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 CEI/18/0021

Date of decision: 18 December 2019

Appellant: Mr A

Public Authority: Kilkenny County Council (the Council)

Issue: Whether the Council was justified in refusing to grant the appellant's request for access to information relating to Environmental Complaint KK/17/1

Summary of Commissioner's Decision: The Commissioner found that the Council was justified in refusing the appellant's request under article 9(2)(a) of the AIE Regulations. Accordingly, he affirmed the Council's decision.

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

This case is closely related to Case CEI/17/0034 (Mr. A and Kilkenny County Council). Both cases concern requests from the appellant to the Council for information relating to Environmental Complaint KK/17/1. This concerns an investigation by the Council into the suspected presence of polychlorinated biphenyls (PCBs) arising from a spillage of PCBs in 1980, at what is now a historic landfill, at Talbotsinch, Co. Kilkenny. PCBs are persistent organic pollutants that are harmful to human health and the environment.

As part of its investigation into Environmental Complaint KK/17/1 the Council carried out a Tier 1 assessment of the Talbotsinch historic landfill site. The Tier 1 assessment was a desk top study involving the development of a conceptual site model (CSM) for the site and risk screening and prioritisation. Subsequent to its Tier 1 assessment, the Council engaged environmental consultancy services to carry out a Tier 2 environmental risk assessment involving site investigations and testing of the Talbotsinch site. Following on from the Tier 2 assessment, Talbotsinch site was moved on to a Tier 3 assessment which involves a refining of the CSM using the information obtained from the Tier 2 assessment. The Council's assessment are being carried out in accordance with the Environmental Protection Agency's (EPA) Code of Practice for Environmental Risk Assessment for Unregulated Waste Disposal Sites. The EPA's Code of Practice provides that following a Tier 3 assessment a local authority shall make recommendations for the preferred remediation option, if considered necessary. The local authority shall prepare a report on the implementation of any agreed remediation option and ensure that all reporting requirements are met. The Council has been liaising with the EPA in respect of its assessments.

On 30 April 2018 the appellant requested the following information:

> "With reference to Environmental Complaint KK/17/1 and the Investigation arising from the disposal by Guinness Ireland Ltd, (St. Francis Abbey Brewery) of Polychlorinated Bi-Phenyls (PCB's) at or near Talbots Inch, Kilkenny and the emissions into our Environment thereof, I seek a copy of all information related to ENV complaint KK/17/1 which is held by or for Kilkenny County Council and which has to date not been released to me; to include but not limited to the following:
>
> 1 All files, records, documents, maps, memoranda, draft memoranda, grant applications/grant awards, letters of awards re tenders, reports, draft reports, internal Kilkenny county council emails, notes, notes of phone calls, minutes from meetings, notes from meetings/phone calls with KKCOCO staff and former KKCOCO staff, agents of KKCOCO and other third parties to include emails sent to and received from non @kilkennycoco.ie / external mail servers, to include public bodies/authorities/state entities and third parties, as a priority those third parties/businesses/industries occupying and/or in the vicinity of the Tier 1 and Tier 2 area of investigation and also DIAGEO (former owners of St.Francis Abbey Brewery), and the Contaminant hydrogeologist expert, and/or other various environmental experts and contractors, and any other parties advising KKCOCO re Environmental Complaint KK/17/1.
>
> 2 I also request a copy of all related tender documents related to the appointment of the Environmental consultant and/or Hydrogeologist etc who won the tender/s to conduct Investigations into matters arising from Environmental Complaint KK/17/1.

3 I seek all copies of any information and correspondence (as worded above) on Whatsapp or other social media/ instant messaging platforms (or any other electronic, digital devices- where relevant) held by or for KKCOCO and/or its officials relating to Confidential Environmental Complaint KK/17/1. I also seek a copy of all text messages sent and received between KKCOCO staff and/or their agents and third parties in relation to ENV complaint KK/17/1 and its follow up. This will require a circular asking staff whether they have discussed this matter using such platforms- it should not be presumed this practice does not happen in KKCOCO.

