



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

**Decision of the Commissioner for Environmental Information
on an appeal made under article 12(5) of the European Communities
(Access to Information on the Environment) Regulations 2007 to 2018
(the AIE Regulations)**

Case: OCE-110745-C2C9S9

Date of decision: 1 September 2023

Appellant: Mr Ken Foxe

Public Authority: Meath County Council (the Council)

Issue: Whether the Council was justified in refusing to disclose environmental information requested by the appellant.

Summary of Commissioner's Decision: The Commissioner found that the Council was not justified in refusing the release of the requested information to the appellant. The Commissioner noted that the Council has now disclosed all information he considers to be within the scope of the AIE request.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision, as set out in article 13 of the AIE Regulations. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.



Background

1. On 4 May 2021, the appellant made a request to the Council under the AIE Regulations for:
“a copy of the audio/video recordings of all meetings held to discuss a proposed new county development plan (as per the following newspaper article:
<https://www.meathchronicle.ie/2021/04/30/councillors-refuse-to-adoptincomplete-version-of-development-plan-meeting-minutes/>”).
2. On 3 June 2021, the Council refused access to the records under article 8(a)(i) of the AIE Regulations, on the basis that the records contained personal information.
3. On 21 June 2021, the appellant wrote to the Council seeking an internal review of his original request.
4. In its internal review decision of 20 July 2021, the Council affirmed its refusal of the request.
5. The appellant requested a review of the Council’s decision by this Office on 22 July 2021.
6. I am directed by the Commissioner for Environmental Information to carry out a review of this matter under article 12(5) of the AIE Regulations. In so doing, I have had regard to the correspondence between the Council and the appellant as outlined above and to correspondence between this Office and both the Council and the appellant on the matter. In addition, I have had regard to:
 - the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister’s Guidance);
 - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
 - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (‘the Aarhus Guide’).
7. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

8. In accordance with article 12(5) of the AIE Regulations, the role of this Office is to review the public authority’s internal review decision and to affirm, annul or vary it. The scope of this review is confined to whether the Council’s refusal of the information requested was justified under the AIE Regulations.

Preliminary Matter

9. Before setting out my analysis of this appeal, I wish to express my regret at the delay that the appellant experienced in having this appeal resolved. As set out in further detail below, the Council has now made the requested information available to the appellant. However, this occurred at a



point in the investigation when the information had already been released under the Freedom of Information Act, without any consideration of the application of the AIE Regulations. I understand the appellant's dissatisfaction that this was the case, and I apologise that a decision was not made on this case in a more timely manner.

Analysis and Findings

10. In its original and internal review decisions, the Council sought to rely on article 8(a)(i) of the AIE Regulations as grounds for refusal of the appellant's request. The Council also supplied the appellant with a link to the official record of the meetings, claiming that this was an alternative form of the information sought such that articles 7(3)(a) and 7(3)(b) of the AIE Regulations applied. Articles 7(3)(a) and (b) allow for the provision of information in an alternative form or manner to that requested by a requester, provided certain conditions are fulfilled.
11. Article 8(a)(i) provides that:

“A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information— (a) would adversely affect— (i) the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law”.
12. The Council relied on this provision as the information requested included images and voices of individuals who, according to the Council, did not consent to the disclosure of the personal information. It is relevant to note that, during the course of the review, the information contained in the records was made available to another party through a Freedom of Information request. The information was also made available to the appellant by the Council after the outcome of the Freedom of Information review was published.
13. While the provision of the requested information is no longer at issue, it is important to note that the rationale of the Council for withholding the information under the AIE Regulations was not outlined with the required level of detailed reasons that a requester is entitled to, under the AIE Regulations.
14. The Council officials and elected Members attended the Special Planning Meeting pursuant to their employment role and/or statutory functions within the Council. Further, where any active participation by those officials and elected Members was not only pursuant to the performance of these functions, but was actively intended to be placed on the record. The Council did not show that the personal information contained on the recordings was confidential in nature, and that its confidentiality would be adversely affected by the disclosure of the recordings. Nor did it address why it considered article 8(a)(i) to justify refusal of the recording, in circumstances where it was satisfied to provide the official record of the meeting to the appellant or why it considered the conditions of article 7(3) to have been fulfilled in the circumstances of this case.
15. On this basis, it is my view that the Council was not justified in refusing the information at issue pursuant to article 8(a)(i) of the AIE Regulations.



Decision

16. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I find that Meath County Council was not justified in refusing the appellant's AIE request. I therefore annul the Council's decision. The information at issue has now been released, therefore I make no further findings on this appeal.

Appeal to the High Court

17. A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

Deirdre Gallagher
on behalf of the Commissioner for Environmental Information
1 September 2023