

Staffan Dahllöf

ACKNOWLEDGEMENT OF SERVICE

Staffan Dahllöf
regarding **Right to access public records**

Document etc.
JUDGEMENT, 19/02/2019

It is important that you immediately confirm that you have received the aforementioned document/documents by filling in and returning the acknowledgement of service. You can also confirm that you have received the aforementioned documentation in another manner, for example, over the telephone.

..... Date Signature
..... Telephone (home)	Staffan Dahllöf..... Name in block letters
..... Telephone (work) New street address
..... Mobile telephone New postal address
..... E-mail address	

If the receipt is not returned, the acknowledgement of the service can be served in another manner e.g., by a process server. For further information you may contact the Court.

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APPELLANT

Staffan Dahllöf

APPEALED DECISION

The Swedish Chemicals Agency's decision of 5 December 2018 in the case with ref. no. 2.4.2.a-H18-08227, see appendix 1

MATTER

Right to access public records

THE ADMINISTRATIVE COURT OF APPEAL'S DECISION

The Administrative Court of Appeal rejects the appeal.

PETITIONS, ETC.

Staffan Dahllöf petitions for the requested draft of the assessment report to be disclosed in its entirety. He states the following: In the available parts of the assessment report, it is clear that chlorpyrifos is highly toxic to aquatic organisms, that it is suspected to cause genetic damage, and is presumed to cause severe birth defects in the nervous system. The decision not to disclose the document was taken without consideration for Directive 2003/4/EC on public access to environmental information. Pursuant to the directive, a request must not be rejected if it concerns information about environmental emissions. The use of pesticides entails environmental emissions. The information in the requested document is clearly of public interest.

The Swedish Chemicals Agency states the following: Nothing has emerged to contradict the agency's assessment that confidentiality applies in accordance with Chapter 15, Section 1a of the Public Access to Information and Secrecy Act (2009:400) (hereafter OSL) is in accordance with Article 4(2)(b) in Directive 2003/4/EC. The assessment is based on the Swedish equivalent of Article 4(2)(b), i.e. Chapter 10, Section 5, second paragraph of OSL, which does not fall within the scope of the Directive's prohibition to reject a request for environmental information.

GROUND FOR THE ADMINISTRATIVE COURT OF APPEAL'S RULING

Applicable provisions, etc.

Public Access to Information and Secrecy Act

Pursuant to Chapter 15, Section 1 a, first paragraph of OSL, the confidentiality of information received by a government agency from a foreign body as a result of a binding EU act applies if it can be assumed that Sweden's possibility to participate in the international collaboration referred to in the act deteriorates if the information is disclosed.

The legislative history of Chapter 15, Section 1 a of OSL includes the following: The government agency that examines the issue of confidentiality is obliged to make an independent assessment in each individual case of what consequences a disclosure can be assumed to have for its continued collaboration with foreign bodies. The agency must then consider whether and, if so, in what way the issue of confidentiality is regulated in the act. If the information is kept confidential by the foreign body, the point of departure is that disclosure can typically be considered to mean that the damage requirement is fulfilled and that an impediment to disclosure by the Swedish government agency exists (Govt. Bill 2012/13:192 pp. 34, 35, 43, and 44).

Chapter 10, Section 5, first paragraph of OSL states that if a classified document constitutes such environmental information as is referred to in Section 2 of the Act (2005:181) concerning environmental information amongst certain individual bodies, confidentiality does not apply if it is obvious that the information has such significance from an environmental point of view that the interest of public knowledge of the information takes precedence over the interest which the confidentiality is to protect. Furthermore, the second paragraph stipulates that confidentiality in accordance with Chapters 19–40 is not applicable to information concerning environmental emissions.

The provisions of Chapter 10, Section 5 of OSL were introduced in order to implement Directive 2003/4/EC on public access to environmental information and in order for Sweden to fulfil its obligations in accordance with the Aarhus Convention. The legislative history to the corresponding provision in Chapter 14, Section 11 of the now repealed Secrecy Act (1980:100) includes the following: Article 4(2) of the Directive merely states that in each individual case, the public interest of the disclosure of information must be weighed against the interest of confidentiality. How this balancing should be carried out is not specified. As there is a Directive involved, the Member State must decide how it is to be implemented. Because Swedish confidentiality regulations were designed on the premise that every exception to the constitutional principle of public access to official records must be carefully stated in the law and that the confidentiality regulations have been structured so that a balancing of interests has already been carried out in several stages, a general provision concerning an additional balancing of interests should be restrictively designed.

