



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-118384-M1X5T9, OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J

**Date of decision:** 31 August 2023

**Appellant:** Organisation XYZ

**Public Authority:** Department of Defence (the Department)

**Issue:** Whether the Department was justified in giving access to information relating to OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4 other than in the form or manner requested under article 7(3)(a)(i) of the AIE Regulations and in refusing access to additional information relating to OCE-118384-M1X5T9 other than the list of documents provided in the decision letter on the basis that no further relevant environmental information is held by or for the Department.

**Summary of Commissioner's Decision:** The Commissioner annulled the Department's decisions. He directed the Department to undertake a fresh decision making process in respect of each of the appellant's requests.

**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. This case concerns five requests made by the appellant organisation to the Department on 12 July 2021, seeking access to information about the Curragh Plains, including interactions with a named consultancy firm. A summary of these requests is set out at Appendix 1 to this decision.
2. For ease of reference, I will refer to the five requests using this Office's reference numbers.
3. On 17 September 2021, the Department issued three decisions regarding the five requests.
4. The first decision dealt with OCE-118384-M1X5T9 (and another request, appellant reference 2003/4 EC - MoD 2, which is not at issue in this decision). The Department listed ten records held by it relating to procurement for the provision of a "Multi Disciplinary Landscape Architect Lead Project Team Services for The Curragh Plains, The Curragh, Co. Kildare" for "The Delivery of a comprehensive Conservation Management Plan & an Interpretation/Branding Plan incorporating an Orientation and Wayfinding Strategy" (hereinafter "The Curragh Plains Project"). The Department noted that these records were provided by Kildare County Council (the Council) when it commenced the procurement process concerned and that the Council had also made the information sought publicly available on the eTenders website.
5. The second decision dealt with OCE-118412-N4R7L8 and OCE-118414-N8P5T6. The Department stated that articles 7(3)(a)(i), 9(2)(a), and 9(2)(c) of the AIE Regulations applied.
6. The third decision dealt with OCE-118415-B0V3W9 and OCE-118416-P0M2J4. The Department stated that articles 7(3)(a)(i) and 9(2)(c) of the AIE Regulations applied. The Department also stated, "with a view to being of assistance to you, the information requested on the Public Consultation is available on [www.curraghplains.ie](http://www.curraghplains.ie) Outcomes of further Public Consultations will be published on this website following their completion."
7. On 23 September 2021, the appellant made five internal review requests in respect of the Department's decisions. Among other things, regarding OCE-118384-M1X5T9, the appellant indicated that it was unhappy with the list received, emphasising that it had asked for a list of "all" relevant information. Regarding OCE-118412-N4R7L8 and OCE-118415-B0V3W9, the appellant highlighted that it was seeking a list of relevant information and no list had been received, and in respect of OCE-118414-N8P5T6 and OCE-118416-P0M2J4, the appellant highlighted that it was seeking copies of relevant information and no copies had been received.
8. Following correspondence with this Office, on 15 December 2021, the Department notified the appellant of its positions in respect of OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9, and OCE-118416-P0M2J4, referring solely to article 7(3)(a)(i) of the AIE Regulations. On 17 December 2021, the Department notified the appellant of its position in respect of 118384-M1X5T9, affirming its original decision to grant access to the information requested by way of the list given in the original decision letter.
9. On 12 January 2022, the appellant submitted five appeals to this Office.



10. I am directed by the Commissioner for Environmental Information to undertake a review under article 12(5) of the AIE Regulations. In so doing, I have had regard to the correspondence between the Department and the appellant as outlined above and to correspondence between my Office and both the Department 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)
11. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

### **Scope of Review**

12. The scope of this review concerns whether the Department was justified in giving access to information relating to OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4 other than in the form or manner requested under article 7(3)(a)(i) of the AIE Regulations and in refusing access to additional information relating to OCE-118384-M1X5T9 other than the list of documents provided in the decision letter on the basis that no further relevant environmental information is held by or for the Department.