4 I also seek a copy of any deleted messages, emails or deleted texts (to include their date of deletion) and/or files held by or for any KKCOCO officials on any email server and/or any messaging platform relating to Environmental complaint KK/17/1 and its investigation. Therefore, I seek a copy of the full Environmental Complaint KK/17/1 file and its related Investigations, documents, records, reports and correspondence- not to include documents already released to me. As this AIE Request relates to an emission, I would ask KKCOCO to, where possible, expedite your decision in favour of the disclosure of Environmental Information and to communicate your decision to me "positively and promptly" as required by Article 7.3 of the Directive.

5 A copy of any correspondence relating to the Fehilly & Timoney Draft report on an area within the former Talbots Inch Landfill site."

The AIE officer at the Council phoned the appellant on 30 April 2018 to clarify with him what information he was seeking access to. The memo of that phone call said that the AIE officer had stated that this request was similar to two previous requests made by the appellant, and that, with the exception of the tender documents and the final Tier 2 Consultants' Report, all documents in relation to the Talbotsinch site have been released to him. The memo continued that the final Tier 2 Consultants' Report would be forwarded to the appellant when it was available, and that she would enquire about whether the tender documents could be released to him.

On 5 June 2018 the appellant requested an internal review on the basis of the deemed refusal of his request. The AIE Officer emailed the appellant on 12 June 2018 stating that she understood that his request had been dealt with. She denied that there had been a deemed refusal of his request. She referred to the phone call of 30 April 2018 where she said that all documents had been released to the appellant, with the exception of the final Tier 2 Consultants' Report and the tender documents. She stated that the final Tier 2 Consultants' Report had been released to the appellant on 15 May 2018 and that this was the decision on his request.

On 13 June 2018 the appellant responded to the AIE officer informing her that his understanding was that his request had not been dealt with and denying that the Council had made a decision on it.

The appellant appealed to my Office on 11 July 2018.

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 the Council. I have also 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

My review is confined to whether the Council was justified in refusing to grant the appellant's request for access to information relating to the Environmental Complaint KK/17/1. The appellant's submissions highlight that he has concerns in relation to how the Council is carrying out its environmental protection functions, including its investigation into that complaint. In addition, his submissions highlight concerns he has in relation to the Council's obligation to actively disseminate environmental information pursuant to article 5 of the AIE Regulations. However, I would like to emphasise that it is not within my remit as Commissioner for Environmental Information to adjudicate on how public authorities carry out their functions generally. In addition, my Office has no enforcement powers in relation to article 5 of the AIE Regulations.

Preliminary matters

Before setting out my findings, I wish to explain the approach of my Office to this review. Given the broad nature of the request and the possibility that it may be manifestly unreasonable pursuant to article 9(2)(a), my investigator invited the appellant to narrow the scope of his request. My Office was hopeful that this would bring clarity as to what information was being sought and that it would make this review more manageable. In fairness to the appellant, he agreed to narrow the scope. However, even after the narrowing of the request by the appellant, it was still not clear what outstanding information remains to which he is requesting access.

My Office then proceeded to treat this case as it would an adequacy of search case. Our aim in treating it in this manner was to bring clarity for all parties as to what information falls within the scope *i.e.* what information the Council held when it received the request which has not previously been released to the appellant. However, as will be evident from the decision that follows, the broad nature of the request and its apparent overlap with other requests gave rise to difficulties in this review. I now consider it appropriate to bring this matter to conclusion by way of a formal, binding decision.

The Council's position

The Council submits that it does not hold any information on parts 1, 3 and 5 of the request that has not previously been released to the appellant. In relation to part 2, it states that article 9(1)(c) applies to the tender documents as disclosure of the information would adversely affect commercial or industrial confidentiality.

In response to a series of enquiries made by my investigators to the Council regarding what steps it has taken to locate information falling within the scope of the request, it states that it carried out extensive searches for the information requested, including searching its hard drives, databases, complaints database and Outlook (emails). It also states that it has searched through its manual files including historical records in its storage area. In addition,

internal discussions have been had with relevant staff members and the previous engineer on the project has been contacted to check if he had any additional information.

The Council explains that its staff do not use WhatsApp or other social media/instant messaging services to conduct Council business. This is supported by its Social Media Policy and Electronic Communications Policy, copies of which have been provided to my Office. Its Social Media Policy provides that proprietary information shall not be exchanged, discussed or referred to on social media sites even in private messages between site members who have authorised access to the information. Examples of such information include, among others, discussion on any aspect of Council business or activity, particularly issues subject to administrative, legal, financial or regulatory processes. The Policy applies to all employees of the Council (permanent and temporary), independent contractors, consultants and other persons or entities that use the Council's digital resources, during and outside of working hours.

