

ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



CHILE

Chile provides for access to environmental information from governmental agencies through Article 31 of the [Law on General Basis of the Environment \(Law 19300\)](#), implementing the Aarhus Convention, as amended on January 26, 2010.

Article 31A.- Everyone has the right to access information of an environmental nature held by the Administration...

The law in Article 31A(d) specifically covers “reports of compliance with environmental legislation”(emphasis added).

Significantly, the law in Chile does not provide for the discretionary Aarhus Convention exclusion of information about criminal or disciplinary proceeding where disclosure could prejudice the outcome.¹ This issue is undoubtedly covered by generic Chilean law, but seems to be absent for environmental information access. Chile apparently considers restrictions in other laws as potentially applicable to the Article 31.

The major decision found on this provision is [Judgment 2907-15-INA of the Constitutional Court of Chile, of December 27, 2016](#). In that case, an NGO sought information held by the government on what antibiotics were given to salmon in fish farms. The salmon industry objected that it was propriety. The Court went off on a long discussion of the rights of the public to private information given to the government and tried to distinguish between private information so held and the government’s own information. Over a rigorous dissent, the Court denied the request for the information. However, the Court later reversed that decision in “July 2017 in a judgment of the

¹ The Aarhus provisions that allow exclusion of material that would adversely affect the judicial criminal or disciplinary proceeding 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. 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 After the matter is resolved by officials, the reason for the exemption is arguably no longer valid.¹ See [Flachglas Torgau GmbH v Germany](#), C-204-09, February 14, 2012.

Supreme Court that orders the delivery of information regarding the use of antibiotics by the Salmon Industry in the country, in a disaggregated manner.” [Commentary in the above linked decision]. See [Actualidad Juridica Ambiental, November 14, 2017](#). The final Court judgment abolished the distinction between the source of the information in the hands of the government, applying the disclosure law to privately-produced information. The order did accommodate propriety concerns by allowing some commercial deletions. None of that would be applicable to compliance data (not propriety). In addition, compliance reports are specifically enumerated in Article 31 so the argument for non-disclosure would seem inapplicable altogether.

CONTACT INFORMATION:

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

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

REV 0: 27 April 2020