

Environmental Information Act¹

Date of signature: 22 December 2004

Full citation:

Environmental Information Act of 22 December 2004 (Federal Law Gazette I, p. 3704)

Footnote

This act was adopted as Article 1 of the Act of 22 December 2004, Federal Law Gazette I, p. 3704. Pursuant to Article 9 paragraph 1, it entered into force on 14 February 2005.

Part 1

General provisions

Paragraph 1 – Purpose of the Act and scope

- (1) The purpose of this Act is to establish a legal framework for freedom of access to environmental information held by and for bodies subject to a disclosure obligation and for the dissemination of environmental information of that kind.
- (2) This Act shall apply to Federal bodies and Federal institutions with legal personality under public law subject to a disclosure obligation.

Section 2 – Definitions

- (1) 'Bodies subject to a disclosure obligation' means
 1. government and other bodies of the public administration. Bodies advising those institutions shall be treated as part of the institution that appoints their members. Bodies subject to a disclosure obligation shall not include
 - (a) the supreme federal authorities when acting in the context of the legislative process or issuing statutory instruments, and
 - (b) federal courts unless they are performing public administrative functions;
 2. any natural or legal person governed by private law having public functions or providing public services relating to the environment, in particular services of general interest relating to the environment, under the control of the Federation or a legal person under public law supervised by the Federation.
- (2) The control referred to in subsection (1) number 2 above shall be deemed to exist when
 1. in exercising public functions or providing public services, the person governed by private law is subject to special obligations as regards third parties or has special rights, in particular where there is an obligation to contract or an obligation to connect and to use; or
 2. one or more of the legal persons under public law specified in subsection (1) number 2, individually or together, directly or indirectly,
 - (a) hold the majority of the subscribed capital of the undertaking,
 - (b) hold the majority of the voting rights associated with the shares in the undertaking, or

¹ This working translation of the *Umweltinformationsgesetz (UIG)* is provided by the Language Service of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. Only the German text of this Act is authentic.

- (c) -may appoint more than half of the members of the administrative, management or supervisory body of the undertaking.
- (3) -'Environmental information' means all information howsoever stored on
1. - 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;
 2. - factors, such as substances, energy, noise, radiation, waste of any kind, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in number 1 above;
 3. - measures or activities
 - (a) -affecting or likely to affect the elements of the environment referred to in number 1 above or the factors referred to in number 2 above, or
 - (b) intended to protect elements of the environment referred to in number 1 above; in this regard, measures shall include policies, legal and administrative provisions, agreements, environmental agreements, plans and programmes;
 4. - reports on the implementation of environmental legislation;
 5. - cost-benefit and other economic analyses and assumptions used in preparing or carrying out the measures and activities referred to in number 3 above; and
 6. - the state of human health and safety, the 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 number 1 above or by the factors, measures or activities referred to in numbers 2 and 3 above; in this connection, this shall also include the contamination of the food chain.
- (4) A -body subject to a disclosure obligation shall be regarded as holding environmental information where that information is in its possession or is held for that body. Environmental information shall be deemed to be held for a body, if a natural or legal person not subject to a disclosure obligation keeps environmental information on behalf of a body subject to a disclosure obligation referred to in subsection (1) above and the latter body has the right to demand the provision thereof.

Part 2

Access to information upon request

Section 3 – Right to access environmental information

- (1) Every person shall have the right in accordance with this Act to freely access environmental information held by or for a body subject to a disclosure obligation as defined in section 2 subsection (1) without having to state a legal interest. This shall be without prejudice to other rights to access information.
- (2) Access may be granted through the provision of information, an opportunity to inspect the files or in some other manner. If a request seeks information in a specific form, this shall be made available in the form requested unless there are good reasons to provide it in a different form. For these purposes, a good reason shall be taken to include a substantially greater administrative burden. If environmental information is already available to an applicant in another, easily accessible form, in particular as a result of dissemination in accordance with section 10, the body subject to the disclosure obligation may refer the applicant to that means of accessing the information.
- (3) Where a right specified in subsection (1) exists, environmental information shall be made available to the applicant having regard to the timescale specified by that person and, at the latest, on the expiry of the period referred to in the second sentence number 1 or number 2

below. The period shall begin on receipt of the application by the body subject to the disclosure obligation holding the information and shall end

1. - after one month or
2. - if the volume and complexity of the information is such that the one-month period referred to in number 1 above cannot be complied with, after two months.

