# 6 Freedom of Environmental Information[1]

*Gerd Winter*

Table of Contents



## I NATIONAL VARIATIONS

Comparative examination can establish that the particular resistance to, or propensity towards, freedom of information in a given country is influenced by its specific constitutional history. For example, in Germany, access to official files has traditionally been restricted to persons whose individual substantive rights may be affected by an imminent administrative decision. The right to know is seen as an essential element – indeed the primary element – of the legal protection of the substantive rights and it is not designed to guarantee participation in public decision-making. Historically this can be explained by what is called the German *Sonderweg* (peculiar path) towards parliamentary democracy. Eighteenth-century German absolutism was basically benevolent and did not provoke strong democratic opposition as it did in France. The German bourgeoisie, afraid of the political potential of the rising working classes, compromised with the nobility to establish a constitutional monarchy rather than a parliamentary republic. They wanted parliamentary and other participation in governmental decision-making where they deemed their individual rights to personal freedom and property were affected, but let the monarch rather than the parliament decide about other political issues, thereby hampering the development of a full democracy.

In the UK, in principle at least, those whose individual rights may be affected have, until recently, had a right of access to official files, though subject to important qualifications. In contrast to Germany, free public access has frequently been

[1] This chapter is based on the introduction to Gerd Winter (ed.), *Öffentlichkeit von Umweltinformationen*, Baden-Baden: Nomos Verlag, 1990.

provided to final administrative decisions and a number of registers containing official information. However there is an overall reluctance to allow extensive participation in the governmental decision-making process prior to the decision itself. At first sight, this may appear surprising given John Locke's influential definition of government as the 'trust' of society. While this construction is indeed taken seriously in British constitutional doctrine, it is not the public at large but rather parliament (which represents it) to which the executive branch is made responsible. Given the multitude of factual circumstances of which a minister may remain ignorant, and given the quasi-autonomy of many administrative bodies, a minister has in fact little direct control over day to day decision making, so that in reality ministerial responsibility to parliament has become little more than a fiction. Nevertheless, this fiction has served as an argument against access to information outside parliamentary channels.

France provides an example of how a country with a highly professionalized and centralized administration can abandon official secrecy. The relevant legislation is the Act of 1978 on access to administrative documents which was part of a group of laws enacted in the late 1970s designed to promote public participation in administrative decision-making. On the one hand the policy behind the legislation flowed from a broad democratic movement pushed by the student rebellion in the 1960s and reflecting, in a broader sense, more radical French democratic traditions. On the other hand, it may also be traced from the French Orleanist tradition of benign autocracy. From this second perspective the Act can be seen as a gift from above, from the enlightened bureaucratic élite searching for greater legitimacy at a time of intensified technocratic intervention. These two strands in the relaxation of administrative secrecy have combined in the effort to alter bureaucratic routines, and the seriousness of the undertaking can be shown by the establishment of a supervisory commission charged with the implementation of the Act, the *Commission d'Acces aux Documents Administratifs*.

In the USA absolutism has not been an historical and symbolical phenomenon against or through which the public has had to struggle and establish itself. Certainly, as elsewhere, bureaucracy in the USA has a real tendency towards secrecy, but distrust of bureaucracy has led to the need for public participation becoming established as an undisputed societal value in America. Ministerial responsibility to parliament is not a viable alternative as an important part of the administrative branch of government – that is, the many regulatory agencies are neither responsible to a particular ministry nor derive full legitimacy from Congress. As a result these agencies must establish public approval directly, and this in particular explains their participatory rule-making and adjudicatory procedures and the acceptance of open access to information.

An examination of socialist configurations completes our overview of the various national variations. In the German Democratic Republic, before its unification



with the Federal Republic, no right of access to administrative information was provided by law, but neither did a legal principle of official secrecy exist. According to the official socialist conception the state and the people were identical. The state was constructed as the people's 'committee'. In practice this resulted in the attitude that the people did not need to have individual rights of access because, by implication, they had access collectively. Equally, the state did not need to establish secrecy by law because, as the state *was* the people, there was in fact no official secrecy. Of course, this vision of popular and state 'identity' contradicted the actual clash of the interests between the state and the citizen. This tension finally contributed to the 1989 November revolution.

