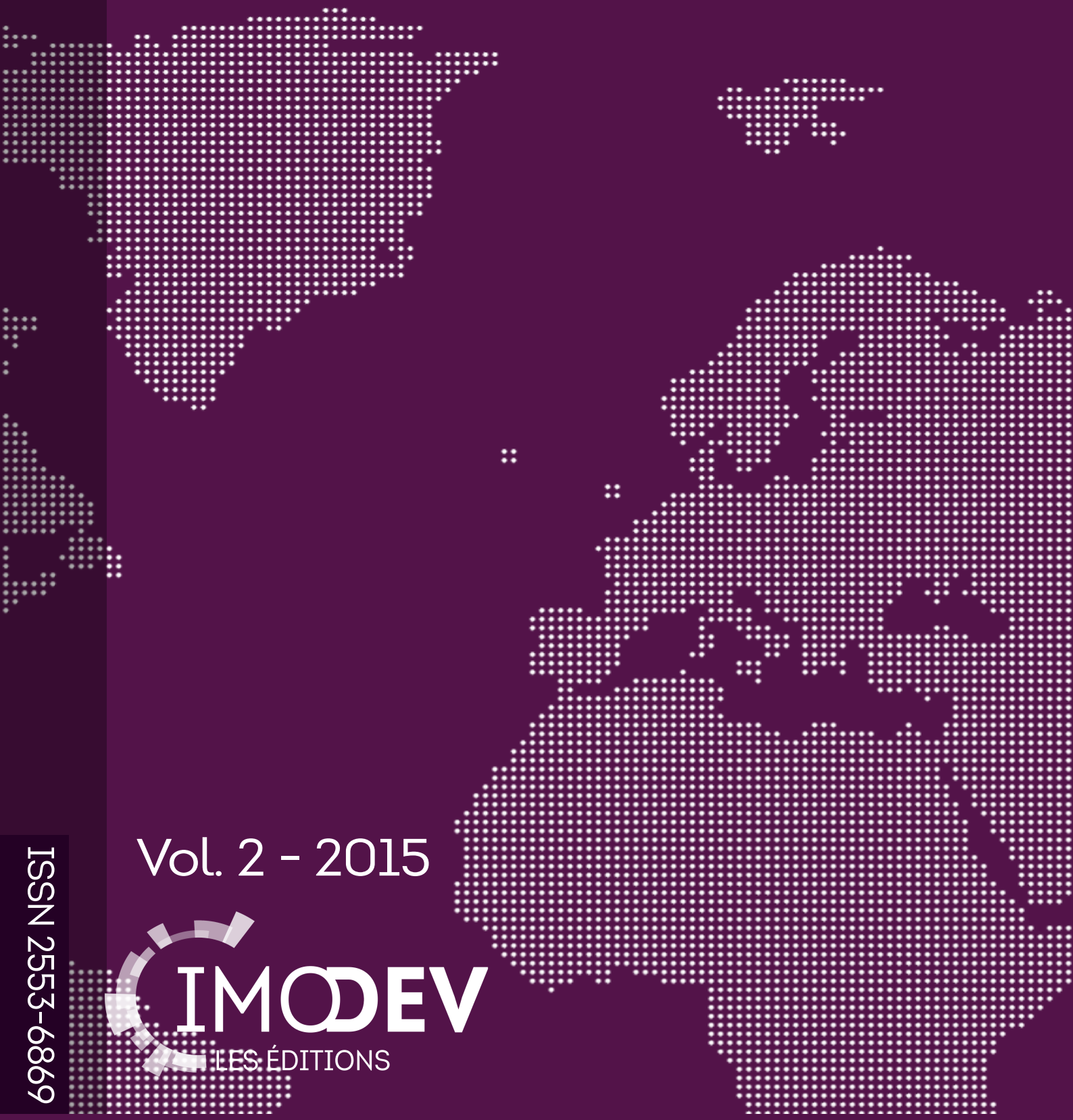

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À PROPOS DE NOUS

La **Revue Internationale des Gouvernements ouverts (RIGO)/ the International Journal of Open Governments** est une revue universitaire créée et dirigée par Irène Bouhadana et William Gilles au sein de l'IMODEV, l'Institut du Monde et du Développement pour la Bonne Gouvernance publique.