### **Preliminary Matters**

13. This decision concerns five separate appeals submitted by the appellant to this Office. In the circumstances of these appeals, where they concern five requests that were submitted by the same requester to the same public authority and have similar subject matter, I have decided that a composite decision is appropriate.
14. It is clear from the comments of the Court of Appeal in *Redmond & Another v Commissioner for Environmental Information & Another* [2020] IECA 83, at paragraph 51, that the nature of a review by this Office is inquisitorial, rather than adversarial in nature. The extent of the inquiry is determined by this Office, and not by the parties to the appeal.
15. It is outside the remit of this Office to adjudicate on how public authorities carry out their functions generally, including with respect to their environmental information management practices. This Office has no role in assessing how public authorities collect and maintain environmental information. The role of this Office is to review appeals of decisions on requests for access to environmental information within the scope of a request, which is held by or for the relevant public authority and no more than that.
16. A review by this Office is considered to be *de novo*, which means that it is based on the circumstances and the law at the time of this decision.



## **Positions of the Parties**

### **The Appellant's Position**

17. The appellant, in its submissions to this Office regarding OCE-118412-N4R7L8 and OCE-118414-N8P5T6, highlighted that it is seeking a list and copies of all relevant information and that no list or copies had been provided. It also contended that the information sought is not publicly available and, notwithstanding this view, even if “some” of the information is publicly available, it is seeking access to “all” relevant information and further information additional to that which the Department considers to be publicly available should exist. By way of example, the appellant referred to information relating to the memorandum of understanding between the Council and the Department for the Curragh Plains (specifically for the delivery of a conservation management plan and an interpretation/branding plan incorporating an orientation and wayfinding strategy); to minutes of meetings; and to any and all of the Department's considerations regarding; how, when, and where the plan came into existence and the need for the plan. It further contended that the Department did not inform it where to access any information which it considers to be publicly available. Regarding OCE-118415-B0V3W9 and OCE-118416-P0M2J4, the appellant again highlighted that it is seeking a list and copies of all relevant information and that no list or copies had been provided.
18. Regarding OCE-118384-M1X5T9, the appellant indicated that it is unhappy with the list of ten documents received, emphasising that it asked for a list of “all” relevant information and contending that additional information had not been listed. By way of example of the additional information, which it believes had not been listed, the appellant referred to records referencing the contract between the Council and the consultants and to the Department's communications with “Curragh Sheep Farmers” regarding the procurement of the consultants.

### **The Department's Position**

19. As indicated above, the Department, in its original decisions regarding OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4 stated that it was applying article 7(3)(a)(i) of the AIE Regulations and noted that the provision states that where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless the information is already available to the public in another form or manner that is easily accessible. Regarding OCE-118415-B0V3W9 and OCE-118416-P0M2J4, it also stated: “With a view to being of assistance to you, the information requested on the Public Consultation is available on [www.curraghplains.ie](http://www.curraghplains.ie) Outcomes of further Public Consultations will be published on this website following their completion.” In its internal review decisions regarding OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4, the Department stated that it was affirming its decisions “to refuse access to the information requested in the format provided pursuant to [a]rticle 7(3)(a)(i) of the [AIE Regulations], i.e. the information is already available to the public.”
20. The Department, in its original decision regarding OCE-118384-M1X5T9, listed ten records held by it relating to procurement for the provision of “The Curragh Plains Project”. The Department noted that these records were provided by the Council when it commenced the procurement process concerned and that the Council had also made the information sought publicly available on the eTenders website. In its internal review decision regarding OCE-118384-M1X5T9, the Department affirmed its original



decision to grant access to the information requested by way of the list given in the original decision letter.

21. The Department, in its initial submissions to this Office, specifically stated that records relating to OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4 are considered to be available elsewhere. It also commented generally:

“...the data cited in our various decisions is readily available elsewhere, such as on the public consultation website and or held by another public authority (namely Kildare County Council). In these instances, it is suggested that the appellant rather than conducting their own retrieval of data available, is seeking to de-facto have the Department at as an information gatherer in these instances. As this information is not readily available in the [Department] it is considered that [a]rticle 7(3)(i)(a) of the AIE [Regulations] applies.”

