



**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-93476-Z2S5Q2

Date of decision: 28 September 2022

Appellant: Mr. Liam Ó'Grádaigh

Public Authority: Dublin Airport Authority plc (daa)

Issues: (1) Which documents held by or for daa contain information falling within the scope of the request?

(2) Was daa justified in withholding information in scope on the basis of articles 7(3)(a)(i), 8(a)(i), 8(a)(iv), 9(1)(c), 9(2)(c) and/or 9(2)(d) of the AIE Regulations?

Summary of Commissioner's Decision: The Commissioner annulled the decision of daa. He found that daa had not taken all reasonable steps to identify information relevant to the appellant's request and directed that further searches be carried out to identify any additional information held by or on behalf of daa. The Commissioner found that a further 8 documents already identified by daa were within or partially within the scope of the request. He directed release of these documents, save for certain information which should be withheld under articles 8(a)(i) and 9(2)(c) of 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

1. This appeal arises out of the development and construction of the North Runway at Dublin Airport. On 29 May 2019, the appellant requested “all documentation and materials compiled by [Dublin Airport Authority] on the health effects of Aircraft Noise on residents living in the vicinity of an airport. Please include all medical opinions and reports obtained by [Dublin Airport Authority]. Please also include all opinions whether internal or external on the WHO guidelines and specifically the WHO 2018 guidelines. Please include all correspondence and reports provided to senior management on these issues.”
2. On 28 June 2019, Dublin Airport Authority (daa) granted access to four documents, but refused access to any other information held by daa on the basis that the exceptions in articles 9(1)(c) and 9(2)(c) and (d) of the AIE Regulations applied. The appellant applied for an internal review of the decision on 28 June 2019 and on 9 August 2019, daa affirmed its decision on internal review. The appellant appealed to my Office on 9 September 2019.
3. 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 by daa. I have also examined the contents of the documents at issue. In addition, I have had regard to:
 - [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](#)”);
 - [The Aarhus Convention—An Implementation Guide](#) (Second edition, June 2014) (the “Aarhus Guide”); and
 - 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”).
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.

Preliminary matter

Delay

5. This appeal is now one of the oldest appeals at my Office awaiting a decision, having been with my Office for almost three years. The daa’s failure to provide reasons to the appellant significantly contributed to the delays in dealing with this appeal in a timely manner. I sincerely regret the delay in reaching a decision on this appeal. I am committed to improving the efficiency of my Office in order to achieve more timely reviews.



Failure to give reasons

6. daa's original decision and its decision on internal review were both very brief, referring only to the articles relied on in respect of each exception and making no reference to the public interest test in article 10(3) of the AIE Regulations or the factors taken into account by daa in coming to its conclusion on the public interest. No schedule of relevant documents was provided to the appellant. While daa's submissions to my Office provided substantial reasons for its decision, including the factors taken into account when considering the public interest, I would remind daa that its duty under the AIE Regulations is to provide such reasons to an applicant for information at the time of its decision. As stated above it is my view that daa's failure to provide reasons to the appellant significantly contributed to the delays in dealing with this appeal in a timely manner.

Scope of Review

7. In accordance with article 12(5) of the AIE Regulations, my role 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, I will require the public authority to make available environmental information to the appellant.
8. daa refused the request on the basis of the exceptions in articles 9(1)(c) and 9(2)(c) and (d) of the AIE Regulations. However, in correspondence with my Office daa submitted, in summary, that:
 - a. only 7 documents held by daa (4 of which have already been disclosed) fall within the scope of the request; and
 - b. any documents in scope of the request may be withheld on the basis of articles 8(a)(i), 8(a)(iv), 9(2)(b), 9(2)(c) and/or 9(2)(d), depending on the relevant document.
9. As such, the questions before me are:
 - a. Which documents held by or for daa contain information falling within the scope of the request?
 - b. Was daa justified in withholding information in scope on the basis of articles 8(a)(i), 8(a)(iv), 9(2)(b), 9(2)(c) and/or 9(2)(d) of the AIE Regulations?
10. The appellant submits that his request has three different parts to it. One part is concerned about the health effects of Aircraft Noise on residents and any material obtained by daa; the second part relates to the WHO 2018 Guidelines; and the third part relates to correspondence and reports to senior management. He says that daa must hold information in addition to that which has been provided to him. By way of example, the appellant identifies documents available on the internet which he submits were held by daa at the relevant time and fall within the scope of his request, as well as documents previously provided to him by daa in response to other AIE requests. The



appellant also submits that he has engaged with daa on the health of his family and that such information would fall within the scope of his request.

