

Comments on the UNEP Access-to-Information Policy from Governments and stakeholders and responses by the UNEP secretariat

The Executive Director established the UNEP Access-to-Information Policy on 6 June 2014. The Executive Director was requested by the Governing Council at its twenty-seventh session to establish such a written access-to-information policy (GC decision 27/2). The first year after the establishment of the policy served as a pilot phase of the implementation of the Policy. During that period, consultations with Governments and stakeholders took place. The Policy was to be reviewed within one year from the date of its establishment.

The Policy was opened for comments on UNEP's website (<http://www.unep.org/environmentalgovernance/UNEPsWork/policy/tabid/794452/Default.aspx>) on 15 November 2014 and remained so until 31 July 2015. On 26 May 2015, one-day dialogue on the Policy was held in Nairobi, during which further views and comments were shared among those who participated in the event.

This document presents a summary of the comments on the Policy received from Governments and stakeholders, as well as responses to those comments by the UNEP secretariat. The following Governments submitted their comments: Brazil, Canada, European Union and its Member States, Holy See, New Zealand, Norway, United States of America. Comments were received also from 13 organizations and groups and 11 individuals.

This document and especially the responses by the UNEP secretariat are open for further comments by 5 October 2015. Comments should be submitted also through the above-mentioned website.

On the basis of the comments on the Policy and the UNEP's responses, the UNEP secretariat will prepare the draft revised Policy. The UNEP secretariat will publish the draft revised Policy for comments on the above-mentioned website, which will be subject to comments for a period to be specified at the time of its publication. An informal dialogue event on the draft revised Policy will be held thereafter. Subsequently, taking into account comments on the draft revised Policy, the UNEP secretariat will finalize it.

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General comments

General comments from Governments and stakeholders	Responses by UNEP secretariat
<p>It is important to recognize the right of citizens to take part in the conduct of public affairs and the vital importance of access to information to facilitate decision-making. Access is particularly important in environmental decision-making, which benefits greatly from the informed participation of a broad range of stakeholders. In order to meet the mandate of Rio+20, UNEP has a clear responsibility to promote meaningful stakeholder participation, which requires an open and transparent policy on access to information.</p>	<p>As stated in para. 2 of the Policy: "UNEP recognizes that it is critically important to disseminate and make accessible the information concerning its work or information generated through its programme as widely as possible. UNEP also recognizes that transparency, accountability, and openness can become a catalyst for achieving a greater impact. In particular in the context of Principle 10 of the Rio Declaration on Environment and Development, it is of fundamental importance to make available relevant information to stakeholders and the public in general."</p>
<p>The Policy is insufficiently progressive as GC decision 27/2 requires UNEP to enhance transparency and openness of its work and not merely capture existing practices.</p>	<p>The text will be revised wherever possible to bring it into line with a more progressive approach.</p>
<p>The Policy needs to distinguish between "access to environmental information" aspects and general considerations concerning other documents relating to personal and commercial information.</p>	<p>The mandate of establishing the policy is set out in paragraph 17 of Governing Council decision 27/2 concerning the implementation of paragraph 88 of the outcome document of the UN Conference on Sustainable Development, which reads as follows:</p> <p style="padding-left: 40px;">"[The Governing Council] Decides to enhance transparency and openness in its work and in this regard requests the Executive Director to establish a written access-to-information policy."</p> <p>Since the responsibilities of the Governing Council (which has been transformed into the United Nations Environment Assembly) as set out in General Assembly resolution 2997 (XXVII) covers a broad range of functions for promoting international cooperation and providing policy guidance in the field of the environment as well as approving the budget and programme of</p>

