



The Ombudsman, transparency and freedom of information

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Content

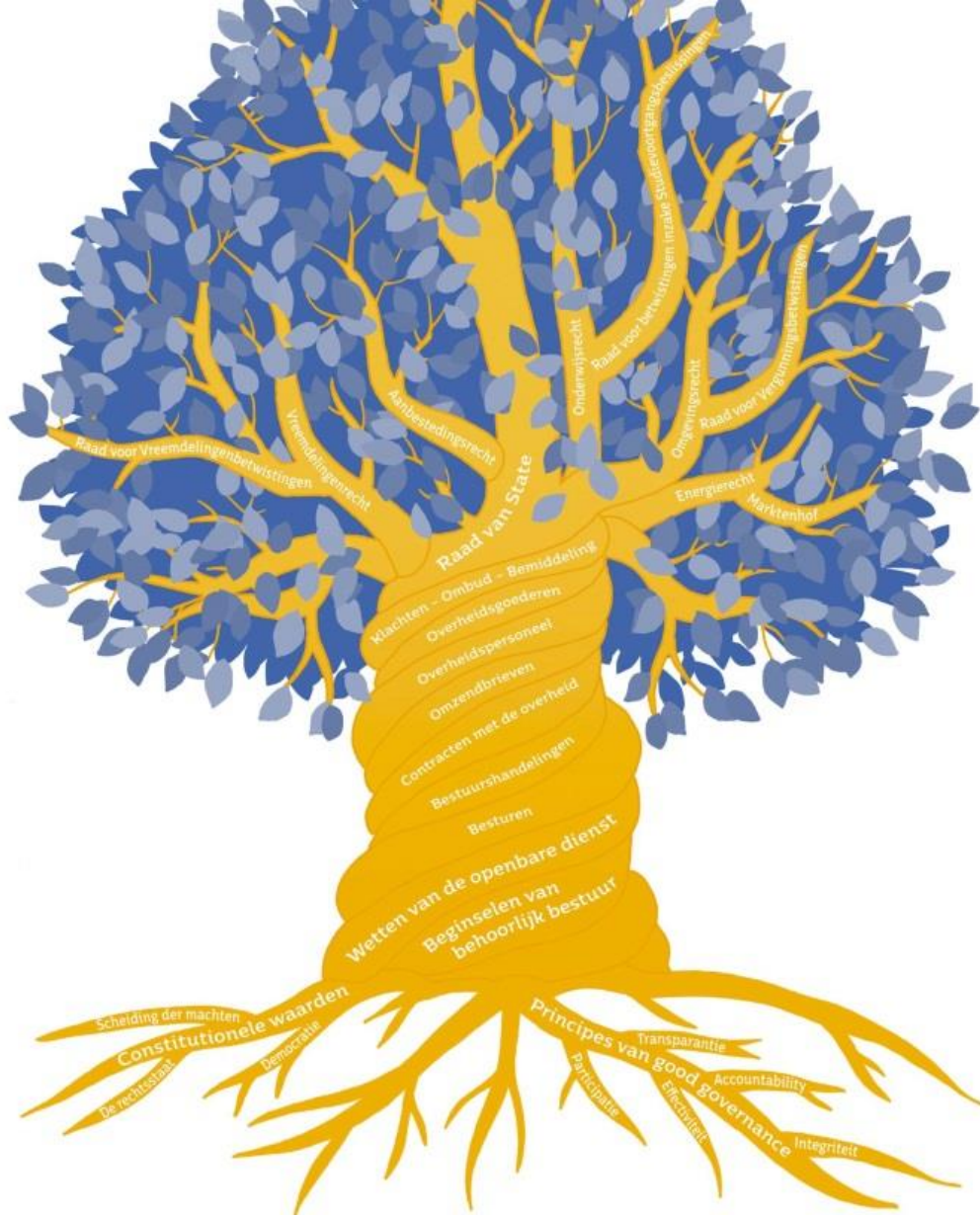
1. The importance of the principle of transparency
2. The Ombudsman: an obligation of transparency?
3. Freedom of information for the ombudsman with respect to documents held by others
4. Conclusions

➔ How *should* it be from a *legal* point of view?



1. Importance of the principle of transparency

- An image can say more than a thousand words → Book cover





Roots and meta values of administrative law

- *Constitutional values* (principle of legality, separation of powers, rule of law, democracy,...)
- *Principles of good governance*
 - Accountability
 - **Transparency**
 - **Participation**
 - Integrity
 - Effectiveness



2. The ombudsman: an obligation to transparency?

Double constraint

- **Open**
 - **Discrete:**
 - privacy of complainers - personal data
 - 'sensitive information'
- (*Belgium* : general obligation to confidentiality for the ombudsman)



Open: Obligation of transparency?

- Easy access
- Transparent procedures
- General reports: public information

BUT → Access for everyone to the information held by the ombudsman ?? The same obligation of access to information for the ombudsman as for public authorities? ? (Belgium imposes an obligation to confidentiality on the ombudsman!)



= Access for anyone to the
(anonymous) documents held by
the ombudsman ?

- Pros and cons ?
- **Pro:** Why not ? accountability of the ombudsman, the controller of the public authorities
- **Contra:** ombudsman: no discretionary powers + *mediation*: better 'in the shadow' / sheltered from ... ? Confidentiality – serenity of the mediation
- *Answer: Different for different types of ombudsman?*



3. Freedom of information for the ombudsman regarding documents held by others

- Principle: Right to have all the information they *need to carry out their mission*
- Restrictions? Protected/ sensitive information
 - ? Automatic 'clearance' for ombudsman?
 - ? Functional 'clearance' : when necessary
- ! No rights without obligations: training is very important to deal with protected information



4. Conclusions

- Transparency is very important
- But limits to transparency also ...
- Important to look at the specific statute/task of each ombudsman