



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-106805-B6N6X7

Date of decision: 24 October 2022

Appellant: Ballyboden Tidy Towns Group & Glendoher & District Residents' Association

Public Authority: National Transport Authority (the NTA)

Issue: Whether the NTA was justified in refusing access to information relating to the Orlagh Roundabout and BusConnects Route 12, on the basis that the request was manifestly unreasonable within the meaning of article 9(2)(a) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner remitted the request back to the NTA for a fresh decision-making process.

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 18 February 2021, the appellant made a request under the AIE Regulations for access to the NTA's files for the Orlagh Roundabout and BusConnects Route 12. On 5 March 2021, the NTA wrote to the appellant and refused the request under article 9(2)(a) of the AIE Regulations. The appellant requested an internal review of the decision on 8 March 2021, and the NTA affirmed its original decision on 7 April 2021.
2. In an email received by this Office on 27 April 2021, the appellant appealed the NTA's decision to refuse the information sought. The appellant noted that the NTA made no attempt to assist it to refine the scope of its request and the two files sought had not been considered separately.
3. I am directed by the Commissioner for Environmental Information to carry out a review of this appeal. I have now completed this review under article 12(5) of the Regulations. In so doing, I have had regard to the correspondence between the NTA and the appellant as outlined above and to correspondence between my Office and both the NTA and the appellant on the matter. 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](#)).
4. What follows does not comment or make findings on each and every argument advanced but I have considered all materials submitted in the course of the investigation.

Scope of Review

5. 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.
6. This review is concerned solely with whether the NTA was justified in refusing the appellant's request under article 9(2)(a) of the AIE Regulations.



Analysis and findings

7. Article 9(2)(a) provides that a public authority may refuse to make environmental information available where the request is manifestly unreasonable having regard to the volume or range of information sought. This provision seeks to transpose Article 4(1)(b) of the AIE Directive, which provides that Member States may provide for a request for environmental information to be refused if the request is manifestly unreasonable, and, in turn, is based on part of Article 4(3)(b) of the Aarhus Convention.
8. Article 9(2)(a) must be read alongside article 10 of the AIE Regulations, which provides for certain limitations on the ability of a public authority to refuse environmental information. Article 10(3) of the AIE Regulations requires a public authority to consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal and article 10(4) of the AIE Regulations provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest served by disclosure. Article 7(4)(c) of the Regulations requires a public authority to specify the reasons for refusal of a request.
9. The Minister's Guidance at paragraph 12.8 states the following:

“Article 9[(2) ...] clarifies that a public authority may refuse to make information available if the request is considered unreasonable due to the range of material sought, if the request is too general or if the material requested is not yet completed. Public authorities are requested to invoke these grounds for refusal sparingly, and to assist the applicant (to reformulate a request, for example) as appropriate.”
10. I note that neither the NTA's original nor internal review decisions provided reasons for refusal, save for stating that the request was manifestly unreasonable as provided for in article 9(2)(a) of the AIE Regulations. I further note that the NTA failed to offer the appellant assistance in refining its request in order to avoid the request being refused.

The NTA's position

11. The appellant in this case has been provided with a detailed summary of the NTA's submissions, so I do not propose to repeat the submissions in full here. Essentially, the NTA's position is that it holds numerous records falling under the scope of the appellant's request and that fulfilling the request would result in an unreasonable burden on the NTA and would interfere in its day to day operation.
12. In its submissions to this Office, the NTA stated that in relation to the Orlagh Roundabout, the file likely comprised in excess of a thousand records covering designs, surveys, construction records, correspondence, reviews, traffic counts and other information. It stated that much of the information was held electronically, on a network drive, as well as in emails – some of which were held on a central database with more possibly stored outside that database, given the numerous channels of communication regarding the roundabout.
13. The NTA stated that to process this part of the request would require a search of all the emails and files of a number of people in the organisation involved in the roundabout. The NTA said that it would



then need to review each of the over one thousand records to establish if they held any exempt information. The NTA stated that due to the nature of the correspondence items, it is likely that many records would contain a large amount of personal information.