	<p>work, and the Executive Director substantively supports those functions as mandated by the General Assembly in the same resolution, “information” that was to be addressed by such a written access-to-information policy ought to cover not only “environmental information” but also management, financial and other administrative information of UNEP.</p> <p>Given this background, and because the secretariat, headed by the Executive Director, is the custodian of the information at UNEP, the UNEP Access-to-Information Policy established by the Executive Director in June 2014 covers both “environmental information” and other “general information”, although it is mainly addressed to staff of the UNEP secretariat who handle information under their duties. It also provides procedures for accessing information not found on UNEP website.</p> <p>Many comments appear to focus either on access to “environmental information”, express concern over procedures for handling such information at the UNEP secretariat, or request “more progressive” handling of “environmental information”, citing Aarhus Convention and the Bali Guidelines (both of which deal with “environmental information”) as the standard to be looked upon, handling of “environmental information”. As this is part of the core mandate of UNEP, it will be more distinctively addressed in this Policy. The progressive nature of UNEP’s mandate and action concerning environmental information will be emphasized more in the Policy.</p> <p>The handling of other general information, especially in connection with sensitive information which may require specific handling under confidentiality, will be consistent with the procedures within the UN Secretariat and in line with this, efforts will be made to uphold the principle of openness.</p>
Ambiguous provisions and phrases need to be clarified and a section with definitions should be included.	The clarity of languages will be examined, and where ambiguities exist, these will be elucidated.
Best practices of other international organizations and model laws need to be taken into account. In the above context, the standards contained in the Aarhus Convention and the Bali Guidelines should be followed. Also, examples of similar policies at World Bank, UNICEF, UNDP and some regional development banks should be followed. Consistent, horizontal approach throughout the UN system on access to information policies would be desirable.	Within the UN system, some programmes and bodies that have field operations (such as UNDP and UNICEF) had established information disclosure policy before UNEP established its Policy. Those existing policies will be further examined with a view to strengthening UNEP Policy, guided by the principle of openness.

An implementation plan as well as a system to report on progress for the policy should be put in place.	A tracking mechanism for the number of requests, denials, documents accessed under the procedure stipulated in the Policy (i.e. access to information not available on UNEP website for which a specific request is made) will be introduced.
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Specific comments

Introductory paragraph, section I: Statement of Policy

Comments	Responses by UNEP secretariat
Language of the Policy should be strengthened to make a stronger emphasis and clear commitment to the fundamental importance of making available relevant information to stakeholders and the public and prioritize a “presumption of openness” and “access without differentiation” when balancing openness and secrecy (para 3). Exceptions for disclosing information to the public should be interpreted narrowly, taking into account the public interest in disclosure.	The text will be revised to ensure that UNEP’s commitment to openness and access to information in an understandable, timely and effective manner is clearly reflected in the policy and emphasized. Additional clarity will be introduced in the Policy so that exceptions will be more precisely defined in order to narrow down the scope of exception, taking into account the public interest in disclosure.
The statement of policy should also clearly state the overarching purpose of the policy.	An introduction as well as a summary of the policy in an easy-to-understand language will be provided.
Policy should extend beyond information held by UNEP and its regional offices to information held by the MEA secretariats (see para 2).	Application of this Policy will be discussed with the MEA secretariats.
Availability, understanding and public awareness and understanding of the policy should be increased <i>inter alia</i> , by - providing context in a common language as well as a more user-friendly version of the policy - including a special provision to ensure access for vulnerable/marginalized groups with limited resources including children, youth, women and indigenous persons - making documents available in different languages to ensure wider access (at least in all UN languages)	To the extent possible, a common language will be used throughout the text. The feasibility of the proposals made, including provision to ensure the availability of information for vulnerable groups and translations of documents, will be explored.

Section II: Public access to information

Comments	Responses by UNEP secretariat
<p>Best practices on proactive release of information have to be considered and included in an expressed provision for more proactive release of relevant, timely and accurate environmental information, aggregated information, data sets and open data to the public within defined time periods.</p> <p>The Policy should set out:</p> <ul style="list-style-type: none"> - A clear statement that the Executive Director will ensure a forward thinking policy providing for: <ul style="list-style-type: none"> ▪ trainings for UNEP officials on how to assist and provide guidance to the public in seeking access to information (including providing for the duty to advise and assist requestor to identify document they wish to obtain); ▪ the necessary data management/technical means to assist information disclosure; appointing dedicated contact persons for access to information and make a commitment to ongoing improvement in providing information with the public; - Procedures for updating mechanisms ensuring reliable, sustainable and effective functioning of UNEP Live and continuously improving the website; - Mechanism to ensure efficient cooperation for the exchange of data and information between secretariats of MEAs and other international organizations; - Establish monitoring body to ensure proactive release; - Access to Information Portal with links to relevant databases, frequently-asked-questions on where to find and how to request information. 	<p>UNEP secretariat will evaluate the feasibility of the proposals made to seek to ensure proactive release of relevant, accurate and timely information in a sustained manner.</p> <p>UNEP secretariat will:</p> <ul style="list-style-type: none"> - Provide training to all UNEP staff; - Improve the data management; - Establish updating mechanisms and monitoring processes; - Provide an Access-to-Information Portal; - Ensure that there are mechanisms put in place for cooperation between UNEP secretariat, MEA secretariats and other international organizations in the relevant areas.

