



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-124303-G4V2N6

**Date of decision:** 31 March 2023

**Appellant:** Mr. B.

**Public Authority:** Galway County Council

**Issue:** Whether the Council holds further information relevant to the request and whether the Council were justified in withholding certain information from the documents provided to the appellant.

**Summary of Commissioner's Decision:** The Commissioner found that the Council was justified in refusing part of the request under article 7(5) of the AIE Regulations as it does not hold the records in question. The Council was not justified in redacting information from the records which were released. The Commissioner directed release of the relevant unredacted records.

**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 9 March 2022, the appellant requested information relating to the application made by Údaras na Gaeltachta and the authorisation given by Galway County Council to permit the collection, transport and addition of all effluent and sewage generated at a named industrial estate facility, for processing and discharge to sea from the wastewater treatment plant at Ros 'n Mhíl.
2. On 4 April 2022, the Council released a number of records relating to the request with some redactions.
3. On 5 April 2022, the appellant sought an internal review of the decision, as he believed the Council held further records relevant to the request.
4. In its internal review decision of 3 June 2022, the Council varied the original decision and released a number of additional records. Some information relating to details of staff who undertook work on behalf of the Council, in relation to managing the conditions of the discharge licence, were redacted from relevant records.
5. The appellant submitted an appeal to this Office on 31 May 2022, as he believed the Council held further relevant records and that he was entitled to unredacted copies of records which had been released.
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 this review, I have considered the submissions made by the appellant and the Council. I have also examined the contents of the records 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').

What follows does not make findings on each and every matter raised; however, all relevant information has been taken into account.

## **Scope of Review**

7. In accordance with article 12(5) of the AIE Regulations, the role of this Office is to review the Council's internal review decision and to affirm, annul or vary it. Where appropriate in the circumstances of an appeal, the Commissioner will require the public authority to make available environmental information to the appellant.



8. The first part of this review is whether the Council was justified in refusing part of the request under article 7(5) of the AIE Regulations.
9. The second part of this review concerns whether the Council is justified in redacting certain information from the documents provided to the appellant under the provisions of the AIE Regulations.

### **Analysis and Findings**

#### **Whether the Council holds further information relevant to the request**

10. The appellant contends that the Council should hold further information in relation to his request, specifically an original application made to the Council and the subsequent decision in relation to activities outlined in his original request.
11. Article 7(5) of the AIE Regulations is the relevant provision of the Regulations when a request is refused on the grounds that a public authority does not hold the information sought, as follows:
  - a. *“7(5) where a request is made to a public authority and the information requested is not held by or for the authority concerned, that authority shall inform the applicant as soon as possible that the information is not held by or for it.”*
12. In dealing with cases where a public authority has effectively refused a request under article 7(5) of the AIE Regulations, this Office must be satisfied that adequate steps have been taken to identify and locate relevant records, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply.
13. This Office’s Investigator wrote to the Council seeking submissions regarding its position on the specific records highlighted by the appellant and the steps it took to search for information relevant to the request.
14. The Council submitted that there was no application made to it for the activities outlined in the original AIE request. All information relating to the activity was submitted by Údaras na Gaeltachta in response to a review notice, pertaining to the site, which the Council issued in 2016. Furthermore, no final decision or determination has been made in relation to the review notice to date. The Council confirmed to this Office that it has released all relevant information held by it to the appellant. The released information originates from the review notice, as opposed to any application as described in the appellant’s AIE request.
15. Based on the submissions received from the Council and the examination of records, which have been released, I am satisfied that the specific records that the appellant has requested are not held by the Council. The Council’s explanation of the documentation that it holds, and the absence of others, is reasonable and is supported by the content of the information in the released records. I am also satisfied that it has released all records it holds that may be relevant to the original AIE request.



### **Whether the Council was justified in withholding certain information from the documents provided to the appellant**

16. Article 8 (a)(i) is the relevant article of the AIE Regulations providing for the non-disclosure of personal information in certain circumstances. This provision states:

“8. A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information— (a) would adversely affect— (i) 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”.

17. It is the practice of this Office that in appropriate circumstances, third parties who may potentially be affected by disclosure of information be contacted in advance of any release of information and be given an opportunity to make submissions regarding the disclosure of information. I have examined the records provided to the appellant from which the Council chose to redact certain names. These records relate to site inspections, lab reports and relevant invoices. The Council has redacted the names of the individuals which appear on these records, including staff members of Údarás na Gaeltachta in addition to various technical staff at a number of contractors working on managing the conditions of the licence on behalf of Údarás na Gaeltachta. It has stated that it does not wish to release information relating to individuals unless directed to do so by this Office.
18. The records at issue here are of a technical nature and were submitted to the Council in the context of the management of the licence. The individuals named were acting in a professional capacity or in the course of business when providing these records and the information contained therein to the Council. I do not consider there to be any potential for an adverse impact for the named individuals that justifies the redaction of their names from these records, nor has the Council pointed to the potential for such an adverse impact. On this basis, I find that the appellant is entitled to unredacted copies of the records in question.

### **Additional Issues**

19. In his submission the appellant questioned why he was provided with information (record 11) which appears to be an application relating to proposed discharge at a wastewater treatment plant which was not the subject of the original AIE request and asked that this be addressed. During the course of the investigation the Council explained that while this information does not strictly relate to the site at Ros 'n Mhil which was the subject of the request, it does relate to the treatment plant at Páirc Gnó An Tulaigh from which the wastewater is being tankered and was released as a precautionary measure in case it was deemed to be relevant.

### **Decision**

20. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I vary the decision of the Council. I find that the Council was justified in



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refusing part of the request under article 7(5) of the AIE Regulations as it does not hold the records in question. I find that the Council was not justified in redacting names from the records provided to the appellant under the AIE Regulations and I direct release of the relevant unredacted records.

### **Appeal to the High Court**

21. 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 McGoldrick**

**On behalf of the Commissioner for Environmental Information**

31 March 2023