



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-119760-Z5D4W4

Date of decision: 10 July 2023

Appellant: Ms. X

Public Authority: Department of Agriculture, Food and the Marine (the Department)

Issue: Whether the Department complied with its obligations under article 7(3) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner found that the Department had not complied with its obligations under article 7(3) as it had failed to provide environmental information to the appellant in the form or manner requested by her in circumstances where none of the exceptions contained in article 7(3) could be said to apply.

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 27 December 2021 the appellant requested access to mapped and tabular data relating to afforestation and felling licences approved by the Forest Service within certain land boundaries, for the period 1 January 2021 to 27 December 2021.
 - (1) The appellant specifically sought the following information, with reference to data contained in a published report – [Hen Harrier Conservation and the Forestry Sector in Ireland 2015](#) ('the Report'), and in particular Figure 1 as contained at page 9 of same. A map showing the location of all afforestation licences approved by the Forest Service within squares G92, G93 and G94 of Figure 1 and, if possible, inclusion of these grid square boundaries on said map.
 - (2) A table listing both the CN reference numbers and the size of the forest (in hectares) for the afforestation licence areas shown on the map (point (1) above).
 - (3) A map showing the location of all felling licences approved by the Forest Service within squares G92, G93 and G94 of Figure 1 and, if possible, inclusion of these grid square boundaries on said map.
 - (4) A table listing both TFL and LM reference numbers and the size of the forest (in hectares) for the felling licence areas shown on the map (point (3) above).
2. The Report, which examined the interactions between the forestry sector and Hen Harrier conservation in Ireland, was produced by the National Parks and Wildlife Service (NPWS) – being part of the Heritage Division of the Department of Housing, Local Government and Heritage (and formerly the Department of Arts, Heritage and the Gaeltacht).
3. The Report identified six sites which are designated as Special Protection Areas (SPAs) for breeding Hen Harrier in Ireland and fifteen further important regions for Hen Harrier during the breeding season, seven of which are 'non-designated', i.e. not part of the Hen Harrier SPA network. One of these non-designated regional zones is referred to as the "Leitrim Uplands", an area which is observed to lie within the grid squares to which the appellant's request refers.
4. The Report stated that as of 1 January 2015, the Forest Service is not issuing any further afforestation licences within the six SPAs. The appellant noted in her request that afforestation licences may continue to be granted by the Forest Service in the important areas outside of the Hen Harrier SPA network.
5. The Forest Service (or Forestry Division) of the Department of Agriculture, Food and the Marine (the Department) has statutory responsibility for forestry in Ireland with responsibilities including regulation of key forestry activities, including afforestation and felling licences.
6. The Department responded to the appellant on 10 January 2022 advising her that "the information is publicly available on the Department's website" and provided her with two website links. The first link provided access to a [Register of Decisions](#) section on its website,



which contains links to PDF documents providing data on felling licence decisions, forest road licence decisions and afforestation licence decisions, broken down on a monthly basis. The second link provided access to the Department's [Forestry Licence Viewer \(FLV\)](#) which is an interactive mapping application displaying certain forestry licence information.

7. The appellant sought an internal review of the Department's decision on 12 January 2022. She acknowledged that the Department had "by virtue of [its] reply, directed [her] to the raw data relevant to [her] request" but noted that the information had not been provided in the two formats requested. She submitted that "[she] did not hold the raw data in electronic form" and "if [she] were to create the information in the format requested it would be time-consuming and inefficient". She submitted that there was no indication that the Department had considered article 7(3)(a) of the AIE Regulations. The appellant also argued that "article 5(1)(b) of the AIE Regulations implies that basic information should be held in such a manner that it can be provided in alternative formats" and that "it would be unreasonable for [the Department] to maintain the information in a consolidated form or to have the means to create the information in alternative formats and then not provide that information in the formats requested".
8. The Department issued its internal review decision on 11 February 2022. The internal review affirmed the original decision on the basis that "the information sought is freely available in the Forestry Licence Viewer (FLV) on the Department's website".
9. The appellant brought an appeal to this Office on 17 February 2022.
10. I am directed by the Commissioner for Environmental Information to conduct a review under article 12(5) of the AIE Regulations. In so doing, I have had regard to the submissions made by the appellant and the Department. 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](#)').
 - [Right to Know v An Taoiseach \[2018\] IEHC 372](#)