Exceptions for disclosing information to the public should be interpreted narrowly, taking into account the public interest in disclosure (para 5) ¹ .	Additional clarity will be provided to increase the precision of the scope of exceptions, leading it to be narrowed down.
The non-exhaustive list of accessible documents in para 6 adds little value especially considering the detailed exceptions. ²	Regarding “positive listing”, instead of showing a non-exhaustive list of documents, a regime of making information available, especially “environmental information”, to the public will be described. Consequently, no specific reference to a particular set of documents will be made.
Current wording of para 7 makes it sound like only the three types of project documents listed will be made available ³ .	The three types are specific forms of projects where information will be made available proactively. It does not mean that other types of project documents will not be made available. Since this provision was made before UNEP introduced its policy on environmental and social safeguard, it will be reviewed to ensure harmonization between this Policy and the policy on environmental and social safeguard.

¹ Para. 5 reads as follows: “5. The Policy is guided by openness, with the underlying presumption that UNEP allows access to any information in its possession that is not on the list of exceptions set out in Section III below. Primarily, information will be made accessible, in the available language or languages, on UNEP public website – www.unep.org.”

² Para. 6 reads as follows: “6. The following is a non-exhaustive list of documents that will be made available to the public on UNEP public website:
(a) UNEP annual reports; (b) Final form of UNEP environmental assessment reports; (c) UNEP publications, documents and information material, including photos and videos, as defined in UNEP Publishing Policy; (d) UNEP Biennial Programmes of Work and related budgets approved by UNEP Governing Bodies; (e) UNEP Audit Reports; (f) UNEP Programme and Project Performance Reports; (g) UNEP Evaluation Reports; (h) Official documents for UNEP governing body; (i) Information on UNEP’s projects, national data and reports available through the UNEP- Live website (<http://www.unep.org/uneplive>).”

³ Para 7 reads as follows: “7. With regard to UNEP’s projects, where relevant to the projects concerned and within the framework and available resources of such projects, UNEP will make the following information available in a timely manner, in a place accessible to key stakeholders, including project affected groups and civil society organizations, in a form and language understandable to them: (a) Draft environmental and social impact assessments; (b) Documentation of the consultation process; (c) Draft mitigation plan.”

Section III: Exceptions

Comments	Responses by UNEP secretariat
Disproportionate length of the section does not reflect an adequate commitment to disclosure and openness. Redraft section to be more concise, deleting superfluous repetitions and structure it more logically.	This section will be shortened, where possible, to put its contents in a summary format, instead of fully describing each content.
Exceptions drafted too ambiguously, open and general.	Where ambiguity exists, provide clearer and precise language.
<p>Exceptions should focus on the types of information that will be withheld, rather than on types of documents. The section should include a paragraph stating that, where possible, restricted information will be redacted and the remaining unrestricted information disclosed.</p> <p>Beginning of section 3 should state that the provision are to be interpreted narrowly taking into account the public interest (public interest test) served by disclosure.</p>	<p>Exceptions will describe the type of information that can be withheld.</p> <p>Examples of similar policies will be further examined to address justifiable cases of exceptions.</p>
<p>Harm based test on a case-by-case basis preferable to absolute or class-based exceptions assuming at the outset that certain types of information could always cause harm.</p> <p>Language in some paragraphs (see e.g. 15,⁴ 10 (c),⁵ 14⁶ and 20 (c) so broad that independent of the concrete content of a document and its sensitivity, entire groups of documents would be generally excluded from access rights.</p>	The provisions of this section will be further reviewed against “harm test” and “public interest test” in order to cut a proper balance between openness and the requirement for confidentiality.