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ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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FREEDOM OF INFORMATION AND OPEN GOVERNMENT IN DENMARK: PROGRESS OR DETERIORATION?

by Professor **Helle KRUNKE**, Head of Centre for Comparative and European Constitutional Studies (CECS), Faculty of Law, University of Copenhagen.[1]

INTRODUCTION

The purpose of this article is to show how freedom of information and open government have come under pressure in Denmark. Denmark has traditionally been known as a very open society. However, recent developments have challenged Denmark's commitment to giving the public access to information, as well as its commitment to open government. The questions have arisen because of changed security situation following the 9/11 terrorist attacks, increased EU cooperation since the EU system has traditionally provided less public access to information than the Danish system, and recent amendments to the Danish Public Records Act that limit public access to internal documents that detail or describe political decision-making. Obviously, some of the mentioned challenges are general concerns in many Western democracies.

§ 1 – A BRIEF OVERVIEW OF THE HISTORY OF FREEDOM OF INFORMATION IN DENMARK

Denmark has a long tradition of providing the public with access to governmental information.[2] As far back as 1866, Denmark provided a limited right of access to information for parties involved in administrative cases. This right of access was strengthened in 1964. In 1970, the Public Records Act which provided everyone with access to governmental information. The Public Records Act was strengthened in 1987. And, then, in January 2014 a new and much debated Public Records Act came into force.

Under the Danish constitutional system, the public's right to information does not have a constitutional basis. The right to expression is explicitly provided for in Article 77 of the Constitution. Hence, the right to information is regulated by statutory law and by the European Convention of Human Rights.

[1] The author would like to thank research student, Jens Christian Dalsgaard, Centre for Comparative and European Constitutional Studies (CECS), Faculty of Law, University of Copenhagen, for assistance with search of legal sources and research on information for the article.

[2] *See* STEEN RØNSHOLDT, FORVALTNINGSRET, 4th edition, 2014, p. 308.

§ 2 – WHY IS FREEDOM OF INFORMATION IMPORTANT?

An explanation for Denmark's commitment to access to information is provided in Article 1 of the new Danish Public Records Act. That Act provides that:
"The purpose of this Act is to secure openness with public authorities, etc., for the purpose mainly of supporting:

1) The right to information and the right to expression
2) The citizens' participation in the democracy
3) The public's control of the public administration
4) The media's dissemination of the information, and

Trust in the public administration"
In other words, the right to information is an important component of an open and enlightened democracy that values active citizen participation.

§ 3 – CONFLICTING CONSIDERATIONS

Of course, in no country is the right to access governmental information regarded as absolute. Although Article 1 of the Public Records Act lists the values that underlie the right to access information, there are competing considerations that tend to limit access, including the government's desire to shield information from disclosure that affects:

1) State security;
2) Defense;
3) Foreign policy;
4) Governmental decision-making processes

All of these considerations have resulted in exceptions to the right to information as set forth in the Act.
In other words, even though the right to access information is regarded as important in a democratic society, and promotes a number of important values (as discussed earlier), that right has never been regarded as absolute. On the contrary, the right to access information must be weighed against other competing values. As a result, the right of access is not a "stable" right in the sense that the scope of right to information available to the public may vary depending on the present state of state security, defense policy and foreign policy, and, of course, each of those situations can be affected by developments in the world.
Furthermore, many of these competing considerations involve threat assessments which are usually kept confidential for security reasons, and therefore are not available to the public. Obviously, this situation tends to empower public authorities who are vested with extensive powers since they alone are allowed to decide when state security, defense policy and foreign policy considerations require abrogation of the right of access. Moreover, the citizenry often lacks the expertise and knowledge to second-guess the decisions of governmental officials. Of course, as the world becomes more globalized, officials increasingly rely on such exceptions to shield information from the public.