11. daa submits that at the time of the request it held seven documents containing information falling within the scope of the appellant's request, four of which were disclosed to the appellant. daa provided my Office with a schedule of 158 documents which it had identified as potentially relevant as part of its search. (The documents were numbered from 1-160, with entries 45 and 46 missing as daa had concluded that such documents were not even potentially relevant). In respect of each document, the schedule provided a brief description of the document, together with daa's view as to whether the document fell within the scope of the appellant's request. daa also provided my Office with copies of each of those documents. In summary, daa submits that the remaining documents concern matters such as engagement with the local community on the North Runway project, internal discussion of noise levels in particular areas and noise mitigation measures, but do not contain information in relation to the health effects of aircraft noise on nearby residents.
12. The investigator asked daa about its record management practices, in order to establish whether it holds any information not identified in the schedule provided to this Office. daa submits that any documents which would be relevant to the appellant's request would be held on the Sharepoint site for the North Runway project and on its shared drives, as this is the project which is critical to the aviation noise footprint of the airport. daa states that a request was sent to the coordinator of the site requesting all information which could potentially fall within the scope of the request. It states that the coordinator conducted a manual review of the files, and all documents which were potentially relevant to the request were included in the schedule provided to this Office. daa submits that, given the nature of the documents requested, any documents in existence would be important reference materials commissioned from external consultants, which would be referenced in management or proposal documentation. The absence of such documents from the system would be noted, and no such absences were noted.
13. daa does not accept that it is hiding information, as suggested by the appellant. daa submits that it has not commissioned medical opinions and reports on the impact of noise on nearby residents; nor has it compiled any materials on the health effects of aircraft noise, save for the documents identified as falling within scope. daa submits that, in common with most other airports in other jurisdictions, daa does not have in-house competency to undertake research and make generalised assessments or judgments on a specialised environmental and health issue such as the health effects of aircraft noise on nearby residents. Rather, the type of information gathered and used by daa is, by its nature, publicly available, as daa relies on public health guidance and research to guide its understanding. daa submits that its approach is determined primarily by international and national regulations which are predicated on reports by specialists and experts at a European and global level. daa submits that, while over time it has collected aircraft noise information, that information has been published either as part of its noise contour maps or as part of the noise complaints information provided to local communities on a regular basis. It submits that such information does not include information on the health effects of aircraft noise on nearby residents, so it does not fall within the scope of the appellant's request.



Understanding the scope of the appellant's request

14. I have considered the terms of the appellant's request in light of the request as a whole and the ordinary language used, as well as having regard to the appellant's submissions on scope. I consider that the first sentence of the appellant's request defines the scope of that request, namely "all documentation and materials compiled by daa on the health effects of Aircraft Noise on residents living in the vicinity of an airport." I understand that daa considered the appellant's use of the phrase "compiled by daa" to require daa to have played an active part in the composition or publication of a record for it to come within scope, or for such actions to have been taken on daa's behalf. It is my view that the use of the word "compiled" must be interpreted broadly and should not be used to overly restrict the documents falling within the scope of the request.
15. The remainder of the request clarifies the *types* of documents which should, in particular, be considered by daa in that context, namely medical opinions and reports, opinions on WHO guidelines, and correspondence and reports provided to senior management. The way in which the appellant framed the request leads me to conclude that any such documents would only fall in scope if they are documents 'on the health effects of aircraft noise on residents living in the vicinity of an airport'. So, for example, opinions provided to senior management on WHO guidelines on a subject other than the health effects of aircraft noise on residents living in the vicinity of an airport would not fall within the scope of the request. To include this information would not be consistent with a plain and objective interpretation of the request. By contrast, any information provided to senior management on the health effects of aircraft noise on residents living in the vicinity of an airport would fall within the scope of the request.
16. I do not find, however, that the list of documents suggested by the appellant in his request are the only documents sought by him. The list merely suggests the types of documents that he is particularly interested in obtaining. This does not exclude other types of documentation and materials from the scope of the request.
17. Accordingly, I interpret the appellant's request as being a request for 'all documentation and materials compiled by daa on the health effects of aircraft noise on residents living in the vicinity of an airport, to include, but not limited to medical opinions, reports, internal or external opinions on WHO guidelines (including 2018 guidelines) and correspondence and reports provided to senior management on such effects.'

