



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-127809-W0D0Y8

Date of decision: 7 October 2022

Appellant: Mr. P, c/o FP Logue Solicitors

Public Authority: Fingal County Council (the Council)

Issue: Whether the Council was justified in refusing to process the appellant's request for environmental information.

Summary of Commissioner's Decision: The Commissioner annulled the Council's decision on the ground that it had not carried out a review of the appellant's request at either stage of the process. He directed it to undertake a fresh decision-making process in respect of the appellant's request.

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 case involves an alleged unauthorised development, regarding which the Council had sent a warning letter pursuant to section 151(1) of the Planning and Development Act. All references to the appellant in this case includes references to the appellant's representative.
2. On 27 July 2022, the appellant contacted the Council's Planning and Enforcement Section by email regarding the warning letter that had issued. In the attached letter, under the heading "Access to relevant information", and citing the AIE Regulations, the appellant sought access to:

"all information relating to this matter including the enforcement file; copies of all representations made; all correspondence between Fingal County Council and persons making representations and all internal communications and reports"
3. The Council did not respond to this request. On 28 August 2022, the appellant emailed the Council once again, requesting that the Council carry out an internal review of its deemed refusal of the AIE request.
4. The Council acknowledged receipt of the correspondence on 30 August 2022 but did not acknowledge or respond to the AIE request that had been contained in the original correspondence. In a second email on the same date, a further email issued, which directed the appellant to submit the request directly to the FOI Officer at a specific email address.
5. The appellant queried why the Council required the request to be sent to a particular email address on 31 August 2022, to which the Planning and Enforcement section responded on the same date citing a passage from its website.
6. The appellant submitted this appeal of the Council's refusal to deal with the request to this Office on 31 August 2022.
7. I am directed by the Commissioner for Environmental Information to carry out a review of this matter. I have now completed this review pursuant to article 12(5) of the Regulations. In so doing, 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).

Scope of Review

8. 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. The scope of this review is confined to whether the Council was justified in refusing the request on the basis that it was not sent to a specific email address.

Analysis and Findings

9. Article 7(1) of the AIE Regulations provides that a public authority shall “make available to the applicant any environmental information, the subject of the request, held by or for the public authority”. Article 7(2)(a) goes on to state that a public authority shall make a decision on a request “as soon as possible and, at the latest, [...] not later than one month from the date on which such request is received by the public authority concerned.”
10. The appellant’s representative submitted the AIE request by email to the Council’s Planning Enforcement section. From reviewing the correspondence that followed, it appears that the request was not processed by the Planning Enforcement section, nor was it directed to the AIE or FOI section.
11. As mentioned above, when the appellant sought an internal review, the Council responded to say that the request must be submitted to the FOI Officer at foi@fingal.ie. The Council also provided information from its website.
12. The manner in which the Council dealt with this request is unacceptable. The absence of any evidence to show that the Council engaged with the request at either original decision stage, or at internal review stage, is most disappointing. There is no suggestion that the Council did not receive the correspondence attached to the email of 27 July 2022, in which the AIE request was made, nor did the Council set out any objection regarding the validity of the appellant’s request, having regard to the AIE Regulations.
13. I understand the need for the Council to have in place administrative procedures to deal with AIE and indeed FOI requests. However, such arrangements should not prevent or delay the processing of requests, which have been validly communicated to, and received



by, the Council. The Council's requirement that all requests for information must be sent to a specific email address, in order for that request to be answered, appears to me to be a barrier to the access to environmental information, running contrary to the letter and the spirit of the Convention. There is no provision in the AIE Regulations, nor in the AIE Directive, which allows for such an administrative obstacle to be put in place. The barrier in this case was further exacerbated by the considerable delay in notifying the appellant that the request had not been processed.

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

Decision

15. Having carried out a review under article 12(5) of the AIE Regulations, I annul the Council's decision. I remit the matter to the Council, who should process the appellant's request in accordance with the AIE Regulations.

Appeal to the High Court

16. 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

7 October 2022