

**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 CEI/19/0057

Date of decision: 1 July 2020

Appellant: Mr. Conor Ryan, RTÉ Investigations Unit

Public Authority: Irish Coursing Club (the ICC or the Club)

Issue: Whether the ICC was justified in refusing the appellant's request for access to certain information related to the regulation of coursing on the basis that the Club is not a public authority and/or that the information sought is not environmental information within the meaning of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner found that the ICC is a public authority within the meaning of article 3(1)(b) of the public authority definition and that the information sought is environmental information under article 3(1)(c) of the environmental information definition. He annulled the ICC's decision and directed that a fresh decision-making process be undertaken in accordance with the AIE Regulations.

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

On 3 October 2019, the appellant requested four items of information relating to the regulation of coursing, as follows:

1. A copy of all rules, regulations and directives that were in force for 2018-2019 for regulated coursing;
2. A copy of all documents related to the status, rights and membership of associative clubs of the ICC as they relate to coursing;
3. A copy of all fixtures considered, approved and rejected by all clubs directly or indirectly affiliated to the ICC under Rules 11, 12 and 13 and the final fixtures schedule for all park and open events for the 2018/2019 season;
4. A copy of all control steward reports for all events held by any coursing club affiliated to the ICC during the 2018/2019 season.

In a decision dated 13 October 2019, the Chief Executive Officer (CEO) of the ICC refused the request on the basis that the information sought was not environmental information as defined in the AIE Regulations. On 14 October 2019, the appellant requested an internal review of the ICC's decision. However, as the original request had been dealt with by the CEO, no decision maker was available to carry out the internal review, which effectively resulted in a deemed refusal of the request on 14 November 2019. The appellant appealed to my Office on 21 November 2019.

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 initial submission made the ICC on 4 March 2020. I have also examined the contents of the relevant records forwarded to my Office for the purposes of my review.

However, in its submission to this Office, the ICC pointed out the information sought at items 1 and 2 is published on the National Parks & Wildlife Services (NPWS) website <https://www.npws.ie/licences/hare-coursing> and the balance of the information is available on the Irish Coursing Club website <https://irishcoursingclub.ie/rules-regulations/> and <https://irishcoursingclub.ie/fixtures/>. The availability of the information online was relayed to the appellant, who did not raise any objection to accessing it in this manner. The fixtures sought at item 3 of the appellant's request, on the other hand, are not available online in full, as the ICC also suggested, and the only record of fixtures forwarded to this Office was a list of completed fixtures for 2018/2019. Nevertheless, I consider the list of completed fixtures sufficient for me to understand the nature of the remaining information requested at item 3.

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’).

I note that, in its submission dated 4 March 2020, the ICC claimed for the first time that the Club was not a public authority within the meaning of the AIE Regulations. My Office requested further submissions on the matter and gave the ICC until 18 March 2020 in which to respond. The ICC requested an extension of the deadline until 20 March 2020, which was granted, but no further response was received. Subsequently, on 29 April 2020, my Office wrote again to the ICC for the purpose of updating it on issues that had been raised by the appellant in his submissions in relation to both the public authority definition and the environmental information definition. The ICC was given a period of three weeks, or until 20 May 2020, in which respond. To date, however, the ICC has made no reply, though there is nothing to indicate that correspondence was not being monitored during the Covid-19 restrictions. I consider it appropriate to bring this matter to conclusion by way of a formal, binding decision based on the information now before me.

Scope of Review

My review in this case is concerned solely with the question of whether the ICC was justified in refusing items 3 and 4 of the appellant’s request relating to the regulation of coursing on the basis that the Club is not a public authority and/or that the information sought is not environmental information within the meaning of the AIE Regulations.

