

Appendix 7

Explanatory Memorandum

Regulations governing public access to government information (Government Information (Public Access) Act)

6. Internal consultation

Section 1, subsection 2 of the Government Information (Public Access) Act (WOB) limits public access to documents drawn up for the purpose of internal consultation. This limitation of public access has been included in section 11 of the present Bill. Internal consultation is defined in section 1 (d) of the Bill as consultation concerning an administrative matter within an administrative authority or within a group of administrative authorities in the framework of their joint responsibility for an administrative matter. By defining the term internal consultation in this way, we have endeavoured to give effect to the gist of recommendation 9 of the Evaluation Committee. This deals with the problem of involving external experts and advisory and other bodies in forming an opinion on documents which, according to the administrative authority, are still the subject of internal deliberation.

The internal character of a document is determined by the purpose for which it is drawn up. Internal consultation may therefore occur even where external persons or bodies are involved in collecting data, developing policy alternatives and/or completing the consultation within the administrative authority. Such involvement may, however, negate the internal character of the consultation if it qualifies as advice or structured deliberation rather than consultation. Likewise, the number of parties involved in the consultation may mean that it is not internal. In our view, it is not possible to define this term by reference to objective, clear-cut criteria that hold good for all cases. The term 'consultation' does not imply that the documents concerned must be the subject of discussion with colleagues at all times. It even includes documents whose contents are intended for a single official. Those who have drawn up the documents or taken responsibility for their contents must have intended to use them for their own purposes or for those of other persons within the government sector. Documents drawn up for internal consultation include memorandums drawn up by civil servants for their superiors and their political leaders, correspondence between the different parts of a government ministry and

between ministries, draft documents, agendas, minutes, summaries and conclusions of internal discussions, and reports of civil service advisory committees. Internal documents may also be documents exchanged between central government and other public bodies. As regards these documents, the intention to treat them as documents for internal consultation must be either expressly apparent or reasonably presumable.

House of Representatives, 1986-1987, 19 859, no. 3