

**The Parliamentary
Ombudsman**

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/logo of the Parliamentary Ombudsman/

Ministry of the Environment
P.O. Box 8013 Dep
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Our ref.
2011/197

Your ref.
201100225-/HEH

Our executive officer
Edvard Aspelund

Date
1 March 2011

SUBMISSION – MATTER CONCERNING ACCESS TO INFORMATION

Reference is made to previous correspondence, most recently the Ministry of the Environment's letter of 8 February 2011 forwarding the case documents.

Please find enclosed a copy of the complaint of 20 January 2011 from Ole Kristian Fauchald. The complaint concerns the Ministry's refusal of 19 January 2011 to accede to his request for access to "a legal assessment conducted in connection with preparation of the Nature Diversity Act". Fauchald makes a number of submissions, including that the documents in question are subject to the Environmental Information Act and that there are strong arguments to support disclosure of this assessment.

Following a review of the documents, the Ombudsman finds reason to ask the Ministry to provide a more detailed explanation for the exemption of the documents from public disclosure.

1. For its legal authority, the Ministry referred to section 14 of the Freedom of Information Act of 19 May 2006 No. 16, which states that documents drawn up by the administrative agency itself for the purposes of internal case processing may be exempted from disclosure. From the information sent by the Ministry, it appears that the legal assessment requested by Fauchald does not comprise a single, specific document, but rather a series of memorandums, emails and statements from various ministries.

The grounds given by the Ministry for its refusal appear to be of a general nature, and are not connected to the individual documents. This makes it difficult for the Parliamentary Ombudsman to perform a concrete assessment of the question of exemption. The Ministry is therefore requested to explain its view on whether section 14, first paragraph, of the Freedom of Information Act, permits this type of general justification disconnected from the specific individual documents. Is the Ministry of the view that all the documents sent may be exempted from public disclosure based on section 14 of the Freedom of Information Act?

2. Pursuant to section 2, first paragraph, of the Environmental Information Act, environmental information is defined as “factual information about and assessments of:

- ...
- b) factors that affect or may affect the environment, including
 - projects and activities that are being planned or have been implemented in the environment
 - the properties and contents of products
 - factors related to the operation of undertakings, and
 - administrative decisions and measures, including individual decisions, agreements, legislation, plans, strategies and programmes, as well as related analyses, calculations and other assumptions used in environmental decision-making”.

The preparatory works to the provision also stated that “decisions regarding law or regulations that affect or may affect the environment” shall be considered administrative decisions, see Proposition to the Odelsting [draft bill] No. 116 (2001-2002), p. 145.

The Ministry has stated that the information in question does not fall under the term “environmental information” in section 2 of the Environmental Information Act. The Parliamentary Ombudsman would request a more detailed account of the Ministry’s view on this matter, with special reference to the fourth hyphenated item in the sub-paragraph b).

3. The Parliamentary Ombudsman would request a detailed and concrete explanation of the Ministry’s assessment of enhanced access to information for each of the various documents, see section 11 of the Freedom of Information Act. What considerations spoke in favour of or against full or partial disclosure of the respective documents? Did the Ministry consider granting partial disclosure of some of the documents? How, in the eyes of the Ministry, does the fact that the Act has now been adopted and is in force affect the assessment of enhanced access to information?

4. Pursuant to Section 31, first paragraph, fourth sentence, of the Freedom of Information Act, a refusal under the Freedom of Information Act shall inform the applicant of the right of appeal and the time limit for lodging an appeal. Furthermore, it follows from the Ministry of Justice’s “Rettleiar til offentleglova” [Guidance on the Freedom of Information Act], p. 70, that when a ministry refuses a request for disclosure of information, the refusal notice shall inform the applicant that the right to appeal to the Parliamentary Ombudsman does not apply where an appeal is decided by the King in Council, see section 32, first paragraph, of the Freedom of Information Act.

Neither the right to lodge an appeal or the procedural rules concerning appeals are given in the Ministry’s refusal. Why did the Ministry not give information on the right to lodge an appeal and the possibility of submitting the complaint to the Parliamentary Ombudsman in its refusal notice of 19 January 2011?

As part of the Parliamentary Ombudsman’s standard procedure, the public administration’s reply to the Ombudsman is forwarded to the complainant for comment. The Ombudsman would therefore ask the Ministry of the Environment, in so far as possible, to frame its response in a manner that makes it possible to present it to the complainant. However, given that the Ombudsman has, above,

requested a concrete explanation of the Ministry's assessments regarding the content of the report, it may be difficult to comply fully. The Ministry is therefore requested to indicate clearly any parts of its answer which contain information the complainant is not entitled to see.

Please respond at your earliest convenience, and no later than within four weeks.

For the Parliamentary Ombudsman

/signature/
for
Harald Gram
Principal Officer

/signature/
Edvard Aspelund
Adviser

Enclosure(s)

Cc: Ole Kristian Fauchald