In this respect, Poland was more realistic, preserving some of its pre-war tradition of the rule of law and pluralist democracy even during the socialist period. Much as in West Germany it established a right of access to files for those who are aggrieved with respect to their individual rights through action of the administration. To this a socialist component was added so that so-called societal organizations, ranging from labour unions to environmental associations, were also given a right of access and of participation in every administrative procedure. However, as these organizations were closely supervised by the state they could not develop as a real opposition.

## II EMPIRICAL OBSERVATIONS

Before turning to concrete legal forms of access to official information, I would like to make some empirical observations concerning the consequences of the introduction of access laws.[2] There is, however, a caveat to be made. The impact of new legislation on actual practice cannot be measured precisely. A new law will most probably have some effect, but many other factors are necessary in order to direct society and government towards the envisaged aim: in our case, making bureaucracies open-minded and inducing the actual exercise of rights of participation by the public may depend more on the general information-culture than on the law. As a result, much remains to be done once access laws have been adopted. Nonetheless, laws are indispensable in that they can operate to preserve a culture of openness in time of decline, and to strengthen it in a time of growth. Our data shall be presented in the form of answers to arguments against freedom of information legislation:

1 **'Free access leads to an additional workload for public officials'**
There are enormous differences between individual states and agencies in respect of frequency of requests and the workload arising from responding to

[2] The following information draws on an empirical investigation reported in ibid.

these requests for information. For instance, the US Consumer Product Safety Commission handles about 13,000 requests for information per year, to deal with which 16 full-time posts have been created. On the other hand, a French department which supervises 1,500 classified factories receives only about three to four requests per year. This reflects, among other things, the differences in the information cultures already mentioned. But where a heavy workload results the solution must be to appoint more personnel. If open administration is considered desirable a society, logically, must be prepared to bear the related cost.

2 **'Freedom of access will be perverted as a means through which business will gather information about competitors'**

Whereas in the 'open systems' we researched – that is, France, Sweden, the Netherlands and Canada – most requests in the environmental and consumer protection fields came from concerned persons and associations, access rights in the USA are, it is true, used much more frequently by businesses and even specialized companies, which make a business out of conveying freedom of information services to clients. For instance, of the 41,500 requests received by the Food and Drug Administration in 1987, 80 per cent were filed by regulated and other industries, 6 per cent by the press, 4 per cent by private persons and 1 per cent by public interest groups. Indeed, why should competitors in a market economy, whose very concept relies on the free flow of information, be refused information (not legitimate trade secrets, of course) about their fellow competitors? Many requests are from companies seeking to establish whether they are being treated equally by the agency; others come from businesses wishing to sell technology to companies with a low environmental performance. These, I believe, are perfectly legitimate goals.

3 **'Business will become more reticent in voluntarily providing agencies with information'**

In open systems, business develops greater awareness and caution with respect to sensitive information so that, in the interaction with administrative bodies, more information is declared to be a trade secret. Cases have been reported in Sweden and the Netherlands where firms have refused to give voluntary information about an environmental aspect of their processes and products (even if this information could not be deemed a trade secret), when the relevant agency failed to agree not to disclose the information. Yet, although such a change in attitude may be an unavoidable cost of opening up two-tier relations with third parties, the consequences could be mitigated and, in particular, the giving of information could be made obligatory rather than voluntary. For its own part, the agency could secure the confidence of the information suppliers by careful appraisal of secrecy claims, and this could be reinforced by reliable practice.



4 **'Business will be harmed by frequent disclosure of trade secrets'**

Although we asked all our respondents both in private business and administrative agencies about this point not one single concrete case was mentioned where a firm was economically harmed by the disclosure of information. Those who make this claim ignore the fact that most agencies almost overanxiously either accede to the firms' initial secrecy claim or give them a prior notice for possible comment before they release potentially sensitive information.

5 **'Access rights are covertly counteracted in practice'**

This argument is frequently put forward by environmental associations in France, Germany, Italy and Greece but less so in Sweden and the Netherlands. In the USA it is made with regard to some, but not all, agencies. Obstacles to access experienced by associations include high requirements as regards specifying the requested document, delayed responses on the part of the agency, intolerable reading conditions within the agency, lack of copying facilities, high charges, broad interpretations of exceptions to disclosure and so on. Yet, quite obviously, these experiences do not mitigate against stricter access legislation.