The Council submits that due to overlapping requests there is confusion, on both sides, about when and what information is being provided to the appellant. By way of explanation, it states that there are multiple overlapping requests for information including AIE requests, freedom of information (FOI) requests and environmental complaints that the appellant has made. For instance, it states that this request seeks the same information that was sought in a request on 16 March 2018. It also says that further confusion arises from the fact that some requests for information have been made directly to the engineer dealing with the Talbotsinch site. It states that it is trying to be accommodating as possible in releasing information to the appellant.

The appellant's position

The appellant's submissions explain that this request "is significantly broader [than that in Case CEI/17/0034] as it seeks all documents relating to ENV complaint KK/17/1 in total". He maintains that his request in this case is a "new and unequivocal request for documents and records".

As set out above, owing to the broad nature of the request and its potential manifestly unreasonable nature, my investigator invited the appellant to narrow the scope of his request. The appellant duly agreed to refine his request as follows:

- to narrow part 1 to any other documents/correspondence there may have been between the Southern Regional Waste Management Office and/or Department of Communications, Climate Action and the Environment and the Council
- to narrow part 2 to the tender documents relating to investigations carried out by the Council as a result of the environmental complaint leading to Environmental Complaint KK/17/1
- to strike out part 4.

The appellant also initially refined part 3 to the final line *i.e.* "a circular asking staff whether they have discussed this matter using such platforms - it should not be presumed this practice does not happen in KKCOCO". However, having been informed by my investigator that this would not be practicable, the appellant stated that he wished for the internal correspondence to remain within the scope of his request. Thus, part 3 reverted to its original scope. He also refined part 5 to the draft report and any record which filtered into

the draft report from before the date of his request. However, that is in essence the same as his initial request though worded differently.

The appellant states that, in his view, it would be unusual that documents like the tender documents would be created without liaison between relevant parties or stakeholders such as Council officials, Government Departments and the Southern Regional Waste Management Office. He also states that there may be relevant documents on the Council's Risk Management Register or other such related registers.

In response to being notified of the Council's search efforts, the appellant submitted documentation that he had received in response to AIE requests from the EPA and the Department of Communications, Climate Action and the Environment (DCCAE). He also asked that with "the Commissioner's permission", the Council would establish whether the relevant officials have WhatsApps on their work phones and then actively establish that there is not relevant information on those work phones. The appellant explains that he has issues about trusting the Council and has had a frustrating experience in the past with the Council in relation to his related AIE request. He feels that through the role my Office played in Case CEI/17/0034 further documents were released to him and that perhaps the Council holds further information which it has not released to him.

He also submits that he finds it unusual that the Council would not hold certain types of information. He states there is a public interest in the Council declaring that they do not have correspondence with certain third parties as, in his view, the absence of official correspondence with those third parties would be extraordinary. He seeks that the Council would state that it has no information with certain third parties. The appellant further submits that the request concerns emissions into the environment and that the "emissions override" in article 10(1) of the AIE Regulations applies to it.

Analysis and Findings

It is important to note that the right of access to environmental information is an important statutory right and while public authorities have statutory obligations to ensure that right can be properly exercised, there are limits to those obligations. 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. Article 9(2)(a) acts a safeguard to protect against an unreasonable administrative burden being placed on public authorities in processing a request for access to environmental information.

Article 9(2)(a) is based on Article 4(1)(b) of the Directive and indirectly on Article 3(3)(b) of the Convention, neither of which expressly refers to the volume or range of the information sought. The Supreme Court explained in *National Asset Management Agency v Commissioner for Environmental Information* [2015] IESC 51, available at www.courts.ie, that the provisions of the Regulations "must be understood as implementing the provisions of the Directive 2003/4/EC (and indirectly the [Aarhus] Convention) and . . . ought not to go further (but not fall short of) the terms of that Directive." I have stated in previous decisions that the volume or range of information requested is not itself a determinative factor in relation to the question of whether a request is manifestly unreasonable. However, it is relevant in determining whether the processing of the request would result in an unreasonable administrative burden on the relevant public authority, diverting it away from its core work. I find support in my approach in the Explanatory Memorandum for Proposal

for a Directive of the European Parliament and of the Council on public access to environmental information (COM(2000) 402 final 2000/0169(COD), available at www.eur-lex.europa.eu, which explains that:

