



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-120518-X2W6N8

Date of decision: 1 June 2023

Appellant: Right to Know CLG

Public Authority: Environmental Protection Agency (the EPA)

Issue: Whether the EPA was justified, under articles 8(a)(i), 8(a)(iii), and 9(1)(a) of the AIE Regulations, in refusing access to certain information relating to the water abstraction register (non-drinking water).

Summary of Commissioner's Decision: The Commissioner annulled the EPA's decision in respect of information regarding 1,223 non-drinking water registrations coming within the scope of this review. He directed the EPA to undertake a fresh decision making process in respect of that information.

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 14 January 2022, the appellant submitted a request (Request 1) to the EPA seeking access to the following: “...a copy of the Water Abstraction Register (non drinking water) to include
 1. the name and address of the person or persons undertaking the abstraction as per S4 (1) b) of S.I. No. 261/2018 - European Union (Water Policy) (Abstractions Registration) Regulations 2018
 2. the address and location, including the grid coordinates, at which the abstraction is taking place as per S4 (1) c) of S.I. No. 261/2018 - European Union (Water Policy) (Abstractions Registration) Regulations 2018
 3. the name and contact details of the person responsible for registering the abstraction, if different from the person undertaking the abstraction as per S4 (1) d) of S.I. No. 261/2018 - European Union (Water Policy) (Abstractions Registration) Regulations 2018
 4. the purpose of the abstraction, any related planning conditions or court orders, and where appropriate provide linkages with other reporting requirements as specified by the Agency as per S4 (1) e) of S.I. No. 261/2018 - European Union (Water Policy) (Abstractions Registration) Regulations 2018
 5. details of any enforcement actions undertaken by EPA under S.I. No. 261/2018 - European Union (Water Policy) (Abstractions Registration) Regulations 2018 since the introduction of the SI on 24th July, 2018”.
2. The appellant stated “[w]hile, I understand the derogation for drinking water, I do not read the SI as having any provision to protect the identities or locations of persons involved in water abstraction, and do not believe that can be read into the legislation.”
3. On 17 January 2022, the appellant submitted a second request (Request 2) to the EPA seeking access to the following: “a list of named quarries with their GPS locations and related water abstraction data, from the dataset known as the Water Abstraction Register.”
4. The EPA dealt with Request 1 and Request 2 together, as they both concerned the water abstraction register. On 11 February 2022, the EPA issued its original decision, in which it identified and part-granted access to a water abstraction register excel sheet. While it released certain information contained therein, including relating to part 4 of Request 1, it refused access to certain information relating to parts 1 and 3 of Request 1 and, seemingly, Request 2 under articles 8(a)(i), 8(a)(iii), and 9(1)(a) of the AIE Regulations. It also refused access to certain information relating to part 2 of Request 1 under articles 8(a)(iii) and 9(1)(a) of the AIE Regulations. It further refused access to information relating to part 5 of Request 1 under article 7(5) of the AIE Regulations, on the basis that no relevant records exist.
5. On 14 February 2022, the appellant sought an internal review of the EPA’s decision, noting his position that “the public security provisions do not apply to non-drinking water abstraction (e.g. quarry abstractions).” On 8 March 2022, the EPA issued its internal review decision wherein it affirmed its



decision to part-grant access to the information sought, noting that it was also relying on article 8(a)(i) of the AIE Regulations in refusing access to information relating to part 2 of Request 1.

6. On the same day, the appellant brought an appeal to this Office and made submissions. In summary, he outlined that he was seeking a review of the EPA's decision to refuse access to information relating to the water abstraction register (non-drinking water) under articles 8(a)(i), 8(a)(iii), and article 9(1)(a) of the AIE Regulations.
7. I am directed by the Commissioner for Environmental Information to carry out a review under article 12(5) of the AIE Regulations. In so doing, I have had regard to the correspondence between the EPA and the appellant, as outlined above, and to correspondence between my Office and both the EPA and the appellant on the matter. I have also examined the content of the record at issue. 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)
8. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

9. 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.
10. The EPA in its original and internal review decisions part-granted access to a water abstraction register excel sheet (non-drinking water). The redacted copy of the excel sheet released to the appellant contained no visible redactions, however in its decision letters, the EPA explained that information relating to parts 1, 2, and 3 of the appellant's Request 1 and relating to the appellant's Request 2, had been withheld.