Whether all reasonable steps have been taken by daa to identify information held by it relevant to the request

18. My Office sought to establish whether documents other than those identified in the schedule were held by daa at the relevant time. My investigator put the appellant's submissions to daa and sought submissions from daa about its record management practices. As set out above, daa contended



that all relevant information would be held within the North Runway Project Sharepoint site and shared drive. My Office was informed that a manual review of files on this Sharepoint site was carried out. When it was put to daa that the appellant said he had personally engaged with daa on the health of his family, daa responded that an in person informal meeting took place between a member of staff and the appellant, but that no written record of that meeting was available.

19. Following this, the appellant provided my office with emails sent by him to the Head of External Communications (at that time) of daa. The appellant referenced the health of his family in that email, and requested inclusion in the daa insulation scheme. The response to his email provided information on eligibility for the insulation scheme. The email was similar in nature to document 38 which will be considered below, but this document was not provided to my Office or identified in the schedule of 160 documents which were identified as potentially relevant to the request.
20. My office provided copies of this email to daa and queried why this email was not included in the initial schedule, and whether searches were carried out of the email account of the Head of External Communications or of other individual email accounts. The explanation provided by daa was that firstly, the email was outside of the scope of the request as it set out information on eligibility of a particular individual for an insulation scheme, and secondly that the views shared in this correspondence were the appellant's own opinions, and as such would not be provided to the appellant under the request.
21. daa confirmed that searches were not carried out in the email account of the Head of External Communications or any other individual email account. It is unclear whether this email was or should have been included on the North Runway SharePoint site. If it was not contained on the North Runway SharePoint site, the reasons for that are not clear to me given that the email concerns information directly relevant to the project. It is further unclear from the response received as to whether the email was discounted from initial searches as it falls outside of the scope of the request, or because it was information relating to the appellant himself. The provisions of the AIE regulations do not provide for the automatic exclusion of personal information when processing a request.
22. Given that a) the appellant's email was not identified by daa in its searches for documents relevant to this request and b) no searches have been carried out of any individual employee email account, I cannot be satisfied that daa has taken all reasonable steps to identify information relevant to the appellant's request. It does not appear that daa has considered emails that may be held in individual staff members email accounts, or that may have mistakenly not been filed on the relevant Sharepoint site.
23. Having received the above response, I considered seeking further clarification from daa as to the storage of emails from members of the public that may contain information relevant to this request. However, a long period of time has passed since my Office received this appeal and a considerable amount of correspondence has already been generated. I consider that it is appropriate for me to deal with the documents already identified by daa in its searches for information relevant to this request, and to direct that daa should also carry out further searches to



identify whether any additional documentation may exist that is relevant to the request. The details of these searches should be provided to the appellant, with any additional relevant information identified being processed under the AIE Regulations. Should the appellant not be satisfied with same, he may appeal again to my office.

