

Province of Groningen

Provincial Executive

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Greenpeace
attn. Mr F. van Olden
P.O. Box 3946
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Date : 19 July 2011
Letter number : 2011-32.305/29/A.35, LGW
Case number : 337124
Dealt with by : Joustra M.S.B.
Telephone no. : (050) 316 4051
Reply to : Your letter about WOB application for information about granting of permits for coal-fired power plants
Enclosure : 1
Re : Decision on Greenpeace's WOB application

Dear Mr Van Olden,

We are writing in reply to your letter of 1 June 2011 on the application under the Government Information (Public Access) Act (referred to below by its Dutch acronym WOB) for information about the granting of permits for coal-fired power plants.

Please find enclosed a list of all documents relating to the procedures you mentioned. This shows the post-2005 documents still with our staff. We have assessed each document separately when deciding whether to classify them as 'public' or 'not public'. The basic principle is that all information is public. Where we have classified documents as not public, we have checked that in each case the ground for refusing the application complies with the WOB. If no ground for refusal exists, we have designated the document as public.

As your application relates to a very large quantity of documents, we have merely provided below a general statement of the reasons for not disclosing certain documents. In addition, the documents released will be redacted by removing names and other personal data. This will be done pursuant to section 10, subsection 2 (e) of the WOB.

In a few cases the documents contain data relating to companies and manufacturing processes. Refusal in such cases is based on section 10, subsection 1 (c) of the WOB and,

where the documents concern environmental information, on section 10, subsection 4 of the WOB.

As regards the other documents, we have distinguished between the permit-granting phase and the phase of appeal to the Administrative Jurisdiction Division of the Council of State.

Where documents have only been passed between the administrative authorities concerned, disclosure has been refused if the documents were intended for internal consultation and contained personal opinions on policy. Some of the cases concern documents discussed with external advisers, particularly the external lawyer consulted by the province. Disclosure of those documents has been refused under section 11, subsection 1 of the WOB. In so far as those documents include environmental information that has not been disclosed elsewhere, we invoke section 11, subsection 4 of the WOB.

Where documents have only been passed between the administrative authorities concerned, disclosure has been refused if the documents were intended for internal consultation and contained personal opinions on policy. Some of the cases concern documents discussed with external advisers, particularly the external lawyer consulted by the province. Disclosure of those documents has been refused under section 11, subsection 1 of the WOB. In so far as those documents include environmental information that has not been disclosed elsewhere, we invoke section 11, subsection 4 of the WOB.

We do not consider that it would be in the interests of effective governance for these documents to be nonetheless disclosed under section 11, subsection 2 of the WOB. In our opinion, the importance of making the decisions concerned and coordinating the defence before the courts in confidence outweighs the importance of disclosing the information in question. This also applies where the documents passed between administrative authorities possibly contain environmental information that has not been disclosed elsewhere because the information in question does not add anything of real value to what is already known about the state of the environment from public sources, the permits issued under the Environmental Management Act and Nature Conservancy Act, and the public files on which they are based.

The following approach has been taken to documents sent to or received from permit holders (exclusively or otherwise). Documents that predate the granting of the permit are not intended for internal consultation. Nor do such documents contain environmental information. Where these documents do contain environmental information, they are disclosed. Disclosure of the other documents is refused pursuant to section 10, subsection 2 (g) of the WOB. This is because disclosure of these documents would result in disproportionate disadvantage both to the companies concerned and to the administrative authorities concerned, including the province. A degree of confidentiality between applicant and competent authority is necessary to ensure the proper functioning of the process leading to the issue of a permit. In our view, the importance to the companies and administrative authorities concerned of being able to consult together confidentially in the phase before the issue of a permit outweighs the public interest in disclosure of the information concerned. It is important to us for the permit files and permits to contain the information necessary to assess the decisions and decision-making process.

Where the documents were sent to or received from permit holders (exclusively or otherwise) and date from after the granting of the permits, they relate to consultation that took place between the administrative authorities and companies concerned in connection with preparation for the defence of the permit before the courts. Unlike the situation in the phase before the granting of the permit, the companies can be regarded in that phase as third parties involved in the preparation of the final decision. This is why the documents are treated as intended for internal consultation and containing personal opinions on policy.

Disclosure of those documents is refused pursuant to section 11, subsection 1 of the WOB. In so far as those documents include environmental information that has not been disclosed elsewhere, we invoke section 11, subsection 4 of the WOB. We do not consider that it would be in the interests of effective governance for these documents to be nonetheless disclosed under section 11, subsection 2 of the WOB. The importance of properly preparing the defence of the decisions before the courts outweighs the public interest in disclosure of this information. This also applies where the documents contain environmental information that has not been disclosed elsewhere because the information in question does not add anything of real value to what is already known about the state of the environment from public sources, the permits issued under the Environmental Management Act and Nature Conservancy Act, and the public files on which they are based. Alternatively, section 10, subsection 2 (g) of the WOB is invoked in respect of these documents.

As we expect various interested parties to have objections to the disclosure of the documents concerned, we will make them available, pursuant to section 6, subsection 5 of the WOB, only after giving such parties the opportunity to object.

In view of the large quantity of documents and the fact that it is the holiday season, we have decided to give interested parties six weeks in which to lodge an objection. As all public documents are being anonymised, the period for inspection will start no earlier than 3 August 2011.

After expiry of this period, we will provide you with the documents we have classified as public, unless an interested party has applied to the District Court for an interim injunction suspending disclosure. On that occasion we will indicate on the list of refused documents the grounds on which disclosure of each document is refused.

Finally, we would point out that in view of the huge quantity of documents we have not managed to put a few of them on this list. These documents must still be analysed by us. We will inform you in due course if this necessitates disclosure of additional documents.

Yours sincerely,

Chair
For Groningen Provincial Executive

Secretary