



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-127738-G5G7B7

Date of decision: 30 June 2023

Appellant: Mr X

Public Authority: Irish Aviation Authority (IAA)

Issue: Whether the IAA was justified in refusing the appellant's request under Article 7(5) of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner annulled the decision of the IAA and directed it to carry out a fresh decision-making process.

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 12 June 2022, the appellant requested a copy of “all records, radar recording, ATC recordings, documents, memos, emails, reports, internal/external records, correspondence instructions, electrical records, notes on the sightings of unknown aerial object(s) reported to Shannon ATC by 3 number aircraft crew off the west coast of Ireland at 06.47 November 9th 2018.”
2. On 12 July 2022 the IAA responded, stating that it was unable to locate records relevant to the request.
3. The appellant requested an internal review on 20 July 2022.
4. On 22 August 2022 the IAA replied to the appellant, affirming the original decision on the basis that it was unable to locate records relevant to the request.
5. The appellant brought an appeal to this Office on 30 August 2022.
6. I am directed by the Commissioner for Environmental Information to carry out a review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant. 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’).

Scope of Review

7. The scope of this review is limited to whether the IAA was justified in refusing the appellants request under Article 7(5) of the AIE Regulations on the basis that no relevant records exist.

Preliminary Matters

8. This office has been unable to carry out a thorough review in this case due to the absence of engagement by the IAA. I understand that the Government’s aviation regulation reform



initiative involves the establishment of a single national civil aviation regulator and this has resulted in the IAA merging with the Commission for Aviation Regulation during the course of this investigation. This has led to some internal transfer of functions. However, as set out in further detail below, the conduct in relation to this appeal has been unacceptable and I expect the IAA to take steps to engage more fully with this Office and with its obligations under the AIE Regulations.

Submissions of the Parties

9. In his submission to this Office, the appellant outlines that the incident which he has requested records on has attracted significant media attention. In one such report highlighted by the appellant which was published on the website of the Irish Independent on 19 May 2022, a reporter from the Independent asked to view the relevant IAA report. A spokesperson for the IAA is quoted in the report as stating that “Given the lack of further reported sightings or recorded material, there was no definitive conclusion, the report cannot be released as it is confidential. Please note this is not specific to this occurrence - all reports recorded by the IAA’s occurrence reporting system are confidential,” Therefore, the appellant contends that some records must exist which are relevant to his request.
10. This Office’s investigator wrote to the IAA on four separate occasions between January and June 2023, inviting the IAA to make detailed submissions on this appeal. No response was received to any of this correspondence. In addition to this, the investigator called the IAA after receiving no response. During this call, he was informed that the AIE officer was working offsite on the day and was unavailable. He outlined the reasons for his call and was assured that the message would be passed on and he would receive a response as soon as possible. There was no further contact from the IAA.

Analysis and Findings

11. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested information is held by or for the public authority concerned. When considering an appeal 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 records, having regard to the particular circumstances.
12. In determining whether the steps taken are adequate in the circumstances, the Commissioner considers that a standard of reasonableness must necessarily apply. Therefore, during the course of investigations, public authorities are required to detail the steps taken to search for relevant records in their submission to this Office.
13. The evidence in "search" cases generally consists of the steps actually taken to search for the information along with miscellaneous other information about the records



management practices of the public authority insofar as those practices relate to the information in question.

14. The investigator in this case highlighted the relevant media reports to the IAA and specifically asked for an outline of the steps taken to search for the relevant report, in addition to details of guidelines, practice, procedures and arrangements in relation to the storage, archiving, retention and destruction of the type of information sought in this request. A detailed description of the searches carried out to cover the possibility of misfiled or misplaced records and a description of the records that would typically be created in a case such as this were also requested.
15. As outlined above there was no response to any of these requests which is both disappointing and unacceptable.
16. The IAA must comply with the AIE Regulations and should immediately put in place appropriate measures to ensure proper engagement with this Office in relation to AIE appeals.
17. In the absence of engagement with this Office's queries under the AIE process, I am not satisfied that reasonable searches have been carried out to locate the information requested. I do not know if the information sought exists, nor is it possible to know its content. If such information exists, it may comprise third party information, the release of which those third parties have not been afforded an opportunity to make comments. Therefore, because of the nature of the information sought, I am not in a position to direct release of the information.

Decision

18. Having carried out a review under article 12(5) of the AIE Regulations, I annul the decision of the IAA on the basis that I am not satisfied that reasonable and appropriate searches have been conducted to identify and retrieve environmental information within the scope of the appellant's request.
19. I am directing the IAA to carry out a fresh decision-making process. While doing so, the IAA must take all reasonable steps to identify and retrieve any environmental information held by or for it within the scope of the appellant's request and to set out in detail to the appellant the steps it has taken, as required by the AIE Regulations.



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Appeal to the High Court

20. 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

30 June 2023