Analysis and Findings

Public authority

In inviting the ICC to make further submissions in relation to its claim that it was not a public authority, my Office referred the Club to the public authority definition as set out in the AIE Directive and Regulations and addressed in the relevant judgments: *C-279/12 Fish Legal and Emily Shirley v Information Commissioner and Others (Fish Legal)*, available at [Fish Legal](#); and the judgment of the Supreme Court in *National Asset Management Agency v Commissioner for Environmental Information 2015 IESC 51 (NAMA)*, available at www.courts.ie. Article 2(2) of

the Directive and article 3(1) of the Regulations provides that an entity is a public authority where

- a) It is an administrative authority, i.e. where it forms part of the public administration or the executive of the State, and this includes all legal persons government by public law which have been set up by the State and which it alone can decide to dissolve;
- b) It is empowered to perform public administrative functions, i.e. where it is tasked by national law with the performance of services of public interest, and is, for that purpose, vested by national law with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law; or
- c) It has public responsibilities or functions, or provides public services, relating to the environment, and it is a body under the control of a public authority falling under paragraphs (a) or (b) of the definition.

The definition set out in the AIE Regulations adds that it “includes -

- (i) a Minister of the Government,
- (ii) the Commissioners of Public Works in Ireland,
- (iii) a local authority for the purposes of the Local Government Act 2001 (No. 37 of 2001),
- (iv) a harbour authority within the meaning of the Harbours Act 1946 (No. 9 of 1946),
- (v) the Health Service Executive established under the Health Act 2004 (No. 42 of 2004),
- (vi) a board or other body (but not including a company under the Companies Acts) established by or under statute,
- (vii) a company under the Companies Acts, in which all the shares are held-
 - (I) by or on behalf of a Minister of the Government,
 - (II) by directors appointed by a Minister of the Government,
 - (III) by a board or other body within the meaning of paragraph (vi), or
 - (IV) by a company to which subparagraphs (I) or (II) applies, having public administrative functions and responsibilities, and possessing environmental information”.

However, in *NAMA*, O’Donnell J. interpreted the structure of the definition of “public authority” as “reproducing the international and European law terms, and thereafter attempting to clarify the scope of application of those terms within the Irish legal system, rather than somehow extending them.” Accordingly, sub-articles (i) to (vii) do not extend the primary elements of the definition contained at (a) to (c), which correspond to the definition of “public authority” as set out in Articles 2(2)(a) to (c) of the Directive.

In his submissions, the appellant stated that the ICC is a legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment. He noted that its role is enshrined in the Greyhound Industry Act 1958 (the 1958 Act) to regulate and control coursing and the Irish Greyhound Studbook. He

further noted that the ICC's Constitution is legally part of the 1958 Act and included as an appendix.

The appellant also noted that the Wildlife Act 1976 (the 1976 Act) references the Club four times and that it allows specific and special exemptions for the hunting of hares in circumstances where the Club regulates the activity. Licences under the 1976 Act are issued by the Minister on an annual basis to allow for this to happen. The appellant referred to the "State of the World Report on Biodiversity for Food and Agriculture (SoWBFA), State of Biodiversity for Food and Agriculture in Ireland" report 2014, produced by the Department of Agriculture, which describes the 1976 Act as "the principal national piece of legislation providing protection of wildlife (both flora and fauna) and the control of activities that may impact adversely on the conservation of wildlife".

The appellant stated:

"The ICC's rules and regulations are embedded in the legal and regulatory measures taken to protect the hare and its reports are a required measure for the licencing regime that was set up to govern this. In the subsequent Open Seasons Order – regulated coursing, which is defined as hunting done in accordance with the rules of the ICC and its affiliated clubs, is specifically referenced as one of three means (only) by which hares can be legally hunted. The ICC is, under the Wildlife Act 1976, the only body that can apply to hunt hares outside of the prescribed open season. In this regard there is no other organisation in this country with a more special status in the area of biodiversity than the Irish Coursing Club. Its public function is to provide for and police the only legal form of hunting a protected species with greyhounds. It also is the body through which all reports of legal netting and capturing of this protected species are channelled through."

The appellant also argued that the ICC has public functions and responsibilities under the 1958 Act, the Welfare of Greyhounds Act 2011 (the 2011 Act) and the Microchipping of Dogs Regulations 2015. He said that the ICC performs functions on behalf of the State and receives substantial income from owners of all greyhounds for fulfilling these legally mandated activities.