6 **'Formalized free access will cause informal sources of information to dry up'**

Odd as it sounds, this argument is not too far-fetched. Certainly, informal channels of information do exist in the shadow of formal official secrecy. To a growing extent third party networks are infiltrating into bureaucracies to 'whistle-blow' (that is, give clandestine telephone information) and 'brown-bag' (that is, mail information in brown paper bags). Also, substantive legal protection rights are sometimes traded for the voluntary provision of information. For instance, when the German chemical company Hoechst planned to build a new pesticide manufacturing factory in Frankfurt, a neighbouring objector withdrew his complaint, which would have delayed the realization of the project considerably, in exchange for the firm's promise to release process- and product-related information otherwise not accessible to him.[3] The argument goes that formalization of information flows might, by channelling its wilder flows, make such interactions more effective as far as non-sensitive information is concerned and, at the same time, more restrictive for sensitive

[3] See the case study presented by M. Führ, Umweltinformationen im Genehmigungsverfahren, in G. Winter (1990), *op. cit.*, p. 149.

information. I doubt that this expectation is correct. The US example shows that formalized free access and additional informal communications can go hand in hand. In any case, nobody who would make this assumption would seriously oppose free access rights.

## III FRAMING FREE ACCESS RIGHTS AND EXEMPTIONS

In the following I shall take the perspective of a law-maker who devises a new access law under EC Directive 90/313 on Free Access to Environmental Information[4] and takes the different national laws and experiences into account.

The Directive establishes an access right independent of showing an interest. Access shall be given to environmental information. The Directive defines what this is and states exceptions to the access right. It also requires that the right be legally protected. For the transformation into national law it should be noted that, as the Directive is based on Article 130 s of the EC Treaty, Article 130 t is applicable, which allows the Member States to go further. For instance, the national legislator may want to open access to more information than that which the Directive rather narrowly defines as environmental information. Also, the legislator has some discretion – and may exert it in favour of greater public access or public secrecy – in concretizing the exemptions to the access right (the protection of trade secrets, privacy and governmental deliberations). In this there is a risk that the doors which are to be opened by the basic right of access lead ultimately to rooms which have been carefully emptied through a broad definition of the exemptions.

### 1 Prerequisites of access rights

As mentioned above, the right must be framed as a general right open to everybody. *No specific legal interest has to be shown*. Foreign citizens are included, no matter whether they belong to a state inside or outside the Union. This may confer advantages on those searching in a more open foreign state for information not accessible in their own state. The USA has been used as such a source. For instance, expert reports on environmental pollution and its effects have generously been made available by the Environmental Protection Agency to foreigners. On occasion, this information has even concerned a situation in the country of the foreign requestor which was not accessible there.

So far as the *object of access* is concerned it makes a difference whether the agency selects the data or whether this is left to the requestor. Selection costs

[4] OJ. L 158/56 of 23 June 1990.



worktime but is linked also to the power to determine what will be released and what will not. He who selects the relevant information also defines the dividing line between secrecy and openness. Little power remains with the agency when the object of access is the entire file, as is the case in the USA, Canada and Sweden. There, a requestor not only receives information concerning the matter enquired about but also concerning the handling of the matter by the authorities – whether it was delayed, formed part of a trade off, was treated seriously, pushed through and so forth. This 'operative' information is useful in respect of possible legal action and more generally contributes to effective participation. Most operative information remains secret when the object of access is a public register, as was formerly the case in the UK, or administrative documents, as it still is in France, because operational information emerges from the whole of a file rather than from a single datum or document. The EC Directive leaves it to the Member States to decide how the information should be made available. German law, for instance, gives the agency discretion to grant access to the files or to hand separate documents to the requestor.[5] Even more broadly, English law refers to 'such form, and at such times and places, as may be reasonable'.[6]

The *scope of accessible information* is, in principle, not limited in those legal systems (such as the USA, Canada, France, the Netherlands, Denmark and Sweden) which have introduced general freedom of information legislation. It would be interesting to know why, in the other European countries, the debate about introducing a general access right has focused on *environmental information* rather than on other or more general categories of information. It could be that, for most such categories (possibly excluding the area of consumer protection information which also requires access legislation), an interest-bound access right is sufficient. This can be shown by the fact that in those countries which have an interest-free access right most information requestors do in fact have an individual interest to accede to the information.[7] For these persons the interest-based legal systems provide access equally well. By contrast, environmental information is an exemplary case of the kind of information which is very often not only of individual but of collective interest. Given its general importance it is unsurprising that a lack of access to information has caused particular dissatisfaction in the environmental field.