In the following sections, we look more closely at some of the exceptions and the developments in an effort to gain insight into how these exceptions affect the public's right to access governmental information.

A) The Post 9/11 Area

As is common knowledge, the 9/11 terrorist attacks provided a stimulus for the enactment of anti-terrorism legislation in the western world. This legislation has had an adverse impact on traditional human rights, including for example the right to privacy. How is then the right to information adversely affected by these trends? In a number of ways.

First, huge amounts of information are secretly gathered by intelligence services.[3] In the U.S., Edward Snowden, a former National Security Agency (NSA) contractor exposed the U.S.'s secret cybersurveillance program. In general the public has no right to access information about this program, and that includes both the general public as well as those people who are being monitored under the program.[4] In Denmark, it is not even possible for the public to find out whether the intelligence services is maintaining records on them, even if the request does not seek access to the content of the file.[5] Prior 2014, public access to information from the Intelligence Services was regulated by the Public Records Act, but is now regulated by the Act on the Security and Intelligence Service and the Act on the Defense Intelligence Service. However, before the amendments to these Acts took effect in 2014 the two intelligence services routinely denied requests to access this type of information under the Public Records Act.[6] This means that in reality the Intelligence Services have always been very secrecy about their work and hence public access in this field has been strongly limited. After the 9/11 attacks, more money and resources were allocated to the Intelligence Services, and they were allowed to shield more information from public scrutiny.

Second, in this area, few control mechanisms have been placed on the actions of authorities. The Danish Parliament has a small committee which has the right to require and review all documents held by the Security and Intelligence Service and the Defense

[3] *See* also below on big-data surveillance.

[4] As regards the Danish Security and Intelligence Service see Article 12 of the Act on the Security and Intelligence Service, Act No. 604 of 12 June 2013. As regards the Defense Intelligence Service see Article 9 of the Act on the Defense Intelligence Service, Act No. 602 of 12 June 2013.

[5] As regards the Danish Security and Intelligence Service this follows from Article 12 of the Act on the Security and Intelligence Service, Act No. 604 of 12 June 2013. As regards the Defense Intelligence Service it follows from Article 9 of the Act on the Defense Intelligence Service, Act No. 602 of 12 June 2013. However, it is possible to request a special supervisory committee to investigate whether information is ineligibly being held by the two intelligence services, see Article 13 of the Act on the Security and Intelligence Service, Act No. 604 of 12 June 2013, and Article 10 of the Act on the Defense Intelligence Service, Act No. 602 of 12 June 2013.

[6] This follows from the *travaux préparatoires* of the Act on the Security and Intelligence Service, Act No. 604 of 12 June 2013, bullet 7.1 and of the Act on the Defense Intelligence Service, Act No. 602 of 12 June 2013, bullet 6.1.

Intelligence Service.[7] However, given the level of monitoring being done by these services, Parliamentary control only provides a limited check. There are various problems. How does Parliament know which documents to demand? Furthermore, since members of the committee are subject to a duty of confidentiality, they cannot reveal what they know to the public, and thus start a public debate regarding the surveillance program. That said, a new independent supervisory committee was established in 2014 which has its own secretariat. The members are appointed by the Minister of Justice after negotiations with the Minister of Defense. The committee supervises the Security and Intelligence Service and the Defense Intelligence Service. Importantly, the committee can require the services to submit information, documents and materials, and the committee has a right to access buildings of the intelligence services without a court order.[8] The new supervisory committee replaces the old so called "Wamberg Committee" which was created by administrative decision.[9] The new committee strengthens governmental control of the intelligence services. For instance, the committee's competence is broader than that of the prior committee.[10] However, the two committees function somewhat differently. Whereas the old "Wamberg Committee" conducted *ex ante* control, and was asked to give prior approval regarding the registration of Danish citizens and foreigners, the new committee exercises only *post* decisional authority.[11] Though the purpose of establishing this new committee was to strengthen control over the Danish Security and Intelligence Service, the reform has been criticized for being unambitious compared to the reforms adopted by other countries. [12] A third method of control is provided by the Ombudsman.

