

Access to Information in Malta and the interpretation of certain restrictions in disclosure



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The Freedom of Information Act (Chapter 469 of the Laws of Malta):

- General legislation regulating freedom of information in Malta.

The Freedom of Access to Information on the Environment Regulations (Subsidiary Legislation 549.36):

- This is the principle legislation which regulates access to and dissemination of **environmental information** in Malta;
 - Implements **articles 4 and 5** of the Aarhus Convention;
 - Implements **article 9(1)** of the Aarhus Convention.
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- As per regulation 3 of the **Freedom of Access to Information on the Environment Regulations**:
 - (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.
 - (2) A record of all such requests shall be kept by the competent authority.
 - The Competent Authority under these regulations is the Environment & Resources Authority (ERA).
 - Requests for information are received by **email, phone** or through the **ERA website** – recently revised to make it more user-friendly.
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Type of Query

- Enquire on an environment permit
- Report an environmental illegality **
- Request for data or information

Description *

(*) Fields marked with an asterisk are required

(**) In case of an environmental emergency kindly contact ERA on 2292 3500 during office hours and 9921 0404 after office hours, weekends and public holidays

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- Regulation 7 of S.L. 549.39 lists the possible grounds for refusal of the requested information:

“(1) The competent authority may, on its own behalf or on behalf of another public authority, refuse to provide the requested environmental information if: [...]

(d) the request concerns internal communications, taking into account the public interest served by disclosure.”

- This exception is in line with article 4(3)(c) of the Aarhus Convention

“A request for environmental information may be refused if ... the request concerns material in the course of completion **or concerns internal communications of public authorities** where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.”

Grounds for Refusal (2)

Internal communications

- **What are ‘Internal communications?’**
 - The term ‘internal communication’ is not defined in legislation.
 - This may cover information, opinions, statements, etc made and shared by officers within one government body, or between different government bodies.
 - The **Aarhus Implementation Guide** provides some examples on what should not be considered as ‘internal communications’
 - × Strictly factual material;
 - × Information that has been disclosed by a public authority to a third party;
 - × Opinions / statements expressed by public authorities acting as statutory consultees during a decision-making process;
 - × Studies commissioned by public authorities from related, but independent, entities.
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Grounds for Refusal (3)

Internal communications

- What is the **justification** for this grounds for refusal?
 - Allows for and ensures the free expression of personal and professional opinions by public officers involved in internal communications or in preparation of relevant materials, without external pressures;
 - Similar in rationale to the grounds for refusal of *'material in the course of completion or unfinished documents'* under regulation 7(1)(c), as it protects the officer in the course of his/her decision-making and finalisation of work;
 - Prevents the disclosure of communications that may be taken out of context, misapplied and difficult to redact.
 - In any case, when applying this ground, the Authority must **interpret it restrictively**, and weigh out the public interest served by disclosure against the interest served by the refusal for every particular case (regulation 7(3) of S.L. 549.39).
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- Under the Freedom of Access to Information on the Environment Regulations, the applicant may appeal the Authority's decision not to disclose the environmental information requested.
 - This may be done by lodging an appeal with either:
 - **The Information and Data Protection Commissioner** (Regulation 12 of S.L. 549.39)
 - No cost to appeal to the Commissioner;
 - **The Environment and Planning Review Tribunal** (Regulation 11A of S.L. 549.39)
 - Expedited review (hearing within 6 days) and fee is between €150-200.
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The Situation due to COVID-19

- The current situation has not effected the procedure for receipt of / replies to access to information requests received by the Environment and Resources Authority.
 - Requests for information continue to be received mainly in writing (through email / website), which is preferable for records and tracing purposes.
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Thank you for your attention!

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