[5] Art. 4, para. 1, sentence 2 Umweltinformationsgesetz (Environmental Information Act), reprinted in G. Winter (ed.), *German Environmental Law. Basic Texts and Introduction*. Dordrecht: Martinus Nijhoff, 1994.

[6] The Environmental Information Regulations 1992, s. 3 para. 5.

[7] Commission d'Access aux Documents Administratifs, *6ième Rapport d'Activités*, Paris: La Documentation Française, 1990.

The range of information open to public access under the Directive goes beyond simply environmental quality data and includes information about emissions and pollution abatement measures. At first sight, the broad and most important area of product-related data – data about the composition, effects and utilization of harmful substances and products – might seem to be excluded. The Commission proposal for the Directive had expressly mentioned data relating to the 'production and use of dangerous products or substances'.[8] This passage does not reappear in the final version.[9] But as these product-related data were mentioned as examples of 'activities' which may impair the environment and these activities are retained in the final version, it can be inferred that information about product-related environmental effects is indeed included.

Accessible information must furthermore be delimited according to the *relevant person holding the information*. As access is open to administrative information the problem here lies in the definition of what 'administration', and more specifically environmental administration, means.

First, the *legislature* and *judiciary* are excluded by the Directive. With respect to legislative functions one might ask whether implementing regulations amount to legislation. In German law this is assumed[10] – wrongly so, I believe. The legislative function is excluded from the access to information right because one assumes that it is exposed to the public by its very nature: proposals for new laws are published and debated in parliament. But, this is not the case with a regulation. The subject matter and procedure adopted resemble those of administrative tasks and processes much more than parliamentary decision-making. For instance, in Germany, whether a dangerous chemical substance shall be prohibited is decided by regulation (*Rechtsverordnung*) but could just as well be framed to be decided by administrative order. Under the Act on Access to Environmental Information, however, access is excluded by the mere chance fact that the Chemical Substances Act prescribed a regulation rather than an administrative order as the form of prohibitive intervention for these substances. Therefore, the exemption of 'legislation' from the access right must be understood not to include law-implementing regulation.

The sphere of administrative holders of information subject to access rights must be distinguished from the *private sphere* which is not made subject to the access right. Some legal systems, it is true, recognize the direct right of a private person to information held by other private persons without the intervention of an administrative agency. For instance, under the German Environmental Liability Act an aggrieved person has a right to be informed, by the plant operator, about

8 OJ C 335/5 of 30 December 1988, Art. 2 (a) 3rd indent.
9 Art. 2 (a).
10 Art. 3.



the installations, the utilized substances and their effects if there is reason to believe that the plant may have caused the damage. There is also vast legislation at Union and national level prescribing the declaration of process- and product-related dangers. For instance, dangerous substances must be labelled accordingly if marketed,[11] and plant operators must keep the public informed about possible dangerous accidents and their effects.[12]

This kind of information flow between risk-setter and individually or collectively affected private parties must be distinguished from the information flow between private parties and the government. The basic idea of the former is to identify and control specific hazardous causative chains. By contrast, the idea of the latter is to appraise and supplement the government's administrative tasks. Therefore, access to environmental information held by private parties does not form part of the relevant legislation. However, to the extent that private parties perform a *public service* of environmental protection and are, in this respect, subject to governmental supervision the Directive has included them in the list of relevant holders of information.[13]

For instance, a technical expert who is officially mandated to undertake the monitoring of air pollution required by law must be counted as a holder of information. The monitoring data collected by him must be made available, albeit via the supervisory agency, as the Directive distinguishes between the relevant holder of information and the person to whom the information request must be addressed. It is less clear whether scientific and technical advisory bodies also belong to the administrative sphere within the meaning of the Directive. Probably not, since such bodies themselves can hardly be said to perform environmental protection functions and to be supervised by the government. An even more intricate question is whether private or public entities which render a public service in the area of environmental management should be made subject to the access right. For example, the running and managing of a waste disposal facility may be taken as a public service in the field of environmental protection whether it is managed by a private company or public corporation.