Section 4 – Request and procedure

- (1) On -request, environmental information shall be made available by a body subject to a disclosure obligation.
- (2) The request must make clear the environmental information to which access is sought. If a request is too unspecific, the applicant shall be informed of this within one month and given the opportunity to specify the request. If the applicant thus specifies the request, the period within which the request must be answered shall start to run afresh. Persons seeking information shall be assisted in making and specifying their requests.
- (3) If a request is lodged with a body subject to a disclosure obligation not holding the relevant environmental information, it shall forward the request to the body holding the information sought if known to the former and shall inform the applicant of this fact. Instead of forwarding the request, it may refer the applicant to other bodies subject to a disclosure obligation known to it that hold the relevant information.
- (4) If, as provided for in section 3 subsection (2), access to information is granted in a form other than the form sought, this fact shall be communicated together with the reasons within the period specified in section 3 subsection (3), second sentence, number 1.
- (5) Where the longer period specified in section 3 subsection (3), second sentence, number 2 applies, the applicant shall be informed of this fact together with the reasons at the latest on the expiry of the period specified in section 3 subsection (3), second sentence, number 1.

Section 5 – Refusal of the request

- (1) If the request is refused in full or in part pursuant to sections 8 and 9, the applicant shall be informed of this fact within the periods specified in section 3 subsection (3), second sentence. A request shall be deemed to have been refused if, pursuant to section 3 subsection (2), the access to information is granted in a form other than that requested or the applicant is referred to a different form of access to the information. The grounds for the refusal shall be communicated to the applicant; in addition, in the cases to which section 8 subsection (2) number 4 refers, it shall also be informed of the body preparing the material and the estimated time needed for completion. Section 39 subsection (2) of the Administrative Procedures Act² shall not apply.
- (2) If the request was made in writing or where desired by the applicant, the refusal shall be made in written form. On request by the applicant, it shall be communicated in electronic form if this means of communication is available.
- (3) Where access is refused on one of the grounds specified in sections 8 and 9, to the extent that it is possible to separate out the information affected by that reason, the information not affected by that reason shall be made available.
- (4) If a request is refused in full or in part, the applicant shall be informed in addition about the possibilities to obtain legal redress in relation to the decision, specifying the body before which redress may be sought and the period in which to do so.

Section 6 – Legal redress

- (1) Disputes arising out of this Act shall be heard by the administrative courts.

² *Verwaltungsverfahrensgesetz.*

- (2) In relation to decisions taken by the public administration as defined in section 2 subsection (1) number 1, also if the decision has been taken by a supreme federal authority, the review specified in sections 68 to 73 of the Code of Administrative Court Procedure³ shall be carried out.
- (3) If an applicant takes the view that a body subject to a disclosure obligation as specified in section 2 subsection (1) number 2 has not satisfied a request in full, it may have that decision reviewed in accordance with subsection (4) below. No review of that kind shall be required for the purposes of bringing the action referred to in subsection (1) above. No action may be brought against the competent body specified in section 13 subsection (1).
- (4) The -request for review shall be lodged in writing with the body subject to a disclosure obligation specified in section 2 subsection (1) number 2 within a month of that body's notification that the request has been refused in full or in part. The body subject to a disclosure obligation shall communicate to the applicant the results of its review within one month.
- (5) State -law may provide that disputes concerning rights enforceable against private bodies subject to a disclosure obligation on the basis of state legislation on access to environmental information may be heard by the administrative courts.

Section 7 – Support in obtaining access to environmental information

- (1) Bodies subject to a disclosure obligation shall take measures to make it easier to access the environmental information held by and for that body. For those purposes, they shall work towards ensuring that environmental information held by or for them progressively becomes available in electronic databases or is stored in other formats accessible by electronic means.
- (2) Bodies subject to a disclosure obligation shall facilitate access to information through practical arrangements, such as:
 1. - the designation of information officers or information points,
 2. - the publication of registers on the environmental information available,
 3. - the establishment of publicly accessible information networks and databases or
 4. - the publication of information on the responsibilities of authorities.
- (3) The -bodies subject to a disclosure obligation shall ensure as far as possible that all information compiled by such bodies or behalf thereof is up to date, correct and comparable.

