

Protocol for the disclosure of emissions reports

NEa adheres to the following protocol for requests relating to the viewing of, or for copies of emissions reports:

What information is deemed public in the emissions report?

- A) Emissions data is deemed public without exception under the Freedom of Information Act (*Wet openbaarheid van bestuur*). The NEa publishes the total CO₂ emissions of every operator on an annual basis.
- B) Information on CO₂ emissions classified by fuel type is not actively published but will, in principle, be provided to third parties on request. The NEa will promptly notify the operator concerned of such third-party requests to obtain its view and, after taking a decision on the third-party request, will observe a two-week period between announcing the decision and providing the emission data to the party making the request. The two-week period serves to provide the company the opportunity to apply for preliminary relief.
- C) The NEa regards all other information in the emissions report as business and manufacturing information which has been communicated to the government on a confidential basis. This does not relate to emissions data, but to the underlying data per operator, per fuel type or per installation, such as emissions factors, key figures and energy or fuel consumption¹.

Procedure for the disclosure of environmental information provided on a confidential basis.

This means that in the case of a formal request under the Freedom of Information Act to disclose the data referred to under B and C the NEa must weigh the interests of disclosure against the interests of maintaining confidentiality of the business and manufacturing data. To that end the NEa adheres to the following procedure:

- In the event of a request to disclose data, the NEa must carefully assess whether or not the environmental information qualifies for disclosure. The NEa's position must be well-substantiated, both in the situation in which it will disclose the information and in the situation in which it will not disclose the information.
- For this reason, upon receipt of a request under the above Act the NEa will always contact the relevant operator to obtain its views so that it can include any substantiated objections against disclosure in its assessment.
- Ultimately it is up to the NEa, rather than the party submitting the emissions report, to decide on disclosure.

Grounds for rejection

In the event a request for the disclosure of emission data is rejected, the NEa requires the cooperation of the operator that has submitted the emission report. The grounds the NEa wishes to receive must contain a thorough analysis of the business confidentiality of aspects such as:

- D) the specific operation of the relevant market;
- E) the value of the relevant data for the operator's competitive position or for its specific competitors in that market;
- F) the extent to which the data are already in the public domain due to the fact that a considerable amount of information can, for instance, be derived from the public licensing procedure.

¹ See also the decision of 28 October 2009, ECLI:NL:RVS:2009:BK1375. The Administrative Jurisdiction Division has determined that the data *underlying* emissions data cannot be deemed equivalent to the actual emissions data.