



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

OCE-139596-G8H3D9	OCE-139077-G4C2M6	OCE-138820-M8X1H8
OCE-138488-J3C7Q2	OCE-137870-P8H4R1	OCE-137743-C3C4Y4
OCE-137399-G7W5W1	OCE-137308-T9D1F4	OCE-137273-W3J9M2
OCE-137146-N7W8H1	OCE-137137-X0S9V4	OCE-136439-H9S7W5
OCE-135470-K8Q9G8	OCE-135469-W6N5L2	OCE-133754-N7Y2T4
OCE-133713-P2G5R3	OCE-128393-H3G5N6	OCE-135169-Q7L8F6
OCE-137143-Z2N9D6	OCE-129455-J9C5R1	

Date of decision: 4 August 2023

Appellants: Various

Public Authority: Coillte

Issue: Whether Coillte holds information relevant to each request and whether the Coillte was justified in withholding information from the appellants.

Summary of Commissioner's Decision: The Commissioner annulled Coillte's decision in each case and directed Coillte to undertake a fresh decision-making process in respect of each request.

Right of Appeal: A party to any of these appeals 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. As outlined in the recently launched annual report detailing the work of this Office during 2022, there has been a sharp increase in the number of appeals to this Office across the board, particularly in relation to forestry issues. This increase has resulted in a significant challenge to our goal of dealing with appeals in a timely and efficient manner. To address this challenge we are continuously reviewing our procedures for investigating appeals to ensure we operate as efficiently as possible.
2. While public authorities in all sectors have experienced an increase in requests for information under the AIE Regulations over the last eighteen months, Coillte in particular have seen a dramatic rise in the number of requests it has received.
3. The notable increase in appeals received by Coillte, over a relatively short period of time, has resulted in pressure being brought on staff to process these requests. This Office welcomes the allocation of additional resources by Coillte to deal with future AIE requests and recommends that both requestors and Coillte engage fully to achieve satisfactory outcomes for requests under the AIE Regulations.
4. In recognition of the resource savings achievable, where informal solutions can be found for the release of information without the need for a formal decision, this Office has carried out a review of our current case load to identify instances where an informal solution may be found and information could be released without the need for a formal decision.
5. The 20 appeals at issue here were each the subject of a decision by Coillte on a date between 2022 and early 2023. Each relates to a request for environmental information relating to the primary operation of Coillte (i.e. forestry). These cases were identified by this Office as suitable for review by Coillte staff to reassess if, given the passage of time and improvements in the search abilities of Coillte, additional information relevant to each individual case could be identified and released to the appellant.
6. I am directed by the Commissioner for Environmental Information to carry out a review of these appeals under article 12(5) of the AIE Regulations. In so doing, I have had regard to the submissions made by the parties to each appeal. In addition, I have had regard to:
 - a. Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - b. 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
 - c. the Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide').

Scope of Review

7. In accordance with article 12(5) of the AIE Regulations, the role of this Office in each of these appeals is to review Coillte's internal review decision and to affirm, annul or vary it.



Initial Analysis and Findings

8. While I will not comment on each individual case affected by this decision, the common thread which all cases share is the application by Coillte of article 7(5) of the AIE Regulations, which deals with the search process to be carried out by a Public Authority once a request for information is received.
9. Under article 7(5), Coillte refused the information sought by the appellants on the basis that no information existed, or could be found, relevant to the request. From a review of Coillte's decision-making records on these files, I am of the view that Coillte has not demonstrated that it has carried out reasonable and appropriate searches to identify and retrieve environmental information relevant to the requests.
10. The requirement for a public authority to clearly set out the actions it has taken, in response to a request, under article 7(5) of the AIE Regulations, is not only useful for this Office in its considerations but also gives confidence to the appellant that suitable search procedures were conducted in response to their request.
11. The duty to give reasons, for the refusal of requests, in the decisions of Coillte arises not only by virtue of the AIE Regulations and Directive, it is also recognised generally as a core principle of administrative law and a fundamental element of constitutional justice (see, for example, *Meadows v Minister for Justice* [2010] IESC 3 and *Balz & Anor v An Bord Pleanála & Ors* [2019] IESC 90). Both of these judgments, in the same way as the AIE Regulations, make it clear that where a requester has all or part of a request refused, they are entitled to be provided with clear reasons for that refusal. This duty arises so that the requester can take a view as to whether they consider refusal justified, or whether they wish to exercise their entitlement to have the refusal reviewed.
12. Following this Office's initial examination of the case files, in each instance it appeared certain that following a full investigation of all of the circumstances of the appeal that the decisions of Coillte would be annulled and the request remitted. In the circumstances of these cases, where it is unclear if adequate searches have been conducted, and this Office has not had sight of the records at issue, it is not appropriate to consider directing release of the records. This is because the records could contain confidential third party information, where the third parties have not been consulted in relation to its release.
13. Having reached this preliminary conclusion, this Office's investigator contacted Coillte to outline concerns on the lack of detail contained within the case material surrounding how the search for information, relevant to each individual request, was conducted. In an effort to bring these cases to a timely conclusion Coillte has agreed to re-examine each case within this decision to bring them to a satisfactory conclusion preferably with an informal resolution where appropriate. While this agreement will place an additional workload on Coillte, the approach taken to reprocess these cases in an effort to satisfy the appellants request must be commended.



14. A full investigation in each of these appeals would result in further delays to requesters receiving relevant information where appropriate, in addition to a significant amount of work on the part of this Office.
15. I consider the most appropriate course of action is to annul Coillte's decisions in each of these appeals and to remit all 20 cases back to Coillte so that it may carry out a fresh decision making process in respect of each of the requests. I do so on the basis that carrying out full reviews of these cases where the Coillte would, in effect, be making first instance decisions, would take more time than it will take for Coillte to review the requests and issue original and, where necessary, internal review decisions.

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 annul Coilltes decision in each case. I direct Coillte to undertake a fresh decision-making process in respect of each of the requests.

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

4 August 2023