As a general rule, if the Security and Intelligence Service's investigation will violate the right to privacy, protected by Article 72 of the Constitution, the service must first obtain a court order before beginning the investigation.[13] Furthermore, in order to obtain the order, the Intelligence Service must be able to demonstrate that it has a concrete suspicion regarding the person(s) being investigated, and it must prove that violation of the constitutional provision is crucial to the investigation, and the

[7] *See* Consolidation Act on the Establishment of a Committee on the Defense and Police Intelligence Services, Consolidation Act No. 937 of 26 August 2014 Article 2, part 3.

[8] *See* Act on the Security and Intelligence Service, Act No. 604 of 12 June 2013, Article 10, and Act on the Defense Intelligence Service, Act No. 602 of 12 June 2013, Article 17.

[9] See Henrik Hjorth Elmquist and Thomas Klyver, Ny lovgivning om Politiets Efterretningstjeneste og den parlamentariske kontrol med efterretningstjenesten, JURISTEN, No. 6, 2013, p. 273.

[10] *See* ibid, p. 273.

[11] *See* ibid, p. 273.

[12] *See* for instance Pernille Boye Koch, *Reform af PET – styrket demokratisk kontrol?*, in Hans Viggo Pedersen (ed.), Juridiske emner ved Syddansk Universitet 2013, 2013, pp. 277-285, and Pernille Boye Koch, *Ministeransvaret og tilsyn med PET – et uløseligt dilemma?*, Ugeskrift for Retsvæsen, 2012, Afdeling B, pp. 377-385.

[13] *See* Administration of Justice Act, Consolidation Act No. 1308 of 9 December 2014, Article 783.

investigation itself must involve a severe crime.[14] Finally, the violation of the constitutional right must be proportional to the threatened harm.[15] The court order may be issued in secret, and the person who is the object of the privacy violation is not allowed to be present. However, he may be represented by an attorney.[16] In emergency situations, when it is not possible to wait for a court order, the police may act immediately and seek court approval afterwards.[17] The regulation on court orders contained in the Administration of Justice Act does not apply to the Defense Intelligence Service.[18]

Third, since terrorism is a threat that crosses international borders, Denmark's investigation and intelligence services are allowed to work across borders. Since terrorism can involve both an internal and an external threat, the Security and Intelligence Service (which is part of the police and deals with internal threats) and the Defense Intelligence Service (which is part of the military and deals with external threats) are involved in the fight against terrorism necessitating closer cooperation between them. Before 9/11, the legislation regulating these two intelligence services erected the functional equivalent of a Chinese wall between the two services in regard to the exchange of information. However, after 9/11 the two branches cooperate more freely and exchange information between themselves.

One consequence of this increased level of communication is that information that has been collected by the Defense Intelligence Service without a court order (since that is not required for that branch of the intelligence service)[19] can be passed on to the Security and Intelligence Service when it is important to the conduct of that agency's tasks.[20] Information can be transmitted between the services even though the Security and Intelligence Service could not have collected that information itself without a court order.[21] Interestingly, before 2006, the Defense Intelligence Service could only collect information on events that occurred abroad when those events could have an impact on Danish security. However, in 2006, the Defense Intelligence Service was provided with increased competences because of new anti-terror legislation.

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[14] *See* Administration of Justice Act, Consolidation Act No. 1308 of 9 December 2014, Article 781.

[15] *See* Administration of Justice Act, Consolidation Act No. 1308 of 9 December 2014, Article 782.

[16] *See* Administration of Justice Act, Consolidation Act No. 1308 of 9 December 2014, Article 784.

[17] *See* Administration of Justice Act, Consolidation Act No. 1308 of 9 December 2014, Article 783.

