



**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-119761-F1D1Q9	OCE-125790-Z0S2H6	OCE-132200-J8B4N5
OCE-120471-J6M2B9	OCE-125793-Y8F4B0	OCE-133297-N4F7G5
OCE-125080-H6N7N8	OCE-125856-V9Z3Y1	OCE-133307-R2Z4D2
OCE-125285-R5R7T4	OCE-125858-Z7P9T4	OCE-135259-H7Z9K9
OCE-125566-Z6L2Z3	OCE-125863-L2L3H8	OCE-135364-L1W0G6
OCE-125567-P6G3H5	OCE-127670-P3C6F4	OCE-137101-Q4H1J5
OCE-125768-L4S6W8	OCE-129127-Z0Z4H4	

Date of decision: 30 May 2023

Appellants: Various

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

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

Summary of Commissioner's Decision: The Commissioner annulled the Department's decision in each case and directed the Department 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 currently reviewing our procedures for investigating appeals to ensure we operate as efficiently as possible.
2. The increase in appeals in relation to forestry issues has been challenging for the Department. The Department has allocated additional resources to process AIE requests and subsequent appeals and that is most welcome.
3. In an effort to reduce delays, this Office has carried out a review of our current case load to re-examine where informal solutions could be found and information could be released without the need for a formal decision. As a part of this exercise there has been engagement with the Department regarding appeals where decision making fell short of the requirements of the AIE Regulations.
4. The 20 appeals at issue here were each the subject of a decision by the Department on a date between 18 February 2022 and 3 April 2023. Each relates to a request for environmental information relating to forestry. They were all identified as cases where the Department's decision-making process did not comply with the responsibilities placed on public authorities by the AIE Regulations.
5. 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

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

Initial Analysis and Findings

7. The Department's decisions on these cases refused the information sought. The majority of the decisions stated, in almost identical terms, that no information existed relevant to the request. From a review of the Department's decision-making records on these files, it appears to me that few, if any, searches were carried out in relation to the requests in which article 7(5) of the AIE Regulations was applied.



8. There is also a notable and almost complete absence of reasons for refusal of the requests in the Department's decisions. The duty to give reasons, which arises not only by virtue of the AIE Regulations and Directive, is 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.
9. It is unacceptable that the Department provided identical decisions in response to so many requests, without providing even a basic level of reasoning. This is contrary to both the letter and the spirit of the AIE Regulations, by which the Department is bound.
10. 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 the Department would be annulled and the request remitted to the Department. In the circumstances of these cases, where adequate searches have not 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.
11. Having reached this preliminary conclusion, this Office's investigator contacted the Department to express concern at the manner in which these cases had been handled. The Department agreed that it may not have complied fully with the Regulations when processing these requests.
12. 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, which should have been carried out by the Department.
13. I consider the most appropriate course of action is to annul the Department's decisions in each of these appeals and to remit all 20 cases back to the Department 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 Department would, in effect, be making first instance decisions, would take more time than it will take for the Department to review the requests and issue original and, where necessary, internal review decisions.

Decision

14. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I hereby annul the Department's decision in each case. I direct the Department to undertake a fresh decision-making process in respect of each of the requests.



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Appeal to the High Court

15. 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 May 2023