

22nd Meeting of the Working Group to the Aarhus Convention

(Geneva, 29-21 June 2018)

Agenda item 3 (a): Thematic Session on Access to information

Norway

Ensuring restrictive interpretation

Striking the right balance between the environmental and public interests served by disclosure and the interests served by the grounds for refusal is not an easy task.

The Norwegian Environmental Information Act requires a genuine and objective need to make use of exemptions provided for by law from the right of access to information. If the environmental and public interests outweigh the interests served by refusal, the information shall be disclosed. The Act furthermore identifies specific types of information that shall always be disclosed.

These requirements provide general directions that contribute to ensuring restrictive interpretation of grounds for refusal. Applying them when considering individual requests for access to information may however prove to be challenging.

Requests for information that encompasses confidential information such as business secrets are among those where the balancing exercise may prove to be particularly difficult. Provisions exempting such information from the right of access may not only serve the needs of undertakings. They may also serve the needs of authorities to receive information from undertakings that may also contain business secrets in order to safeguard public interests in tax, customs and environmental matters. Undertakings may be reluctant to accept and comply with obligations to provide such information if they are unsure whether its confidentiality will be sufficiently safeguarded. Authorities may be reluctant to question whether it is a genuine and objective need to keep the information confidential if they fear that this may influence the willingness of undertakings to provide such information.

The Environmental Information Act therefore also contains special procedural rules to be followed in such cases. The aim of these special procedural rules are to both to avoid disclosure of genuinely confidential information and to avoid refusal of access in cases where there is no genuine and objective need for it.