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Access to Information in Sweden

Introduction

Most of the legislation relevant to the principle of transparency is translated to English and can be found on the website of the Government (<http://www.government.se/sb/d/3288/a/53923>). General information in English on access to information in environmental matters can be found in the Swedish Implementation Report to the Aarhus Convention 2014 (http://www.unece.org/env/pp/reports_trc_implementation_2014.html) and the eJustice Fact sheet on Access to justice in environmental matters in Sweden under heading Access to Information Cases (author associate professor Annika Nilsson, Uppsala Universitet). (https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-se-en.do?member=1#III).

It is worth noticing, that cases concerning access to information in environmental matters are quite rare in Sweden. A further complicating factor is that those cases are not easily distinguishable from access to information cases from other sectors of the administration, as there is no specific statistics for environmental law or environmental information. In the Implementation Report 2014 (page 3), it is however highlighted that according to the Swedish Union of Journalists, figures from the Parliamentary Ombudsmen (JO) shows that the number of cases where the Ombudsman found reason to criticize a government agency for not handling a request for disclosure of public documents in a timely manner has increased, particularly in respect of disclosure by municipal authorities.

1. Constitutional frame, constitutionally guaranteed right of access to (environmental) information? Access to information as a fundamental (democratic) right?

Since 1766, the Swedish administration is based on the Principle of transparency, meaning that the public can ask for any document in the hands of an authority. Today, this constitutional principle is expressed in Chapter 2 of the Freedom of Press Act (1949:105, TF). The access right covers information from all documents that are held by the authority (TF 2:3), have been drawn up or received by the authority (TF 2:6-7) and are not deemed to be secret. The most important secrecy exceptions relate to state affairs, defence and armed forces, foreign affairs, privacy, business competition, administrative control and inspection, the protection of species and natural resources (TF 2:2). The legal bases for secrecy are specified in the Public Access to Information and Secrecy Act (2009:400, OSL). The fundamental idea is that, on its own, the interest of secrecy can never decide the strength of secrecy protection; instead, it must always be weighed against the interest of insight and that the weight of the interest of insight can be different in different contexts. This balance is already struck when a secrecy provision is intro-

duced, and is expressed by stating in the provision whether a presumption of public nature or a presumption of secrecy shall apply to the information covered by the provision. In addition, a balance has to be struck for each request for the release of environmental information from public authorities as to whether it is apparent that the information is of such importance from an environmental perspective that general awareness of the information has precedence over the interest to be protected by secrecy (OSL 10:5).

The procedure for requests for information is also given in OSL. All individuals can ask for the documents – in paper or electronic form – without stating reason or revealing his or her identity or nationality. If the authority is requested to produce the information in writing, a fee is required, covering the cost for copying (the administration's prime production cost). A request for information must be responded to "promptly", which in most cases mean within 1 or 2 days. If the secrecy examination is complex or if the request covers vast materials, the disclosure may take up to 1 week, in extreme cases even longer.

The principle of public access to official documents is also manifested in other ways. Civil servants in public authorities in Sweden have freedom of expression. This means that there is no general duty to observe confidentiality, and instead the general rule for officials is freedom of speech. In addition, officials in Swedish authorities have a far-reaching right to disclose information subject to secrecy in order for the information to be published in the media. Even if the freedom to communicate information does not give the public a right to information, the principle of freedom of communication does give officials an opportunity to inform the media about what is happening in their area.

2. Other (national) legal acts providing access to information held by public authorities. Relationship with laws transposing Dir 2003/98 on re-use of public sector information

Decisions on access to information made by the Parliament, the Government or the Ministries are not appealable to courts in Sweden. On ratification of the Aarhus Convention, a reservation was made on this issue (<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=no-XXVII-13&chapter=27&lang=en#EndDec>).

As for new legislation, there was only a need to expand the principle of transparency to cover a small number of private entities that fulfil public functions within water management, fishery and wildlife. This was done by the Environmental Information Act 2005:181. This legislation contains a definition of environmental information and a requirement to make such information available as soon as possible, but no later than one month after the information has been requested.

Minor amendments were also made in the OSL, including a secrecy-override rule for information on emissions to the environment.

3. National legal situation before Dir 90/313/EC: has the EC/EU legislation had a major impact on the national law on access to information?

See above.

4. Statistical information about the use of the access-right including types of users if known (eg NGOs, competitive industry, general public, environmental consultants, etc). Difficulties of the administration handling the number and/or the scope of applications.

No such statistics available. The Yearbooks of the Parliamentary Ombudsman (JO) include a number of statements on access to information, but they concern all areas within the administration. Nevertheless, the statements of the JO are of decisive importance for the creation of good governance concerning access to information in environmental matters.

5. Significant national law and jurisprudence on the definition of “environmental information” (Art. 1 para 1 Dir 2003/4/EC

See above, no such case law under Code 2005:181.

6. Significant national law and jurisprudence on determining the access right holder (“without having to state an interest”, Art. 3 para 1 Dir 2003/4/EC)

See above. The body of case law on this issue has been built up under the last century by the administrative courts and JO, the essence being that the authority can only ask for the information needed to perform the secrecy examination. In most cases, this means that they cannot ask for the identity of the requester.

7. Significant national law and jurisprudence on the realm and obligations of private persons as defined by Art. 2 No. 2 b and c 4/EC. (see ECJ 279/11 (Fish Legal)

See above, no such case law under Code 2005:181.

8. National law and jurisprudence on the public authorities to be addressed (“information held by or for them”) (Art. 3 para 1 Dir 2003/4/EC)

See above, no such case law under Code 2005:181.

