



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-119758-L8R2B8

Date of decision: 23 March 2023

Appellant: Ms X

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

Issue: Whether the Department was justified in refusing the appellant's request on the basis that no information within the scope of that request is held by or for it

Summary of Commissioner's Decision: The Commissioner found that the Department had not established that reasonable and appropriate searches had been conducted to identify and retrieve environmental information within the scope of the appellant's request and remitted the matter to the Department for further consideration.

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 7 December 2021 the appellant made a request to the Department for “all information in connection with Action Point 7 of the National Peatlands Strategy 2015”.
2. The Department responded to the request on 16 December 2021. It refused the appellant’s request on the basis that the information requested “does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken”.
3. The appellant sought an internal review of the decision on 12 January 2022. The Department’s original decision was affirmed at internal review stage on 11 February 2022.
4. The appellant submitted an appeal to this Office on 17 February 2022.
5. I am directed by the Commissioner for Environmental Information to carry out a review under article 12(5) of the Regulations. In doing so, I have had regard to the submissions made by the appellant and the Department of Agriculture, Food and the Marine. 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 comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

6. 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, the Commissioner will require the public authority to make available environmental information to the appellant.
7. This review is concerned with whether the Department is entitled to refuse access to the information requested by the appellant on the basis that no information within the scope of the request is held by or for it.



Analysis and Findings

Article 7(5) of the AIE Regulations

8. The Department, at both original decision and internal review stage, refused access to the information requested on the basis that the information did not exist or could not be found. The appellant also provided a submission on 4 April 2022 and set out her view that that in neither the original decision from the Department or the internal review, did the responder provide any information on the steps taken to locate the information requested. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned.
9. This Office's approach to dealing with cases where a public authority has effectively refused a request under article 7(5) is to assess whether adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply. It is not normally this Office's function to search for environmental information.

Position of the Parties

10. In her submission to this Office the appellant made reference to the [National Peatlands Strategy Progress Report 2018 and 2019](#), and noted the status in relation to the implementation of Action Point 7 as: '*Completed with project continuing to 2022.*' The Department of Agriculture is noted in the progress report (at Action 7) as one of the bodies responsible for this action. The appellant submitted that this contradicts both the original decision and the Internal Review decision whereby she was informed no records exist or they could not be found.
11. She also submitted that the work stated by the National Parks and Wildlife Service (NPWS) as completed by Action Point 7 of the [National Peatlands Strategy 2015](#) (and continuing into 2022) is vitally important for the current climate and biodiversity crises. The appellant therefore does not consider it plausible that such environmental information does not exist.
12. The Department responded to the appellant five working days after she received an acknowledgement of her original AIE request. The deadline for determining the AIE request was not due for another 12 days after receipt of the response. The appellant queried why the Department did not utilise more time available to it to respond to the AIE request in accordance with the AIE Regulations. She also noted that following this, the Internal Review decision was issued on the last day available to the Department to reply.



13. The Department provided a submission to this Office on 22 April 2022 wherein it stated that following searches, “the records no longer exist nor cannot be found”. It also noted that the information requested relates to the National Peatlands Strategy 2015, which was produced by the Department of Arts, Heritage and the Gaeltacht and not the Department of Agriculture, Food & the Marine.
14. It further submitted that the Department’s current Afforestation Grant and Premium Scheme 2014 – 2020 lists the lands that are excluded for Afforestation (at 8.10) as follows: “xi. Former and existing industrial cutaway peatlands are excluded”. It stated that as the Department is bound by such terms no licence can or will be granted for Afforestation in such areas as mentioned above.
15. The Investigator acknowledged that although the Department may not have had a role in producing the National Peatlands Strategy 2015, the Department is listed as one of the bodies responsible for Action 7 of the National Peatlands Strategy Progress Report 2018 and 2019. The status of this action is listed as ‘Completed with project continuing to 2022’. The investigator set out that this appears to suggest that there may be information available relating to that project.
16. During the course of the review, the Investigator requested that the Department provide further details of the steps taken to search for information relating to the request. This included a number of specific queries as to the locations searched, the search methods used and the individuals consulted in the Department. The Investigator also requested that the Department address the appellant’s specific arguments, such as its involvement in fulfilling Action 7, as set out above.
17. In its submissions to this Office on 22 February 2023, the Department noted the following:
 - That staff in the unit do not have access to all areas of the Department’s records and therefore must issue ‘searching emails’ to relevant staff members to procure any information that is not easily accessible to them.
 - Emails were sent to the Head of Inspectors/Head of Ecology and other key personnel to determine whether or not this information was held by them. No records were identified.
 - Further enquiries were made while preparing its submission and it confirmed that no records were identified by key personnel in the Department.
18. The Department also made reference to a public consultation launched by the Department of Housing, Local Government and Heritage on the mid-term review of the National Peatlands Strategy on 30 April 2021. It explains that the NPWS is part of the Heritage division and records should be held by them. In addition, it notes the following: “Any person interested in



this strategy should be able to determine which public authority is responsible for the records in this case”.

Findings

19. In order for article 7(5) to apply, this Office must be satisfied that the Department has taken adequate steps to identify and locate all relevant environmental held by it.
20. Although there is evidence of some emails being sent in an effort to determine whether or not information was held by the Department, I am not satisfied that reasonable and appropriate searches were conducted to identify and retrieve environmental information within the scope of the appellant’s request. There is no reference to any other electronic or physical searches, or any key words or references used to search for the information.
21. The Department has not explained the basis on which it has concluded that the information sought does not exist.
22. The Department has not adequately responded to the specific questions this Office put to it on 24 January 2023 asking for the details of the searches it undertook to arrive at its position that it does not hold the requested information. The Department’s comment that ‘further enquiries’ were made while preparing its submission does not assist in ascertaining that appropriate searches were carried out. As outlined by the Investigator’s queries in the request for submissions, to make this finding, this Office would require more detail on the searches actually carried out, such as specific files searched and the relevant search methods used.
23. As previously outlined by the appellant, and also put to the Department by the Investigator in the request for submissions, the Department of Agriculture, Food and the Marine is clearly noted as the public authority responsible for Action 7 of the [National Peatlands Strategy Progress Report 2018 and 2019](#). That is precisely why the appellant queried the possibility of information being available. Furthermore, the consultation of the [National Peatlands Mid-Term Review in 2021](#) (as referenced by the Department) also identifies the Department (at Item D) as the lead body responsible for Action 7 under the Implementation of Prioritised Actions 2021-2025. The timeline for completion of this Action is noted as ‘Commencing Q1 2021’. When referencing the 2021 National Peatlands Strategy consultation, which lists the Department as the public authority responsible for Action 7, the Department provided no clear evidence of appropriate searches having been carried out relating to the appellant’s queries in this regard.
24. Taking all of the above into account, the Department has not demonstrated that it carried out sufficient searches to justify its position that the requested environmental information is not held by or for it. As such, I cannot find the Department was justified in refusing access to the



requested environmental information, on the basis that no relevant environmental information was held by or for it.

25. I consider that the most appropriate course of action to take at this stage is to annul the decision of the Department in its entirety, the effect of which is that the Department must consider the appellant's request afresh and make a new, first instance decision in accordance with the provisions of the AIE Regulations.

Decision

26. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I annul the decision of the Department. I remit the matter to the Department who should process the appellant's request in accordance with the AIE Regulations.

Appeal to the High Court

27. 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