Documents falling within the scope of the request

24. I have reviewed daa's schedule of documents, the documents themselves and the submissions of both daa and the appellant. I have reached the following conclusions, with reference to the numbers in daa's schedule of documents:
- a. Documents 1, 5, 6, 7 and 8 (document 7 being a duplicate of document 8), which have already been provided to the appellant, fall within the scope of the appellant's request.
 - b. The following parts of the following documents fall within the scope of the appellant's request:
 - i. In document 3, questions 38 and 89-97, as well as the answers to those questions;
 - ii. In document 4, which consists of a table, row no.7.
 - iii. In document 53, slide 7, row 4 and slide 11, paragraph no.3.
 - iv. In document 54, slide 47, row 4.
 - v. In document 55, slide 49, row 4.
 - vi. In document 85, which is a note of two community meetings, under "Insulation Information Meeting No.2, the 7th bullet point.
 - c. Documents 38 and 160 in their entirety fall within the scope of the appellant's request.
 - d. Documents numbered 2, 9-37, 39-44, 47-52, 56-84 and 86-159 do not contain information falling within the scope of the appellant's request. Such documents concern matters such as engagement with the local community on the North Runway project, internal discussion of noise levels in particular areas, and noise mitigation measures, but do not contain information in relation to the health effects of aircraft noise on residents living in the vicinity of an airport.
25. daa has agreed to the release of document 53, slide 7, row 4; document 54, slide 47, row 4; and document 55, slide 49, row 4. daa argues that articles 7(3)(a)(i), 8(a)(i), 8(a)(iv), 9(1)(c), 9(2)(c) and 9(2)(d) allow for the refusal of the remainder of the documents, with different arguments and exemptions applying to each of the documents identified.
26. For the sake of clarity, I will review the decision of daa by considering in turn whether the above provisions of the AIE Regulations justify the refusal of the information sought by the appellant.



Article 7(3)(a)(i)

27. daa argues that document 4 is exempt from disclosure as it is publically available. Document 4 is a draft action plan prepared following engagement with the community liaison group. Row 7 of this document is within the scope of the request. daa state that this document is available publicly on the Dublin Airport website. daa in its submission states that due to this, document 4 did not need to be disclosed to the appellant under article 7(3)(a)(i) of the AIE Regulations.
28. This is not a correct interpretation of article 7(3)(a)(i). This article does not provide an exemption from disclosure for documents that already available to the public, but rather for the granting of a request in an alternate form or manner to the form specified in a request, where information is already available to the public in another form or manner that is easily accessible.
29. I do however accept that a request can be granted by directing a requestor to where information is available publicly. When a search process is carried out for information relevant to an AIE request, this should include documents that are already available to the public that are held by or for the public authority. Best practise in processing a request would be to provide the appellant with a schedule of documents setting out all documents identified as relevant to the request. The requestor should then be directed to where exactly those documents can be accessed. Due to the above I find that daa's reliance on article 7(3)(a)(i) is not justified and the document should have been disclosed to the appellant.

Article 8(a)(i)

30. daa submits that document 38 and the relevant portions of documents 53 and 85 are exempt from release under article 8(a)(i) of the AIE Regulations. Having viewed the contents of document 53, slide 11, paragraph 53, I find that this portion of the document does not contain personal information.
31. I agree that that documents 38 and 85 contain personal information regarding an individual which could be exempt from disclosure under article 8(a)(i) of the AIE Regulations. The appellant has confirmed that he does not request the release of information that would identify any named individual to him. daa noted its obligations in relation to the protection of this personal information under the General Data Protection Regulation. Considering the content of these documents, I am of the view that it is appropriate for the identifying information to be redacted, to include names and any information relating to the addresses of the individuals that may lead to them being identified. With these redactions, I find that the remainder of documents 38 and 85 do not contain confidential personal information of natural persons within the meaning of article 8(a)(i).