14. The NTA estimated that processing this part of the request would require three staff members a total of two weeks to retrieve all records, review each record to identify and redact exempt information, and to prepare the records for release. It explained that this work would fall to its Active Travel Investment Section, which has 11 staff members. The NTA explained that this section is currently managing around one thousand cycling and walking projects across the country. It stated that the section is under-resourced and has requested authorisation to recruit additional resources. This request is being considered by the Department of Public Expenditure and Reform. The NTA stated that given the under-resourcing, to remove personnel from the delivery of Active Travel projects to focus on such a wide-ranging request would adversely impact the delivery of those projects and would be highly disruptive to the operation of that section. The NTA stated that it would result in the failure to deliver on Government objectives for the delivery of Active Travel schemes, which it stated is a significant priority area for transport.
15. In relation to BusConnects Route 12, the NTA outlined the Rathfarnham to City Centre Core Bus Corridor is a uniquely large and complex project, focussed on transforming bus transport and cycling facilities along this corridor. The NTA stated that there is a vast amount of documentation that has been prepared or is under preparation for this project, covering everything from design drawings, a myriad of different surveys, property investigations to establish ownerships of properties to be acquired, transport modelling and simulation, factual reports, interpretative reports, junction assessments, utility information, correspondence items, cost assessments, payment invoices, expenditure information, three environmental impact assessment report materials, compulsory purchase order information and a host of other documentation.
16. The NTA stated that most of the relevant records were held electronically, and it explained that hardcopy files received were digitised and shredded after receipt in line with the relevant retention policy. It stated that some records may have been held in hardcopy which had not yet been digitised, and it also held personal diaries, records and notes in hardcopy form.
17. The NTA outlined a number of electronic and hardcopy systems and files which hold relevant records. On its network drive alone, the NTA stated that it held 11,556 folders with almost 90,000 files which would all need to be searched, as folders are not organised specifically by route.
18. On its stakeholder management tool, the NTA stated that it held information relating to 4,745 stakeholders relating to Route 12. It stated that further information had not yet been manually entered into this tool and was stored locally by contractors.
19. The NTA outlined further electronic systems, including email account which would also need to be searched for relevant records. It estimated that processing this part of the request would take three to five months of a staff member's working hours. It based this estimate on the number of records and files involved in the project, and the fact that many of the records contain personal information and would need to be reviewed and redacted. The NTA also stated that that a request to recruit additional



resources for the BusConnects unit is currently being considered by the Department of Public Expenditure and Reform. The NTA argued that given the sheer volume of records, and the constrained resources operating on this project, the processing of this part of the request would be highly disruptive to the delivery of a vitally important nationally infrastructure programme and would cause delay to the progression of this project.

20. In its submissions to this Office, the NTA outlined the public interest considerations it took into account in considering the request as a whole. It stated that the factors favouring disclosure include the right of the public to have access to information, and transparency and accountability in the work of the NTA. It stated that the factors favouring non-disclosure include: the likely impact on the NTA's work and operation; the interest in protecting the ability of the NTA in carrying out its core functions and maintaining the integrity of the request mechanism under the AIE regulations; and the significant impact processing the request could have on a major capital infrastructure project contained in the Programme for Government.
21. The NTA noted that as part of the BusConnects Project, it held three rounds of public consultations, the third of which was conducted in December 2020. The NTA stated that during those rounds of public consultations, it made available a range of documents as part of that process, including documents relating to Route 12, to assist members of the public wishing to review the plans and/or make a submission in respect of the project as a whole or elements of the wider BusConnects project, all of which are still available on the BusConnects website.

The appellant's position

22. As outlined above, in its appeal to this Office, the appellant noted that the NTA made no attempt to assist it to reduce the scope of its request. The appellant also argued that the NTA had considered the entire request together, and had not examined if either part of the request could be reasonably processed.
23. Having been provided with a summary of the NTA's submissions in this case, the appellant clarified the records it was seeking. It stated that, with regard to the Orlagh Roundabout, it was looking for the plans of what was built as opposed to what was permitted. It stated that it wished to limit the scope of its request to the actual construction file, i.e., the instructions, plans and drawings given to the contractor. It clarified that it was also seeking compliance documents which showed that the NTA had complied with all legal obligations. It stated that it would be happy to exclude emails except where emails related to those two matters.
24. Regarding BusConnects Route 12, the appellant clarified that it was seeking the environmental surveys undertaken and/or considered by BusConnects pertaining to the Owendoher River and Dodder River, on which BusConnects based its proposal to build three bridges as part of the Route 12 proposal. The appellant stated that this proposal was part of a public consultation but the environmental surveys were not included in the documents released, notwithstanding that reference was made to them by BusConnects as part of the public consultation.