Columns

11. During the course of this review, the EPA provided this Office with a copy of the excel sheet released to the appellant (the released excel sheet), which comprised a total of 18 columns (A-R) and a copy of



the original, unredacted excel sheet (the clean excel sheet), which comprised a total of 27 columns (A-AA). As noted, the copy of the excel sheet released to the appellant contained no visible redactions, however the copy of the clean excel sheet provided to this Office was highlighted by the EPA to indicate that information relevant to nine columns on the clean excel sheet (B, C, D, I, Q, S, U, V, and Z) had been withheld from the released excel sheet. These columns are:

- i. Column B – Organisation (Licence) (Licence)
 - ii. Column C – Site (Licence) (Licence)
 - iii. Column D – Scheme / Licence Name
 - iv. Column I – Abstraction Point Name
 - v. Column Q – Easting
 - vi. Column S – Northing
 - vii. Column U – Townland Name
 - viii. Column V – Townland ID
 - ix. Column Z – Registration Contact (Licence) (Licence)
12. This Office’s Investigator highlighted to the EPA that the columns on the two excel sheets were not presented in the same order (see appendix 1). The EPA explained that the clean excel sheet presents the information as it appears when directly exported from the EPA database, whereas the released excel sheet reorders the information to make it more readable for the user – by way of example, the abstraction point code column is beside the registration number column as, the EPA stated, this makes it easier for the user to understand that a single registration can have multiple abstraction points. Having examined the clean excel sheet and the released excel sheet, I am satisfied that although in a different order, all of the columns on the clean excel sheet are included on the released excel sheet, apart from the nine columns (B, C, D, I, Q, S, U, V, and Z) in respect of which information was withheld under articles 8(a)(i), 8(a)(iii), and 9(1)(a) of the AIE Regulations.
13. This Office’s Investigator also asked the EPA why the townland names and townland IDs (columns U and V) had been redacted, given that they would seem to provide similarly unspecific locations to the rounded eastings and northings, which had been released. In response, the EPA stated that the townland names and townland IDs could, in fact, be released to the appellant. As that information is no longer being refused, I find that it does not fall within the scope of this review. I expect the EPA to release that information, in line with its undertaking to this Office.

Rows

14. The released excel sheet contained a total of 1,225 registrations (rows). The clean excel sheet provided to this Office contained a total of 2,818 registrations (rows), including drinking water registrations which do not fall within the scope of the appellant’s request. This Officer’s Investigator noted to the EPA that when the copy of the clean excel sheet is filtered using the abstraction purpose



column to exclude the “drinking water” purpose, the clean excel sheet contains a total of 1252 registrations.

15. The Investigator asked the EPA to explain why there are 1,252 registrations without drinking water on the clean excel sheet but only 1225 registrations without drinking water on the released excel sheet. In response, the EPA stated that there are 29 erroneous registrations contained on the clean excel sheet, which are not included on the released excel sheet, as the EPA considered they could be misleading. It noted that these errors related to erroneous or duplicate registrations that had not been successfully deleted by the registrant.
16. By way of example, the EPA pointed to registrations made under registration number R00044-01, in respect of which there are three registrations contained on the clean excel sheet but only one registration contained on the released excel sheet. The EPA explained that this is because the registrant had originally submitted two registrations in error and, while it later re-registered one, it failed to properly edit the two original registrations. Accordingly, the two original registrations, although they are not actual abstractions, remain active on the system. The EPA noted that without the 29 erroneous registrations there are 1,223 registrations, which are contained on the released excel sheet in addition to two further registrations, which were registered during the week the information was exported from the database and included in error, making up the 1,225 registrations on the released excel sheet. I note that these two further registrations (abstraction codes APR002876 and APR002877) post-date the appellant’s request and, as such, fall outside the scope of this review. Should the appellant wish to seek information relating to the 29 registrations, which the EPA considers to be erroneous, in addition to the two additions which post-date his request, it is open to the appellant to make a fresh request to the EPA for that information.

Appellant’s Statement of Appeal dated 8 March 2022

17. In a submission to this Office, the appellant outlined, in summary, that he was seeking a review of the EPA’s decision to refuse access to information relating to the water abstraction register (non-drinking water) under articles 8(a)(i), 8(a)(iii), and 9(1)(a) of the AIE Regulations. He made submissions in that regard and, under the heading “Personal Data”, stated the following:

“I accept that the release of an unredacted copy of the water abstraction data could release some personal data. Personal data could be redacted (in a similar manner to the way local authorities redact personal names in the release of Section 4 Trade Discharge Licenses). So this should not be a reason for refusal.

In almost all cases the abstraction entities are large corporates (quarries, data centers, irrigation operations etc), so the issue of release of personal data is only relevant in some cases. EPA are refusing access to all company names/locations as well as the personal data

The personal data is provided by a person as an agent/employee of the corporate entity abstracting the water.

