

ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



INDIA

India does not have a separate environmental information law but has a [Right to Information Act \(Act No. 22 of 2005\)](#). The act is broad in application and the major exemption to disclosure that is relevant relates to *“information which would impede the process of investigation or apprehension or prosecution of offenders.”* Section 8(1)(h).

While there is no definitive authority of the scope of the exception, it clearly would not be applicable to information already in the possession of the targeted person or company or information on past violations now resolved. The [Aarhus Convention](#) (not signed by India) also contains the similar provision and has been interpreted by both the United Nations Guidance document and the European Court of Justice. Article 7 of the convention parallels the Indian exception:

“When the requested information is subject to the authorities' judicial consideration, in any stage of the process, and its disclosure or use by third parties may cause damage to the normal development of the judicial procedure.”

This does not prohibit the disclosure of information unless it would adversely affect the judicial or disciplinary proceeding.¹ It has been normally interpreted to mean the internal documents of the enforcement agency that have not otherwise been turned over to the target of a criminal investigation or action.² There is also a major body of international law that the exclusion only applies to ongoing proceedings. See Banner, *The Aarhus Convention: A Guide for UK Lawyers*, (Bloomberry Pub.2015)p. 110 (citing [UN Implementation Guide](#)). After the matter is resolved by officials, the reason for the exemption is arguably no longer valid.³ See [Flachglas Torgau GmbH v Germany](#), C-

¹ The Aarhus provision describes the intent of the exclusion: “(c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;”

² The [UN Implementation Guide](#) notes: “The Convention clearly does not include all investigations in this exception, but limits it to criminal or disciplinary ones only. Thus, information about a civil or administrative investigation would not necessarily be covered.” Page 87.

³ The [UN Implementation Guide on the Aarhus Convention](#) which originated this exception notes: “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.

204-09, February 14, 2012. There are no India cases in point. But this interpretation is likely to be persuasive authority in India.

While much of the Indian government documents are required to be able online, the practical problem of the number of requests for written documents has drawn criticism of the process. See *Sharma, Aradhana. "State Transparency after the Neoliberal Turn: The Politics, Limits, and Paradoxes of India's Right to Information Law."* POLAR: Political & Legal Anthropology Review, vol. 36, no. 2, Nov. 2013, pp. 308–325. As much as 60% of requests are denied, but most of these are due to the lack of sophistication of the requestor causing errors in the application. TJ, Shalin (1 May 2017). "[When RTI is Difficult?](#)". *OnlineRTI Blog*. There does not appear to be a straight-forward online site for compliance information. However, the government maintains the [ENVIS Centre on Control of Pollution Water, Air and Noise](#) website with contact information that may assist in finding facility compliance status.

CONTACT INFORMATION:

Randy Mott JD, Director for Europe, the Middle East and Africa, CHWMEG, +48-607-339012, Europe@chwmeq.org. Please advise me if you find changes in the above information or errors.

<mailto:europa@chwmeq.org?subject=-- INDIA-- Feedback/Dead Link/Update Required for Accessing Facility Regulatory Info>