



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-118952-D7H1Q2

Date of decision: 23 March 2023

Appellant: Ms C

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

Issue: Whether the Department complied with its obligations under article 7(3) of the Regulations.

Summary of Commissioner's Decision: The Commissioner found that the Department had not complied with its obligations under article 7(3) as it had failed to provide environmental information to the appellant in the form or manner requested by her in circumstances where none of the exceptions contained in article 7(3) could be said to apply.

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. The background to this appeal involves the Agriculture Appeals Act 2001 (Section 14A) Regulations 2021 (the 2021 Regulations), which were signed by the Minister for Agriculture, Food and the Marine on 12 July 2021. The 2021 Regulations reduced the appeal period for forestry decisions from 28 to 14 days commencing on the date of the decision. The making of decisions on forestry applications is notified to the public through publication on the Department's website.
2. The appellant wrote to the Department, on 18 November 2021 seeking "a tabulated list of licence numbers for licences issued by the Forest Service ([for] all schemes) which have not been published on the Department's website on the day that the decision was issued". She also requested "the date of issue and the date of publication for each of [those] licences". She asked that these would be provided "by email and in Excel format".
3. The Department responded to the appellant on 29 November 2021. It provided her with a link to the Register of Decisions section of the Department's website: <https://www.gov.ie/en/publication/ac62c-licence-applications-for-felling-afforestation-forest-roads-and-aerial-fertilisation-2020-register-of-decisions/>. This webpage contains links for Felling Licence Decisions, Forest Road Licence Decisions and Afforestation Licence Decisions. Each of those links leads to a webpage, which contains links for each month of the year from 2021. Each of those links leads to a number of further links to Decisions Reports which are listed by date, month and year (e.g. Felling Licence Decisions Report 29 September 2021). Those Decisions Reports consist of pdf tables, which vary slightly in format, but, broadly speaking, contain details of the application number, the townland and county in which the relevant site is located, the decision, the decision date and the latest appeal date. Some, but not all, tables also list the publication date.
4. An exchange of emails between the appellant and the original decision-maker took place between 29 November and 1 December 2021. The appellant informed the original decision-maker that the Department's response "would require me to trawl through the information listed on your website because I do not hold this information in electronic format". She noted that "it is a general duty of a public authority [under article 5 of the AIE Regulations] to make all reasonable efforts to maintain environmental information held by or for it in a form or manner that is readily reproducible and accessible by information technology or by other electronic means". She submitted that if the Department had made such efforts it "should...be able to readily search its archives and identify any records relevant to my request using appropriate software". She asked the Department to confirm whether it could do so. The Department responded, advising the appellant "the information requested is available on the Department's website" and "is public information and an AIE is not required to access such information". The appellant's response once more outlined that only the raw data which was needed to compile the table she had requested was available on the Department's website and not the table itself. She submitted that because she did not hold the raw data in electronic format "if I were to create a tabulated list it would be time-consuming and inefficient, compared with a search by someone within the Department who has access to that information electronically (assuming that the Department has the relevant software)". She once again asked the Department to advise her whether it could create a tabulated list and requested a formal decision on her request. The Department's



response reiterated that the information “is public information and an AIE is not required to access such information” and advised her that she had received its formal decision on 29 November 2021.

5. The appellant sought an internal review of the Department’s decision on 27 December 2021. She acknowledged that the Department had “directed [her] to the raw data relevant to [her] request” but noted that she had requested a tabulated licence and submitted that her request had not been granted in the form or manner requested. She submitted that if she were to create a tabulated list “it would be time-consuming and inefficient given that I will need to access data from between 150 to 180 individual files”. She estimated that it would take her “between 8 to 10 hours to create the tabulated list for the relevant period” and submitted that “article 5(1)(b) of the AIE Regulations “implies that basic information should be available in a consolidated form so as not to require individual files to be accessed”.
6. The Department issued its internal review decision on 26 January 2022. The internal review affirmed the original decision on the basis that “the information sought is already available in a tabulated form on the Department’s website...with further information available through the Department’s Forestry Licence Viewer (FLV)”.
7. The appellant appealed to my Office on 2 February 2022.
8. I am directed by the Commissioner for Environmental Information to carry out a review under article 12(5) of the Regulations. In so doing, I have considered the submissions made by the appellant and the Department. In addition, I have had regard to:
 - 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’);
 - the decision of the Supreme Court in *National Asset Management Agency v Commissioner for Environmental Information* [2015] IESC 51 (NAMA).