Individuals are not abstracting water in a personal capacity, but acting as employees



If there are any individuals abstracting water in Ireland in large enough volumes to be in the Register, then their names/locations would be redacted. But it would be an unlikely scenario

In short, the refusal should not apply to any Companies, as they are not natural person.”

18. In light of all of the foregoing, I am satisfied that the appellant is seeking access to the names/locations of the organisations/companies who are registrants. Having examined columns B, C, D, I, Q, S, and Z, I am satisfied that this type of information is contained in columns B, C, D, I, Q, and S. I am satisfied that no organisations/companies are listed in column Z, which simply contains the names of the individuals who can be contacted in relation to the registration. Accordingly, having regard to the appellant’s statement of appeal in its entirety and notwithstanding part 3 of Request 1 or the fact that those individuals may be employees of organisations/companies, I do not consider column Z to fall within the scope of this review.

Scope

19. In all the circumstances, I am satisfied that the scope of this review is confined to whether the EPA was justified, under articles 8(a)(i), 8(a)(iii), and 9(1)(a) of the AIE Regulations, in refusing access to all of the information contained in six columns (B, C, D, I, Q, and S) on the clean excel sheet regarding the 1,223 non-drinking water registrations listed on the released excel sheet coming within the scope of this review.

Preliminary Matters

20. A review by this Office is considered to be de novo, which means that it is based on the circumstances and the law as they pertain at the time of the decision.

Analysis and Findings

Context

21. This case concerns the water abstraction register. According to the EPA’s [website](#) an abstraction is the removal or diversion of water from a river, lake, stream, spring, groundwater well, borehole or estuary for any purpose. The European Union (Water Policy) (Abstractions Registration) Regulations 2018 (S.I. No. 261 of 2018) (the Abstractions Registration Regulations) provide that if a person abstracts 25 cubic meters (25,000 litres) of water or more per day, they must register this abstraction with the EPA. The EPA explains that the purposes of such abstraction can include: agricultural activities such as dairy, beef, or horticultural; industrial activities such as EPA licensed facilities; commercial activities such as hotels; recreational activities such as golf courses or racecourses; as well as drinking water supply, aquaculture, hydropower, mining and quarrying activities.
22. The Abstractions Registration Regulations, among other things, set out the requirements to establish and maintain a register of abstractions, including the parameters for inclusion on the register. The



Abstractions Registration Regulations also outline the details that must be contained within a notification of an abstraction for entry on the register, before setting out that the EPA may share details that are entered on the register, other than personal information, in specific contexts.

23. The EPA's [website](#), under "Will my data be shared with anyone?" notes "Personal information will not be shared. The EPA may share information on abstractions with other public authorities with responsibility for water management in Ireland, such as local authorities, government departments, and state bodies. This is laid out in Article 6 of the Regulations (S.I. 261 of 2018)." Under "Can I access the register?" it notes:

"The EPA does not publish a detailed public abstraction register as it may contain personal or commercially sensitive information or other information that could jeopardise the security of water supplies. However, the EPA may share information on abstractions, except for personal information, with persons or public bodies, so they can satisfactorily discharge their statutory functions. This is set out in Article 6 of the European Union (Water Policy) (Abstractions Registration) Regulations 2018 (S.I. No. 261 of 2018)."

The website also contains information on how members of the public and public authorities can obtain versions of the register.

24. The Abstractions Registration Regulations form part of the transposition into Irish law of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (the Water Framework Directive). On 20 December 2022, the Water Environment (Abstractions and Associated Impoundments) Act 2022 (the Act) was passed, Part 4 of which concerns the Register of Abstractions. In addition to noting what is required to be held on the register, it outlines that the register shall be maintained in such form, including electronic form, as the EPA may determine; that the register shall be kept at the EPA; that the EPA shall make the register available for inspection by any person free of charge during office hours, and provide a copy of an entry in the register, or an extract from an entry, to any person on request free of charge; and that the EPA may publish any of the information contained in the register as it considers appropriate on the internet or in such other manner as it considers appropriate. I understand that the Act will revoke the Abstractions Registration Regulations, however the whole Act has not yet been commenced. During the course of this review, this Office's Investigator indicated to the EPA that it appeared that some of the withheld information might already be in the public domain due to information contained, for example, on the EPA's website in respect of different types of licences. She referred to one of the registrations, noting that some information relating to that registration, including information regarding water abstraction, was contained in respect of the Integrated Pollution Prevention Control (IPPC) licence referenced on the abstractions register. She asked if the EPA could clarify what withheld information (if any) in respect of each registration might already be in the public domain.
25. In response, the EPA explained that the abstraction register involves self-reporting and the information contained in the register is inserted by those registering their water abstraction details – the EPA does not insert any information. It stated that there is a "licence code" column to allow registrants to enter other codes relevant to EPA licences etc., however not every registrant necessarily inserts this