> "Public authorities should also be entitled to refuse access to environmental information when requests are manifestly unreasonable or formulated in too general a manner. Manifestly unreasonable requests would include those, variously described in national legal systems as vexatious or amounting to an *abus de droit.* Moreover, compliance with certain requests could involve the public authority in disproportionate cost or effort or would obstruct or significantly interfere with the normal course of its activities. Authorities should be able to refuse access in such cases in order to ensure their proper functioning."

I also note that the Aarhus Convention Compliance Committee (ACCC) in response to a request for advice by Belarus (ACCC/A/2014/1), available at www.unece.org/env/pp/cc/a1.html, on the interaction between access to information without an interest having to be stated and refusals of unreasonable requests, expressly acknowledged that volume and complexity are among the relevant factors to consider in relation to whether or not a request is manifestly unreasonable:

> "28. … the Committee emphasizes that whether or not a request is manifestly unreasonable relates to the nature of the request itself, for example, its volume, vagueness, complexity or repetitive nature, rather than the reason for the request, which is not required to be stated. The Committee accordingly recommends to the Party concerned that it inform its authorities that, when handling information requests within the scope of article 4 of the Convention, they are not permitted to require applicants to give a reason for their request."

The request is very broadly phrased for "all information" relating to Environmental Complaint KK/17/1. It then proceeds to list five categories of information which the requests includes, but explicitly states that the request is not limited to these categories. In my view, each of these five categories of information are in themselves a singular AIE request and are potentially very broad in and of themselves. Thus, in essence the AIE request is six requests in one: a broad all encompassing request for all information relating Environmental Complaint KK/17/1, followed by five more specific requests. I have cautioned in previous decisions that trawling requests, such as the one in this case, can add unnecessary complexities to the processing of AIE requests and appeals, and run the risk of over burdening public authorities. I have also previously stated that AIE requests are singular, and where a request consists of multiple parts any single part of a request can render the entire request manifestly unreasonable.

Article 6(1)(d) of the AIE Regulations provides that AIE requests shall "state, in terms that are as specific as possible, the environmental information that is the subject of the request." The request in this case could, at a stretch, be viewed as somewhat specific in that it relates to a specific environmental complaint. However, while Environmental Complaint KK/17/1 dates back to 2017, the environmental incident at the centre of the complaint occurred almost 40 years ago. I note that the request was not, for example, confined to information contained in the file for the complaint or to a specific period of time, but was for all information related to the complaint. In my view, the wording of the request is such that the scope of the request includes all information held the Council by going back almost 40 years

relating to that environmental incident in so far as that information is also relevant to Environmental Complaint KK/17/1.

When the narrowing of the request failed to bring clarity, in the interest of fairness to the appellant, my Office proceeded to treat this case as it would a case where the question arises as to whether the requested information is held by or for the public authority concerned. There is of course, the added complication in this case that neither the appellant nor the Council can say with certainty what information has already been released to the appellant under AIE, FOI or otherwise. It seems to me that there is little doubt that the appellant has been supplied with a large amount of information on the subject of the request.

Article 7(5) of the AIE Regulations is the relevant provision to consider when the question arises as to what information is held by a public authority. In such cases I must be satisfied that adequate steps have been taken to identify and locate relevant records, having regard to the particular circumstances. It is not normally my function to search for information. In determining whether the steps taken are adequate in the circumstances, I consider that a standard of reasonableness must necessarily apply (see Case CEI/13/0015 (Mr. Lar McKenna and EirGrid plc) and Case CEI/11/0009 (Ms. Rita Canney and Waterford City Council), available at www.ocei.ie). I also consider that any steps that might be taken by a public authority to contact staff and ascertain whether or not they hold records within the scope of a request would have to be proportionate and not unreasonable.