22. In further submissions to this Office, regarding OCE-118384-M1X5T9, OCE-118414-N8P5T6, OCE-118415-B0V3W9, OCE-118416-P0M2J4, and seemingly also OCE-118412-N4R7L8 (although this reference appears to have been omitted in error), the Department outlined the following background details:

- The issue of management and use of the Curragh Plains had raised concerns, including in respect of misuse of the Curragh Plains and progression of its strategic positioning in relation to other developments in the immediate area. The Department engaged with the Council “to establish a scope for synergies, shared goals and outcomes.” The Council indicated its intention to engage a consultancy firm to develop options for the future of the Curragh Plains in terms of it being an historical, cultural, and recreational asset. The Department formed the view that there was merit in a joint approach with the Council for this process including, if required, co-funding.
- The Department, in March 2019, met with the Council and it was agreed that there was merit in continuing to develop a more collaborative approach to the management and future direction of the Curragh Plains. The Council informed the Department that it was open to procuring a study, either from a drawdown of its existing consultancy framework or as a standalone competition. The Council indicated that it was willing to lead and oversee the procurement process and manage the contract.
- The Minister for Defence, in April 2019, approved in principle the Department entering into a joint collaborative study of the Curragh Plains with the Council, subject to more detailed procurement and project management details being agreed in advance of going to tender for the study. The study was to examine the current land management arrangements for the Curragh Plains and to provide recommendations for its protection, conservation and future development capacity as an area of cultural significance.
- Following collaboration on the text for the tender documentation, in particular the information memorandum, the text was agreed in January 2020. The Minister for Defence then approved the commissioning of the study with the Council as the contracting authority.
- The Department, on 27 January 2020, sent a letter of understanding to the Chief Executive Officer (CEO) of the Council at the time. The correspondence confirmed that the Department was now in a



position to enter a joint consultancy study with the Council. It also confirmed that the Department and the Council would jointly fund the study.

- The Council, on 28 January 2020, confirmed by email that it would arrange to have the tender published.
- The Council, on 13 March 2020, confirmed it had received a response to the tender. The Council advised that it would assess the tender submission for the pass/fail criteria and a joint tender assessment could be scheduled later. The Department responded to the Council by email agreeing to a joint tender assessment and a copy of the tender package was requested.
- The Department, on 17 April 2020, had a conference call with the Council to discuss the tender submission and agree modalities concerning the administration of the study between both parties, including a Memorandum of Understanding (MOU).
- The Department, on 27 April 2020, concurred with the Council's comment/scoring and asked to be copied on a letter of intent to the Paul Hogarth Company. The Council, on 11 May 2020, issued and signed the letter of intent to the Paul Hogarth Company.
- The Department and the Council agreed and signed the MOU in June 2020, which indicated that the Council is the project manager with responsibility for the project and will procure a multi-disciplinary team of consultants, which will, in turn, manage and be responsible for all matters in relation to the process on behalf of the Council and the Department.
- The Department stated that it was given a copy of the Tender and Schedule for the Conditions of Engagement for Consultancy Services (technical) (signed only by the Paul Hogarth Company) and a letter of acceptance (unsigned) that the Council issued to the Paul Hogarth Company. The Department stated that it is evident from this correspondence that the Council is the contracting authority and the Department is not a party to the contract. The Department stated that it has no other documentation relating to the contract.

23. In responding to queries from this Office regarding its record management practices and the searches undertaken to identify and locate relevant environmental information, the Department outlined the following:

- Information is stored physically in files 0272/2022 (Part 3), 0648/2020 (Part 2), and 0328/19, which are held in the Department's office in Newbridge and the files were searched.
- Information is stored electronically on the Department's G Drive and recently introduced eDocs system and these were searched.
- No relevant information relating to the study has been destroyed or archived.
- The probability of misfiling or misplacement of information is very low as the information sought relates to a unique work item and most of the work was undertaken by two officers.





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- The Department did not consult the Paul Hogarth Company, as it is not the contracting authority. It referred to the Commissioner's decision in cases [OCE-118418-T4Y4L5](#) and [OCE-118417-H6X6J4](#)
24. The Department submitted that all relevant information held by it was already provided to the appellant and it holds no further relevant information. It also submitted that relevant information is held by/on behalf of the Council and that it had referred the appellant to the Council.
  25. The Department stated that to allay any concerns and by means of addressing the appellant's belief that it has not provided all relevant information held by it, it is open to the appellant to physically inspect the Department's files.
  26. The Department stated that the correspondence to the CEO of the Council and the MOU signed in June 2020 was already provided to the appellant in response to four other requests made by the appellant to the Department (Department references: AIE/009/2021, AIE/0010/2021, AIE/011/2021 and AIE/014/2021). The Department also mentioned that information relating to meetings with the Council and all records relating to the background details outlined had been shared with the appellant.
  27. The Department referred again to the Commissioner's decision in cases [OCE-118418-T4Y4L5](#) and [OCE-118417-H6X6J4](#), wherein the Commissioner was satisfied that the Department was not the contracting authority for the Curragh Plains study. The Department stated its belief that the appellant does not accept that it is not a contracting authority and, accordingly "does not accept or appear to [accept] the implications of same in terms of the information believed to be retained by [the Department]".
  28. The Department stated that information relating to interactions with those who participated in the Curragh Plains consultation process is not available within the Department, rather it is held by or for the Council as the contracting authority.
  29. The Department referred to the appellant's reference to the Department's communications with "Curragh Sheep Farmers" regarding the procurement of the consultants. While the Department noted that the appellant had not specified who he meant by the "Curragh Sheep Farmers" and stated its view that such information was additional to and did not fall within the scope of the appellant's requests, it also said that it had no communications with any such individuals/group.