25. The appellant argued that a public authority ought to organise its information appropriately in a way that facilitates access and that a public authority cannot rely on its own disorganisation to deny access to information.
26. In correspondence with this Office, the appellant drew attention to the decision of this Office in case OCE-108782-X6N0D1, which it stated was relevant to this case, without providing further information as to why it considered it relevant.

Analysis

27. When considering whether a request is manifestly unreasonable, it is necessary to examine the impact on the public authority of dealing with the request. In particular, I must examine whether responding to the request would involve the public authority in disproportionate cost or effort or would obstruct or significantly interfere with the normal course of its activities. In light of the findings of the Court of Justice of the European Union in T-2/03 *Verein für Konsumenteninformation v. Commission*, at paragraphs 101-115, I consider that the exception in article 9(2)(a) is only available where the administrative burden entailed by dealing with the request is particularly heavy. The burden is on the public authority to demonstrate the unreasonableness of the task entailed by the request.
28. In the circumstances of this case, I accept the position of the NTA that processing the request as initially worded would result in a significant interference with the normal course of the NTA's activities and of particularly busy sections of the NTA, given the number of systems and files which would need to be searched to fulfil the request and given the time it would take NTA staff to do so.
29. As the appellant argued, the exception in article 9(2)(a) is not intended to endorse any failure by public authorities to comply with their duties of dissemination of environmental information under article 5 of the AIE Regulations and Article 7 of the AIE Directive. Accordingly, it is relevant to consider whether the information requested is the kind of environmental information that one would expect to be organised by the public authority in a manner that enables its easy dissemination.
30. While the NTA would be expected to disseminate much of the requested information in support of participation in the public consultations regarding the Orlagh Roundabout and Route 12, it does not seem reasonable to expect that the NTA would regularly disseminate all records relating to the two projects. Indeed, the NTA, in its submissions, pointed out that much of the correspondence would likely contain personal information which would need to be redacted before being released. I consider it likely, given the nature of the original request, that other information may need to be considered by the NTA before being released, and would not constitute the kind of information which the NTA would be expected to disseminate regularly. I note in its submissions that the NTA outlined the information falling under the scope of the request which it had already published on its website.
31. In this case, however, the NTA failed to provide any reasons for its original or internal review decisions and did not comply with article 7(4)(c) of the Regulations in this regard. Furthermore, it does not appear that the NTA attempted to assist the appellant in any way to refine the scope of the request such that it would no longer fall to be refused under article 9(2)(a) of the Regulations.



32. As evidenced by the appellant's willingness to refine the request once provided with a summary of the NTA's submissions, which can be regarded as reasons for its decision to refuse the request under article 9(2)(a), it appears to me that had the NTA complied with article 7(4)(c) of the AIE Regulations in the first instance, this appeal may have been avoided.
33. While the request as originally worded may constitute a manifestly unreasonable request, I do not consider it appropriate to affirm the NTA's decision in circumstances where it failed to provide assistance to the appellant to refine the scope of the request and where it failed to comply with article 7(4)(c) of the Regulations.
34. In the particular circumstances of this case, on behalf of the Commissioner for Environmental Information, I find the most appropriate course of action is to annul the NTA's decision in this case and direct it to undertake a fresh decision-making process on the refined scope of the appellant's request. I would remind the NTA that the Minister's guidelines provide that should a public authority seek to refuse a request under article 9(2) of the AIE Regulations, it should first assist the appellant to reformulate the request as appropriate. I would suggest, in this case, that the NTA and the appellant liaise with a view to fully processing the request as efficiently as possible.

Decision

35. Having carried out a review under article 12(5) of the AIE Regulations on behalf of the Commissioner for Environmental Information, I find that the NTA failed to comply with article 7(4)(c) of the AIE Regulations and that this failure was not justified. I hereby annul the NTA's decision. I direct the NTA to conduct a fresh decision-making process in this case, having regard to the appellant's refined request.

Appeal to the High Court

36. 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