Article 8(a)(iv)

32. daa contends that document 3 is exempt from disclosure under article 8(a)(iv) of the AIE Regulations. This article provides that a public authority shall not make available environmental information where disclosure would adversely affect the confidentiality of the proceedings of public authorities, where such confidentiality is otherwise protected by law.
33. The following elements must be satisfied before the question of refusal under article 8(a)(iv) arises:
- (i) the case must involve the “proceedings” of public authorities;
 - (ii) those proceedings must have an element of confidentiality;
 - (iii) that confidentiality must be adversely affected by the disclosure of the information requested; and
 - (iv) that confidentiality must be protected by law.
34. daa has not identified any particular proceedings that are at issue in this case, other than stating that disclosure would adversely affect the confidentiality of proceedings of daa. The concept of proceedings cannot be applied in a general way to all activities of public authorities. The Court of Justice in *Flachglas Torgau GmbH v Bundesrepublik Deutschland* C-204/09 set out at paragraph 63 that the concept of proceedings, as referred to in article 8(a)(iv), “refers to the final stages of the decision-making process of public authorities”. A similar conclusion was reached by the Court of Justice in *Saint-Gobain Glass Deutschland v Commission* T-476/12. Although that case dealt with Regulations 1049/2001 and 1367/2006 rather than the AIE Directive, it considered the provisions of the Aarhus Convention on which both the Directive and the Regulations are based. The Advocate General, when referring to the ground for refusal at issue in *Saint-Gobain* noted that “the same ground for refusal is laid down in article 4(2)(a) of [the AIE Directive]” before concluding at paragraph 52 that “the concept of ‘proceedings’ must be understood as covering only the deliberation stage of decision-making procedures”
35. I see no evidence in the contents of document 3 that it relates to proceedings within the meaning of article 8(a)(iv), as it does not relate to any deliberative or decision-making process. daa state that the purpose of document 3 is to assist in communicating with the public. From information provided to my Office in this appeal, I can see that daa communicates with the public in a number of different ways e.g. through community meetings, email, individual meetings. I do not find that these types of activities can be described as “proceedings” within the meaning of article 8(a)(iv). As well as this, I do not see how an element of confidentiality can be attached to this document or to activities relating to this document, if the very purpose of it is to assist in communicating with the public. For these reasons, daa’s reliance on article 8(a)(iv) in respect of document 3 is not justified.
36. I have recently referred a question to the High Court on the interplay between article 8(a)(iv) of the Regulations and the provisions of the Freedom of Information Act. If I were satisfied that the other conditions set out in article 8(a)(iv) had been satisfied, it would perhaps have been necessary for me to put my decision on this aspect of the case on hold pending the outcome of those



proceedings. However, in circumstances where none of the other conditions are fulfilled, I do not believe it is necessary for me to await the outcome of the High Court proceedings in order to reach a decision on whether article 8(a)(iv) applies to document 3.

Article 9(1)(c)

37. daa says that article 9(1)(c) applies to the relevant portions of documents 53 and 85. Article 9(1)(c) provides that a public authority may refuse to make available environmental information where the disclosure of the information requested would adversely affect commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest.
38. daa has not provided substantive submissions regarding the application of article 9(1)(c) to these documents, despite having ample opportunity to do so. daa has not identified the legitimate economic interest at play, how any confidentiality might be provided for in national or Community law or any adverse effect which might result from the disclosure of the information. Having regard to the contents of the relevant portions of documents 53 and 85, I see no evidence that article 9(1)(c) of the AIE Regulations is applicable to these documents, and I find that daa's reliance on this provision in refusing access to the relevant portions of documents 53 and 85 is not justified.

Article 9(2)(c)

39. daa says that article 9(2)(c) applies to documents 3, 53 and to document 160. Article 9(2)(c) of the AIE Regulations provides that a public authority may refuse to make environmental information available where the request concerns material in the course of completion, or unfinished documents or data. In my view, the expression "in the course of completion" relates to the process of preparation of the information or the document.