What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

- 11.** The appellant contends that the Department has failed to comply with article 5(1)(b) of the AIE Regulations which provides that:

“A public authority shall make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means”.

It is not within the remit of the Commissioner for Environmental Information to examine how public authorities carry out their general duties under the AIE Regulations, including with respect to their information management practices.

- 12.** The appellant contends that the Department did not provide her with information in the form or manner she requested. Article 7(3)(a) 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:

- (i) the information is already available to the public in another form or manner that is easily accessible, or
- (ii) access in another form or manner would be reasonable.”

The scope of this review is confined to whether the decision on the request complied with the Department’s obligations under article 7(3) of the AIE Regulations.

- 13.** For the purposes of clarity and completeness, I should note that in her internal review request to the Department, and in submissions to this Office, the appellant referenced “article 3(1)(a)(i) and (ii)”. It is clear to me that this reference was made in error, as no such article exists, and that all such references should be taken to mean article 7(3)(a)(i) and (ii) of the AIE Regulations. This was confirmed to the Department by this Office’s Investigator as part of a request for submissions in this case.

Analysis and Findings

Article 7(3) of the AIE Regulations

- 14.** Article 7(3)(a) of the AIE Regulations requires a public authority to provide information in the form or manner requested by an appellant unless the exceptions provided for in that article apply. As outlined above, in her initial request, the appellant stated that she was seeking



mapped and tabular data relating to afforestation and felling licences approved by the Forest Service, within certain land boundaries, over a specified time period. Instead, the Department provided links to a number of webpages, from which it implied that the data sought by the appellant could be extracted. It did not, therefore, provide her with the information she requested in the form or manner requested by her.

15. In order for the Department to have complied with its obligations under article 7(3)(a) of the AIE Regulations, it must therefore be established either: (i) that the information requested by the appellant was already publicly available in an easily accessible form or manner; or (ii) that the access provided by the Department was reasonable.
16. Article 7(3)(b) of the AIE Regulations 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”.
17. The Minister’s Guidance on implementation of the AIE Regulations advises “where an applicant requests information in a particular format or manner, public authorities should provide the information in that format or manner unless it is already publicly available in another form or manner, or access in an alternative manner would be more efficient (public authorities are requested to facilitate applicants in this to the greatest extent possible).” Under article 14 of the AIE Regulations, public authorities are obliged to take account of these guidelines in performing their functions under the Regulations.
18. The Aarhus Convention provides certain exceptions to the requirement that information should be provided in the form requested. The Aarhus Guide sets out that “access to information should be effective in practice... To be effective, “publicly available” means that the information is easily accessible to the member of the public requesting the information. In addition, “another form” means that the available information is the functional equivalent of the form requested, not a summary; and that the information should be available in its entirety”.

Positions of the Parties

19. The Department’s original decision took the view that it was granting the appellant’s request by providing her with website links containing the information requested. The Department did not acknowledge that this decision did not provide the appellant with the information requested in the form or manner requested by her and did not reference any consideration of the provisions of the AIE Regulations in this regard. The appellant made it clear in her request for internal review that she understood the Department’s position to be “factually incorrect”. The Department did not engage with the appellant’s submissions and simply affirmed the original decision, without reasoning.