Part 3

Grounds for refusal

Section 8 – Protection of public interests

- (1) If disclosure of the information would adversely affect:
 1. - international relations, defence or important interests of public security,
 2. - the confidentiality of the proceedings of bodies subject to a disclosure obligation referred to in section 2 subsection (1),
 3. - the course of justice, the ability of any person to receive a fair trial or the ability to conduct an enquiry of a criminal, administrative or disciplinary nature;
 4. - the state of the environment and its elements referred to in section 2 subsection (3) number 1 or the protected interests specified in section 2 subsection (3) number 6,

³ *Verwaltungsgerichtsordnung.*

the request shall be refused, unless the public interest in disclosure is greater. Access to environmental information on emissions shall not be refused on the grounds referred to in numbers 2 and 4 above.

(2) If a request:

1. - is manifestly unreasonable,
2. - concerns internal communications of body subject to a disclosure obligation referred to in section 2 subsection (1),
3. - is lodged with a body not holding environmental information and cannot be forwarded pursuant to section 4 subsection (3),
4. - concerns the disclosure of material in the course of completion or unfinished documents or data or
5. - is formulated in too unspecific a manner and following a request by the body subject to a disclosure obligation of the kind referred to in section 4 subsection (2) is not specified within a reasonable period,

it shall be refused, unless the public interest in disclosure is greater.

Section 9 – Protection of other interests

(1) If

1. - disclosure of the information would reveal personal information and this would have considerable adverse effect on the interests of the person concerned,
2. - intellectual property rights, in particular copyrights, would be infringed through the disclosure of environmental information or
3. - disclosure would undermine the confidentiality of commercial or industrial information or the information is protected according to the principle of tax secrecy or statistical confidentiality,

the request shall be refused unless the persons concerned have given their consent or there is a greater public interest in disclosure. Access to environmental information on emissions shall not be refused on the grounds referred to in numbers 1 and 3 above. Before a decision is taken to disclose the information specified in the first sentence numbers 1 to 3 above the persons concerned shall be consulted. The body subject to a disclosure obligation shall presume, as a rule, that the interests of a person as specified in the first sentence number 3 above are affected, if the information provided is marked as confidential commercial or industrial information. Where a body subject to a disclosure obligation so requires, persons whose interests are potentially affected shall substantiate the confidential nature of the commercial or industrial information supplied.

(2) Environmental information provided by private third parties to a body subject to a disclosure obligation without being under, or capable of being put under, a legal obligation to do so and whose disclosure would adversely affect the interest of the third parties may not be made available to others without their consent unless there is a greater public interest in disclosure. Access to environmental information on emissions shall not be refused on the grounds referred to in the first sentence above.

Part 4

Dissemination of environmental information

Section 10 – Informing the public

(1) The bodies subject to a disclosure obligation shall inform the public about the environment to an appropriate extent and in an active and systematic manner. In this context, they shall

disseminate environmental information which is relevant to their functions and which is held by and for them.

- (2) The environmental information to be disseminated shall include at least:
1. - texts of international treaties, Community legislation adopted by European Community institutions and provisions adopted by federal, state or municipal authorities on the environment or relating to it;
 2. - policies, plans and programmes relating to the environment;
 3. - progress reports on the implementation of the legislation and policies, plans and programmes referred to in numbers 1 and 2 above when prepared or held in electronic form by the relevant body subject to a disclosure obligation;
 4. - data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
 5. - authorisations with a significant impact on the environment and environmental agreements and
 6. - summary presentations and evaluations of environmental impact referred to in sections 11 and 12 of the Environmental Impact Assessment Act⁴ as promulgated on 5 September 2001 (Federal Law Gazette I, p. 2350), last amended by Article 3 of the Act of 24 June 2004 (Federal Law Gazette I, p. 1359) and risk assessments concerning the environmental elements referred to in section 2 subsection (3) number 1.