### **Analysis and Findings**

30. Article 6(1)(e) of the AIE Regulations provides that if an applicant desires access to environmental information in a particular form or manner, the request shall specify the form or manner of access desired. In OCE-118384-M1X5T9, OCE-118412-N4R7L, and OCE-118415-B0V3W9, the appellant sought access to "lists" of information and, in OCE-118414-N8P5T6, OCE-118416-P0M2J4, the appellant sought access to "copies" of information. Accordingly, I am satisfied that the appellant specified the form of access desired in accordance with article 6(1)(e) of the AIE Regulations.
31. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request, subject only to the provisions of the AIE Regulations.



32. Article 7(3)(a)(i) of the AIE Regulations provides that where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless the information is already available to the public in another form or manner that is easily accessible. Article 7(3)(a)(i) of the AIE Regulations seeks to transpose Article 3(4)(a) of the AIE Directive, which provides that where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available unless it is already publicly available in another form or format which is easily accessible by applicants.
33. It is important to note that article 7(3)(a)(i) of the AIE Regulations must be read alongside article 7(3)(b) of the AIE Regulations, which provides that where a public authority decides to make available environmental information other than in the form or manner specified in the request, the reason therefore shall be given by the public authority in writing.
34. I wish to highlight that that article 7(3)(a)(i) of the AIE Regulations can only be considered where a public authority has carried out searches, identified relevant information held by or for it, determined that information should be released, and has then decided to give access to that information other than in the form or manner requested. When relying on article 7(3)(a)(i), the public authority should identify the specific information concerned and direct the requester to where it is already available to the public and can be accessed.
35. A public authority may seek to rely on article 7(3)(a)(i) of the AIE Regulations in cases where, for example, the information sought is held by or for it, but it also considers that the information is available on the internet or that it has already released the information to the requester under the AIE Regulations (this is because disclosure under the AIE Regulations is understood as disclosure to the world at large). In such cases, the public authority should identify the specific information concerned, show where it is available on the internet or that it has already been released, and show that it is easily accessible to the requester. However, in cases where, for example the public authority is of the view that the information sought is not held by or for it, it cannot then give access in another form or manner under article 7(3) of the AIE Regulations; rather it should seek to rely on article 7(5) of the AIE Regulations, identifying the searches carried out in an effort to locate the information.
36. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned. This Office's approach to dealing with cases where a public authority has effectively refused a request under article 7(5) is that this Office must be satisfied that adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, this Office considers that a standard of reasonableness must necessarily apply. It is not normally a function of this Office to search for environmental information.
37. Article 7(6) of the AIE Regulations provides that where article 7(5) applies and the public authority concerned is aware that the information requested is held by another public authority, it shall as soon as possible (a) transfer the request to the other public authority and inform the applicant accordingly, or (b) inform the applicant of the public authority to whom it believes the request should be directed.





**OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4**

38. The first question I must consider is whether the Department was justified in giving access to all information relating to OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4 other than in the form or manner requested under article 7(3)(a)(i) of the AIE Regulations.
39. The Department, in its original and internal review decisions merely referred to article 7(3)(a)(i) of the AIE Regulations and incorrectly stated that access to the information had been refused, rather than granted and given in another form or manner than requested. The Department did not specifically identify the relevant information coming within the scope of OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 or OCE-118416-P0M2J4, which it considered to be publicly available. It also did not state where it might be accessed, other than referring generally to the public consultation website in respect of OCE-118415-B0V3W9 or OCE-118416-P0M2J4. Furthermore, it gave no evidence to suggest that the information concerned was actually held by or for the Department in the first instance.
40. In its submissions to this Office, the Department stated that all relevant information held by it had already been released to the appellant and that any further relevant information is held elsewhere – either on the public consultation website or by the Council. However, the Department, while it briefly mentioned information concerning meetings with the Council, did not specifically identify any relevant information held by it that would reasonably appear to me to fall within the scope of OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 or OCE-118416-P0M2J4, which it considered to have already released, nor did it provide any supporting documentation to that effect (e.g. a schedule of information already released under the AIE Regulations).
41. Indeed, in referring to the information, which it considered to have already released, the Department only specifically identified two records and the AIE requests to which they related. Having regard to the descriptions of those records as provided, it would appear to me that those records can reasonably said to fall within the scope of OCE-118384-M1X5T9, rather than the scope of OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 or OCE-118416-P0M2J4. Furthermore, while the Department also briefly mentioned that information relating to the background detail provided was already released, this information, or at least a significant proportion of it, would again seem to me to reasonably relate to OCE-118384-M1X5T9, rather than the four requests concerned.
42. I understand that there has been significant interaction between the parties and that the appellant has made a number of other AIE requests to the Department. It may very well be the case that information relevant to OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 or OCE-118416-P0M2J4 held by the Department has already been released to the appellant and that no additional information is held by the Department. Unfortunately, however the Department did not provide sufficient explanations or evidence to suggest that this has in fact occurred.
43. In all of the circumstances, I cannot find that that the Department was justified under article 7(3)(a)(i) of the AIE Regulations in giving access to all information relating to OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J4 other than in the form or manner requested.



**OCE-118384-M1X5T9**

44. The second question I must consider is whether the Department was justified in refusing access to additional information relating to OCE-118384-M1X5T9 other than the list of ten documents provided in the decision letter on the basis that no further relevant environmental information is held by or for the Department. The list of ten documents provided in the decision letter comprises the ten documents publicly available on the eTenders website for the procurement process concerned (available [here](#)).
45. As indicated above, the Department provided this Office with certain details regarding its record management practices and the searches undertaken to identify and locate relevant environmental information. However, while the Department stated that three physical files and its G Drive and eDocs were searched, it provided no detail regarding the type of information held in those locations, the particular electronic files searched, or the search terms used. Having regard to the background detail provided by the Department in its submissions to this Office it also appears that relevant email correspondence may exist, however the Department gave no indication as to where such correspondence is held or whether searches for same were carried out.
46. The submissions provided by the Department also appear to suggest that there is more information held by or for the Department coming within the scope of OCE-118384-M1X5T9, other than the ten documents listed, including, but not limited to, the two records which the Document specifically identified as records it considered to have already released. While I accept that certain relevant information may have already been released to the appellant in response to other AIE requests, the appellant did not exclude such information from the list of information being sought.
47. In all the circumstances, I cannot find that the Department was justified under article 7(5) of the AIE Regulations in refusing access to additional information relating to OCE-118384-M1X5T9 other than the list of documents provided in the decision letter on the basis that no further relevant environmental information is held by or for the Department.
48. I would also note, for the sake of completeness, that while the Department indicated in its submissions to this Office that information relating to OCE-118384-M1X5T9 may be held by or for the Council, I note that no reference to article 7(6) of the AIE Regulations or comments to the effect of transferring or informing the applicant to direct the request to the Council were included in the original or internal review decisions.

**Conclusion**

49. I consider that the most appropriate course of action to take at this stage is to annul the Department's decisions under article 7(3)(a)(i) of the AIE regulations regarding OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-B0V3W9 and OCE-118416-P0M2J and its decision under article 7(5) of the AIE Regulations regarding OCE-118384-M1X5T9, the effect of which is that the Department must consider the appellant's requests afresh. Before doing so, the parties may wish to note the following matters.
50. First, the Department may find it useful to engage further with the appellant in the first instance to clarify the precise nature of the information sought in each of the requests.