information and it is not a mandatory requirement to do so. It explained that, currently, water abstraction is not an activity regulated by the EPA and while some EPA licensees abstract water, they are not required to report this separately to the EPA. It stated that nonetheless some licensees make reference to their abstraction in their annual environmental reports, which are published on the EPA Website. The EPA stated that some of the organisations listed happen to undertake EPA licensed activities, however not all have inserted their EPA licence reference in the “licence code” column. It noted that if you were to use the licence reference number to search for EPA licences using the EPA website search tool, you could identify the organisation name associated with it from the website. The EPA stated that the redacted information at issue may be contained in the publicly available files in an unstructured form. However, it stated that in order to verify this it would need to review every file on the EPA website to determine what is already in the public domain.

26. The EPA, under articles 8(a)(i), 8(a)(iii), and 9(1)(a) of the AIE Regulations refused access to all of the information contained in six columns on the clean excel sheet regarding the 1,223 non-drinking water registrations listed on the released excel sheet coming within the scope of this review. The information refused can generally be described as follows:
- i. Column B – Organisation (Licence) (Licence) – The name of the registrant. This is completed for all registrations at issue.
 - ii. Column C – Site (Licence) (Licence) – The name of the registered site. This is completed for all registrations at issue.
 - iii. Column D – Scheme / Licence Name – The name of the registered scheme/licence. This is **not** completed for all registrations at issue.
 - iv. Column I – Abstraction Point Name – The name of the abstraction point. This is completed for all registrations at issue.
 - v. Column Q – Easting – The precise easting of the abstraction point. This is completed for all registrations at issue.
 - vi. Column S – Northing – The precise northing of the abstraction point. This is completed for all registrations at issue.
27. For the purposes of this decision, I will examine the exemptions relied upon by the EPA in the following order; article 8(a)(iii), article 9(1)(a), and finally article 8(a)(i) of the AIE regulations.

Article 8(a)(iii)

28. The EPA, under article 8(a)(iii) of the AIE Regulations refused access to all of the information contained in columns B, C, D, I, Q, and S on the clean excel sheet regarding the 1,223 non-drinking water registrations listed on the released excel sheet coming within the scope of this review.
29. Article 8(a)(iii) of the AIE Regulations provides that a public authority shall not make available environmental information where disclosure of the information would adversely affect the protection of the environment to which that information relates. This provision seeks to transpose Article 4(2)(h)



of the AIE Directive, which in turn is based on Article 4(4)(h) of the Aarhus Convention. I note that the AIE Directive and the Aarhus Convention provide examples of the type of information intended to be protected, respectively referring to “the location of rare species” and “the breeding sites of rare species”.

30. Article 8(a)(iii) must be read alongside article 10 of the AIE Regulations. Article 10(1) of the AIE Regulations provides that notwithstanding articles 8 and 9(1)(c) of the AIE Regulations, a request for environmental information shall not be refused where the request relates to information on emissions into the environment. Article 10(3) of the AIE Regulations requires a public authority to consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal. Article 10(4) of the AIE Regulations provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest served by disclosure. Article 10(5) of the AIE Regulations provides that nothing in article 8 or 9 shall authorise a public authority not to make available environmental information which, although held with information to which article 8 or 9 relates, may be separated from such information.
31. The Minister’s Guidance, in considering “Material the disclosure of which would make it more likely that the environment to which such material related would be damaged” outlines:

“This exclusion is designed to cover information such as that pertaining to the location of endangered species where, for example, disclosure of detailed information would pose a risk to the continued integrity of rare specimens” (paragraph 11.4).
32. The Aarhus Guide notes that the equivalent provision in the Aarhus Convention allows public authorities “to protect certain sites, such as the breeding sites of rare species, from exploitation — even to the extent of keeping their location a secret. It exists primarily as a safeguard, allowing public authorities to take harm to the environment into consideration when making a decision whether or not to release information.”
33. I am satisfied that the purpose of article 8(a)(iii) of the AIE Regulations is to allow for the withholding of information where disclosure would be harmful to the protection of the environment. When relying on article 8(a)(iii) the public authority should identify the environment to which the information at issue relates and explain how disclosure of the information at issue would adversely affect the protection of that environment. Again, the public authority must demonstrate a clear link between disclosure of the specific information that it has withheld and any adverse effect. The risk of the protection of the environment being undermined must be reasonably foreseeable and not purely hypothetical.
34. The EPA’s website explains that it is necessary to register abstractions in order to manage and protect our waters. It states:

“Water abstractions need to be registered so that our rivers, lakes, estuaries, and groundwaters can be managed and protected for everyone’s benefit. To assess if our water resources are being managed sustainably, it is important to know what volume of water is being abstracted and from which rivers, lakes, and groundwaters.



