

# ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



## JAPAN

Japan has one of the earliest freedom of information laws in Asia, the [Law Concerning Access to Information Held by Administrative Organs](#) [Eng version], [[Japanese version](#)].

The Japanese law provides general access to government documents<sup>1</sup> subject to several exemptions from disclosure. These include confidential information and national security-sensitive information, but also have provisions that would affect environmental compliance information. One in particular reflects the general international pattern:

*(4) Information that, if made public, the head of an administrative organ with adequate reason deems to pose a risk of causing a hindrance to the prevention, suppression or investigation of crimes, the maintenance of public prosecutions, the execution of sentencing, and other public security and public order maintenance matters. [Article 5, sec.4](emphasis added).*

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 past violations. There is also commentary from Japan to indicate that this only applies to criminal matters, not administrative matters.<sup>2</sup>

Japan is not a signator to the [Aarhus Convention](#) on Environmental Information but has local rules that are comparable The [Aarhus Convention](#) contains the similar provision in Article 7:

*“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.”*

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<sup>1</sup> “... [Administrative Reform Commission (ARC, *Gyosei Kaikaku linkai*)] commentary states that in a system that provides a universal right to request disclosure the government should not take into account the identity of the requester or place any restrictions on usage of the disclosed information...” Repeta, [“Japanese Government Information: New Rules For Access”](#) (2002)[English.].

<sup>2</sup> “The ARC commentary points out that application of this exemption is meant to be limited to information concerning the investigation and prevention of crimes, rather than applying to all police or investigatory activities.” Repeta, [“Japanese Government Information: New Rules For Access”](#) (2002)[English.].

As in the Japanese provision, Aarhus Article 7 does not prohibit the disclosure of information unless it would adversely affect the judicial or disciplinary proceeding. 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.<sup>3</sup> 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.<sup>4</sup> See [Flachglas Torgau GmbH v Germany, C-204-09, February 14, 2012.](#)

The Japanese exemption from disclosure would likely be applied in the same liberal fashion. The law has been used to make public all the internal compliance and regulatory records behind the Japanese nuclear reactor accident, so it is apparent that it is broadly interpreted. Repeta, "[Japan's News Media, The Information Disclosure Law, and The Fukushima Nuclear Disaster](#)," March 14, 2015. **Article 6 of the Japanese law also provides for partial disclosure by redaction of sensitive parts of the document.**

For general discussion of the Japanese law and a comparison with U.S. law, see Repeta, "[Japanese Government Information: New Rules For Access](#)" (2002)[English.].

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<sup>3</sup> 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.

<sup>4</sup> 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.