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. The appellant contends that the Department did not provide her with information in the form or manner she requested. Article 7(3)(a) of the AIE Regulations provides that:

Where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless:



- (i) *the information is already available to the public in another form or manner that is easily accessible, or*
- (ii) *access in another form or manner would be reasonable.*

My review in this case is concerned with whether the Department complied with its obligations under article 7(3) of the AIE Regulations.

10. I should note, for completeness, that in submissions to this Office, the Department made reference to its original decision “to refuse the request under article 9(2)(c)” of the Regulations. Article 9(2)(c) provides grounds for refusal of environmental information where the request concerns material in the course of completion or unfinished documents or data. No other reference to article 9(2)(c) has been made by the Department in the course of this appeal and requests for further clarification on this point from the Department were not answered. It appears to me that the reference to article 9(2)(c) was made by the Department in error as its relevance to the case was not at all clear from the Department’s submissions and I am therefore not considering the application of article 9(2)(c) of the Regulations as part of this review.

Preliminary Matters

11. Before I proceed to the substantive review, I consider it necessary to make it clear that the Department’s engagement with this Office has been disappointing. As outlined above, the appellant was not satisfied that the Department had provided her with information in the form or manner she requested, in accordance with article 7(3) of the AIE Regulations. This formed the basis of her appeal to this Office.
12. During the course of the appeal, on 4 March 2022, the Department made submissions to this Office. These submissions were brief and largely reiterated the position as set out in the internal review decision of 26 January 2022. As outlined above, they also made reference to article 9(2)(c) of the Regulations. .
13. My Investigator wrote to the Department seeking clarification on the reference to article 9(2)(c). She also sought further information as to the basis on which the Department considered it had satisfied its obligations under article 7(3) of the Regulations. No response was received from the Department. This is unsatisfactory. While this Office appreciates the Department’s heavy workload, this should not result in requests for clarification being ignored.

Analysis and Findings

Article 7(3)(a) of the AIE Regulations

14. Article 7(3)(a) of the AIE Regulations requires a public authority to provide information in the form or manner requested by an appellant unless the exceptions provided for in that article apply. As outlined above, in her initial request, the appellant outlined that she was seeking a tabulated list, in Excel format, of licences issued by the Forest Service, which had not been published on the website on the



date the decision was issued along with the decision date and publication date for those licences. Instead, the Department provided links to a number of webpages which ultimately led to a significant number of pdf files from which the data sought by the appellant could be extracted. It did not, therefore, provide her with the information she requested in the form or manner requested by her.

15. In order for the Department to have complied with its obligations under article 7(3)(a) of the Regulations, it must therefore be established either:
 - (i) that the information requested by the appellant was already publicly available in an easily accessible form or manner; or
 - (ii) that the access provided by the Department was reasonable.
16. Article 7(3)(b) of the Regulations provides that “where a public authority decides to make available environmental information other than in the form or manner specified in the request, the reason therefore shall be given by the public authority in writing”.

Position of the Parties

17. The Department did not specify a reason in writing in its original decision. It simply provided a link to the Register of Decisions section of its website. While there may have been a misunderstanding at this stage as to what exactly the appellant was seeking, any such misunderstanding would have been clarified by the subsequent email exchange between the appellant and the Department and by the appellant’s request for an internal review, in which she made it clear that she was seeking an Excel table of licences which had been issued by the Department, where the decision was published after the date of the decision. She also wished to receive details of both the publication and decision dates. The appellant made it clear that she accepted that the data needed to compile the Excel table was available on the website but that she did not consider it reasonable that she would be expected to compile that data herself.
18. However, no further reasoning was provided in the Department’s internal review. Instead, the Department did not engage with the appellant’s submissions and affirmed the original decision on the basis that “the information sought is already available in a tabulated form on the Department’s website at gov.ie - Licence Applications for Felling, Afforestation and Forest Roads - Register of Decisions (www.gov.ie), with further information available through the Department’s Forestry Licence Viewer (FLV)”.
19. The Department provided further vague submissions to this Office on 4 March 2022 noting that “the original decision...to refuse the request under article 9(2)(c)” had been affirmed. As noted above, this was despite the fact that article 9(2)(c) had never previously been referred to by the Department. The submission went on to note:

“The reason for the refusal was that the Department already publishes a list of forestry licence applications and decisions as part of the public consultation process. These lists are tabulated and published every Monday, Wednesday and Friday. The date of publication is the date that the list



appears on the website. The date of issue of the licence (decision) is given in the list. This information is supplemented by that appearing for each licence in the Forestry Licence Viewer (FLV).”