[18] *See* Betænkning om PET og FE, No. 1529, 2012, p. 593, and Jens Elo Rytter, *Våbenbrødre – efterretningsvirksomhed I USA og Danmark*, in Peter Blume and Carsten Henrichsen (ed.): Forvaltning og retssikkerhed, 2014, p. 382.

[19] *See* Betænkning om PET og FE, No. 1529, 2012, p. 593, and Jens Elo Rytter, *Våbenbrødre – efterretningsvirksomhed I USA og Danmark*, in Peter Blume and Carsten Henrichsen (ed.): Forvaltning og retssikkerhed, 2014, p. 382.

[20] *See* Act on the Defense Intelligence Service, Article 7, Part 1.

[21] This aspect has been emphasized by the former leader of the Security and Intelligence Service Hans Jørgen Bonnichsen, *see:* http://www.dr.dk/Nyheder/Indland/2012/12/27/133626.htm.

Hence, in performing its duties, the Defense Intelligence Service may now also collect information on Danish citizens and persons staying in Denmark.[22] This change increases the amounts of data that the Defense Intelligence Service may collect and gives its activities a more national scope. When considered along with its new competence to transfer relevant information to the Security and Intelligence Service, a competence added in 2006,[23] there are far more opportunities to branches of the intelligence service to transfer information between themselves.

However, it is important to emphasize that information also flows from the Security and Intelligence Service to the Defense Intelligence Service. In 2006, a new provision introduced in the Administration of Justice Act, Article 116 authorized the Security and Intelligence Service to transfer information to the Defense Intelligence Service. The introduction of Article 116 was adopted as part of a larger anti-terror legislation package.[24] Under Article 116, Part 1, the Security and Intelligence Service can transfer information to the Defense Intelligence Service when such a transfer of information is important for the conduct of its tasks. With the new Act on the Security and Intelligence Service, which came into force 1 January 2014, the content of Article 116 has been transferred to Article 10, Part 1, of the new Act.[25] In conclusion, since 2006 the free flow of information between the two intelligence services has increased.

Since the Defense Intelligence Service and the Security and Intelligence Service also exchange information with Intelligence Services in foreign nations, information now flows more freely within Denmark as well as across the Danish border.[26] Of course, this means that information about Danish citizens and persons who have at some point stayed in Denmark is undoubtedly also held by foreign Intelligence Services.

As regards big-data surveillance, as a result of the EU Data Retention Directive 2006/24, Danish private providers of telecommunication are required to register meta-date, and they

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[22] *See* Act on Amendment of the Act on the Purpose, Tasks and Organization, etc., of the Defense, Act No. 568 of 9 June 2006, on the new Article 116, Part 3, and Henrik Stevnsborg, *Politiet og de "asymmetriske og uforudsigelige trusler"*, Retfærd, issue, 3, 2008, p. 59.

[23] *See* Act on Amendment of the Act on the Purpose, Tasks and Organization, etc., of the Defense, Act No. 568 of 9 June 2006, on the new Article 116, Part 4.

[24] *See* Act on Amendment of the Criminal Act, the Public Administration Act and a Number of Other Acts, Act No. 542 of 8 June 2006 and Act on Amendment of the Public Administration Act and a Number of Other Acts, Act No. 538 of 8 June 2006. As pointed out by Henrik Stevnsborg it is interesting that while most of the 2006 anti-terror package was introduced by Act on Amendment of the Public Administration Act and a Number of Other Acts, Act No. 538 of 8 June 2006, Article 116 was introduced by another piece of legislation namely Act on Amendment of the Criminal Act, the Public Administration Act and a Number of Other Acts, Act No. 542 of 8 June 2006. See Henrik Stevnsborg, *Politiet og de "asymmetriske og uforudsigelige trusler",* Retfærd, issue, 3, 2008, p. 58. The first anti-terror legislation package was introduced in 2002.

[25] *See* Act on the Security and Intelligence Service, Act No. 604 of 12 June 2013, Article 10, Part 1.

