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*Our ref.*  
2011/197

*Your ref.*

*Date*  
10 June 2013

## **REQUEST FOR DISCLOSURE OF INFORMATION AND DOCUMENTS FROM THE PREPARATION OF THE ACT, ETC.**

Reference is made to previous correspondence in the matter, most recently my letter of 7 March 2013.

Based on my statement of 17 November 2011, the Ministry of the Environment has in a letter of 19 October 2012 re-assessed the question of disclosure.

The Ministry has now concluded that the legal assessments at issue in this matter fall within the scope of section 2 of the Environmental Information Act. The Ministry has then performed an assessment of whether there is a “genuine and objective need” to exempt this information from disclosure, see section 11, first paragraph, of the Environmental Information Act. In this assessment, the Ministry has made a number of submissions, including:

“Work on the Nature Diversity Act was a process that was both comprehensive and demanding. In connection with the submission to the ministries, many points of disagreement were resolved. Several of the topics, including the question of the geographical scope of the Nature Diversity Act, were important questions of principle for the ministries and/or the political parties. Delimiting the scope of the Act was therefore not merely a question of legal assessments, but also of political deliberations, as is evident in the documentation. The confidential nature of the negotiations and correspondence between the ministries and the cabinet ministers was important in order to advance the process and reach an agreement. Although the matter was resolved, releasing this information at the present time may have unfortunate consequences. We would point out that the involved persons, both the members of the civil service and those holding political office, are to continue co-operating on the implementation of the Act. Further, in future the ministries and the government will also have to resolve issues requiring confidentiality. As we see it, such co-operation will be less smooth and efficient if negotiations and correspondence are not protected by an element of confidentiality. The Ministry believes that great importance must be given to these considerations in the discretionary assessment of this matter. We would point out that the preparatory works to the Environmental Information Act state that these are relevant issues that should be emphasised.”

The Ministry has also pointed out that the interests safeguarded by not disclosing the information, must be considered to “far outweigh those being served by disclosure.”

The Ministry’s re-assessment was sent to you in case you had any comments. In your letter of 31 October 2012, you have made a number of supplementary comments including on the Ministry’s processing period and actual renewed consideration of the question of disclosure. of access to information. Your comments were forwarded to the Ministry, which has made no further remarks on the matter.

**My observations:**

One of my reasons for asking the Ministry to re-assess the matter was that I believed that there was reason to doubt that the Ministry had adopted a correct interpretation of the law in its assessment of access to information pursuant to the Environmental Information Act. Nor had the Ministry provided a sufficiently concrete assessment of section 11, third paragraph, of the Environmental Information Act. Based on the explanations provided by the Ministry, I concluded that I could let the issue of sections 14 and 15 of the Freedom of Information Act, and the question of assessment of enhanced access to information, rest.

The Ministry has now re-assessed the matter and concluded that the information you wish to have disclosed falls under the Environmental Information Act. After a somewhat general, but renewed, assessment of the question of disclosure, the Ministry has upheld its previous refusal.

Following an overall evaluation of the matter I have, albeit with some reservations, decided to let the matter rest now that the Ministry has re-assessed your request. In so doing, I have given particular importance to the fact that the Ministry’s new assessment is likely to be above criticism as to its legal basis, and that the decision hinges on a concrete assessment in which the consideration of confidential communication among the ministries features prominently. The Ministry would have done well to provide a more specific and detailed account of the question of partial access pursuant to section 11, third paragraph, of the Environmental Information Act, but I have also decided to let matters rest with regard to this point.

I have noted your comments regarding the other aspects of the case, and will bear them in mind in future cases involving the same issues. However, your comments do not provide sufficient grounds for me to initiate further inquiries at this point. As a matter of form, please note that this does not mean that I support all aspects of the Ministry’s renewed consideration and assessment.

/signature/

Arne Fliflet

Enclosure(s)

Cc: Ministry of the Environment