



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-131983-N2F3X9

Date of decision: 12 May 2023

Appellant: Dr. Fred Logue

Public Authority: Department of Public Expenditure, NDP Delivery and Reform [the Department].

Issue: Whether the Department correctly applied article 7(8) of the AIE Regulations to the request; the Department's adherence to the timelines for decision-making as set out in article 7 of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner found that the Department had failed to adhere to the timelines for decision-making as set out in article 7(8) of the AIE Regulations, but did ultimately release all requested information to the appellant.

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 6 September 2022, the appellant requested access to a letter from Minister McGrath referred to in an article in a local newspaper in March 2022. The article related to a flood scheme in County Mayo and quoted a county councillor as saying he “had a letter from Minister McGrath in connection with the River Deel scheme”.
2. The Department responded to the appellant on 6 October 2022, stating that it was unable to identify any record containing a letter from the Minister addressed to the councillor. The Department invited the appellant to make a more specific request. The letter provided the appellant with the details of searches carried out and noted that it may be the case that the letter referred to in the article was addressed to another individual and subsequently forwarded to the councillor.
3. The appellant stated his view that his request was sufficiently specific and sought an internal review. He also suggested that the Department may have misinterpreted the request and identified dates, between which the letter may have been sent. The Department asked the appellant to confirm that he wished for a search to be carried out for relevant letters issued between these dates, and the appellant stated that it was a matter for the Department to decide what searches were to be carried out. The Department wrote to the appellant several more times asking him to confirm whether he wished the decision-maker to go ahead with an amended search.
4. The appellant submitted this appeal to my Office on 2 November 2022. My Office wrote to the Department requesting that it provide my Office with a copy of the internal review decision related to the request. This did not occur. The appeal was accepted by my Office on 10 November 2022.
5. The Department ultimately issued a letter to the appellant on 14 December 2022, refusing the original request under article 9(2)(b) of the AIE Regulations, on the grounds that the request remained formulated in too general a manner. The Department then carried out an internal review. The internal reviewer found six records of letters written by the Minister relating to the flood scheme. The Department was unable to identify which letter was the one mentioned in the article, so it released all six letters to the appellant on 13 January 2023. These decisions were issued outside the timelines set out in article 7 of the AIE Regulations, which will be discussed below, and therefore are not technically “decisions” for the purposes of the Regulations, but I will refer to them as such for the sake of convenience.
6. I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the Department. In addition, I have had regard to:
 - a. 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);
 - b. Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - c. 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
 - d. The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (‘the Aarhus Guide’).



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

Scope of Review

8. The Department issued an original decision and an internal review decision outside the timeline set out in the AIE Regulations. Due to this, the decision under review under article 12(5) of the AIE Regulations in this case is the deemed refusal of the appellant's request, which arose on 7 November 2023. While the information requested has since been provided to the appellant, my jurisdiction under article 12(3)(a) of the AIE Regulations to review a 'refusal' includes review on the basis that a request has been inadequately answered or has otherwise not been dealt with in accordance with Article 3, 4 and 5 of the AIE Directive. Article 3(2) and (3) of the AIE Directive deals with the timelines for a decision on a request and the approach that must be taken by a public authority where a request is formulated in too general a manner. Those provisions are implemented by article 7(2) and (8) of the AIE Regulations.
9. Accordingly, the scope of my review in this case is confined to the Department's adherence to the timelines set out in the AIE Regulations.

Analysis and Findings

10. The appellant's request was made on 6 September 2022. Article 7(2)(a) of the AIE Regulations provides that a public authority shall make a decision on a request as soon as possible, and at the latest not later than one month from the date on which such request is received by the public authority. Accordingly, a decision on this request was due on 5 October 2022. By operation of article 10(7), a refusal was deemed to have been made on that date.
11. While a public authority may refuse a request on the grounds that it has been made in too general a manner under article 9(2)(b), it may only do so having invited the requestor to make a more specific request under article 7(8). Such an invitation must be made as soon as possible, and at the latest within one month of the request. The Department's engagement with the applicant was outside the time period in article 7(8) and, in any event, such engagement could not have the effect of extending the time for the Department's decision. In circumstances where a requester chooses not to make a more specific request when asked to do so, the time for the decision continues to run from the date the request was made. If a requester chooses to make a more specific request, that would be a new request under the AIE Regulations, and the time for the decision would be not later than one month from the date of that new request. The only way that the Department could extend the time for its decision was by the application of article 7(2)(b), which it did not seek to do in this case.
12. The internal review request was made on 6 October 2022, meaning that an internal review decision was due on 5 November 2022. As set out above, the Department did not provide the appellant with an internal review decision until 13 January 2023.
13. As the above does not comply with the timelines set out in the AIE Regulations, the request was not dealt with in accordance with the provisions of the AIE Regulations, or with articles 3, 4 or 5 of



the AIE Directive. The Department did ultimately deal with the request in a practical manner, and having reviewed the relevant correspondence, I am satisfied that the intention of the Department was to comply with its obligations under the AIE Regulations. There appears to have been a genuine misunderstanding on the part of the Department regarding the timelines under the AIE Regulations, which apply strictly, with only article 7(2)(b) allowing for the extension of the time for making a decision, as set out above.

14. In correspondence with my Office, the Department has recognised the issues that arose and has committed to reviewing its procedures for the handling of AIE requests following receipt of this decision. Errors, while regrettable, happen. I believe the key issue is how such errors are dealt with. In this case the Department released the information sought. Furthermore, in correspondence with my Office, the Department has recognised the issues that arose and has committed to reviewing its procedures for the handling of AIE requests following receipt of this decision. I welcome the Department's actions and commitment in this regard

Decision

15. Having carried out a review under article 12(5) of the AIE Regulations, I annul the decision of the Department, being the deemed refusal of the appellant's request for an internal review. As the Department has released the requested information to the appellant, I make no further direction.

Appeal to the High Court

16. 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.

Ger Deering

Commissioner for Environmental Information

12 May 2023