[26] *See* Act on the Security and Intelligence Service, Act No. 604 of 12 June 2013, Article 10, Part 2, and Act on the Defense Intelligence Service, Act No. 602 of 12 June 2013, Article 7, Part 2.

have registered approximately 900 billion bits per year.[27] As noted, the Security and Intelligence Service must obtain a court order in order to access this information. However, the Defense Intelligence Service also collects large amounts of information which is referred to as "raw data".[28] The Defense Intelligence Service does not need a court order to collect this data.

Finally, it should be noted that the Danish Public Records Act excludes the records of criminal investigations, in general including terrorism, from the right to access information.[29]

In conclusion, because of the political reaction to the security situation created by the 9/11 attacks, the Intelligence Services have been given greater competences and provided with new tools for collecting information on Danish and foreign citizens. As they do, this information can now flow more freely between the Security and Intelligence Service and the Defense Intelligence Services, and there is no right of public access to this information, and no right to know whether the services are collecting and maintaining information about specific individuals. The amount of information in this field is growing and exchange of information takes place across borders. A new independent supervisory committee has been established in order to create more control and a committee placed under the Parliament also contributes to this.

B) Enhanced EU Cooperation

The Public Records Act's exception against disclosure for foreign policy matters extends to, and includes, information related to EU cooperation.[30] This means that the right to information is limited if confidentiality follows from EU obligations. Certain documents and information can therefore not be passed on to Danish or other EU citizens. For instance, according to a number of directives letters from the Commission cannot be made public without approval of the Commission itself.[31] Furthermore, under Regulation 1049/2001, on public access to documents from the European Parliament, Council and Commission, these documents can only be made public by a member state if the relevant EU institution has been consulted first.

This exception from public access extends to documents that might reveal Danish negotiating positions regarding EU matters.[32] Under this exception, EU policy positions on for instance new EU legislation can, according to the Public Records Act, be excluded from the right to information.

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[27] *See* Jens Elo Rytter, *Våbenbrødre – efterretningsvirksomhed I USA og Danmark*, in Peter Blume and Carsten Henrichsen (ed.): Forvaltning og retssikkerhed, 2014, p. 384.

[28] *See* Betænkning om PET og FE, No. 1529, 2012, p. 452, and Jens Elo Rytter, *Våbenbrødre – efterretningsvirksomhed I USA og Danmark*, in Peter Blume and Carsten Henrichsen (ed.): Forvaltning og retssikkerhed, 2014, p. 382.

[29] *See* the Public Records Act, Act No. 606 of 12 June 2013, Article 19.

[30] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 32, Part 1.

[31] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 32, Part 1, and Steen Rønsholdt, Forvaltningsret, 4th edition, 2014, pp. 348-349.

[32] *See* STEEN RØNSHOLDT, FORVALTNINGSRET, 4th edition, 2014, p. 361.

Traditionally, the EU system has provided less public access to information than the Danish system, and the movement towards greater EU cooperation in more fields will result in less public access and a less open government. Although there is a movement towards greater openness regarding EU cooperation, the need for openness is heightened by the fact that more and more areas are becoming subject to EU cooperation and thus part of the EU system. Even given the trend towards greater openness in the EU, closer Danish EU cooperation has the effect of limiting Danish citizens' access to information and their ability to gain insights into political decision-making. Obviously, if the EU system becomes more open and transparent, these concerns may be alleviated. Of course, since Danish internal legislation has moved Denmark to provide less access to information, there may be less conflict between the Danish and the EU political culture of open decision-making.