- 20.** The appellant provided detailed submission to this Office on 2 April 2022 in support of her argument that the handling of her request by the Department is not consistent with the requirements of the AIE Regulations.
- 21.** The appellant submits that she has not been provided with the information requested, in the format requested, and she has instead been directed to website resources containing raw data relevant to her request. The appellant submits that the raw data relevant to this AIE request is held by the Department in electronic format and that she has not been provided with any of the raw data in this format.
- 22.** The appellant argues that directing her to the raw data relevant to her request is not reasonable on the part of the Department. She also argues that the fact that the Department has directed her to manually review a significant amount of raw data to collate the information requested means that the information she has requested is not “easily accessible” to her. She also notes that the Department no longer publishes the files containing the “raw data” in XLS format which makes the task of manually consolidating the information more onerous and time-consuming for a member of the public.
- 23.** The appellant notes that the format in which the raw data is published means that she would be required to manually check and review approximately 270 different records. She bases this estimate on a review of the information published for December 2021 which includes 12 records for Afforestation Licences and 11 records for Felling Licences. She calculates therefore that there are 23 records to be reviewed for the month of December 2021 and notes that her request covers the period 01 January 2021 to 27 December 2021, a period of almost 12 months.
- 24.** The appellant further outlines that having collected the relevant information, she would then need to spend time checking the location of each licence against the FLV base map or the map in Figure 1 of the Report; and finally create her own maps and tables. In this regard, the appellant contends that there are a number issues with the FLV, including base map inaccuracies, lack of townland boundary information and lack of spatial data relating to the boundaries of designated sites, including the areas involved in her request.
- 25.** The appellant submits that in order to manually process all the information relevant to her AIE request from the available website resources, if she would elect to do so, would take over 20 hours (estimated), compared with less than 1-2 hours (estimated) were the raw data available in electronic format.
- 26.** The appellant submits that the Department is “providing information in a segregated way”, in particular in relation to the licences issued by the Department under the ‘Forestry Programme 2014-2020’, and in doing so, is placing “hurdles in the path of the public... contrary to the principles underpinning the AIE Regulations, the AIE Directive and the Aarhus Convention”.



- 27.** The appellant submits that her request is a request for very basic information. She also submits that the information requested is the sort of information which should be “made available proactively” by the Department. She argues that the Department’s failure to make consolidated information available in relation to programmes which have been subject to public consultation (such as forestry applications, decisions, Appropriate Assessments and Nature Impact Statements) is not consistent with its duties under the AIE Regulations.
- 28.** The appellant notes a lack of evident consideration by the Department to article 5(1)(b) of the AIE Regulations, querying whether all reasonable efforts have been made by the Department to organise information in manner consistent with its obligations. She submits that the information requested in this case is the kind that one would expect to be published or organised by the Department in a manner that enables its easy dissemination on request, in accordance with the its duties under article 5 of the AIE Regulations.
- 29.** The appellant refers to the following excerpt from [OCE-105379-F8L2B9 and OCE-106896-D5T5W5](#) (*Mr X and Department of Agriculture, Food and the Marine*), which notes that:
- “The [Department] explains that it manages its forestry licensing and schemes through its claims/payment system, IFORIS. The system holds all data in relation to forestry licence applications, approvals, applications for forestry schemes, payments, etc. IFORIS can be interrogated by means of a reporting system, or by constructing ad hoc reports for specific requirements”. (Emphasis added by appellant)
- 30.** The appellant contends that this background information on IFORIS confirms that the Department can interrogate the data held by it by electronic means and that it is not clear why the decision-makers in this case chose not to interrogate IFORIS to extract the information requested. She argues that it appears the Department is operating a parallel and unfavourable regime for the public in comparison with the information available to the Department, particularly information held electronically on IFORIS.
- 31.** The appellant submits that it is unreasonable for the Department not to use facilities to provide the information requested in this case, in the format requested, if it can do so. She submits that if the Department is of the view that the information can be collated manually, it stands to reason that the same information can be provided electronically if the information is maintained in a manner that is readily reproducible by information technology or other electronic means. The appellant suggests that were the Department to receive a similar query by means of a Parliamentary Question, it is not credible that it would respond by asking the querist to look at the raw data themselves in order to find the answer.
- 32.** The Department provided submissions to this Office on 27 April 2022, noting that “the request was granted, and the complainant was directed appropriately”. The Department maintains that “the original officer and internal reviewer were correct in their opinion that the information being requested is freely available in the Forestry Licence Viewer application on



the Department’s website”, with this format designed to ensure public access. The Department submits that “public bodies do not have to automatically present information in the format requested [as in this case], especially where it is already presented in a freely available, readily accessible format” and it is “unclear as to how the appellant is not being facilitated”.