⁴ Para. 15 reads as follows: “15. Information which, if disclosed, in UNEP’s view would seriously undermine the policy dialogue with Member States or other partners. UNEP does not provide access to any documents, memoranda, or other communications which are exchanged with Member States, with other organizations and agencies, where these relate to the exchange of ideas between these groups, or to the deliberative or decision-making process of UNEP, its Member States, or other organizations, agencies or entities with whom it cooperates.

⁵ Para. 10 reads as follows: “10. Information whose disclosure is likely to endanger the safety or security of any individual, violates his or her rights, or invades his or her privacy. In particular, UNEP does not provide access to: [...] (c) Information whose disclosure would, or would likely endanger the life, or safety of any individual, or the environment”

⁶ Para. 14 reads as follows: “14. Commercial information where disclosure would harm either the financial interests of UNEP or those of third parties involved. UNEP does not provide access to financial, commercial, scientific or technical information that may, in UNEP’s sole opinion or as a result of a confidentiality restriction, if disclosed: (a) Cause harm to UNEP or a third party’s commercial and financial interests; (b) Put a third party at disadvantage in contractual or other negotiations; (c) Prejudice a third party in commercial competition.

Standard for relying on exemptions should be higher than mere harm (“serious harm”) (para 8) ⁷ .	
Paragraph on protecting internal deliberations is so broadly worded it could be used to withhold just about any document and should be deleted or the paragraph/section needs to be reworded to include a harm test (para 13) ⁸ .	UNEP secretariat will review paragraphs on internal deliberations against a harm test.
Include provision that allows for partial release of information/redaction where confidential information is concerned.	The feasibility and practical handling of allowing partial release of information will be examined.
Policy effectively grants third parties a veto over the disclosure not only of information provided by them but also provided to them with an expectation of confidentiality Should put third parties on notice that their interactions with public bodies come with a presumption of openness unless confidentiality explicitly provided (para 9) ⁹ .	Handling of information involving a third party will be further examined against the practices within the UN Secretariat and those of relevant UN bodies.
<p>Clarify the meaning of:</p> <ul style="list-style-type: none"> - “non-public information” (which could significantly broaden the type of information that can be classified without reference to what information this includes) (para 9); - withholding information that might “prejudice...the proper conduct of any 	The text will be revised to define or clarify the meaning of terms that are considered unclear.

⁷ Para. 8 reads as follows: “8. UNEP does not provide access to information whose disclosure could, in UNEP’s opinion, cause harm to specific parties or interests. Accordingly, UNEP does not provide access to documents that contain or refer to the information listed in paragraphs 9-15.”

⁸ Para. 13 reads as follows: “13. Information on UNEP’s own internal deliberations, communications and UNEP deliberations with Member States or other entities with which UNEP cooperates. UNEP does not provide access to information whose disclosure would, or would likely frustrate the success of a policy or deliberative process; seriously prejudice the work of UNEP; undermine the integrity of UNEP’s decision-making process; or inhibit the free and frank provision of advice and exchange of views. This includes, among others, internal inter-office or intra-office documents, emails, drafts and other relevant correspondence if the record contains: (a) An opinion, advice, report or recommendation; (b) An account of a consultation, discussion or deliberation that has occurred, including, but not limited to, e-mails, notes, letters, memoranda, and draft documents or any other document prepared during the course of its own internal deliberations and deliberations with Member States or other entities with which UNEP cooperates.

⁹ Para. 9 reads as follows: “ 9. Information received from or sent to third parties, under an expectation of confidentiality. UNEP does not provide access to financial, business, proprietary, or other non-public information that it receives in, or with the expectation that it will be treated in, confidence. UNEP does not grant access to information provided to it by a Member State or a third party, on the understanding of confidentiality, without the express permission of that Member State or third party. This includes information, data, reports and analysis, deliberations, and any other work product generated as a result of, or in response to, the confidential information received from a Member State or third party under an expectation of privacy. Material held by UNEP in which other parties hold the copyright may be made available for review, but copying or distributing such material is limited to respect the rights of the copyright holder.”