The appellant asks for my Office to issue detailed directions to the Council on how it should carry out searches for information falling within the scope of this request in line with how he believes that they should search for information. It should be noted that I have no remit to examine, or make findings on, whether or not the Council or individual staff should have created further records, the level of detail in records that were created, the adequacy of the Council's record management policies or its adherence to those policies. In this regard, it seems to me from the appellant's submissions that he may be under the impression that my role in reviews such as this is wider than that of considering the right of access to records held.

As part of its search investigations, my investigators made a number of enquiries to the Council regarding what steps it has taken to locate information falling within the scope of this request. I have already outlined above the searches that the Council says were carried out. It remains the Council's position that, with the exception of the tender documents, it does not hold any information relating to Environmental Complaint KK/17/1 that has not previously been released to the appellant.

As will be seen below, treating this case as an adequacy of search case in an effort to clarify what information falls within the scope of this request, ultimately served to reinforce how unmanageable the processing of the request is. Regrettably, despite the appellant's willingness to narrow the request and my Office's best efforts to ascertain what information is being requested, I am still left in the situation of trying to establish, unsuccessfully, what information falls within the scope of this request. I consider that I cannot ignore the extent of the resources necessary to pursue this. Accordingly, I have reached the point in this review where I must consider the application of article 9(2)(a) of the AIE Regulations.

It is not in dispute that this request is similar to other requests that the appellant has made to the Council. I accept that there is confusion about what information falls within the scope

of this request and what information the appellant is seeking access to. It is evident from the appellant's correspondence to the Council that he also accepts that there is confusion surrounding this request. He acknowledges that there is a "very significant similarity between this request and [his request in] CEI/17/0034". His internal review requests states that "I appreciate that there have been several requests which are broadly similar yet technically they are distinct and ought to enjoy being considered independently of each other as per the Directive on AIE". He continues that "[w]hat I mean by this is it is understandable if there could be an element of confusion, and for my part it certainly was not my intention to be so in any way."

I note that the request excludes information that has already been released to the appellant. While this was no doubt done to reduce the burden on the Council in processing the request, unfortunately, the exclusion of that information when combined with the broad nature of the request has resulted in confusion and uncertainty about what information is being requested, particularly in circumstances where the Council has on multiple occasions released information to the appellant. I would like to acknowledge that the appellant did not intend for his request to create such confusion. I also note that the Council's AIE Officer tried, unsuccessfully, to clarify what information the appellant was seeking. With the benefit of hindsight, it would have been helpful if the appellant had attempted to specify in more detail for the AIE officer what environmental information he believes is held that he does not have already. It would also have been open to the appellant to clarify what information he was seeking access to in his internal review request or in his subsequent correspondence with the Council.

In addition to creating confusion about what information access to is being sought, the cross referencing to other requests adds an additional layer of complexity to this request. I note that the appellant told the Council that this request should be considered independently to other similar requests he has made to it. However, the nature of this request for all information relating to Environmental Complaint KK/17/1 but excluding information that has already been released to him means that the relationship between this request and other similar requests cannot be ignored.

I can identify from the case file at least five instances where the Council has released information to the appellant relating to Environmental Complaint KK/17/1 and the PCB spillage at the Talbotsinch site. The information previously released to the appellant included information that was disclosed to him in response to a request he made to the Council on 16 March 2018, which with the exception of part 5, is the same as this request. I note that, arising out of regular correspondence from the appellant, the Council has released information to him outside of AIE as and when the information becomes available to it. I also note that the appellant has requested information directly from the Council's engineer. Thus, it is likely that further information has been released to the appellant outside of AIE. The disclosure of information outside of AIE is to be welcomed especially where, for example, it leads to a person obtaining environmental information more quickly than they would have done otherwise. However, in the circumstances of this case, particularly where a number of similar AIE requests have been made relating to the one issue, the disclosure of information outside of AIE to the appellant has added a further complicating factor to this request.

I appreciate that the Council is trying to be as accommodating as possible. In retrospect, however, it would have greatly assisted the Council in processing this request, and my Office

in this review, if the Council had been maintaining a list of all information as it was being released. Although the AIE Regulations do not expressly require the provision of a schedule of records, doing so is best practice. I have seen how schedules facilitate greater clarity of communication in the processing of AIE requests and indeed FOI requests also, and how they assist in the processing of appeals made to my Office. I suggest that each public authority should consider creating and maintaining such lists, particularly in instances where it receives more than one request which is similar to previous request(s) from the one requester.