Therefore, the provision states that in situations where it is obvious that the information is of such importance from an environmental point of view that the interest of public knowledge of the information takes precedence, it must nevertheless be disclosed (Govt. Bill 2004/05:65 p. 109.). In regard to the wording of the second paragraph, it specifies that Article 4(2), second paragraph of the Directive stipulates that information on environmental emissions may be kept confidential, for example in consideration of international relations. No exception to confidentiality in accordance with the previous second chapter of the Secrecy Act (confidentiality with regard to the security of the realm or its relationship to another state or international organisation) was therefore necessary (a. Govt. Bill p. 111).

Current EU Acts

Article 11(1) in the Commission Implementing Regulation (EU) No 844/2012, setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market (the Implementing Regulation) indicates that the rapporteur Member State shall submit a report (draft assessment report) to the European Commission along with a copy to the Authority (the European Food Safety Authority, EFSA). The report shall assess whether the active substance can be expected to meet the approval criteria.

Article 12(1) states that the Authority shall circulate the draft renewal assessment report received from the rapporteur Member State to the applicant and to the other Member States at the latest 30 days after its receipt.

According to Article 12(2), the Authority shall make the draft renewal assessment report available to the public, after giving the applicant two weeks to request, pursuant to Article 63 of Regulation (EC) No 1107/2009, that certain parts of the draft renewal assessment report are kept confidential.

Article 63 of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market stipulates that a request can be made for information to be provided in accordance with the regulation to be treated as confidential if the disclosure of the information may adversely affect the protection of the business interests of those concerned or the private life or integrity of individuals.

The Administrative Court of Appeal's assessment

The report shows the following: The document requested by Staffan Dahllöf is a draft assessment report on the renewal of the European Commission's approval of the substance chlorpyrifos. The renewal procedure is governed by the Implementing Regulation. Spain, as the rapporteur Member State, has processed the current application for renewal of the substance chlorpyrifos and has submitted such a draft assessment report to the Commission as is referred to in Article 11(1) of the Implementing Regulation. The other Member States and EFSA have received the draft assessment report in accordance with the provisions of the Regulation. The Swedish Chemicals Agency has released the draft assessment report to Staffan Dahllöf with the exception of four pages, whose contents have been redacted due to confidentiality.

The Swedish Chemicals Agency received the document in question from EFSA because of a binding EU act. Information in the document can therefore be subject to confidentiality in accordance with Chapter 15, Section 1a of OSL, if it can be assumed that Sweden's possibility to participate in collaborations within the EU with regard to the procedure for the approval of active substances in plant protection products would be impaired if the redacted pages in the draft assessment report were disclosed. Nothing has emerged to suggest that the information in the redacted pages is not also confidential with the EFSA. It can consequently be assumed that Sweden's possibility to participate in the current collaboration will be impaired if the redacted pages are disclosed. This part of the document is therefore covered by confidentiality in accordance with Chapter 15, Section 1a of OSL.

Considering that the requested draft assessment report contains such environmental information as is referred to in Chapter 10, Section 5 of OSL, an assessment must also be made of whether the redacted pages shall be disclosed due to that provision. According to the Administrative Court of Appeal's assessment, it is not obvious that the information contained in the redacted pages is of such importance from an environmental point of view that the interest of public knowledge of the information takes precedence over the interest of not impairing Sweden's possibility to participate in the current EU collaboration. The right to access the information covered by confidentiality in accordance with Chapter 15, Section 1a, pursuant to the provision allowing the breach of confidentiality set out in Chapter 10, Section 5, first paragraph does not apply. The Administrative Court of Appeal furthermore notes that the exemption from confidentiality of information on environmental emissions in in Chapter 10, Section 5, first paragraph refers exclusively to confidentiality in accordance with Chapters 19– 40 of OSL and not in accordance with Chapter 15, Section 1a. The appeal must therefore be rejected.

HOW TO APPEAL, see Appendix B (Form 1)

Anita Linder
Senior Judge of Appeal
Presiding

Ann-Jeanette Eriksson
Judge of Appeal

Elisabet Reimers
Judge of Appeal
Reporting Judge

Maya Hald
Reporting Legal Expert

DECISION

Date
05/12/2018

Reference no
2.4.2.a- H18-08227

Legal Secretariat

Elsa Rosén

Acknowledgment of service

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ADMINISTRATIVE COURT
OF APPEAL IN STOCKHOLM

REC. 14/12/2018
CASE 9983-18
FILE APP. 4

Decision Concerning the Disclosure of Public Document

1. Decision

The Swedish Chemicals Agency rejects your request for access to a public document consisting of information in the rapporteur Member State's draft assessment report on the renewal of the active substance chlorpyrifos in its entirety.