The water abstractions register is used, along with other information, to responsibly manage water resources. This involves making sure that river flows, lake, and groundwater levels can sustain aquatic environments, while also allowing the use of water for drinking water supply and other purposes such as agricultural, commercial, industrial, and recreational. Unsustainable abstractions can also be identified and managed.”

35. In its original and internal review decisions, the EPA indicated that it was refusing access to all of the information at issue under article 8(a)(iii) of the AIE Regulations on the basis that its disclosure would adversely affect the protection of the environment. It submitted that all of the information at issue could identify exact abstraction locations. In its submissions to this Office, the EPA stated, in particular, that the exact grid references were not released as they would pinpoint abstraction locations. The EPA noted that it is primarily concerned with protecting wider water resources, contained in aquifers, rivers and lakes, on which the registered abstractors and other abstractors depend for clean water.
36. The EPA stated that abstraction points are often vulnerable infrastructure. The EPA submitted that disclosure of the exact grid references would present a risk to this vulnerable infrastructure, potentially resulting in pollution. The EPA noted that abstraction points provide a direct conduit for pollutants into the wider water resource. The EPA also outlined that pollution at abstraction points would impact on the relevant abstractors and other abstractors, including drinking water abstractors, using the same body of water. It further noted that some abstractors indicated that, although not the primary purpose, the water abstracted is also used as a domestic water supply source.
37. The EPA submitted that, in response to EU Directive 2016/1148, which concerns measures for a high common level of security of network and information systems across the EU (the NIS Directive), abstraction location information is not routinely made publicly available by the various responsible authorities across Europe. It made no specific reference to provisions of the NIS Directive. The EPA stated that grid references rounded to the nearest kilometre is enough location information to assess the environmental impact of abstractions on associated rivers, lakes, or groundwater bodies within a catchment.
38. As indicated, the wording of article 8(a)(iii) of the AIE Regulations makes it clear that there must be some adverse effect on the protection of the environment to which the information at issue relates in order for the exception to apply. There must be a clear link between disclosure of the specific information that it has withheld and any adverse effect. The risk of the protection of the environment being undermined must be reasonably foreseeable and not purely hypothetical. A mere assertion of an expectation of harm is not sufficient.
39. I am satisfied that all of the information at issue, as contained on the abstractions register, relates to the water environment and to the protection of that environment. While the EPA has indicated that disclosure of the information at issue would lead to the pollution of the wider water resource, the EPA has not explained how, or the likelihood that, such pollution would arise. In my view, it has failed to provide sufficient evidence to support the assertion that pollution would occur on foot of the release of the information at issue.



40. Accordingly, I do not find that the EPA's reliance on article 8(a)(iii) of the AIE Regulations is justified. In the circumstances of this case, I am not required to consider article 10 of the AIE Regulations. However, I would highlight that in circumstances where article 8(a)(iii) is found to apply, article 10 of the AIE Regulations must be considered, including article 10(4) which sets out that the grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis, having regard to the public interest served by disclosure.

Article 9(1)(a)

41. The EPA, under article 9(1)(a) of the AIE Regulations, refused access to all of the information contained in columns B, C, D, I, Q, and S on the clean excel sheet regarding the 1,223 non-drinking water registrations listed on the released excel sheet coming within the scope of this review.
42. Article 9(1)(a) of the AIE Regulations provides that a public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect international relations, national defence, or public security. This provision seeks to transpose Article 4(2)(b) of the AIE Directive, which in turn is based on Article 4(4)(b) of the Aarhus Convention. Article 9(1)(a) must also be read alongside article 10 of the AIE Regulations.
43. When relying on article 9(1)(a) of the AIE Regulations, the public authority should identify the relevant limb(s) of the provision concerned (i.e. international relations, national defence, or public security) and show how disclosure of the information at issue would have an adverse effect on that limb(s). Again, the public authority must demonstrate a clear link between disclosure of the specific information that it has withheld and any adverse effect. The risk of international relations, national defence, or public security being undermined must be reasonably foreseeable and not purely hypothetical.
44. The term "public security" is not defined in the AIE Regulations, the AIE Directive, or the Aarhus Convention. However, I note that Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union outlines, at Recital 19:

