

SUBSIDIARY LEGISLATION 549.39

**FREEDOM OF ACCESS TO INFORMATION ON
THE ENVIRONMENT REGULATIONS**

17th May, 2005

LEGAL NOTICE 116 of 2005, as amended by Act XVI of 2008 and Legal Notice 298 of 2012.

1. (1) The title of these regulations is the Freedom of Access to Information on the Environment Regulations. Citation and scope.

(2) The purpose of these regulations is:

- (a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise;
- (b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information; and
- (c) to transpose Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

2. For the purpose of these regulations and unless the context otherwise requires:

Definitions.
Amended by:
XVI. 2008.48.

"applicant" means any natural or legal person requesting environmental information;

"the competent authority" means the Environment and Resources Authority and such other body or person as the Minister may by order in the Gazette appoint and different bodies or persons may be designated as a competent authority for different provisions and different purposes of these regulations;

"environmental information" means any information in written, visual, aural, electronic or any other material form on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

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"Information and Data Protection Commissioner" means the official appointed in terms of article 11 of the Data Protection Act;

"information held by a public authority" means environmental information in possession of such public authority which has been produced or received by that authority;

"information held for a public authority" means environmental information which is physically held by a natural or legal person on behalf of a public authority;

"the Minister" means the Minister responsible for the environment;

"the public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups;

"public authority" means:

- (a) government or other public administration, including public advisory bodies, at national, regional or local level;
- (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and
- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraphs (a) or (b):

Provided that this definition shall not include bodies or institutions when acting in a judicial or legislative capacity.

3. (1) Any applicant may, without having to state an interest, request the competent authority to provide him with any environmental information held by or for the competent authority or any other public authority.

Request for environmental information.
Substituted by:
L.N. 298 of 2012.

(2) A record of all such requests shall be kept by the competent authority.

4. (1) The competent authority shall, if it has in hand the requested environmental information, as soon as possible or, at the latest, within thirty days from receipt of the request, provide such environmental information to the applicant.

Access to environmental information upon request.
Amended by:
L.N. 298 of 2012.

(2) If the volume and the complexity of the information is such that the period referred to above cannot be complied with, the period shall be extended by a further thirty days, and the competent authority shall notify the applicant of such an extension and the reason thereof within the period set out in subregulation (1):

Provided that if the request is formulated in too general a manner, the competent authority shall, as soon as possible and within the period set out in subregulation (1), ask the applicant to specify the request, and provide the applicant with assistance, if need be.

5. If the competent authority does not have in hand the requested environmental information, the applicant shall be informed expeditiously and the competent authority shall immediately forward such a request to the public authorities holding such information, including information held for such a public authority, and shall, in accordance with the provisions of regulation 4, provide such environmental information to the applicant.

Environmental information held by or for other public authorities.
Substituted by:
L.N. 298 of 2012.

6. (1) Where an applicant requests the competent authority to make environmental information available in a specific form or format (including in the form of copies), the competent authority shall make it so available unless:

Format of environmental information.

- (a) it is already publicly available in another form or format, in particular under regulation 9, which is easily accessible by applicants; or
- (b) it is reasonable for the public authority to make it available in another form or format, in which case reasons shall be given for making it available in that form or format.

(2) For the purposes of this regulation, public authorities shall make all reasonable efforts to maintain environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

(3) The reasons for a refusal to make information available, in full or in part, in the form or format requested shall be provided to the applicant within the time limit referred to in regulation 4(1).

7. (1) The competent authority may, on its own behalf or on behalf of another public authority, refuse to provide the requested

Refusal to provide environmental information.

environmental information if:

- (a) the request is manifestly unreasonable;
- (b) without prejudice to the provisions of regulation 4(3), the request is formulated in too general a manner;
- (c) the request concerns material in the course of completion or unfinished documents or data, provided that in this case, the competent authority shall state the name of the authority preparing the material and the estimated time needed for completion;
- (d) the request concerns internal communications, taking into account the public interest served by disclosure.

(2) The competent authority may furthermore, on its own behalf or on behalf of another public authority, refuse to provide the requested environmental information if disclosure of the information would adversely affect:

- (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;
- (b) international relations, public security or national defence;
- (c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- (d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;
- (e) intellectual property rights;
- (f) the confidentiality of personal data and, or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law;
- (g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;
- (h) the protection of the environment to which such information relates, such as the location of rare species.

(3) The grounds for refusal mentioned in subregulations (1) and (2) shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. The

competent authority may not, by virtue of subregulation (2)(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.