In the cases referred to in the first sentence, numbers 5 and 6, for the purposes of dissemination, a reference to where the information is available or can be found suffices. Published environmental information shall be updated at appropriate intervals.

- (3) Environmental information shall be disseminated in a manner that is understandable and easily accessible to the public. For these purposes, where available, electronic means of communication shall be used. The second sentence above does not apply to environmental information compiled before this Act entered into force unless the information is already available in electronic form.
- (4) The requirements to inform the public specified in subsections (1) and (2) above may be satisfied also by creating links to Internet sites where the environmental information to be disseminated can be found.
- (5) In the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, the bodies subject to a disclosure obligation shall disseminate immediately and without delay all information held by or for them which could enable the public likely to be affected to take measures to prevent or mitigate harm arising from the threat. If several bodies subject to a disclosure obligation hold information of that kind, they should coordinate its dissemination.
- (6) Section 7 subsections (1) and (3) and sections 8 and 9 shall apply *mutatis mutandis*.
- (7) Discharge of the obligations specified in section 10 may be entrusted to specific institutions in the public administration or to private bodies.

Section 11 – Report on the state of the environment

The Federal Government shall publish regularly at intervals of no more than four years a report on the state of the environment in the Federal Republic of Germany. In this connection, it shall take account of the requirements of section 10 subsections (1), (3) and (6). The report shall include information on the quality of the environment and the existing degradation of the environment. The first report following the entry into force of this Act shall be published on 31 December 2006 at the latest.

⁴ Gesetz über die Umweltverträglichkeitsprüfung.

Part 5

Final provisions

Section 12 – Charges

- (1) Charges (fees and expenses) shall be levied for the provision of information in accordance with this Act. This shall not apply to the provision of oral information and simple written information, the opportunity to consult environmental information on site, the measures and arrangements specified in section 7 subsections (1) and (2) and the information provided to the public specified in sections 10 and 11.
- (2) Fees shall be set at levels, having regard also to the administrative burden involved, such that the effective exercise of the right to access information set out in section 3 subsection (1) is ensured.
- (3) The Federal Government shall be authorised to set a scale of charges by statutory instrument not requiring consent of the Bundesrat for official acts by bodies subject to a disclosure obligation. Sections 9, 10 and 15 subsection (2) of the Administrative Costs Act⁵ of 23 June 1970 (Federal Law Gazette I, p. 821), last amended by Article 4 paragraph 9 of the Act of 5 May 2004 (Federal Law Gazette I, p. 718), shall not apply.
- (4) Private bodies subject to a disclosure obligation referred to in section 2 subsection (1) number 2 shall be permitted to require applicants to reimburse costs for the provision of information under the terms of this Act in accordance with the principles set out in subsections (1) and (2) above. The costs that may be reimbursed shall be commensurate with scale of costs for official acts by Federal bodies and Federal institutions with legal personality under public law subject to a disclosure obligation set out in the statutory instrument adopted pursuant to subsection (3) above.

Section 13 – Monitoring

- (1) The bodies of the public administration that exercise the control referred to in section 2 subsection (2) on behalf of the Federation or a legal person under public law supervised by the Federation shall monitor the compliance with this Act by private bodies subject to a disclosure obligation referred to in section 2 subsection (1) number 2.
- (2) On request, the bodies subject to a disclosure obligation referred to in section 2 subsection (1) number 2 shall provide to the competent bodies all information necessary for them to exercise their tasks specified in subsection (1) above.
- (3) In relation to the bodies subject to a disclosure obligation referred to in section 2 subsection (1) number 2, the competent bodies specified in subsection (1) above may take such measures or issue such orders as are necessary for compliance with and implementation of this Act.
- (4) The Federal Government shall be authorised to confer the tasks specified in subsections (1) to (3) above in derogation from subsection (1) above on other bodies of the public administration by statutory instrument not requiring the consent of the Bundesrat.

Section 14 – Administrative offences

- (1) A person shall be deemed to have committed an administrative offence where wilfully or negligently he contravenes an enforceable order of the kind referred to in section 13 subsection (3).
- (2) The administrative offence referred to in subsection (1) above shall be punishable with a fine not exceeding ten thousand euro.

⁵ *Verwaltungskostengesetz.*