

ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



UNITED KINGDOM

This memo describes the European framework that applies to the United Kingdom as an EU Member State and in the final section discusses and links the country specific implementation of these requirements as well as national variations.

Environmental Information Directive

The United Kingdom is a Member of the European Union and has transposed the [Environmental Information Directive, Directive 2003/4/EC](#). This is a broad-based disclosure requirement that requires transparency for information about the environment.

“The directive defines “information relating to the environment” in a very broad manner, covering “any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites and on activities or measures adversely affecting, or likely to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes.”¹

The exceptions where disclosure may be denied are actually fairly limited.² The exceptions include, however, criminal and disciplinary proceedings and proceedings by

¹ Resources for the Future, “Public Access to Environmental Information and Data,” 2001, p. 23.

² [Article 4](#): “2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect: (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law; (b) international relations, public security or national defence; (c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature; (d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy; (e) intellectual property rights; (f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law; (g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned; (h) the protection of the environment to which such information relates, such as the location of rare species.” (emphasis added).

public authorities which are confidential under national law.³ This particular exception varies widely by Member State in its implementation. Preliminary investigations can also be excluded. However, the Court of Justice for the European Union has indicated that the reason for confidentiality of certain public proceedings – even where set by national law – may not apply after the proceedings are resolved. See [Flachglas Torgau GmbH v Germany](#), C-204-09, February 14, 2012. Actions related to imminent threats to public health or the environment are also mandated for disclosure. See Article 7(4). The Aarhus Convention⁴ requires that the interest of disclosure of public proceedings must be balanced against the need for confidentiality in each case, so that a blanket exemption is not the intent of the EU Directive implementing the Convention.⁵ All restrictions on disclosure are discretionary with each Member State and national authorities are not necessarily compelled to have the same exemptions in their individual country's laws. See "National Law" section below.

European-Pollutant Release & Transfer Registry

In line with the Aarhus Convention and the EU EID, all emissions data must be publicly available. The EU also maintains the online European Pollutant Release and Transfer Registry or E-PRTR which requires by regulation ([Regulation EC No. 166/2006](#)) the reporting of releases – both accidental and deliberate – to the air, water or soil. E-PRTR searches can be done [online](#). The data base is about two years out of date, but it can be useful to identify past problems at facilities. Reports of discharges or releases from facilities are themselves not confidential under EU law and can also be readily obtained from each Member State.

National Law

The United Kingdom implemented the Directive in its Environmental Information Regulations 2004 (formally [Statutory Instruments, 2004 No. 3391](#)). The rules are described in a website set up by the [UK Information Commissioner](#). The rules basically track the Directive language. Section 12(2) explicitly requires that "a *public authority*

³ There is no explicit authority to include administrative enforcement measures within this definition of exceptions. However, the European Court has ruled that proceedings with possible penalties may come within the exemption. See [Mecklenburg v. Pinneberg](#), C-321-96, 1998 ECRI 3809, 3835. After the matter is resolved by officials, the reason for the exemption is arguably no longer valid. See [Flachglas Torgau, supra](#).

⁴ The [Aarhus Convention](#) on access to justice in environmental matters also has relevant disclosure requirements. The objective is the right to participate in environmental decision-making and the information covered includes administrative measures by public authorities affecting the environment. See Article 2 (definitions). Most of this convention has been incorporated into the Environmental Information Directive at this point.

⁵ See Dirk Bunker, DEFICITS IN US AND EU MANDATORY ENVIRONMENTAL DISCLOSURE, (Springer 2011), p. 141.

shall apply a presumption in favour of disclosure.” Section 12(5)(b) provides “*a public authority may refuse to disclose information to the extent that its disclosure would adversely affect...the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.*” This exception is discretionary and may only be applied where disclosure results in an adverse effect. Documents already in the hands of the facility clearly would not create any disclosure issue.

The Information Commissioner has also published an [online guide](#) to the rules to assist governmental organizations subject to disclosure requirements. His explanation leaves little doubt that the enforcement proceedings exception is narrowly drawn.⁶ Clearly nothing that the facility has already received would seem to present any disclosure issue at all.

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⁶ “...you can refuse to disclose information that would adversely affect formal legal proceedings, whether criminal or civil, including enforcement proceedings. The meaning of ‘the course of justice’ is broad – it covers a range of information, such as court documents and documents covered by legal professional privilege. The meaning of ‘an inquiry of a criminal or disciplinary nature’ is likely to include information about investigations you conduct about a potential breach of legislation, for example, planning law or environmental law. To apply this exception, the disclosure must adversely affect the inquiry by causing some real harm.” (emphasis added).