Document 3

40. As set out above, document 3 consists of an FAQ style document that is titled "Latest Master Q_A". Section D of the document, which consists of questions 89-97, concerns health related matters and is headed as such. Question 38 also references health related matters. This document contains comments in the margins that note that the planning process was unclear at the time of the comments and suggest holding back certain details until such time that this is clarified.
41. It is clear that this is a working document that is intended to be updated as relevant information changes. daa states that this document is "intended to be updated to assist in communicating with the public." daa also points to a separate FAQ section on its website which is regularly updated to inform the public on areas of concern. It states that any material that is relevant to this request has



- been disclosed on the FAQ section of the website. I do note, however, that there is no significant health related information on this part of the website compared to the contents of document 3.
42. I find that given the use of the document as described by daa, it cannot be described as being “in the course of completion” or unfinished. It is clear from the comments contained in the relevant parts of the document which flag that information relating to the planning process may need to be updated when clarification on the process is received.
43. I do not accept that these comments or the fact that new information may be added to the document brings it within the definition of a document that it “in the course of completion” or “unfinished”. I find that this document was accurate at that point in time, albeit that it was intended that the document would be updated when (and if) new information was received. The comments in the margins are communicating that fact to the reader, and I find that the comments form part of the document as a whole.
44. I do not accept that the fact that the document may be edited in the future as new information becomes available should bring it within the exemption provided for in article 9(2)(c). This could lead to a situation where a document remains permanently in the course of completion whenever it is contemplated that a document may potentially be updated in the future. From the title of the document and the description of its use by daa, it is clear that the document is intended for use in its current form, and while it may be updated in the future, the document was at the time of the request complete and intended to be used to communicate with members of the public. For these reasons, I find that article 9(2)(c) is not applicable to document 3.

Document 53 (slide 7, row 4 and slide 11, paragraph 3)

45. Document 53 is a PowerPoint presentation prepared for a daa management meeting. Only the above portions of the document are within the scope of this request. daa has provided no evidence to show that article 9(2)(c) applies to document 53. In particular, the title of document 53 states that it is the “final” set of slides, and it is clear from the contents of the document that the meeting to which the slides relate occurred in 2017, well before the appellant’s request was made to daa. I find that article 9(2)(c) is not applicable to document 53.

Document 160

46. Document 160 is a draft Health Impact Assessment. Having reviewed the document, it appears to me that the document is a working draft, which is in the course of completion. For example, the document includes comments in the margins from several different parties, some of which have already been incorporated and some of which acknowledge that further work on the document is needed. Some of the comments in the margins refer to paragraphs as ‘holding text’ pending further editing. I am of the view therefore that document 160 is an unfinished or incomplete document within the meaning of article 9(2)(c).



47. daa submits that the Health Impact Assessment is material in the course of completion and/or an unfinished document, as evidenced by the substantial mark-up of the document. It submits that it informed the appellant in advance of its internal review decision that document 160 would be completed and made publicly available as part of the planning application made to Fingal County Council. daa submits that, since its decision, relevant information from the Health Impact Assessment was incorporated in chapter 7 of the Environmental Impact Assessment Report submitted by daa to Fingal County Council as part of planning application F20A/0668. However, the final version of document 160 was not itself published.
48. daa submits that there is no public interest in the disclosure of the draft Health Impact Assessment. In favour of refusal, daa submits that the key information is released to the public as part of the planning process, which offers the appellant and all other interested parties the opportunity to examine relevant material and highlight issues of concern or make suggestions to Fingal County Council. It also submits that the transparency of this process, and its simultaneous accessibility to all interested parties, provides for extensive opportunity for a holistic examination of all related environmental information. daa submits that the early provision of incomplete information could serve to undermine the finalised information on aircraft noise.
49. The appellant does not contest that the document may be unfinished or in the course of completion, but says that the public interest in the disclosure far outweighs the interest served by the refusal of the documents. He submits that there is likely to be information in the Health Impact Assessment that is not contained in the EIAR, and suggests that this would have given daa an opportunity to select more favourable information to be made available to the public through the planning process. He contends that there is a strong public interest in the release of any information relating to the health of the population living in the vicinity of Dublin Airport, and that this would far outweigh the interest served by refusal of the document.
50. As set out above, article 10(3) of the AIE Regulations requires that the public interest served by disclosure is weighed against the interest served by refusal in each particular case. In my view the following factors are pertinent to document 160:
 - a. In favour of disclosure, there is an important general interest in the disclosure of environmental information to meet the purpose of the AIE Directive, in particular by contributing to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment, as set out in recital 1 to the AIE Directive. The AIE regime recognises a very strong public interest in openness and transparency in relation to environmental decision-making. I also consider that there is a strong public interest in transparency with regard to how public authorities, such as daa, carry out its functions with regard to environmental factors such as noise.