"The concept of 'public security', within the meaning of Article 52 TFEU and as interpreted by the Court of Justice, covers both the internal and external security of a Member State, as well as issues of public safety, in order, in particular, to facilitate the investigation, detection and prosecution of criminal offences. It presupposes the existence of a genuine and sufficiently serious threat affecting one of the fundamental interests of society, such as a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or the peaceful coexistence of nations, or a risk to military interests. In compliance with the principle of proportionality, data localisation requirements that are justified on grounds of public security should be suitable for attaining the objective pursued, and should not go beyond what is necessary to attain that objective."



45. In its original and internal review decisions, the EPA indicated that it was refusing access to all of the information at issue under article 9(1)(a) of the AIE Regulations on the basis that it could identify exact abstraction locations and the disclosure of such information would adversely affect public security.
46. In its submissions to this Office, the EPA again noted that abstraction points are often vulnerable infrastructure and knowledge of the exact grid references could make this infrastructure a target for malicious damage by third parties who are unhappy with the operator. It stated that the same third parties could also attempt to contaminate the water body from which the water is being abstracted.
47. In noting that the disclosure of the exact grid references could present a security risk for the relevant abstractors and for other abstractors, including drinking water abstractors using the same water body to supply their water, the EPA stated that it seeks to ensure that this does not arise and one of the ways it does so is by protecting relevant data. It also submitted that there is EU legislation which prevents the disclosure of information on the location of water supplies and other critical national infrastructure. It explained that while non-water supply abstraction may not be deemed critical national infrastructure, the abstraction is critical to the abstractor.
48. As indicated above, the wording of article 9(1)(a) of the AIE Regulations makes it clear that there must be some adverse effect on public security in order for the exception to apply. There must be a clear link between disclosure of the specific information that it has withheld and any adverse effect. The risk of public security being undermined must be reasonably foreseeable and not purely hypothetical. A mere assertion of an expectation of harm is not sufficient.
49. While the EPA has indicated that disclosure of the specific abstraction locations may lead to vandalism of the abstraction infrastructure and the pollution of the wider water resource, the EPA has not explained how, or the likelihood that, such vandalism and pollution would arise. In my view, it has failed to provide sufficient evidence to support the assertion that vandalism and pollution would occur on foot of the release of the information at issue such that public security would be undermined.
50. Accordingly, I do not find that the EPA's reliance on article 9(1)(a) of the AIE Regulations is justified. In the circumstances of this case, I am not required to consider article 10. However, I would again highlight that in circumstances where article 9(1)(a) is found to apply, article 10 of the AIE Regulations must be considered, including article 10(4) which sets out that the grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis having regard to the public interest served by disclosure.

Article 8(a)(i)

51. The EPA, under article 8(a)(i) of the AIE Regulations, refused access to all of the information contained in columns B, C, D, I, Q, and S on the clean excel sheet regarding the 1,223 non-drinking water registrations listed on the released excel sheet coming within the scope of this review.
52. Article 8(a)(i) of the AIE Regulations provides that a public authority shall not make available environmental information where disclosure of the information would adversely affect the confidentiality of personal information relating to a natural person who has not consented to the



disclosure of the information, and where that confidentiality is otherwise protected by law. This provision seeks to transpose Article 4(2)(f) of the AIE Directive, which in turn is based on Article 4(4)(f) of the Aarhus Convention. Article 8(a)(i) must also be read alongside article 10.

