



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-115199-X2G0Y3

Date of decision: 22 December 2022

Appellant: Mr. B

Public Authority: Galway County Council (the 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. The Council was not justified in redacting information from the records 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 11 August 2021, the appellant requested “All information dating from 2015 to date held by Galway County Council relating to a licence to discharge trade or sewage effluent to waters ref. no. W182/88 at Rossaveel Townland, Costello, Co. Galway, issued by Galway County Council on 11 March 1992”.
2. On 6 September 2021, the Council released a number of records relating to the request.
3. On 8 September 2021 the appellant sought an internal review of the decision, as he believed the Council held further records relevant to the request.
4. On foot of this request, in its internal review decision of 29 September 2021, the Council varied the original decision and released a number of additional records, citing an administrative error for these records having previously been omitted from the documents released.
5. 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.
6. The appellant appealed to my Office on 1 November 2001, as he believed the Council held further relevant records and that he was entitled to unredacted copies of records which had been released.
7. 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 had regard to the submissions made by the appellant and the Council. 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’).
8. 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. 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.



10. 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.
11. The second part of my 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

12. The appellant contends that the Council should hold further information in relation to his request, including relevant financial records in relation to the discharge licence, in addition to a signed & dated copy of the original discharge licence. The relevant provision of the AIE Regulations in this situation is article 7(5).
13. 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:

“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.”
14. 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.
15. This Office’s investigator wrote to the Council seeking further information on its records management practices and the steps it took to search for the information relevant to the request. In addition to this information, the investigator requested the Council carry out further searches for information which the appellant suggested may be held by the Council relevant to his original AIE request.
16. The Council carried out a detailed search of its financial systems and located additional records in the form of a number of invoices. The Council advised this Office that it did not consider these records to be within the scope of the original request. Following discussions with the Council, these records were subsequently released to the appellant together with an apology for the error. I accept that this was a genuine mistake. I would ask the Council to note that relevant financial records may come within the scope of similar requests and to ensure that it carries out any necessary searches of its financial systems when dealing with AIE requests in the future.
17. The appellant also submitted that the Council must hold a signed and dated copy of the license at issue and a signed copy of the Council order attached to this licence, both of which he believes would come within the scope of the original request.
18. The Council submits that the licence in question was issued on 11 March 1992, and that no further licence has been issued in relation to the site since that date, therefore the license would not come within the scope of the original request as the appellant asked for all information from 2015 to date.



I agree that this document pre-dates the request and therefore does not come within scope of the appellant's request.

19. In relation to the order, the Council has advised that it is unable to locate this record, as it has lost volume 1 of the file in question. This is disappointing and I'm sure a source of frustration for the appellant. However, I do understand this is a historical file and I have no reason to doubt the Council's explanation in this regard.
20. I am now satisfied the Council does not hold further records within the scope of the request which have not been released.

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

21. 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".

22. 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, invoices from consultants and an email concerning a review of the licence. The Council has redacted the names of the individuals which appear on these records, including staff members of Údarás na Gaeltachta and Inland Fisheries Ireland, 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.
23. 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.

Decision

24. 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



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

in refusing part of the request under article 7(5) of the AIE Regulations as the original licence pre dated the request.

25. The Council was not justified in redacting names from the records provided to the appellant under the AIE Regulations. I direct release of the relevant unredacted records.

Appeal to the High Court

26. 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

22 December 2022