<p>operation or any activity of UNEP” as it could be misused to justify the non-disclosure of information that would otherwise result in UNEP activities facing civil society opposition. (para 11)¹⁰;</p> <ul style="list-style-type: none"> - “this right” as referring to the right of UNEP to disclose the information or to the right of the Government/3rd party concerned to give written consent (para 16)¹¹; - “UNEP’s opinion”. 	
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Section IV: Request for information

Comments	Responses by UNEP secretariat
Access needs to be made more user-friendly and less bureaucratic (para 17) ¹² .	Efforts to facilitate access including an Access to Information Portal, a form for requests and other procedures will be evaluated.
Time frames for response and acknowledgement are too long (para 19). ¹³ The timeframe for responding to a request for information should be shortened from 60 days to 30 days.	Efforts will be made to shorten the time frames as much as possible and bring them in line with the proposed 5 days for acknowledgment, 30 days for response with the possibility for extension when necessary

¹⁰ Para. 11 reads as follows: “11. Information whose disclosure is likely to endanger the security of Member States or prejudice the security or proper conduct of any operation or activity of UNEP. UNEP does not provide access to any information that if disclosed would or would likely prejudice an investigation or the administration of justice or violate the applicable law. This includes privileged information (e.g. legal advice and correspondence with legal advisers), and information that, if disclosed, might prejudice an investigation, legal or regulatory proceedings, subject UNEP to an undue risk in any contested matter (e.g. litigation or arbitration), subject UNEP to unauthorized access to its information technology systems, or aid the requester(s) or any other third party in impersonating UN personnel for fraudulent purposes.”

¹¹ Para. 16 reads as follows: “16. UNEP reserves the right, under extraordinary circumstances (for instance when the life or security of a staff member is under imminent threat), to disclose certain information covered in the list of exceptions set out in the paragraphs above, if UNEP determines that the overall benefits of such disclosure outweigh the potential harm to the interests protected by the exceptions, or to restrict access to information that it normally discloses if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure. The disclosure of information provided to UNEP by a Government or a third party in confidence requires the written consent of the Government or the third party concerned. This right may be exercised only with the approval of the Executive Director.

¹² Para. 17 reads as follows: “17. Information that is not available on UNEP public website may be made available upon request. For UNEP’s internal tracking purposes, such requests should quote the following language: “Under UNEP’s Access-to-Information Policy, I am requesting information on....”. The request should be directed to: Access-to-Information Desk, Division of Communications and Public Information, United Nations Environment Programme, Address: P.O. Box 30552, Nairobi 00100, Kenya, Phone: +254 20 7621234, Email: unepinfo@unep.org. Information requests may be handled directly by the Access-to-Information Desk, or subsequently by the head of the relevant Division or office.

¹³ Para. 19 reads as follows: “19. All Information requests should be handled promptly. The requestor should expect to receive an acknowledgement of receipt of the request within ten (10) working days. Depending on the complexity of the request, UNEP will endeavour to handle all requests within sixty (60) calendar days after the acknowledgment of receipt is sent. For information requests that involve the reproduction of material, UNEP may charge a fee for material and labor cost, which will be communicated to the requestor and will need to be paid in advance.”

<p>No or very limited charges (for printing) based on an advance schedule and including the possibility to waive charges (para 19).</p> <p>Reasons for denying whole/partial access to information should be provided including references to the relevant subparagraph(s) (para 20)¹⁴.</p> <p>Information on the review and appeal process, including any time-limit, should be provided with any denial of an information request (para 20).</p> <p>Paragraph 20(c) should be deleted and no request should be “frivolous” request, unless it places an excessive demand on UNEP’s resources (which can already be rejected under 20(b)).</p>	<p>due to the volume and complexity of the request received provided the requestor is informed within 30 days and given an explanation for the extension of the deadline.</p> <p>For electronic information, no charge will be made. For hard copy documents, if not readily available and require printing, further consideration as to the need for any charge will be made.</p> <p>A paragraph will be included to ensure that reasons will be provided with the decision as well as information on the review and appeals process.</p> <p>Will examine about the adequacy of this provision.</p>
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Sections V and VI: Review and appeal process; Access-to-Information Panel