I note that, while the ICC was first established in 1916, it is described on the website of the National Parks & Wildlife Service (NPWS) as having been "set up under the Greyhound Industry Act 1958". It is recognised under section 26 of the 1958 Act as "the controlling authority for the breeding and coursing of greyhounds". On the ICC's own website, it is described in line with the Schedule to the 1958 Act as the "controlling authority over matters relating to coursing and the registration and identification of thoroughbred greyhounds in Ireland". The website explains: "Coursing is managed and regulated by the Irish Coursing Club (ICC), and consists of 89 affiliated clubs from Ireland and Northern Ireland, all of whom must abide by the ICC's rules and regulations." I also note that the ICC has been conferred with significant powers and functions under the 2011 Act, including the appointment of welfare officers for the purposes of enforcement. It is apparent from the terms of 1958 Act and the 2011 Act that the Oireachtas

regards the services performed by the ICC as serving the public interest. In the circumstances, I am satisfied that the ICC is a public authority within the meaning of article 3(1)(b) of the AIE Regulations.

Environmental information

In line with Article 2(1) of the Directive, article 3(1) of the AIE Regulations provides that "'environmental information' means any information in written, visual, aural, electronic or any other material form on -

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,
- (d) reports on the implementation of environmental legislation,
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c),), and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c)".

The Directive was adopted to give effect to the first pillar of the Aarhus Convention. It replaced Council Directive 90/313/EEC, the previous AIE directive, in order to increase public access to environmental information so that an informed public can participate more effectively in environmental decision-making.

The appellant initially suggested that the information he seeks is environmental information under article 3(1)(a) of the Regulations on the basis that it is information on "biological diversity". In response, the ICC took the view that the term refers to the balance between the various species on earth and that information about a single species such as the Irish hare does not therefore meet the definition of information on the state of biological diversity for the purposes of the AIE Regulations. The appellant, in turn, challenged this position but also argued that the regulation of coursing is a measure within the meaning of paragraph (c) of the environmental information definition in that it affects or is likely to affect the environment (biological diversity and its components, in particular the conservation of the Irish hare in the

context of the permitted but controlled hunting of this species by the greyhound) and that the records sought, such as the fixtures, contain information that is integral to this measure and the decision making involved in relation to related activities.

The appellant noted, for instance, that fixtures account for the approved times and locations of events where coursing took place. He said that they are necessary to assess the extent to which coursing legally took place and also to assess other events which are not on the list of approved events. He stated: "Without knowing what was approved it is impossible to assess what was not approved." He also maintained that the ICC fixtures committee is the only body that has the relevant records, whereas the document published online, which lists the fixtures for the current season, provides only limited information for some park and open events but not open events run by Associative Clubs. In support of his position, he referred to the submission made by the ICC to the Oireachtas Committee on Agriculture on 9 July 2019 dealing with the activities of Bantry Open Coursing Club, an associative club. In that submission, the ICC referred to the suggestion that the coursing carried out on Whiddy Island by the Bantry Open Coursing Club under the Open Season Order 2005, i.e. without a licence, is the reason why Whiddy Island has such a strong hare population unlike another island which is regarded as having no hares.

The appellant also explained how coursing and measures adopted and regulated by the ICC have an impact on a protected species. He stated: "Records, such as fixtures, are not simply about sporting events. They are legally mandated records about controlled occasions under which the protection afforded to the hare under the Wildlife Act 1976 can be temporarily suspended in order to facilitate regulated hunting." He referred to an ICC representative's own statement during an appearance before the Northern Ireland Assembly's Environmental Committee, on 18 February 2010, in which a connection was drawn between hunting and the work of coursing clubs and the benefits for biodiversity in relation to the hare. He also noted that the ICC referred to the study "Integrating field sports, hare population management and conservation" (2010), which found a direct link between the work of the ICC and the conservation efforts linked to the Irish hare. In addition, the appellant referred to another study by Andrew Kelly entitled "Welfare Implications for Hares, *Lepus timidus hibernicus*, Taken from the Wild for Licensed Hare Coursing in Ireland" (2020), which discusses the impact of coursing on individual hares.

In relation to the question of biological diversity, the appellant noted that coursing, by its definition, involves two animals. "It is the controlled hunting of a protected animal by another animal, a greyhound, which is bred for that purpose." He said that it involves a "series of measures which allow for a legal way to control the hunting of hares with greyhounds", and he referred to statements made on the ICC website to show how coursing is important for conservation. The appellant also drew attention to the measures listed in the SoWBFA report as being part of the State's response to biodiversity, including the Wildlife Act 1976, which refers to the role of the ICC in the conservation efforts, and the Open Season Order 2005 (as amended).

