

What are Rights of Access to Environmental Information for?

Reflecting on the Concepts of “Information” and “Access”

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What are Access to EI rights for?

- ‘Greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment’ (EID, recital 1)
- Openness and transparency in public authorities (EID, recital 2)
- Compliance with the Aarhus Convention
- ‘In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being’, to ‘enhance the quality and the implementation of decisions’ (Art 1, recital)

Why do people request access to EI?

- To **make money**: *Smartsources v IC*, Case C-71/14 *East Sussex County Council v IC*
- Concern over **public health**: Case C-71/10 *Office of Communications v IC*
- Concern over **environmental issues**: Case C-279/12 *Fish Legal & Shirley v IC*, *Natural England v IC*
- Empowering involvement in/scrutiny of **environmental/public decision-making**: *Shirley, Rickard v IC*, *Ryan v IC*
- Empowering involvement in/scrutiny of **environmental policymaking**: *BEIS v IC*

Purposive reasoning: *BEIS v IC*

*My starting point is the recitals to the Aarhus Convention and the Directive... They refer to the requirement that **citizens** have access to information **to enable them to participate in environmental decision-making more effectively**, and the contribution of access to a **greater awareness of environmental matters**, and eventually, to a **better environment**. They give an indication of how the very broad language of the text of the provisions may have to be assessed and **provide a framework for determining the question of whether in a particular case information can properly be described as ‘on’ a given measure.***

Does transparency always bring clarity?

Table 4-2 Results of Air Quality Assessment for Nitrogen Dioxide in 2017

Zone	Zone code	NO ₂ LV for health (1hr mean)	NO ₂ LV for health (annual mean)	NO _x critical level for vegetation (ann. mean)
Greater London Urban Area	UK0001	> LV	> LV	n/a
West Midlands Urban Area	UK0002	OK	> LV (m)	n/a
Greater Manchester Urban Area	UK0003	OK	> LV (m)	n/a
West Yorkshire Urban Area	UK0004	OK	> LV	n/a
Tyneside	UK0005	OK	> LV (m)	n/a
Liverpool Urban Area	UK0006	OK	> LV (m)	n/a
Sheffield Urban Area	UK0007	OK	> LV (m)	n/a
Nottingham Urban Area	UK0008	OK	> LV (m)	n/a
Bristol Urban Area	UK0009	OK	> LV (m)	n/a
Brighton/Worthing/Littlehampton	UK0010	OK	OK	n/a
Leicester Urban Area	UK0011	OK	> LV	n/a
Portsmouth Urban Area	UK0012	OK	> LV (m)	n/a
Teesside Urban Area	UK0013	OK	> LV (m)	n/a
The Potteries	UK0014	OK	> LV	n/a
Bournemouth Urban Area	UK0015	OK	> LV (m)	n/a
Reading/Wokingham Urban Area	UK0016	OK	> LV (m)	n/a
Coventry/Bedworth	UK0017	OK	> LV (m)	n/a
Kingston upon Hull	UK0018	OK	> LV (m)	n/a

‘Information’

- Undefined in reg 2(1) EIRs (Art 2(1) EID): ‘any *information* in written, visual, aural, electronic or any other material form on...’
- Information vs data
 - Consider analytical techniques involved in processing data
- Information vs knowledge
 - How do different actors understand information?



	Ecological status or potential						Chemical status		
	Bad	Poor	Mod	Good	High	Total	Fail	Good	Total
By 2015	1	2	40	44	0	87	2	277	279
By 2021	0	0	2	9	0	11	0	0	0
By 2027	0	0	6	178	0	184	0	3	3
Beyond 2027	0	0	0	0	0	0	0	0	0
Total	1	2	48	231	0	282	2	280	282
Less stringent							Less stringent		

Extended deadline

Quality of information

- Article 8 EID (see reg 5(4) and (5) EIRs):
 - information should be ‘up to date, accurate and comparable’ (so far as within power of Member State to ensure this)
 - for Art 2(1)(b) requests, authorities, upon request, to report on ‘where information, if available, can be found on the measurement procedures, including methods of analysis, sampling, and pre-treatment of samples, used in compiling the information, or referring to a standardised procedure used’

‘Access’ to environmental information

- Different ways that public access information
 - Voluntary vs legal modes, request vs disclosure
 - Complex landscape of legal regimes – ubiquitous legal commitment across environmental regimes + FOIA
 - Modes of accessing environmental information can *influence* and *limit* public access through their design and operation, and set up more legal complexity



R (Corbett) v Cornwall Council

[I]t is important to distinguish between the different statutory regimes applicable to access to information. The different legal regimes have different definitions of environmental information. They also impose different obligations. In some instances, it is an obligation to provide access to certain types of information when requested. In others, it is an obligation to publicise the fact that certain specified information has been received. In the present case, the Claimant, in fact, relies on three separate legal regimes.

‘Access’ to environmental information

- Different purposes of access
 - Simple instrumental access
 - Means of holding administrators to account – connoting an ability of the public to understand information
 - Facilitating public participation – with different purposes again (increasing public awareness, procuring local knowledge, fostering environmental democracy...)
 - Regulatory tool

Why does all this matter?

- Different purposes → what kind of understanding is implied on the part of the public in gaining ‘access’ to EI, what use can be made of the information so acquired
- Relevant for:
 - (1) legal construction of EIRs (what is information, how exceptions operate etc)
 - (2) evaluating how and whether our legal landscape for accessing environmental information is working