

# ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



## CANADA

Canada has a general law in the [Federal Access to Information Act](#). Provincial laws may also provide access to environmental information, especially in [Ontario](#). The FAI law has a broad exemption that is discretionary on the release of information:

**16 (1)** *The head of a government institution may refuse to disclose any record requested under this Part that contains:*

**(a)** *information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to*

- **(i)** *the detection, prevention or suppression of crime,*
- **(ii)** *the enforcement of any law of Canada or a province, or*
- **(iii)** *activities suspected of constituting threats to the security of Canada within the meaning of the Canadian Security Intelligence Service Act, [Part 1, sec. 16].*

However, Section b provides additional language that follows the international norm on when enforcement matters are exempt for disclosure:

**(b)** *information relating to investigative techniques or plans for specific lawful investigations;*

**(c)** *information the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information*

**(i)** *relating to the existence or nature of a particular investigation, (ii) that would reveal the identity of a confidential source of information, or (iii) that was obtained or prepared in the course of an investigation...*"

This language is consistent with many other national laws, as well as the Aarhus Convention (Canada was not a signatory). Generally, the enforcement exemptions in similar laws have been interpreted to only apply to active investigations and also do not cover information already provided to the facility itself.<sup>1</sup> Canada is, however, behind the United States in public access policy and practice,<sup>2</sup> so there is a possibility of some resistance to obtaining enforcement information unless it is well-articulated.

[Online requests](#) can also be made at the Ministry website.

Canada also has an online [National Pollutant Release Inventory](#) that is current now (2021) up to 2017.

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<sup>1</sup> While not a signatory to the Aarhus Convention, the Canadian law has a similar exemption” The [UN Implementation Guide on the Aarhus Convention](#) discussed this exception: “The term “the course of” implies that an active judicial procedure capable of being prejudiced must be under way. This exception does not apply to material simply because at one time it was part of a court case. Public authorities can also refuse to release information if it would adversely affect the ability of a person to receive a fair trial. This provision should be interpreted in the context of the law pertaining to the rights of the accused.” Page 87.

<sup>2</sup> See Cairns et al. “[Disclosure of Environmental Law Enforcement in Canada: Lessons from America](#),” (McGill University); Kalkbrenner et al. “[ENVIRONMENTAL RIGHTS IN ALBERTA: A RIGHT TO A HEALTHY ENVIRONMENT](#),” Alberta Environmental Law Center (July 2017).