53. When relying on article 8(a)(i) of the AIE Regulations a public authority must show that the information at issue is personal information relating to a natural person, who has not consented to its disclosure; that the personal information has an element of confidentiality, that the confidentiality of that personal information is provided by law; and that the disclosure of the information at issue would adversely affect that confidentiality. The public authority must demonstrate a clear link between disclosure of the information that has actually been withheld and any adverse effect. The risk of the confidentiality being undermined must be reasonably foreseeable and not purely hypothetical.
54. In its internal review decision, the EPA indicated that it was refusing access to all of the information at issue under article 8(a)(i) of the AIE Regulations. It outlined that it considered information such as the name and address of the person(s) undertaking the abstraction and the address and location of the abstraction to be personal information. In respect of the exact easting and northing information, the EPA outlined that it had released the rounded rather than exact grid reference information in order to provide protection regarding the identification of the abstractor, as the abstraction is usually adjacent to the abstractor's activity/property.
55. In its submissions to this Office dated 5 May 2022, the EPA stated that the names and addresses of all entities as well as the names of individuals listed on the register is personal data. It referred to the definition of "personal data" as set out in the General Data Protection Regulation (GDPR) which provides that "'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person". It stated "information on the individual abstractor names, addresses, exact grid-coordinates or contact names were not provided as, by this definition, they are deemed personal information". It further stated "[w]hile some of the non-drinking water abstractors are quarries, data centres etc., over one third are described as either "agriculture" or as "unknown purpose" and many of these appear with personal identifiers (e.g. John Browns Farm, including the address of the house)."
56. In response to the appellant's contention that "refusal should not apply to any Companies, as they are not natural persons", the EPA stated, "[t]he EPA disagrees. Companies are defined as persons under the Interpretation Act. A person can be identified from the name of the company they own. Therefore the EPA is of the view that the names, addresses and locations of those entities abstracting water, whether organisations or individuals, is personal information". The EPA also stated that the particular data to which access was refused is personal information protected under the AIE Regulations and the Freedom of Information (FOI) Act 2014. Furthermore, the EPA referred to Article 6 of the Abstraction Registration Regulations.



57. In its submissions to this Office dated 24 November 2022, the EPA indicated, in particular, that much of the information contained in withheld columns B, C, D, and I comprises personal information the disclosure of which could adversely affect the confidentiality of personal information relating to a natural person. It noted that typically, the information concerned is personal data that provides the name of individual farmers who have registered their abstraction. It again noted that individuals also often live adjacent to or near the abstraction and may rely on the abstraction for their domestic water supply. It further stated that these individuals who registered their water abstractions expect the location of their (farm) water supply to be kept confidential.
58. The EPA reiterated that personal information is protected under the GDPR and the FOI Act. The EPA made no further reference to the FOI Act. In respect of the GDPR, it is important to note that data protection legislation does not prohibit public authorities from processing AIE requests where the records sought contain personal data. Article 86 of the GDPR provides that personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to the GDPR. Section 44 of the Data Protection Act 2018 provides that, for the purposes of Article 86 of the GDPR, personal data contained in environmental information may be disclosed where the information is made available under and in accordance with the AIE Regulations pursuant to an AIE request. It is clear that the GDPR and the Data Protection Acts do not provide for a blanket prohibition on the disclosure of personal data as part of an AIE request. It also appears to me that the AIE Regulations seek to reconcile public access to official documents with the right to the protection of personal data in the manner envisaged by the GDPR. They do so by providing that refusal is only permissible in circumstances where disclosure would adversely affect the confidentiality of personal information.
59. The EPA again referred to Article 6 of the Abstractions Registration Regulations which, as previously indicated, provides that the EPA “may share details entered onto the register in relation to an abstraction, with the exception of personal details, with such other person as it considers necessary for the discharge of its statutory functions, or to enable any other public body to satisfactorily discharge its statutory functions”. The EPA also outlined that the abstraction registration section on its website sets out that personal information will not be shared. It stated that the registrant signs a consent form (see page 7, item 16, of its registration [guidance](#)). It noted that the terms and conditions of this form state that the EPA will not share any personal information that will identify the registrant.
60. The EPA stated its belief that, as registrants are informed that personal information will be kept confidential, if it were to disclose information on farmers / the location of farms this could result in non-compliance or a reluctance on the part of the farming sector in respect of abstraction registration. The EPA submitted that the release of personal data would prejudice its ability to operate the register and to update and collect water abstraction information in future. I note that the Abstractions Registration Regulations make it an offence to not register an abstraction of water of more than 25 cubic metres per day, to knowingly provide false information with regard to a relevant abstraction or to fail to comply with a notice requiring specified information.