C) Extended Protection of Public Authorities' Decision-making Processes

Denmark has adopted recent amendments to the Public Access Act that provide greater protections for public authorities' political decision-making processes. The new Act has been strongly criticized by journalists, and has resulted in a public debate regarding the propriety of limiting access to public information regarding the legislative process in the ministries as well as regarding dialogues between the government and members of Parliament. The new legislation makes clear that the right to information does not extend to cases on legislation before a Bill has been read in Parliament.[33] Under the new Act, there is no right to documents that have been drafted and exchanged between ministries and members of Parliament regarding legislation. However, the exception extends, not only to Bills, but also to "other corresponding political activities."[34] This exemption could extend to negotiations that could result in a legislative initiative, and well as negotiations that could result in general political initiatives other than legislation.[35] The right to information does not include internal documents and information that is being exchanged at a point where there is a concrete assumption that a minister needs or will need the advice of civil servants in a subordinated government agency or in another ministry.[36] Furthermore, in the future, it will no longer be possible to access the calendars of ministers.[37] These exemptions must be viewed from the perspective of Danish politics which has moved towards increasing politicization of the civil servants and where spin

[33] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 20.
[34] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 27, number 2.
[35] *See* Kristian Korfits Nielsen and Morten Niels Jakobsen, *Den nye offentlighedslov – og følgelovgivningen*, Juristen, issue 5, 2013, p. 40.
[36] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 24, Part 1.
[37] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 22.

doctors play an enhanced role.[38] The new Danish Public Records Act was adopted with a large majority of the members of Parliament voting in favor.[39]

§ 4 – STRENGTHENING OPEN GOVERNMENT

Thus far, this article has focused on challenges to open government. However, it should be mentioned that Denmark is discussing new initiatives for creating more open government. For instance, at the moment, Danish politicians are debating new initiatives regarding providing financial support to political parties. The background for these debates is a report on openness and financial support to political parties written by a committee created by the Ministry of Justice and the Ministry of Economic and the Interior. In spring, 2015, the committee recommended more openness regarding financial support given to political parties. In particular, the committee has among others recommended that as regards all support above 20,000 kr., the specific amount must be made public. The President of the Danish Parliament and the Danish government agreed that the legislation should be altered to provide for greater openness.[40] However, there is disagreement among political parties regarding whether such amendments are necessary. For example, some argue that Denmark already has one of the World's lowest corruption indexes.[41] Only time will tell whether the current legislation on financial party support will be amended to provide for greater openness and greater access to information.

Even though the debate surrounding the new Public Records Act has focused on limitations to the right to information, the new Act actually also strengthens the right to information in a number of ways. Indeed, one goal of the reformation of the Public Records Act was to provide for greater openness and this purpose is, as shown earlier, reflected in the first Article of the Act.[42] For instance, the scope of the Public Access Act was broadened to include more institutions within the scope of its coverage, including mixed public-private companies and institutions, etc., that have the right to make administrative decisions.[43] Another example is an extended right to information regarding the top

[38] *See* also Bent Winther, *Der findes en kur mod politiserede embedsmænd: Åbenhed*, in Berlingske Politiko, 23 October 2014, and JESPER TYNELL, MØRKELYGTEN - EMBEDSMÆND FORTÆLLER OM POLITISK TILSKÆRING AF TAL, JURA OG FAKTA, Samfundslitteratur, 2014.

[39] Only 42 members out of 178 voted against the Bill.

[40] *See* http://www.bt.dk/politik/lykketoft-kraever-fuld-aabenhed-om-partistoette and http://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2015/regeringen-%C3%B8nsker-nye-partist%C3%B8tteregler.

[41] *See* http://www.dr.dk/Nyheder/Politik/2015/03/24/171844.htm.

[42] *See* Kristian Korfits Nielsen and Morten Niels Jakobsen, *Den nye offentlighedslov – og følgelovgivningen*, Juristen, issue 5, 2013, p. 32.

[43] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 3, Part 1, number 3, Article 4, Part 1, and Article 5, Part 1.

management contracts that reveal the general prioritization as regards a specific authority, institution, etc.[44]

§ 5 – COMPARISON TO OTHER NORDIC COUNTRIES

In general Nordic countries have a high level of openness and access to governmental information. However, in comparison with other Nordic countries Denmark is not one of the most open countries. For instance, in a comparative study published in 2014 regarding journalist and citizen access to public authorities and politicians, Denmark ranked in general as the lowest Nordic country.[45] The study included Denmark, Sweden, Norway, Finland and Iceland. Though, Denmark was at the top in certain areas, such as access to factual information to documents which contain confidential secret information (the confidential parts would be crossed out), the general picture was that the other Nordic countries guaranteed the public more openness and greater access to documents. The study among others emphasized that Denmark has a more closed legislative process than for instance Finland and Sweden; a tendency that was strengthened by the new Public Records Act on 1 January 2014.