b. In favour of refusal, I accept that there is an interest in giving public authorities time and private space to draft and amend documents that they are preparing before they are finalised. The European Commission acknowledged this interest in its First Proposal for the AIE Directive, as did the Court of Justice of the European Union in Case C- 619/19 *Land Baden-Württemberg v. D.R.* at paragraph 44. I emphasise that this interest is in maintaining the confidentiality of draft documents while they are still being actively worked on, rather than in maintaining the confidentiality of completed documents pending the conclusion of decision-making process. daa suggest that the release of this document would result in misleading information being released to the public and that this should be considered in favour of the refusal to release document 160. Having viewed the contents of document 160, I do not consider this to be the case, and I do not find any other factors in favour of the refusal of the document.

51. I find that this document consists of two elements; the draft document itself, and the comments contained in the margins. The comments in the margins are from different parties, both daa and external advisors, and contain robust engagement regarding the contents of the document. This differs from the comments in the margins of document 3 above, which contain no such engagement. In my view, the comments in this document are a clear example of the “private thinking space”, that article 9(1)(c) is designed to protect and requiring the disclosure of such comments could discourage public authorities from engaging with advisors in this manner in the future. Allowing for that distinction between the two elements of document, I find that the interest served by the exception outweighs the public interest in disclosure of the comments in the margins.

52. I find that different considerations apply to the main body of document 160. This document contains significant, detailed information that is not available elsewhere, and was not used in the environment impact statement that was later submitted to the public authority in respect of the North Runway. I note that there are a small number of paragraphs in this document where the comments note that further input may be required, or the passage may need to be rewritten. Notwithstanding this, I consider that the public interest served by disclosure outweighs the interest served by withholding this information. It is inherent in the release of a draft document that some of the information contained may have been changed before the document was finalised. I consider that the release of this information provides an insight into policy options that were considered by daa and then discounted.

53. In conclusion, I find that daa’s reliance on article 9(2)(c) is justified in respect of the comments contained in document 160, and that these comments maybe withheld from the appellant. In respect of the main body of the document, I find that the public interest served by disclosure outweighs the interest served by refusal.

Article 9(2)(d)



54. daa argues that article 9(2)(d) of the AIE Regulations applies to documents 3, 38, 53 (slide 11, paragraph 3) and 85 (bullet point 7). This article provides that a public authority may refuse to make environmental information available where the request concerns internal communications of public authorities, taking into account the public interest served by the disclosure.
55. The term “internal communications” is not defined by the AIE Regulations, the AIE Directive or the Aarhus Convention. The issue was considered by the CJEU in C-619/19 *Land Baden-Württemberg v DR* in which the court held that internal communications should be interpreted as covering “*all information which circulates within a public authority’s internal sphere- as the case may be, after being received by that authority, provided that it was not or should not have been made available to the public before it was so received*”. This decision also commented that “that the term “communications”, should be given a separate meaning to the terms “material” or “document” (paragraph 40), and that it can be interpreted as relating to “information addressed by an author to someone, an addressee who or which may be an abstract entity – such as ‘members’ of an administration or the ‘executive board’ of a legal person – or a specific person belonging to that entity, such as a member of staff or an official”.
56. I am satisfied that documents 3, 38, 53 and 85 are internal communications for the purposes of article 9(2)(d).
57. Document 3 is an internal guidance document to assist staff members in communicating with the public. While the purpose of the document was for use in communicating with the public and updating the FAQ section of the website, I accept that the document itself was for internal use and was not in its current form intended to be circulated outside of daa.
58. While document 38 contains an email from a member of the public and a reply to that email from daa, it also contains internal emails between employees of daa discussing the email from the member of the public. I am satisfied that those emails are internal communications for the purposes of article 9(2)(d). Documents 53 and 85 are both PowerPoint presentations prepared for internal daa management meetings. I am satisfied that these documents are also internal communications for the purposes of article 9(2)(d).
59. Article 9(2)(d) specifically requires a public authority to take into account the public interest served by disclosure of the requested information before refusing to disclose information under this provision. This is in addition to the obligation in article 10(3) of the AIE Regulations to weigh the public interest served by disclosure against the interest served by refusal in each request. In my view the following factors are relevant to the disclosure of these four documents:
 - a. In favour of disclosure, there is an important general interest in the disclosure of environmental information to meet the purpose of the AIE Directive, in particular by contributing to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment, as set out in recital 1 to the AIE Directive. The AIE regime recognises a very strong public interest in openness and transparency in relation to