I consider that the nature and scope of this request is excessively broad. In my view, processing this request would require the Council to search for and identify all information held by or for it relating to Environmental Complaint KK/17/1. It would have to do this in circumstances where it has previously undertaken such searches in response to other similar requests it has received from the appellant including the request of 16 March 2018 which is largely the same as this request, and where it has previously released a substantial amount of information to the appellant. In order to identify what information specifically falls within the scope this request, it would then have to examine and compare all the information the search would have located with all the information it has previously released to the appellant. The Council would then have to proceed to examine any information identified as being within the scope of this request to determine if it is environmental information, if any of the exceptions to disclosure apply to it and carry out its obligations under article 10 such as the public interest test. In addition, I note that this request seeks access to information relating to third parties, and, as such, it is likely that Council would have to consult with third parties before releasing certain information. In the circumstances, I consider that the volume of work in processing this request would impose a burden on the Council exceeding the limits of what might reasonably be required of it, and would significantly interfere with the normal course of its activities.

In addition to making the processing of the request complex for the Council, the nature of this request has made my review extremely complicated as outlined above. The Council's description of its search efforts would ordinarily indicate that it has taken reasonable steps to search for and provide the information sought by the appellant. In the event that the information is held by or for the Council, the search steps outlined by the Council should have returned the information that the appellant obtained in his AIE requests to the EPA and DCCAE. However, my Office is not privy to all requests for information made by the appellant to the Council under AIE and FOI or otherwise nor to what information he has been granted access to on foot of those requests. As regards information relating to the Environmental Complaint KK/17/1, I consider that merely determining what information falls within the scope of this request would result in an unreasonable administrative burden on my Office. At a minimum, it would require my Office to examine all the information, which the Council holds, and compare it against all the information that has previously been released to the appellant. I consider that undertaking such an exercise would be a disproportionate use of my Office’s resources and would significantly interfere with the normal course of its activities.

Taking all of the above into account, I consider that the processing of this request would place an unreasonable administrative burden on the Council. I am of the view that the considerable amount of time and other resources which would be required to identify the information falling with the scope of this request and processing the request in accordance

with articles 8, 9 and 10 of AIE Regulations would result in a disproportionate diversion of resources from the Council's core work, including the work it is doing in relation to Environmental Complaint KK/17/1. I find that this request is manifestly unreasonable and that article 9(2)(a) applies to it.

Public interest

Article 10(3) requires that a public authority "consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal." Article 10(4) of the AIE Regulations specifies a restrictive interpretative approach to the all exceptions having regard to the public interest served by disclosure.

I consider that there is a very strong public interest in the openness and accountability in relation to the Council carrying out its environmental protection functions. On the other hand, there is also a very strong public interest in giving public authorities the space to carry out their environmental protection functions, including allowing the Council to focus on carrying out its investigation in Environmental Complaint KK/17/1. It seems to me that the public interest in openness and transparency concerning the way in which the Council is carrying out its environmental protection functions is served to a large extent by the information that the Council has released to the appellant in response to other requests for information he has made relating to this matter. I also recognise the disproportionate administrative burden that would be imposed on the Council if it were to process this request as it stands. In addition, I consider that there is a public interest in protecting the integrity of the AIE regime and making sure that the AIE Regulations are used responsibly. In the circumstances of this case, I find that the public interest served by disclosure in this case does not outweigh the interests served by refusal in this case. Accordingly, I find that the Council was justified in refusing the appellant's request on the basis that article 9(2)(a) of the AIE Regulations applies.

As I have found that Council was justified in refusing the appellant's entire request pursuant to article 9(2)(a), it is not necessary for me to consider the s refusal of access to the tender documents in this review nor the applicability of article 10(1) of the AIE Regulations.

Decision

Having carried out a review under article 12(5) of the AIE Regulations, I affirm the Council's decision to refuse the appellant's request on the basis that article 9(2)(a) of the AIE Regulations applies to it.

Comment

I note that it is open to the appellant to make a new AIE request focussing on the environment information he seeks which would avoid the difficulties created by this request. For instance, if he is still seeking access to the tender documents he may make a more specific request for that information.

Appeal to the High Court

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.

Peter Tyndall

Commissioner for Environmental Information

18 December 2019