



**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-135353-K4C6Q3

Date of decision: 11 August 2023

Appellant: Mr. X

Public Authority: Coillte

Issue: Whether Coillte was justified in refusing access to environmental information relating to Invasive Species Action Plans 2021 on the basis that no such environmental information is held by or for them.

Summary of Commissioner's Decision: The Commissioner affirmed the decision of Coillte.

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 3 November 2022, the appellant requested the following from Coillte:
 - A copy of all invasive species action plans completed in 2021 for proposals relating to forestry or forestry projects where such species are present on site.

The information was sought in electronic format.

2. On 21 December 2022, Coillte granted access to the information it had identified as relevant to the request. It issued a spreadsheet to the appellant, which included the areas treated, by Forest per Business Area Units (BAU) during 2021.
3. On 21 December 2022, the appellant sought an internal review of the decision. The appellant advised in his internal review request that what had been issued to him was a list of sites and areas, the appellant reiterated that he had requested a copy of the (Action) plans.
4. On 20 January 2023, Coillte issued its internal review decision, whereby it annulled its original decision. The reason for the annulment was that, following a search for records relevant to the request, Coillte was unable to locate any records which related to the request. Coillte advised the appellant that it had undertaken:
 - a) a physical search of all relevant areas of the organisation in which the records sought might be held
 - b) a search of the electronic databases and records held both on the mainframe computers and individual staff computers
 - c) interviews with individual members of staff who may have dealt with such records
 - d) detailed discussions with the records management staff.
5. Coillte advised the appellant that it does not have invasive species action plans. Coillte states it has a process in place which identifies invasive species on Coillte sites. For operations purposes the BAU refer to the invasive species monitoring form returns, which were issued to the appellant at the initial request, to inform any necessary actions and the priority status of the respective sites.
6. The appellant brought this appeal on 10 February 2023. During the course of this review, this Office's investigator sought details from Coillte of the searches conducted for information falling within the scope of the appellant's request. Coillte confirmed that it does not have an Invasive Species Action Plan. Coillte clarified the detailed process it follows in relation to the control of invasive species. A summary of those submissions was provided to the appellant and the appellant was given an opportunity to comment. The appellant stated that "a plan is a detailed proposal for doing or achieving something". In



the appellant's opinion, what Coillte describe is a plan. The appellant contends that his request "should be read not as a request for a single document called an Invasive Species Action Plan for each relevant site but as a request for a body of environmental information that meets the definition of a plan".

7. I am directed by the Commissioner for Environmental Information to carry out a review of this matter under article 12(5) of the Regulations. In so doing, I have had regard to the correspondence between the appellant and Coillte as set out above and to the communications between this office and both Coillte 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);
 - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide');

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. Where appropriate in the circumstances of an appeal, I will require the public authority to make available environmental information to the appellant.
9. The scope of this review is confined to whether Coillte was justified in refusing access to environmental information relating to all invasive species action plans completed in 2021 for proposals relating to forestry or forestry projects, where such species are present on site, on the basis that no such action plans are held by or for them.

Analysis and Findings

10. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether or not the requested environmental information is held by or for the public authority



concerned. When dealing with cases where a public authority has effectively refused a request under article 7(5), 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, a standard of reasonableness must necessarily apply. It is not normally the function of this Office to search for environmental Information.

11. In its submission to this office, Coillte stated that it does not have an Action Plan and provided details of its process with regard to invasive species. Coillte also provided details of the searches conducted in response to the appellant's request. As this Office has already provided the appellant with those details, I do not propose to repeat them in full here.
12. Coillte explained that it carried out the following searches:
 - 1) On receipt of the AIE request, a meeting was arranged with the relevant staff who have responsibility for this area. Arising from those meetings, no physical searches were conducted as the teams confirmed that no "Action Plans" exist in material form. The team provided a list of locations where invasive species were identified on the Coillte estate in 2021, which was furnished to the appellant as this being the only record relevant to his request.
 - 2) The certification and environment manager and the BAU 6 manager were consulted in relation to the search.
13. None of these steps revealed the existence of any records that could be defined as Action Plans. Coillte also set out the rationale for why such specific Action Plans do not exist, namely that the control of invasive species is managed through risk reduction, early intervention and treatment of invasive species. These processes are all included in Coillte's "planned operations" as required under FSC Irish Forest Stewardship Standard Indicator 6.3.5.
14. I have taken on board the appellant's view, which is that the request encompasses all environmental information held by Coillte that would, when taken together, amount to an action plan. It is my view that Coillte has set out a reasonable explanation for why its processes do not lead to the creation of such information. The spreadsheet released to the appellant shows the areas that were treated and how many hectares were involved in that treatment. I see from the explanation provided by Coillte that this treatment was carried out following monitoring, and that information is not created on the basis of forestry generally or at forestry project level.
15. Having considered the details of the searches and the explanations and process outlined by Coillte, I am satisfied that Coillte has taken adequate steps to search for the requested



information. I am satisfied with Coillte's explanation as to the process and procedures it has in place for the gathering of information. As such, on behalf of the Commissioner for Environmental Information, I find that article 7(5) of the AE Regulations applies.

Decision

16. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental information, I hereby affirm Coillte's decision to refuse the release of the records requested under article 7(5) of the AIE Regulations on the basis that no such records exist.

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