environmental decision-making. I also consider that there is a strong public interest in transparency with regard to how public authorities, such as daa, carry out its functions with regard to environmental factors such as noise.

- b. In favour of refusal, I accept that there is an interest in giving public authorities privacy with regard to their internal communications and protecting the “private thinking space” of public authorities. Outside of this, however, daa have provided no specific submissions on how the disclosure of the above documents would undermine the interest served by the exception relied upon.

60. I find that these factors are relevant to the disclosure of all four documents, having considered the individual contents of each document. Taking these into account, I find that the public interest served by disclosure outweighs the interest served by refusal. In particular, in relation to documents 3, 53 and 85, there is a public element to the contents of each document, which makes it difficult to place a strong weight on protecting the document from disclosure under the AIE Regulations. daa says that the purpose of document 3 is to assist in communications with the public, and so by its very nature the intention is that the contents of the document would be disclosed to the public. The relevant portion of document 53 that is within the scope of the request refers to a publicly available Irish Times article, and document 85 records comments made at a public meeting that was attended by 63 individuals. Due to these factors, I do not place a strong weight on protecting these documents from disclosure. I further do not see any relevant factors to justify the refusal to disclose document 38.

61. I find that the public interest served by disclosure outweighs the interest served by refusal and accordingly find that daa’s reliance on article 9(2)(d) in refusing documents 3, 38, 53 (slide 11, heading and paragraph 3) and 85 (bullet point 7) is not justified.

Conclusion

62. Having carried out a review under article 12(5) of the AIE Regulations, I find that the appellant’s request is for documentation and materials compiled by daa on the health effects of aircraft noise on residents living in the vicinity of an airport, to include medical opinions, reports, internal or external opinions on WHO guidelines (including 2018 guidelines) and correspondence and reports provided to senior management on such effects. I find that other information or material relating to WHO guidelines or to aircraft noise but not concerning the health effects on residents living in the vicinity of an airport are not within the scope of his request.

63. I annul the decision of daa and direct release of the following information:

- i. document 3, questions 38 and 89-97, as well as the answers to those questions;
- ii. document 4, which consists of a table, row no.7.



- iii. document 38, email dated 29 November 2018. This email is to be redacted to withhold any information that would identify any individual. Details of the information to be redacted will be provided by my Office to daa.
- iv. document 53, slide 7, row 4 and slide 11, paragraph no.3.
- v. document 54, slide 47, row 4.
- vi. document 55, slide 49, row 4.
- vii. document 85, which is a note of two community meetings, under “Insulation Information Meeting No.2”, the 7th bullet point. This bullet point is to be redacted in order to withhold information that would identify any individual. Details of the information to be redacted will be provided by my Office to daa.
- viii. document 160, save for the comments in the margins of the documents.

64. In addition, I find that daa has not yet taken all reasonable steps to identify information held by or on behalf of daa that is within the scope of the appellant’s request. I direct daa to carry out further searches to identify any additional information relevant to the request, paying particular attention to relevant information that may be held outside the North Runway Sharepoint site. Should it be the case that additional relevant information is identified, daa should then consider the release of this information under the AIE Regulations, taking into account my findings in this decision.

65. 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.

Ger Deering

Commissioner for Environmental Information

28 September 2022