- 33.** On 13 March 2023, this Office wrote to the Department and outlined some key questions or issues regarded as particularly relevant based on an initial examination of the case file, and provided the Department with an opportunity to make further submissions. At this stage, all of the appellant’s submissions were put to the Department.
- 34.** Regrettably, the Department has not addressed any of the pertinent questions raised by this Office, nor did it provide any further comments in response to the issues raised by the appellant in her submissions. On 21 April 2023, the Department advised the Investigator assigned to this case that it was not in a position to provide a detailed submission; however, some information deemed relevant to the request was forwarded at this time.
- 35.** Information in relation to certain afforestation and felling licences numbers was provided to this Office by the Department, in excel document format containing three sheets of tabular data with column headings as follows:

- Sheet Title – “Affor”

County	Contract No	Townland	Scheme	Stage	Decision Date	Status
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- Sheet Title – “Felling”

Contract No	Scheme	County	Decision Date	Status
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- Sheet Title – “Coillte Felling”

FL App Ref	County	Submission Date
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- 36.** The Department submits that the above information provides “a list of all licence numbers in relation to Felling and Affor/Roads for Leitrim for 2021”. The Department further submits that the corresponding information for these [140] licences is available to view on the Department’s website and FLV application, “which will aid the appellant in looking for the information related to these licences”.
- 37.** The Investigator reverted to the Department, seeking clarity on the following specific points:



- Confirmation as to whether or not the Department has any means of filtering these lists further, i.e. to only include licences within the three 10km grid squares of relevance to the appellant's request;
- A call for the Department to include a further column to capture the "size of the forest in hectares", as stipulated in the appellant's original request; and
- Confirmation as to whether or not it is possible for the Department to provide the requested data in map format (showing the boundaries of squares G92, G93 and G94) as well as tabular format.

38. On 26 April 2023, the Department responded by stating that it could not provide the requested information in map format, and while not answering the specific queries raised; some further information was again proffered to this Office.

39. The Department official outlines that they had obtained a physical map and spent six hours on 25 April 2023 "comparing townlands located at G92, G93, and G94 with the records held on both the Department's FLV and Iforis databases for all of the townlands located within these co-ordinates". The Department official then submits that "this search returned no records relevant to the appellant's request" and they attach pictures (three JPEG files) of a map with an area marked purporting to represent the boundaries of the grid squares of relevance and with the names of the townland areas as searched, manually highlighted.

Findings

40. The AIE Regulations make clear that the default position is that an appellant is entitled to be provided with information in the form or manner requested. It is only possible to depart from that default position where the requirements of article 7(3)(a)(i) or 7(3)(a)(ii) of the AIE Regulations are satisfied and clear reasoning for the decision is provided under article 7(3)(b).

41. In [Right to Know v An Taoiseach \[2018\] IEHC 372](#) the decision of the High Court noted that "a public authority may refuse access to environmental information only where the requirements of the AIE Regulations have been substantively and procedurally adhered to" (paragraph 80). In this case the Court also held that "any decision on a request for environmental information must reflect the fact that the process of engagement with the request (whatever the ultimate outcome) was conducted in accordance with the letter and spirit of the Directive" (paragraph 84).

Is the information already available to the public in an easily accessible form or manner?