Comments	Responses by UNEP secretariat
Panel is insufficiently independent; currently resembles more an Advisory Council to the Executive Director (para 22).	The structure of the Panel and its institutional set-up will be further examined.
Panel should include independent non-UNEP experts (para 27). ¹⁵ Given the importance of this issue to Member States, the selection of the Panel members should be made in consultation with the CPR Bureau.	Various alternative possibilities to include non-UNEP experts are currently discussed, for instance having experts from other offices within the UN Secretariat. Another possibility might be to have an arrangement similar to the Evaluation Office which works independently from the substantive programmatic divisions. Practices of other UN bodies that have established information disclosure policy will be further examined in this regard.
The list of Panel Members should be made publically available.	The list of the members of the Access to Information Panel will be made available.

¹⁴ Para. 20 reads as follows: “20. UNEP may partially or wholly deny a request, as follows: (a) In accordance with the limitations set out or referred to in this Policy; (b) If the request is deemed by UNEP to be an excessive demand upon UNEP’s resources; or (c) If the request, in the judgment of UNEP, appears to be frivolous. In such case, UNEP’s response may only be signed by a Division Director.”

¹⁵ Para. 27 reads as follows: “27. The Panel consists of seven UNEP professional staff members, all appointed by the Executive Director. The Panel may deliberate with a quorum of four members. The Chair of the Panel will be selected from amongst, and by, the Panel members. Members will serve for a term of two years, which may be extended for another term at the discretion of the Executive Director.”

Quorum should be changed to an uneven number (para 27).	The quorum will be changed to an uneven number.
Requestor should not be required to provide reasons for appeal other than stating his request was denied (para 21) ¹⁶ . Acknowledge appeal requests within 5 working days (para 21). Response to appeal should be shorter than 60 days. The policy should state what a denial of request for information should provide, including to give reasoned decision (including references to specific paragraphs) although no detailed information required (para 23). ¹⁷ In addition, the timeline for the review of a denial should be shortened from 60 days to 30 days. Every information request be logged onto a public website and Panel's decision on appeal and reasons should be provided to the requestors and made public on the website unless the panel/Executive Director decides to keep them confidential based on exceptional and very narrowly defined grounds (para 23). Decisions of the Panel should be considered persuasive. Seeking "amicable solutions" cannot be the guiding principle for assessing whether the policy has been correctly applied, however, the merits of finding a mutually acceptable solution has been recognized as the primary aim of the policy is to facilitate access and provision of information (para 25) ¹⁸ .	The procedure for appeal will be further examined. The response time will be shortened as much as possible pending internal consultation of what is considered feasible. Brief reasoned arguments of decisions including references will accompany refusals of appeals without further detailed information.

¹⁶ Para. 21 reads as follows: "21. If a request of information is denied, the requestor may seek the review of the decision by addressing a letter to UNEP Access to Information Panel (hereinafter the "Panel"), providing reasons for the appeal. Every request for appeals will be acknowledged. The Panel will review the denial of requests to disclose a document or portion of a document to a member of the public."

¹⁷ Para. 23 reads as follows: "23. That review should normally be completed within sixty (60) working days of being requested. The outcome of the review will be communicated to the requestor and there will be no requirement for providing a detailed explanation of the outcome of the review."

¹⁸ Para. 25 reads as follows: "25. The Panel's primary function is to review appeals submitted to it and to determine whether the Policy has been properly applied. Determinations shall be guided by the principle of seeking amicable solutions in the context of the request and the parties who may be affected by the release of the information."

Public participation should be ensured for the adoption of more detailed mechanisms on the refusal of requests or reviews of the policy (para 26) ¹⁹ .	
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¹⁹ Para. 26 reads as follows: “26. The Panel may also develop, as appropriate, more detailed mechanisms and procedures for the review of denied requests, review the implementation of the Policy and provide recommendations on changes which should be made, as well as re-examine the Policy on a regular basis in light of operational and other changes within UNEP.”