20. The Department’s submission did not acknowledge that the lists of decisions published did not provide the appellant with the information requested in the form or manner requested by her. Nor did it set out the basis on which the Department considered: (i) that the availability of these lists meant that the information requested by the appellant was already publicly available to her in an easily accessible form; and/or (ii) that pointing the appellant to the existence of these lists rather than providing her with the information in the form or manner she requested was reasonable.
21. On the other hand, the appellant has provided detailed submissions in support of her argument that the information she requested cannot be considered “already publicly available in an easily accessible form or manner”. She argues that the fact that the Department has directed her to manually review a significant amount of raw data to collate the information requested means that the information she has requested is not “easily accessible” to her. She also submits that since the Department does not publish the files containing the raw data in xls format, she would need to go through each of the relevant pdf files to obtain the information she seeks and input that information manually into an Excel spreadsheet. She further submits that the order of the columns in the pdf files published by the Department is not consistent across all documents published which makes the task even more time-consuming, in part because converting each pdf file to Excel format and incorporating it into a master spreadsheet would be made more difficult by this inconsistency in format. She argues that the format in which the raw data is published means that she would be required to check and review approximately 162 different Decisions Reports. She bases this estimate on a review of the information published for August 2021, which includes 13 Decisions Reports for Afforestation Licences, 12 for Felling Licences and 13 for Forest Road Licences. She calculates therefore that there are 38 records to be reviewed for the month of August and notes that her request covers the period 12 July to 18 November 2021, a period of approximately 4 months and 1 week. She estimates that a manual review of all the raw data contained in the Decisions Reports will “on a conservative basis” take “around 8-10 hours”.
22. The appellant has also provided clear reasoning for her position that the provision of the raw data in lieu of the Excel table requested is not reasonable. In the first instance, she submits that the Department’s failure to make consolidated information available in relation to programmes which have been subject to public consultation (such as forestry decisions, Appropriate Assessments and Nature Impact Statements) is not consistent with its duties under the AIE Regulations. She submits that the AIE Regulations, the AIE Directive and the Aarhus Convention are all premised on the principle that access to environmental information is inherently of significant public interest. She notes that Recital 1 to the AIE Directive states that “increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment”.



23. The appellant also submits that the Department would be able to carry out the same exercise electronically and much more efficiently. In support of that argument, she relies on a statement made by the Department in the course of the email exchange between 29 November and 1 December in which it informed her that “the information is not readily available in the format you are looking for”. She argues that this statement suggests that the information could be provided by the Department in the form requested but is not “readily available”.
24. The appellant also notes that article 5(1)(b) of the AIE Regulations provides that a public authority shall “make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means”. She submits that there is no indication in the internal review decision that this provision was considered by the Department. She submits that if the Department is of the view that the information can be collated manually, it stands to reason that the same information can be provided electronically if the information is maintained in a manner that is readily reproducible by information technology or other electronic means. She submits that the information requested in this case is the kind that one would expect to be published or organised by the Department in a manner that enables its easy dissemination on request, in accordance with its duties under article 5 of the AIE Regulations, which seeks to transpose Article 7 of the AIE Directive. She queries whether all reasonable efforts have been made by the Department to organise information in a manner consistent with its obligations under article 5(1)(b). She suggests that were the Department to receive a similar query by means of a Parliamentary Question, it is not credible that it would respond by asking the querist to look at the raw data themselves in order to find the answer.
25. The appellant also refers to the following excerpt from [OCE- 105379-F8L2B9](#) and [OCE-106896-D5T5W5](#) *Mr X and Department of Agriculture, Food and the Marine*:
- “The Department explains that it manages its forestry licensing and schemes through its claims/payment system, IFORIS. The system holds all data in relation to forestry licence applications, approvals, applications for forestry schemes, payments, etc. IFORIS can be interrogated by means of a reporting system, or by constructing ad hoc reports for specific requirements” (emphasis added by appellant).
- She contends that this information on IFORIS confirms that the Department can interrogate the data held by it by electronic means and that it is not clear why the decision-makers in this case chose not to interrogate IFORIS to extract the information requested.
26. Finally, the appellant argues that providing information in a segregated way, as the Department seeks to do in this case, places hurdles in the path of the public and is contrary to the principles underpinning the AIE Regulations, the AIE Directive and the Aarhus Convention.
27. All of the appellant’s submissions were put to the Department by this Office’s investigator but, as outlined above, no response was received from the Department.