42. There is no evidence before me to suggest that the information requested by the appellant is publicly available in an easily accessible form or manner such that article 7(3)(a)(i) of the AIE



Regulations applies. The appellant has estimated that in order to manually process all the information relevant to her AIE request from the available website resources, if she would elect to do so, would take over 20 hours. The Department has not disputed this assertion and indeed the Department has itself at this point spent a number of hours attempting to compile the information concerned, without, in my view, satisfying the core request for environmental information concerned. The information cannot therefore be said to be publicly available in an easily accessible form or manner.

Is the access provided by the Department reasonable?

43. There is no evidence before me to suggest that referral of the appellant to website links where the information may (or may not) be available is reasonable such that article 7(3)(a)(ii) of the AIE Regulations applies. It seems apparent from recent information provided to this Office that the Department most likely does have access to relevant raw data, in electronic format, as argued by the appellant, such that relevant information can be produced in tabular format more efficiently than a manual trawl of available website resources. On this basis, I do not consider it reasonable to expect the appellant to spend a significant amount of time searching for information on website links provided, rather than the Department providing it in a more easily accessible manner as requested.

44. Notwithstanding the above, this Office notes that use of the Department's FLV comes with a restriction in its 'Terms of use' as follows:

"I understand that these maps and forestry licence details have been made available to inform the public of forestry licence applications and application decisions only. The details displayed may not be used for any other purpose."

As such, if information does exist on the Department's FLV, which satisfies this AIE request, it appears that there are limitations on the use to which this information can be put. Release of information under the AIE Regulations is considered to be release to the world at large, and should therefore not be subject to conditions or restrictions, which may be contrary to the aim and purpose of the AIE Directive. The reasonableness of the Department's release of environmental information via the FLV, under the AIE regime, is further undermined by the restrictions placed upon the information contained therein.

Is adequate reasoning provided for the decision made on the request?

45. The Department's response was to "grant" the appellant's request, insofar as it held the position that the information is publicly available "in a readily accessible format" on the Department's website. This decision was made without any reference by the Department to the requirements of article 7(3) of the AIE Regulations.



46. Based on the above assessments however, it is evident that this reasoning is deficient as the information is clearly not already available to the public in another form or manner that is easily accessible or otherwise reasonable.
47. I consider that the three preceding points are the key items for my deliberation in this case. Overall, I find that the Department have failed to deal with the appellant's request in a way that could be deemed consistent with the provisions of the AIE Regulations.

Current Status of the Requested Information

48. At this juncture, I believe that there is cause for uncertainty as to the Department's ability (due to the actual occurrence of relevant information) and/or technical capability (in particular to provide mapped data) to adequately provide information specific to the appellant's request. It is for this reason only, that I am choosing at this time not to direct the Department to compile and provide the information in the exact form and manner requested by the appellant.
49. In recent communications with this Office, there appears to be a shift in the Department's position in this case, from one of a blanket approach to refusing access to information in a certain form or manner, to a notable display of effort and indeed willingness to offer assistance in accessing specific information, which is welcomed.
50. Unfortunately, however, the continued absence of even limited reasoning for the Department's position in these matters is problematic. For example, although it is now suggested that there may be no information relevant to the scope of the appellant's request, i.e. such that no afforestation/felling licences may be identified as approved by the Forest Service within the specific land boundaries for the period concerned; there is insufficient evidence before me to categorically support this.
51. In any event, the Department at this point have not explicitly invoked article 7(5) as may be applicable, nor demonstrated whether the requirements of this provision have been met, i.e. the Department would have to demonstrate that reasonable and adequate steps have been taken to locate all information within the scope of the request.

Decision

52. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I annul the Department's decision and direct it to undertake a fresh decision-making process.



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53. I am directing the Department to engage with the appellant without delay and provide to her all relevant and available information in respect of her request, including to provide sufficient details as to the basis on which any fresh conclusions may be reached, and such that all action will be fully consistent with the requirements of the AIE Regulations.

Appeal to the High Court

54. 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

10 July 2023