There are several explanations for the differences between Denmark and the other Nordic countries regarding openness and access to information. Although a variety of explanations could be given, this article will touch on only a few. First, Denmark has been a member of the EC/EU for a much longer period than the other Nordic EU member states (Sweden and Finland) and some of the Nordic countries are only part of EEA (Norway and Iceland). The most closed culture surrounding the decision-making processes in the EU has thus influenced Denmark for a much longer period of time. Second, Denmark has excised a much more activist foreign policy over the past 10-15 years than the other Nordic countries of which some function only even neutrally (Sweden). For example, Denmark has been involved in several military operations in the Middle East, including the war in Iraq where it fought alongside the U.S.. This intervention, coupled with the Danish "Cartoon crisis"[46] has turned Denmark into a target for terrorism, as illustrated recently on 14-15 February 2015 when Denmark suffered a terrorist attack. Perhaps inspired by the shooting incident in Paris in January 2015, a man opened fire first at a debate meeting on art, blasphemy and freedom of expression (in which one of the original cartoonists and the French ambassador participated) and later in front of the Jewish Synagogue in Copenhagen altogether killing two people.

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[44] *See* Public Records Act, Act No. 606 of 12 June 2013, Article 21, Part 4. More examples can be found in Kristian Korfits Nielsen and Morten Niels Jakobsen, *Den nye offentlighedslov – og følgelovgivningen*, Juristen, issue 5, 2013, pp. 32-50.

[45] *See* OLUF JØRGENSEN, OFFENTLIGHED I NORDEN, Nordicom, University of Göteborg, 2014.

[46] A Danish newspaper, Jyllandsposten, printed some cartoons of the Prophet Mohammed on 15 September 2005. The cartoons offended Muslims all over the world and a political foreign affairs crisis arose.

Undoubtedly, the terrorism threat will naturally lead to restrictions on societal openness and citizens often tend to accept these limitations without questioning them. The impact of terrorism attacks is normally that the politicians supported by the citizens give more power to Intelligence Services. Following the February 2015 terrorist attack in Denmark, the government introduced new political initiatives for fighting terrorism. The Danish government wants to strengthen the fight against terrorism with 970 million kr. over the next four years. Approximately 415 million will go to the Defense Intelligence Service and approximately 200 million to the Security and Intelligence Service. These initiatives had been planned for a long time before the terrorist attack. However, the attack led some political parties to propose even more tools for the police and the Intelligence Service for fighting terrorism. This political response suggests that human rights considerations and open government are not given high value by the public or politicians when terrorism strikes.

Finally, it should be mentioned that even though Denmark has a higher level of terrorism threat than other Nordic countries, both Sweden and Norway, have also involved their military forces in the fight against terrorism even though the main responsibility for fighting terrorism rests with the police and even though concerns have been expressed. In Sweden the police are in charge and the military simply assists. Furthermore, in Sweden, involvement of the military requires concrete approval from the government.[47]

CONCLUSION

Denmark has a long tradition of openness and public access to information. However, this openness is under pressure from a number of factors, including the fight against terrorism which has had both internal and external effects. In addition, closer cooperation between the EU and Denmark has led to potential restrictions on openness and the right to information. Finally, internal factors, such as politicians' desires to build a confidential room around their daily political decision-making processes, have led them to restrict access to information. As this article shows, safeguarding the right to information is an ongoing challenge and a complex task in today's globalized world.

[47] *See* Henrik Stevnsborg, *Politiet og de "asymmetriske og uforudsigelige trusler"*, Retfærd, issue, 3, 2008, pp. 62-65.