A third dimension of identifying the proper addressee of the access right requires that *agencies with environmental tasks* be distinguished from those with other tasks. A narrow conception might include only agencies the main purpose of whose functions is environmental protection. This would exclude almost any access to information in those countries where the environmental protection function

11 Directive 92/32/EEC of the Council, OJ L 154/1 of 5 June 1992 (Chemical Substances Directive), Art. 23.
12 Directive 82/501/EEC of the Council, OJ L 230/1 of 5 August 1982 (Seveso Directive), Art. 8.
13 Art. 6.

has not been bestowed to separate agencies but has been left to the general administration or to agencies with other primary responsibilities, such as, for instance, the agency responsible for building permits. But, because there remain a significant number of agencies which would be excluded in other countries, a broader conception which also includes agencies carrying out environmental protection not as a main purpose but in connection with other primary functions is preferable. This must be the proper interpretation of the Directive, one which has been taken up by the English law on access to information.[14]

We have thus far identified the subject, object, scope and (direct or indirect) addressee of the access right. Some national laws add one further delimitation which is to exclude access as long as the agency is conducting certain *proceedings*. To these belong, according to the Directive, investigations, including disciplinary proceedings and 'preliminary procedures'. The latter term stems from the French Act 78-753[15] where it relates to the administrative activities which are carried out in the preparation of court proceedings. By contrast, the English law reads the clause to cover formal public inquiries in addition. While this may be tolerable because such formal procedures resemble court proceedings and draw their own specific regulation of access to information, the German reading appears to stretch the clause too far. In the German law access to information is excluded during any administrative proceedings.[16] Given the fact that the Administrative Procedure Act includes within the concept of proceedings any administrative activity in preparation of an administrative order or contract,[17] access to information is reduced to a minimum. This contradicts the very idea of access to information. It can also easily be misused by the agency merely pretending to have initiated a proceeding.

## 2 Exemptions from the access right

There are a number of exemptions to the right of access by which various interests in secrecy of the information are protected.

One exemption protects the *decision-making process of the administrative agency*. The Directive takes two measures in this respect. The first deals with the technical side of the process and provides room for undisturbed work. Thus, uncompleted documents or unprocessed data may be excluded from access.[18] For instance, emission data may be retained as long as it is raw, uncompiled and unanalysed. This is acceptable, provided access is given to all information after completion of the document. All national free access laws do so, including the Dutch, French, Danish, Swedish and US, but, remarkably, the Directive does not.

The second exemption concerns the *substance of the decision-making*. Some laws – for example, the French and German – protect documents which are written in direct preparation for the final decision.[19] Others, like the Swedish, require that specific damage arising to the agency must be shown should the information be disclosed. The Directive uses very elusive language in this respect. Access is denied when it affects the 'confidentiality of the deliberations of the agencies' (which, according to a protocol declaration includes the national, regional and communal levels).[20] In addition, 'internal communications' may be protected.[21] Escape clauses could not have been better phrased, all the more so as preparatory information is not expressly made accessible once the decision has been taken.

*Trade secrets* are the second most important exemption from the access right.[22] Like most of the national laws the Directive does not define the term, thereby perpetuating the interpretative battles raging at the national level. The Directive missed the opportunity to decide some of the issues, of which the most important are whether emission data becomes a trade secret when it allows the inference of information about the production technology (reverse engineering), whether in balancing the firm's and the public's interest priority should be given to the latter, whether the agency shall determine by itself the need for secrecy or has to give prior notice to the secret holder, and whether secrecy protection presupposes a secrecy claim by the information provider.

Interpretation of the term 'trade secret' may become easier if elements which, in one way or another, are common to many legal systems are distinguished. These constitute four filters through which the information must pass in order to qualify as protected secret.

First, the information must directly relate to the technical process or business of the concerned person or firm. Hence, any environmental quality data must be accessible, because such data primarily relates to the environment and not, or only indirectly, to the polluter. An exception may only apply when the actual produc-

14 Environmental Protection Regulations 1992, s. 2 (3).
15 Act on the Improvement of the Relationship Between the Administration and the Public, Art. 6, 4th indent.
16 Art. 7, para. 1, No. 2. Only information which was not obtained because of the ongoing proceedings is available.
17 Art. 9.
18 Art. 3 (3).
19 In France the secrecy of *documents préparatoires* is extrapolated from the fact that only 'documents' are accessible. For the German law see Art. 29, para. 1, sentence 2, Administrative Procedure Act.
20 Art. 3 (2) 2, 1st indent.
21 Art. 3 (3).
22 Art. 3 (2), 4th indent of the Directive.

tion of the data is such as to make it an intellectual product disclosure which is forbidden to regulatory agencies by special or general national intellectual property law. Information concerning abatement or avoidance measures taken by the polluter, on the other hand, is clearly of a technical nature. There is greater difficulty concerning emission data as it could be said that since the emissions have left the polluter's property such data no longer relates to the polluter's technical process.

