



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-123434-G9L7L2

Date of decision: 5 October 2022

Appellant: Mr. K

Public Authority: Clare County Council (the Council)

Issue: Whether the Council was justified in partially refusing access to information relating to environmental inspections in Meehan Dairies

Summary of Commissioner's Decision: The Commissioner found that the Council's refusal to provide access to the environmental information was not justified under article 7(5) of the AIE Regulations. He directed the Council to undertake 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 8 March 2022, the appellant contacted the Council and requested access to the following information:
 - All original photos in the original format for example jpeg, jpg, or png taken during Environmental Inspections of Meehan Dairies in the townland of Ballyvanna, Crusheen, Co. Clare.
 - All correspondence between Clare County Council 's Environment and Water Services Department and Inland Fisheries Limerick, Department of Agriculture (DAFM), National Parks and Wildlife (NPWS) and Meehan Dairies relating to the environmental inspection of Meehan Dairies
 - Records of water samples that were taken during the inspection of Meehan Dairies by the Environment and Water Services Department.
 - Original photos of Meehan Dairies farm development in the original format, taken during the Environmental inspection.
2. By email of 5 April 2022, the Council informed the appellant that the request was granted in part. It stated that it had not located any records for items 1, 3 and 4 of his request. In relation to item 2, the Council set out that it could not locate any written correspondence between the relevant parties. However, it stated that it had located a note regarding telephone communication between the Council and Inland Fisheries Ireland (IFI). The Council released this note to the appellant.
3. On 6 April 2022, the appellant requested an internal review of the Council's decision.
4. On 4 May 2022, the Council varied the original decision. Regarding item 1, the Council located a PDF version of a word document containing two embedded photographs, which it released to the appellant. The Council affirmed the original decision regarding items 2 – 4.
5. The appellant appealed to my Office on 12 May 2022.
6. I am directed by the Commissioner to carry out a review of this appeal. I have now completed this review under article 12(5) of the Regulations. In doing so, I have had regard to the submissions made by the appellant and the Clare County 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').



Scope of Review

7. 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 public authority will be required to make available environmental information to the appellant
8. The scope of the review in this case is limited to whether the Council was justified in its decision to refuse the appellant's request, on the basis that it does not hold the information sought.

Analysis and Findings

9. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned. In cases where a public authority has effectively refused a request under article 7(5), this Office must be satisfied that adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply. It is not normally this Office's function to search for environmental information.
10. In the appeal to this Office, the appellant advised us that he was aware of "*communication to/from Clare County Council relating to DAFM, NPWS, and the IFI*". However, a copy of this communication was not provided.
11. In its submission to this Office on 23 June 2022, the Council explained that when the request for the information was received, a search of all files and emails was carried out. The Council confirmed that the searches it carried out did not reveal any written correspondence, sent or received, in relation to the environmental inspection of Meehan Dairies. The Council then went on to give a possible explanation as to why the appellant believed further information exists.
12. The Council said there may have been referral emails from both DAFM and NPWS requesting that the Council investigate the complaint. If so, the referrals may not have been recorded because an investigation was already being carried out.
13. The Council also explained that because IFI was investigating the appellant's complaint, a phone call was made between both bodies where IFI confirmed to the Council that it was the lead body investigating the complaint. The appellant was advised of this in the Council's internal review decision.



14. On 14 July 2022, this Office received a further submission from the Council in which it confirmed that further records had been located. However, the Council set out that third party consent may be required before it could consider whether it would release these records.
15. It is my view that the Council has not demonstrated that it has carried out reasonable searches to satisfy this Office that all relevant records have been located. This view is supported by the recent location of further records, on which the Council had yet to make a first instance decision. I do not believe that it is appropriate for this Office to carry out a review regarding the release of these documents, where they were not the subject of the Council's AIE decision-making process, which should be documented in an original decision of the Council. This is particularly the case where the rights of third parties may be at issue.
16. In the circumstances, I am not in a position to find that the Council has taken adequate steps to identify and locate all relevant environmental information held by it. As such, I cannot find that article 7(5) of the AIE Regulations applies in this case. I consider 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 the provisions of the AIE regulations.

Decision

17. Having carried out a review under article 12(5) of the AIE Regulations on behalf of the Commissioner for Environmental Information, I annul Clare County 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

18. 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 Commissioner for Environmental Information

5 October 2022