61. The EPA contended that information on farms and farmers is held by the Department of Agriculture, Food and the Marine (the Department), however this information is protected and not typically shared with other public authorities. The EPA stated that the Department indicated to the EPA that unless the EPA agrees that data on individual farms and farmers is not made public, the Department will not share information on farmers and farms with the EPA. I note that the EPA explained that it is the registrants who input the data on the water abstraction register, not the EPA or the Department.
62. As indicated above, when relying on article 8(a)(i) of the AIE Regulations a public authority must show that the information at issue is personal information relating to a natural person, who has not consented to its disclosure; that the personal information has an element of confidentiality, that the confidentiality of that personal information is provided by law; and that the disclosure of the information at issue would adversely affect that confidentiality. Accordingly, one of the first considerations for a public authority, in ascertaining whether article 8(a)(i) of the AIE Regulations is engaged, is to examine the information at issue to ascertain whether it is personal information relating to a natural person.
63. In this case, the EPA seems to have referred to article 8(a)(i) of the AIE Regulations in seeking to refuse access to the information at issue in respect of all of the 1,223 registrations coming within the scope of this review. A brief inspection of the registrations indicates that while some of the registrants do appear to be individuals, they also comprise a significant number of companies, organisations, and state bodies. Accordingly, it appears that certain information clearly cannot be said to be personal information, with the required quality of confidence, relating to a natural person, as is necessary to engage article 8(a)(i) of the AIE Regulations.
64. Accordingly, I am of the view that the EPA adopted a blanket approach to its refusal of all of the information at issue contained in columns B, C, D, I, Q, and S on the clean excel sheet regarding the 1,223 registrations coming within the scope of this review by claiming that article 8(a)(i) applied to all of the information concerned, regardless of its specific nature. This is not an appropriate application of the provision. While it may be the case that article 8(a)(i) is applicable in respect of certain information relating to some registrations (subject to article 10) there is no evidence to suggest that any substantive consideration was given to the actual information concerned, to determine if article 8(a)(i) of the AIE Regulations properly applies. It is most disappointing that the EPA does not appear to have fully engaged with its obligations under the AIE Regulations.
65. I do not find that the EPA's reliance on article 8(a)(i) of the AIE Regulations is justified. In the circumstances of this case, where the EPA has not fully engaged with its obligations under the AIE Regulations and properly undertaken its role of assessing the actual information at issue, and in light of the number of registrations involved, I do not believe that it is appropriate for me to direct the release of information at this point. I acknowledge that this will come as a disappointment to the appellant, especially given the length of time that has now passed since the request, for which I apologise.
66. I consider that the most appropriate course of action to take is to annul the EPA's decision in respect of all of the information contained in columns B, C, D, I, Q, and S on the clean excel sheet regarding the



1,223 non-drinking water registrations on the released excel sheet coming within the scope of this review and direct it to undertake a fresh decision-making process in respect of that information. Prior to doing so, having regard to the comments made by the appellant in his statement of appeal to this Office, I would recommend that the parties engage regarding the precise nature of the information sought.

Decision

67. Having carried out a review under article 12(5) of the AIE Regulations, I hereby annul the EPA's decision in respect of the information contained in columns B, C, D, I, Q, and S on the clean excel sheet regarding the 1,223 non-drinking water registrations coming within the scope of this review. I direct the EPA to undertake a fresh decision making process in respect of that information and expect it to release the information contained in columns U and V on the clean excel sheet regarding the relevant registrations, which it stated is no longer being refused.

Appeal to the High Court

68. 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

1 June 2023



Appendix 1

Clean Excel Sheet Provided to OCEI (Column Letter and Title)	Excel Sheet Released to Appellant (Column Letter and Title)
Column A – Reg No (Licence) Licence)	Column A – Reg No
Column B – Organisation (Licence) (Licence)	Withheld
Column C – Site (Licence) (Licence)	Withheld
Column D – Scheme /Licence Name	Withheld
Column E – Licence Code	Column P – Licence Code
Column F – Abstraction Purpose	Column C – Abstraction Purpose
Column G – Other Abstraction Purpose	Column F – Other Abstraction Purpose
Column H – Abstraction Point Code	Column B – Abstraction Point Code
Column I – Abstraction Point Name	Withheld
Column J – Primary Use	Column D – Primary Use
Column K – Secondary Use	Column E – Secondary Use
Column L – Abstraction Type	Column G – Abstraction Type
Column M – Maximum Daily Volume Estimate (m3/d)	Column H – Maximum Daily Volume Estimate (m3/d)
Column N – Maximum Daily Volume Estimate for Scheme (m3/d)	Column I – Maximum Daily Volume Estimate for Scheme (m3/d)
Column O – No. of Abstraction Points	Column J – No. of Abstraction Points
Column P - County	Column K – County
Column Q – Easting	Withheld
Column R – Easting (rounded)	Column L – Easting (rounded)
Column S - Northing	Withheld
Column T – Northing (rounded)	Column M – Northing (rounded)
Column U – Townland Name	Withheld
Column V – Townland ID	Withheld
Column W – Created On	Column O – Created On
Column X – Restrictions Exist	Column Q – Restrictions Exist
Column Y – Further info on Restrictions	Column R – Further info on Restrictions
Column Z – Registration Contact (Licence) (Licence)	Withheld
Column AA - Status	Column N – Status