The Aarhus Guide suggests that the term “biological diversity and its components” has a complex but broad meaning. It refers to the following definition: “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and ecosystems”. It adds: “Biodiversity includes, but is not limited to, ecosystem diversity, species diversity and genetic diversity. In addition, tangible entities identifiable as a specific ecosystem (a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit), are considered components of biodiversity.” I also note that the findings of the Aarhus Convention Compliance Committee (ACCC) on communication [ACCC/C/2011/63](#) concerning compliance by Austria (27 September 2013) indicate that biodiversity components can include a single species and that laws on the protection of wildlife species are laws relating to the environment. As the appellant has amply explained in his submissions, which are supported by the ICC’s own statements, the regulation of coursing has a direct and significant impact on the conservation of the Irish hare, a protected species. It is a measure that is given explicit recognition in the Wildlife Act 1976. In the circumstances, I accept that the regulation of coursing is a measure affecting or likely to affect biological diversity and its components.

I have had regard to the recent judgments in *Jim Redmond & Mary Redmond v Commissioner for Environmental Information & Coillte* [\[2020\] EICA 83](#) and *Electricity Supply Board v Commissioner for Environmental Information* [\[2020\] IEHC 190](#). I have also had regard to the judgment of the English Court of Appeal that is referred to in both of the recent Irish judgments, *Department for Business, Energy and Industrial Strategy v Information Commissioner* [\[2017\] EWCA Civ 844](#) (*Henney*). I note in particular that “any information ... on” a measure affecting or likely to affect the environment is *prima facie* environmental information within the meaning of article 3(1)(c) of the definition, but that it is also important to determine whether access would serve the purpose of the Aarhus Convention and AIE Directive by enabling members of the public to be better informed and better able to contribute to environmental decision-making.

As noted above, the fixtures sought at item 3 of the request were not forwarded to this Office. However, the list of fixtures that was provided shows dates and locations of approved coursing events involving the hunting of the Irish hare, a protected species, by greyhounds. As the NPWS states on its website: “Legal provisions for coursing enable the regulatory authorities to control coursing and reduce the attraction of illegal, unregulated coursing activity.” The additional information requested about the fixtures would identify the coursing events that were proposed but rejected under the applicable rules, thus giving insight into the manner in which the applicable rules are administered in order to reduce or prevent illegal or improper coursing. Moreover, the control reports falling within the scope of item 4 of the request provide information about the hares involved at the coursing events, including information on their quality, mortalities, the numbers pinned (i.e. held down by muzzled greyhound(s)), and required treatment from injuries. I consider that the fixtures sought and the control reports would provide the public with meaningful information about the decision-making involved in regulating coursing. I am therefore satisfied that the information sought at items 3 and 4 of the

request qualifies as information on a measure affecting or likely to affect biological diversity and its components.

In the circumstances, I find that the ICC was not justified in refusing items 3 and 4 of the appellant's request for reasons stated. For the sake of clarity, I note that control reports relevant to item 4 of the appellant's request are available on the NPWS website in redacted format. It may therefore be the case that the appellant's request is subject to refusal in part under article 7(3)(a) of the Regulations or other grounds such as article 8(a)(i) of the Regulations. In any event, as I have found that the ICC is a public authority and that the requested information is environmental information, the ICC must undertake a fresh decision-making process in accordance with the provisions of the AIE Regulations.

Decision

Having carried out a review under article 12(5) of the AIE Regulations, I find that the ICC was not justified in refusing the appellant's request on the basis that it is not a public authority or that the requested information is not environmental information within the meaning of the Regulations. I therefore annul the ICC's decision and direct it to undertake a fresh decision-making process in relation to items 3 and 4 of the appellant's request in accordance with the Regulations, including the timeframes specified. This means that, subject to article 13 of the Regulations, action on the request should be taken within one month as specified under article 7(2) of the Regulations.

Appeal to the High Court

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.

Peter Tyndall
Commissioner for Environmental Information
1 July 2020