July 10, 2024

Dear UNEP:

I am in receipt of your July 1 partial grant of information following my April 5 request for “All communications to and from the owner and/or operator of the oil and gas facility in Kazakhstan concerning the methane leak of June 23, 2023, identified as ‘fb52c2c4-3d6d-4d27-a150-3fc3d9281f75’ in the MARS database.”

This was completely denied on April 15 but, in response to my appeal, some of the information was released.

I realize that no further appeal is possible under UNEP’s policy, but I would like to make several points that I think are important.

The July 1 statement I received is internally inconsistent, saying both that no documents exist and that a confidentiality claim is being applied.

UNEP wrote:

UNEP confirms that no additional formal information exists. UNEP is not able to share information about informal communication with its Member States in light of an expectation of confidentiality as outlined in the Policy.

In this context, since UNEP asks countries to respond to notifications about methane emission findings, it would be unusual for the government to not have replied.  If there are indeed no responsive documents, that would be of interest, indicating that Kazakhstan ignored UNEP. UNEP, in its communication to Kazakhstan about multiple large emissions in July of 2023, wrote that it “kindly requests additional information regarding the cause of this event and to clarify what measures are being put in place to end this ongoing event and prevent future similar events.”

Whether a reply exists is obscured when you say that there is “no additional formal information.” This is vague. The idea of “formal information” is neither referenced nor defined in the UNEP policy.

But the overall inference might be that Kazakhstan replied “informally,” whatever that might mean.

The phrase “informal communication”, also referenced in your response to me, is again not an idea that is recognized in the UNEP policy. The access policy applies to all information, all documents, which should cover communications, including emails and so on (which might be considered to be “informal” but are covered by all better practice access to information laws and policies). Indeed, the access policies of other international organizations and nations do not attempt to make distinctions between formal and informal.

I also have concerns that the reply provided only one document from UNEP. Surely if Kazakhstan replied, UNEP would have engaged further.

The second UNEP explanation for withholding information is that Kazakhstan’s communications must be kept secret because the government wants it that way.

The explanation appears to reference one exemption in the UNEP policy, 5 (a), when it says, “UNEP is not able to share information about informal communication with its Member States in light of an expectation of confidentiality as outlined in the Policy.”

The policy exempts from disclosure:

5 (a) Documents created by the United Nations, received from or sent to third parties, under an expectation of confidentiality which has been expressly stated orally or in writing;

Reliance on this exemption depends on a condition, but UNEP’s explanation to me fails to indicate whether this was satisfied. Specifically, the policy requires the “expectation of confidentiality” to have been “expressly stated orally or in writing.” The short UNEP reply gives no indication that this requirement was met.

It should be noted that the breadth of this exemption gives third parties veto power over disclosure of all communications with UNEP.

A few additional comments.

UNEP’s practices in handling appeals deviate from good practice, making the process unduly opaque. The identities of the three persons who make recommendations about appeals, including that of an outside expert, are secret. Assuming they provided a written rationale in this matter, this document is kept secret, another practice at odds with standard procedure at other international institutions. After the Executive Director issues a final decision, the appellee has no idea what the tri-partite panel recommended.

It appears highly likely that in this instance, judging from the language, the Executive Director digested the decision of the panel. In any case, the lack of a properly written set of reasons for refusing to disclose the remaining information not only raises ambiguities about UNEP’s policy, explained above, but also raises concerns about its stated commitment to transparency.

Looking forward, I recommend:

* Provide properly written reasons when refusing to disclose, based on the actual language of the policy,
* Limit exceptions to what is actually allowed by the policy,
* Disclose the appeals panel recommendations in full, and
* Do not make applicants go through to appeal to get information which is clearly not covered by the exceptions in the policy

I am open to continued communication with UNEP about its policy and practices.

Best regards

Toby McIntosh

Editor

Eye on Global Transparency

**Text of July 1 UNEP Reply**

Dear Toby,

The panel has reviewed your appeal and submitted its assessment to the Executive Director who endorsed that the following information could be shared.

*July 2020 Briefing note shared with the Ministry of Foreign Affairs (attached)*

UNEP confirms that no additional formal information exists. UNEP is not able to share information about informal communication with its Member States in light of an expectation of confidentiality as outlined in the Policy.

This appeal is now considered closed. Should you have further questions about this incident, you may wish to follow up with the Government of Kazakhstan.

Kind regards,

Access to Information Desk