Second, the information can only be termed secret if it is not known by more than a small number of persons. According to some laws, the information is also not secret if it could be produced easily by the average professional. Otherwise latent public information which might easily be brought into the open by the public itself would be made private. This means that, even if one assumes that 'reverse engineering' from emission data back to process data necessarily renders that emission data classifiable information, this does not hold if the reverse engineering could be done by anybody up to an average professional.

Third, the concerned person or firm may be required to claim secrecy when submitting information to the agency. Some legal systems do so (for example the US) whereas others, such as the Dutch and the German, by law or in practice, assume a claim to secrecy by the submitters.

Fourth, in many legal systems the interests of secrecy must be weighed against the interests of disclosure on a case-by-case basis. Some legal systems, such as Canada's, give the public interest, as it relates to public health, public safety or protection of the environment, a certain priority. Others require that for the interest of secrecy to prevail it must be shown that the person concerned would suffer loss should the information be disclosed.

The last exemption from the access right I want to mention is the *protection of privacy*. Information about an event or phenomenon may also contain information about a private person, whether this person was involved in the event or phenomenon or whether this person is the sole source of the information – for example, the author of an expert opinion, the author of a third party intervention, or an applicant for a licence and so on. This person may wish to conceal his or her authorship or involvement in the substance of the information while disinterested as to whether the substance, stripped of the personal allusion, is disclosed.

In order to decide under what circumstances privacy shall be protected two questions must be answered. The first concerns the legal technique: should the conflict of interest between protection and disclosure be regulated by the free access law or by the privacy protection law? The former solution is the more frequent, and is indeed more appropriate in our context because regulation specially tuned to environmental information can be devised.



The second question relates to the substantive criteria for the resolution of the conflict of interests. Some legal systems, such as France and Germany, define a narrow sphere of private life beyond which privacy is not protected. Others use a broad definition of person-related information but limit its protection by setting up negative lists of information which, though person-related, shall nevertheless be accessible. A third group prescribes a balancing of interests test. The latter, however, is an unsatisfactory solution because parliament then avoids setting priorities and, also, respect for the public sphere may wither away in the humdrum process of equalizing interests in principle.

## IV CONCLUSION

Access to environmental information, if constituted as universal right, is part of, and strengthens, the public sphere. Public democratic debate is the necessary chaos which constantly questions and destroys domination emerging in the private and governmental sphere thus preventing societal sclerosis and resistance to learning. The public sphere is permanently subject to attack and erosion from the ordering powers. In developing states the development administration has been able to avoid the chaos of uneducated debate by believing itself to know better than the public, but has often departed from societal needs and become visibly 'corrupted'. The same is true of socialist states where the bureaucracies have believed themselves to be implementing an historic mission, identifying themselves with an abstract labour class whose needs they thought they knew best. The public sphere is also in constant danger in capitalist states. Although there is a structural place for it – that is, the sphere of transcendence of individual interests for their long-term benefit – and although capitalism has succeeded in establishing the public sphere in the face of feudal and absolutist *arcana imperii*, the force of capitalism itself, combined with the technological potential of the information society, poses new threats.

'Information' – that is, the 'forming' of knowledge through communication (rather than, for example, through force or money) – has, to an extent unknown to date, become a means of production, a commodity and a marketing device in the economic system. The political/administrative system, on the other hand, has learned to use information as a method of power more sophisticated than the traditional method of sanctioned law. What has emerged combines in an attempt to make private what was previously in the public sphere. There are a multitude of legal tools which are used to support this process, including the privatization of telecommunications, the commercial capture of science by joint ventures between universities and private industry and the extension of patent law to extend even to genetic information.

In contrast to this trend the battle over a universal right of access to governmental information has been won by the public sphere, although the victory may turn out to be Pyrrhic as exceptions to the right are framed. Broad definitions of the protection of administrative deliberation and of trade secrets are forceful weapons for regaining territory which has been opened to public access. But privacy protection also plays a peculiar role in this context. Privacy protection is certainly legitimate and is indeed a means of preventing the above-mentioned privatization of interests from not only seizing the public, but also the personal sphere. But because it privatizes information as well, though for different reasons, it is apt to be misused by the more powerful economic and governmental actors as a disguise for otherwise not protectable trade and governmental secrets. Therefore, the protection of administrative deliberation, of trade secrets and also of the private sphere must be critically assessed if the European battle over a public environment shall not finally be lost.