51. Second, the appellant may wish to take-up the Department's offer to attend its office and examine the information, which the Department considers to have already released.
52. Third, the Department must identify all relevant records that come within the scope of the appellant's requests.
53. Fourth, while article 7(3) of the AIE Regulations provides for the ability to give access to information other than in the form or manner requested where information has already been released under the AIE Regulations, it can only be relied upon where the information has been granted and does not extend to information that was considered for released but not released / partially released.
54. Fifth, in circumstances where the Department wishes to rely on article 7(5) of the AIE Regulations in respect of certain information sought by the appellant regarding either OCE-118384-M1X5T9 or any of OCE-118412-N4R7L8, OCE-118414-N8P5T6, OCE-118415-BOV3W9 and OCE-118416-POM2J, it must take all reasonable steps to ascertain the whereabouts of the information sought.
55. Finally, as stated, the Department, in its submissions to this Office referred to the Commissioner's decision in cases [OCE-118418-T4Y4L5](#) and [OCE-118417-H6X6J4](#), which concerned two other related requests submitted by the appellant, seeking access to information relating to contracts between the Department and the Paul Hogarth Company. In that decision, the Commissioner was satisfied that Kildare County Council was the contracting authority for the Curragh Plains study and there was no reason to believe that there was a contract between the Department and the Paul Hogarth Company in respect of the study. Accordingly, the Commissioner found that the Department's refusal under article 7(5) was justified on the basis that the information sought did not exist. It is important to note that this Office is not bound to follow previous decisions. However, I wish to state that I continue to accept that the Department was not the contracting authority for the purposes of "The Curragh Plains Project." Accordingly, I also accept that there was no requirement on the Department to consult the Paul Hogarth Company in order to ascertain whether it might hold relevant information "for" the Department.
56. However, I would note that the Department, in its submissions to this Office stated "it would appear in light of the acceptance that the Department is not the contracting authority...the Department could find itself in a position of having to revert to another public authority to access environmental information already held by them." While I make no specific finding on whether any information held by the Council regarding the requests could be held "for" the Department, given the Department's comment, it does not appear to me that the Department properly considered the question as to whether it was necessary for it to consult the Council in respect of information related to the appellant's requests. This might be a relevant issue to consider in more detail when processing the requests afresh.

### **Decision**

57. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I hereby annul the Department's decisions in these cases. I direct the Department to undertake a fresh decision making process in respect of each of the five requests at issue.



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Commissioner for Environmental Information

### **Appeal to the High Court**

58. 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**

31 August 2023



## Appendix 1

- **OCEI Reference: OCE-118384-M1X5T9; Department Reference: AIE/001/2021; Appellant Reference: 2003/4 EC - MoD 1** – “...a list, of:- all correspondence/documentation/pieces of paper generated, and all information known by you that in any and all ways relate to your procurement of the services of Hogarth Consultants including but not limited to for any and all ‘Curragh Plains Consultancy Study...’ (and/or studies, as the case maybe)...”
- **OCEI Reference: OCE-118412-N4R7L8; Department Reference: AIE/003/2021; Appellant Reference: 2003/4 EC - MoD 3** – “...a list, of: all correspondence/ documentation/pieces of paper generated, and all information known by you, that in any and all ways relate to the carrying out of a conservation study on the Curragh Plains including but not limited to any and all considerations by you for same...”
- **OCEI Reference: OCE-118414-N8P5T6; Department Reference: AIE/004/2021, Appellant Reference: 2003/4 EC - MoD 4** – “...copies, of:- all correspondence/documentation/pieces of paper generated, and all information known by you, that in any and all ways relate to the carrying out of a conservation study on the Curragh Plains including but not limited to any and all considerations by you for same...”
- **OCEI Reference: OCE-118415-B0V3W9; Department Reference: AIE/005/2021; Appellant Reference: 2003/4 EC - MoD 5** – “...a list, of:- all correspondence/documentation/pieces of paper generated, and all information known by you that in any and all ways relate to Public Consultation re Study/ies of Curragh Plains including but not limited to such study/studies as apparently/ evidentially procured by you and/or your consultants, and including but not limited to any and all matters re different stages of public Consultation...”
- **OCE-118416-P0M2J4; Department Reference: AIE/006/2021, Appellant Reference: 2003/4 EC - MoD 6** – “...copies, of:- all correspondence/documentation/pieces of paper generated, and all information known by you that in any and all ways relate to Public Consultation re Study/ies on/of Curragh Plains including but not limited to such study/studies as apparently/evidentially procured by you and/or your consultants, and including but not limited to any and all matters re different stages of Public Consultation...”