9. Significant national law and jurisprudence on practices on access conditions (terms, “practical arrangements” (see Art.3 paras 3 – 5 Dir 2003/4/EC)

Commonly, the information is submitted by email or letter to the requester. In rare cases, the requester is asked to come to the office of the administration to study the material. Documents may also sometimes be “masked” in order to hide sensitive information according to TF 2:2 and OSL.

The public always have access to the diary of the authorities and sometimes to computers are made available to enable search in the administration’s docket. Public authorities hold a great deal of information. In order to access the information, private individuals need to know that the information exists and how to get access to it. To facilitate searches in the masses of information held in the archives, the Swedish National Archives has developed a search system that is available via the Internet. The National Archival Database of Sweden (NAD) is a cross-sectorial database and information system in the Swedish archives system. The purpose of the NAD is to provide a national information system for

Swedish archives so as to improve the accessibility and use of archives and collections held by archive institutions in Sweden. In the NAD, the user is able to search, in a single context, information about the archives and collections held by both public and private archive institutions, libraries and museums. The NAD supplies a national archive creator register with archive references, a register of archive institutions with contact information and auxiliary databases for the topographic divisions of Sweden and the history of the administration. The NAD also contains detailed archive lists from archives held by the Swedish National Archives and the regional archives. Anyone who wants to know what activity have been conducted at a particular place can begin their research in the NAD. Using the NAD, it is possible to search archives from public authorities and other organizations with environment-related activities such as the Swedish National Licensing Board for Environment Protection, the Swedish Council for Environmental Information, the Environmental Advisory Council and committees of inquiries related to the environment. The NAD provides information on where the archives are held and overviews of the contents of the archives. The NAD is accessible via the Internet at: www.sok.riksarkivet.se.

10. Law and practices/jurisprudence on charges for access (copying? administrative time?)

According to TF 2:13 and the Fee Regulation (1992:191), the fees are only allowed to cover the prime production price, commonly the cost for copying. Under the general rule, the first 10 copies are free and the charge thereafter is SEK 50 plus SEK 2 per copy. According to the cost-price principle, municipalities are not allowed to charge fees that more than cover the costs of the service being provided. The basis for deciding municipal charges is set out in the charge schedules adopted by the municipal assembly. The Environment Information Act contains provisions stating that reasonable reimbursement may be obtained for costs associated with releasing information and that there has, in that case, to be a pre-determined schedule of charges for this.

11. Do any public authorities claim copyright in the material supplied, and impose conditions relating to use of information under copyright law (such as due acknowledgement and user fees in case of re-publication)?

It happens, but mostly in relation to maps produced by the National Cadastral Offices (Lantmäteriet). Note however that it is always free of charge to study the maps at the offices and that most material is available to search and study on the net. It is for the downloading of maps that fees can be charged and the use can be restricted by copyright.

12. National law and jurisprudence on the role of affected third parties in access procedures esp. concerning trade secrets and personal data (designation of trade secrets, consultation prior to release of information, etc)

See above, no such case law under Code 2005:181.

13. Significant national law and jurisprudence on exceptions (Art. 4 Dir 2003/4/EC)

See above, no such case law under Code 2005:181. However, there exists older case law under OSL relating to environmental information. Some years ago, some municipalities

denied the public and journalists access to information concerning health inspections in restaurants, claiming that the revealing of the protocols would have a negative effect on the business for some of the enterprises (those with remarks). This was not accepted by the courts and today, one may say that naming and shaming is part of the business.

Furthermore, it is noteworthy that the Swedish Ministry of the Environment is open with information about ingoing communications with the Commission through EU Pilot and ongoing infringement cases. Thus, the public commonly have access to all communications between the Ministry and the Commission, including Formal Notices and the Reasoned Opinions. This openness varies, however, between the different parts of the Government, and the Ministry of Foreign Affairs commonly has quite an opposite attitude.

More specifically:

- a) Confidentiality of commercial or industrial information**
- b) Confidentiality of the proceedings of public authorities / internal communications /**
- c) Approach to the disclosure of:**
 - “raw data’ (Aarhus Compliance Committee case ACC/53/ Uk – see AC Implementation Guide 2014 p 85)
 - “material in the course of completion” vs “unfinished documents” see AC Implementation Guide 2014 p 85
- d) “Information on emissions into the environment” (Art. 4 para 2 subpara 2 Dir 2003/4/EC, see T-545/11**
- e) International relations, public security, national defence (see T-301/10 Sophie t’ Veldt)**
- f) Weighing of interests in every particular case (Art. 4 para 2 subpara 2 Dir 2003/4/EC**

14. Judicial control of access-decisions

a) Have specialised administrative appeal bodies (information officer etc) been set up? How do they work? Are their opinions respected?

Any decision on access to information can be appealed to the administrative courts, which decides on the merits of the case in a reformatory procedure. The court decides which information shall be made accessible. Also the statements of JO are of great importance for what is considered as good governance on the area and are widely respected.

b) Court review: “in-camera”-control? Standing of parties affected by decisions denying or granting access?

Business secrecy mainly exists in the area of chemicals control. The affected third parties – here the chemical industry – basically has no standing rights in cases concerning access to information held by the authorities.

15. How do states fulfil the duty to make information actively available?

PRTR and Inspire, www.geodata.se where information from 24 national authorities is made accessible. Work is also under way to make Swedish authorities more accessible to the public by, for example, being available 24 hours a day via electronic information tools. For further information, see the Swedish Implementation Report 2014 (web address above under Introduction).