2. Description of the Matter

You have requested per e-mail to access a public document consisting of the information contained in pages 451–454 of the rapporteur Member State's draft assessment report on renewal of the active substance chlorpyrifos (no. 05.1.3-B13-00248). In this case, the rapporteur Member State is Spain.

3. Grounds

3.1. Applicable provisions

Confidentiality applies to information received by an government agency from a foreign body as a result of a binding EU act or an agreement entered by the European Union or an agreement approved by the Riksdag (the Swedish Parliament) with another state or with an international organisation, if it can be assumed that Sweden's possibility to participate in international collaborations referred to in that act or agreement will be impaired if the information is disclosed. This is stipulated in Chapter 15, Section 1a, first paragraph of the Public Access to Information and Secrecy Act (2009: 400) (hereafter OSL).

The third paragraph of the same provision states that if confidentiality applies in accordance with the first or second paragraph, the provisions of Chapter 10, Sections 15–27 and Section 28, first paragraph, which allow for the breach of such confidentiality, do not apply.

3.2. The Swedish Chemicals Agency's Assessment

The Swedish Chemicals Agency makes the assessment that the information covered by the request for disclosure has been submitted to the agency pursuant to the provisions of Regulation (EC) No 844/2011*, which is a binding EU act.

[Written by hand] 2012 * Correction pursuant to Section 36 of the Administrative Procedure Act (2017:400)

14 December 2018 / ER

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provisions of Regulation (EC) No 844/2011, which is a binding EU act. Given that the information is subject to confidentiality in Spain, it can be assumed that Sweden's possibility to participate in the international work referred to in the act will be impaired if the information is disclosed.

In light of the above, the Swedish Chemicals Agency makes the assessment that the information cannot be disclosed. What you have otherwise stated in the matter does not give cause for any other assessment.

4. How to appeal

This decision may be appealed to the Administrative Court of Appeal in Stockholm. A written appeal to the Administrative Court of Appeal must in that case be received by the Swedish Chemicals Agency within three weeks from the date the appellant was informed of the decision. The appeal is sent to the Swedish Chemicals Agency, Box 2, 172 13 Sundbyberg.

On behalf of the Swedish Chemicals Agency

[Signature]

Elsa Rosén

Legal expert

HOW TO APPEAL

A party wishing to appeal an Administrative Court of Appeal ruling shall write to the Supreme Administrative Court. The letter shall be addressed to Supreme Administrative Court *but shall be sent or submitted to the Administrative Court of Appeal.*

The appeal shall have been received by the Administrative Court of Appeal *within three weeks* from the date when the appellant was informed of the decision. However, if the decision was pronounced during a preparatory hearing, or if a date for pronouncing a decision has been specified during such a hearing, the appeal must have been received within three weeks of the date on which the court's decision is pronounced. The deadline for appeals for the public is however calculated from the day the decision was issued.

If the final day for the appeal falls on a Saturday, Sunday, public holiday, Midsummer Eve, Christmas Eve or New Year's Eve, it is sufficient that the official letter is received on the following working day.

In order for the Supreme Administrative Court to consider the appeal, *leave to appeal* is required. The Supreme Administrative Court grants leave to appeal if having the appeal tried by a higher court will provide guidance for future application of law or there are other special reasons to try the appeal, such as grounds for a new trial or the outcome of the case in the Administrative Court of Appeal being clearly based on serious negligence or a serious mistake.

If leave of appeal is not granted, the Administrative Court of Appeal's judgement stands. It is therefore important that it is clear and evident from the appeal to the Supreme Administrative Court why the appellant believes that leave of appeal should be granted.

The appeal documentation must contain the following information;

1. The appellant's name, personal identity/organisation number, profession, postal address and telephone number (home and mobile). The address and telephone number of the workplace and any other location where the appellant can be reached for the serving of the summons should also be provided, if this information has not already been provided earlier in the case. If the appellant hires a counsel, the counsel's name, postal address, e-mail address, work and mobile telephone numbers should be given. If there are any changes to personal or address details, it is essential that the Supreme Administrative Court is notified immediately,
2. the judgement/decision which is appealed, including the Administrative Court of Appeal's name, case number and the date of the judgement,
3. the reasons the appellant cites in support of the request for leave to appeal,
4. the amendment which the appellant wishes to have made to the Administrative Court of Appeal's judgement,
5. the evidence which the appellant wishes to cite and what he/she would like to substantiate with each piece of evidence.