Findings

28. The AIE Regulations make it clear that the default position is that an appellant is entitled to be provided with information in the form or manner requested. It is only possible to depart from that default position where the requirements of article 7(3)(a)(i) or 7(3)(a)(ii) are satisfied. There is nothing before me to suggest that the information requested by the appellant is publicly available in an easily accessible form or manner such that article 7(3)(a)(i) of the Regulations applies. In fact, the information before me suggests that the appellant would have to spend at least 8 to 10 hours obtaining the information she seeks. The information cannot therefore be said to be publicly available in an easily accessible form or manner.
29. Neither is there any information before me to suggest that it is reasonable to point the appellant to the raw data available via the Department's Register of Decisions and expect her to compile the information herself.
30. The reasonableness requirement in article 7(3)(a)(ii) must be interpreted teleologically in line with the purpose of the Directive (see *NAMA*, paragraph 10). The Department has not established that it complied with the requirements of article 5(1)(b) of the AIE Regulations to take "reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means". Nor has it suggested any other basis on which it is reasonable to expect the appellant to spend hours collating environmental information. Articles 3(5) and 7 of the AIE Directive make it clear that arrangements must be in place to ensure the public are adequately supported in seeking access to information and that public authorities take steps to ensure that access can be effectively exercised. Accordingly, I do not see how I can conclude that it is reasonable for the Department to provide the appellant with information in an alternative form or manner to that requested.
31. In addition, it is not clear whether it is possible for the appellant to obtain all of the information she has requested via the Register of Decisions webpage. For example, as noted above, some of the relevant pdf files contain a reference to their publication date, others do not. The Department did not explain to the appellant, as it did to this Office, that "the publication date is the date that the list appears on the website". It is not clear how an individual could know what date the list appeared on the Department's website, unless that person monitored that website regularly. Therefore, I find that not all of the information sought by the appellant is easily accessible. Further, I do not consider it reasonable to expect ongoing monitoring of a webpage by an individual.
32. The nature of the information at issue in this case is also relevant, in my view, when assessing the question of reasonableness. As outlined above, what the appellant is seeking in this case is a list of cases where the reduced 14-day appeal period for forestry decisions has been further reduced due to a delay on the Department's part in publishing notification of the relevant decision. As Recital 1 of the AIE Directive makes clear, the purpose of the AIE regime is to promote "increased public access to environmental information and the dissemination of such information" in order to "contribute to a greater awareness of environmental matters, a free-exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment". Forestry



decisions fall firmly within the realm of environmental decision-making. The Forestry Appeals Committee, which is the body responsible for dealing with appeals of forestry decisions, notes that “to date, most appeals have been submitted by third parties and concern mainly environmental matters and the implementation of the provisions of the European Union Environmental Impact Assessment (EIA), Habitats and Birds, and Water Framework Directives”. The extent to which delays in the publication of forestry decisions impacts the ability of members of the public to appeal those decisions is therefore information which will contribute to a greater awareness of environmental matters and which impacts the effective participation by the public in environmental decision-making. On this basis, I do not consider it reasonable to expect the appellant to spend a significant amount of time extracting that information from a significant number of Decisions Reports, rather than the Department providing it in the easily accessible and more transparent manner requested by the appellant.

33. It also appears that the Department holds the information requested by the appellant as that information can be extracted from the information available on the Register of Decisions page. Although the publication dates may not be easily deducible for members of the public, they should be known to, or easily traced by, Department staff. It may be the case that the information is already held by the Department in Excel form but if it is not, I am satisfied that it would be reasonable, and within this Office’s jurisdiction, to require the Department to compile that information so that it can be provided in the form or manner requested for the following reasons:
- (i) Article 12(5)(c) provides the Commissioner with jurisdiction “where appropriate” to “require the public authority to make available environmental information to an appellant”.
 - (ii) Article 7(3) of the Regulations makes it clear that a public authority shall provide information in the form or manner requested by an appellant unless it can demonstrate that the limited exceptions provided for in that article apply. The Department has not demonstrated that either of the exceptions contained in article 7(3) apply in the circumstances of this case.
 - (iii) Article 5(1)(b) makes it clear that there is an obligation on public authorities to make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means”.
 - (iv) Remitting the case to the Department for further consideration would provide it with what would, in my view, be an unwarranted opportunity to provide reasons for its refusal to provide the information in accordance with its obligations under article 7(3) in circumstances where it failed to provide those reasons both in its interactions with the appellant and in the course of engagements with this Office.

Decision

34. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I annul the Department’s decision and direct it to provide the information requested by the appellant to her in the form and manner requested.



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Appeal to the High Court

35. 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

23 March 2023