(4) Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of subregulation (1)(c) and (d) or subregulation (2) from the rest of the information requested.

(5) A refusal to make available all or part of the information requested shall be notified to the applicant in writing or electronically, if the request was in writing or if the applicant so requests, within the time limits referred to in regulation 4. The notification shall state the reasons for the refusal and include information on the review procedure.

8. (1) Access to any public registers or lists and examination *in situ* of the information requested shall be free of charge. Charges.

(2) The competent authority may make a charge for supplying any environmental information, but such charge shall not exceed a reasonable amount.

(3) Where charges are made, the competent authority shall publish and make available to applicants a schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.

9. (1) The competent authority shall keep and maintain a public register with a reference of all the environmental information held by or for it or held by or for other public authorities. Public register.

(2) Any public authority shall immediately notify the competent authority with all the environmental information held by or for it, and such public authority shall, in accordance with instructions given to it by the competent authority, deposit a copy of such environmental information with the competent authority.

10. (1) The competent authority shall take the necessary measures to ensure that environmental information is actively and systematically disseminated to the public, in particular by means of computer communication and, or electronic technology, where available. Dissemination of environmental information.

(2) The information to be made available and disseminated shall be updated as appropriate and shall include at least:

- (a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;
- (b) policies, plans and programmes relating to the environment;
- (c) progress reports on the implementation of the items referred to in paragraphs (a) and (b) when prepared or held in electronic form by public authorities;

- (d) the reports on the state of the environment;
- (e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- (f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in accordance with the provisions of these regulations;
- (g) environmental impact studies and risk assessments concerning the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements or a reference to the place where the information can be requested or found in accordance with the provisions of these regulations.

(3) The competent authority shall take the necessary measures to ensure that, in the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information held by or for public authorities which could enable the public likely to be affected to take measures to prevent or mitigate harm arising from the threat is disseminated, immediately and without delay.

(4) The provisions of regulation 7 shall apply *mutatis mutandis* in relation to the duties imposed by this regulation.

Power to make regulations by the competent authority.

11. The competent authority may make regulations to provide for any matter affecting the access to information on the environment as provided for in these regulations in order to give fuller effect to the provisions of these regulations, and in particular, but without prejudice to the generality of the aforesaid, may by such regulations require any other public authority to comply with:

- (a) data and public register delivery methodologies; and
- (b) data formats, data structures, delivery times and any other requirement or requirements incidental thereto.

Appeal to the Environment and Planning Review Tribunal.
Added by:
L.N. 298 of 2012.

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***11A.** In cases where the applicant decides to have recourse to the Environment and Planning Review Tribunal on matters relating to requests for environmental information, having due regard to the need for expeditiousness, the Tribunal shall hold its first hearing within six working days from receipt of the appeal. In any such appeal, the provisions of article 41(4) of the Environment and Development Planning Act shall apply with regard to requests for environmental information.

*this regulation was originally added, by L.N. 298 of 2012, as regulation 12; however, by the time it came into force, two new regulations, 12 and 13, had already been added by Act XVI of 2008; consequently the regulation has been re-numbered as regulation 11A.

12. (1) Any person who requests the competent authority to provide him with environmental information in accordance with regulation 3, and who is dissatisfied with the response, may apply to the Information and Data Protection Commissioner for a decision whether, in any specified respect, his request has been dealt with in accordance with the requirements of these regulations and any additional regulations made in accordance with regulation 11.

Enforcement.
Added by:
XVI. 2008.48.

(2) Part IV of the Freedom of Information Act other than article 26, as well as articles 39, 40 and 43 of the same Act, shall apply *mutatis mutandis* to requests for information under this article, save that references to a code of practice in Part IV of the Freedom of Information Act shall be construed as referring to any code of practice on the disclosure of information that may be issued by the competent authority through regulations in accordance with regulation 11; but the application of the Freedom of Information Act in terms of this sub-regulation shall not be dependent on the issue of such a code.

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(3) Where the question emerges as to whether or not information requested under regulation 3 is environmental information to which these regulations apply, that question shall be subject to review and decision by the Information and Data Protection Commissioner and additionally subject to appeal under articles 39 and 40 of the Freedom of Information Act.

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13. In deciding whether or not particular environmental information is exempted from disclosure under regulation 7(2)(a), regard shall be had to article 29(2), (3) and (4) and article 36 of the Freedom of Information Act; and information to which the aforementioned paragraph applies shall not be released under these regulations if it would be considered exempt matter under the Freedom of Information Act.

Interpretation.
Added by:
XVI. 2008.48.

Cap. 496.
