

10.11.2022

Right To Know

By email only: <requests@righttoknow.ie>

Our Ref: AIE Request 20220316

Your Ref: AIE: Request for Operational Records

I refer to your request under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (S.I. No. 133 of 2007, S.I. No. 662 of 2011, S.I. 615 of 2014 and S.I. No. 309 of 2018) (hereafter referred to as the AIE Regulations), received on 11 October 2022, for access to -

An electronic copy of all Operational Monitoring Records for works in Coillte forests with the prefix WW during the month of April 2022.

Please include details of the relevant licences.

Summary of Decision

I made a final decision on the request on 10.11.2022. I have identified six records which are relevant to your request, and I have decided to refuse access to five of these records, having regard to the provisions of Articles 9(1)(a), 9(1)(c) and 9(2)(c) of the AIE Regulations. To explain, the records identified relate to active harvesting sites. I have set out in further detail, at Part 3 of this letter, the reasons for refusing your AIE request. I am granting access to one record relating to WW05-H0077 which is attached for your information.

1. Grounds for Refusal

I have set out within this letter, the reasons for my application of each of the provisions of the AIE Regulations to refuse access to the records. Reliance on the discretionary exemptions is subject to a public interest test, and I set out my consideration of the public interest at Part 4 of this letter.

2. Discretionary Grounds for Refusal

I have set out hereunder, the discretionary exemptions on which I am relying to refuse access to the information sought. Article 9 of the AIE Regulations specifies the grounds under which a public authority may refuse to make environmental information available, while retaining the power to make it available in cases where it considers it appropriate to do so. Reliance on the discretionary grounds is also subject to a public interest test, which I have addressed at Part 4 of this letter.

2.1 Article 9(1)(a): Public security

Article 9(1)(a) entitles a public authority to refuse to make environmental information available where disclosure of the information would pose a threat to public security.

It is my opinion that, if the public were aware of active harvesting sites which might be either engaged in active harvesting and felling and/or also the subject of a random inspection by a

forest service inspector, certain members of the public would – as they have in the past - take it upon themselves to visit, encroach or intrude upon, or potentially disrupt, such sites and pose various levels of health and safety risks to harvesting operators, inspectors on-site and to themselves, particularly because machines are on-site and active harvesting is taking place.

2.2 Article 9(1)(c): Commercial and Industrial Confidentiality

This Article provides that a public authority may refuse to make available environmental information where 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.

Such confidentiality is provided for in Irish law, including by means of sections 35 and 36 of the Freedom of Information Act 2014.

In this case, I think it is relevant to point out that a significant proportion of active harvesting sites (up to 50% on occasion) comprise of ‘standing sales’ where the standing timber has been sold to a sawmill customer. Disclosure of the information you have requested could disclose and/or lead to the disclosure of, several details regarding such customers’ confidential commercial operations. Accordingly, disclosure could reasonably be expected to impact on such a customer’s commercial interests, insofar as disclosure of the information could prejudice the competitive position of the sawmill customer in the conduct of his or her business and/or could prejudice him/her in the conduct or outcome of contractual or other negotiations.

2.3 Article 9(2)(c): Material in the course of completion

Article 9(2)(c) entitles a public authority to refuse to make environmental information available where the request concerns material in the course of completion, or unfinished documents or data. The information being sought relates to on-going and incomplete processes which are currently generating material relating to the effective implementation and enforcement of the provisions of the Forestry Act, which is not yet complete. It is for this reason that I am refusing access to the information sought.

Name of Authority and Estimated Time for Completion

Pursuant to Article 10(6), I advise that Coillte is the authority preparing the material that is in the course of completion, and the estimated time needed for completion would be approximately four months, but this is subject to change either way.

3. Public interest test

In accordance with Article 10(3) and 10(4) I have weighed the public interest served by disclosure against the interest served by refusal of your request.

Article 10(3) requires that Coillte consider each request under the AIE Regulations on an individual basis and weigh the public interest served by disclosure against the interest served by refusal.

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Article 10(4) requires that the grounds for refusal of a request for environmental information be interpreted on a restrictive basis having regard to the public interest served by disclosure.

These requirements apply to discretionary grounds for refusal of a request under Article 9, which I have relied upon.

In considering the public interest generally, I have considered relevant factors both for and against release of the requested information, as set out below.

It is my opinion that the public interest served by disclosure would be openness and transparency. In this regard, Coillte makes as much information as possible available through its public files, its website and through the DAFM Forest Licence Viewer. Further, I consider the public interest served by individuals being able to exercise their rights under the AIE Regulations to the greatest possible extent, in order to gain access to environmental information.

Finally, I consider the public interest served by environmental information being made available and shared with the public in order to achieve the widest possible systematic availability of environmental information.

However, in the present case, I believe that the factors in favor of refusing access far outweigh those in favor of granting access. I consider there to be a strong public interest in the protecting both the health and safety of the public at large, which cannot be guaranteed where members of the public enter such active sites, which may be the case if such information requested is shared. Further, there is a strong public interest in affording public authorities the space necessary to produce documentation that related to on-going and incomplete processes, this will inevitably produce better outcomes for the public at large.

Another factor, which I consider relevant, is the fact that release of environmental information to a requester under the AIE Regulations is deemed to be release to the world at large, as the AIE Regulations place no restrictions on the subsequent uses to which the information may be put. This is particularly pertinent when considered against the health and safety risks revealed by this letter. The Commissioner and the Courts have consistently confirmed that this is a relevant consideration when balancing the public interest factors at issue. In addition, as the Commissioner's recent decisions make clear, even if the requester was prepared to give an undertaking that the information would only be used in some limited way, this would not be a relevant factor for consideration on the basis that conditions on the use of records after disclosure cannot be imposed and would be unable to be enforced.

I consider that, while the aims of the AIE Legislation include information-access and informed participation in decision-making and so on, and while it is generally in the public interest to make available environmental information that will facilitate this, it is also the case that, particularly in a

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regulatory context where there are ongoing processes, and where the regulatory system is itself designed to protect the environment and to enforce environment-facing laws, there are significant countervailing public interest considerations that can serve to lead to the reasonable conclusion – as is my conclusion in this case - that the public interest in release, or release at this point, of the information sought would not serve the public interest as well as non-disclosure would. In all of the circumstances, I do not believe that the balance of legitimate public interests weighs in favour of disclosure of the requested information.

5. Schedule of Records

I have attached a schedule of records with this letter. This lists the records that I consider relevant to your request. It provides a brief description of each record and the decision I have made on each record.

Right of Review

Under Article 11 of the AIE Regulations you have a right to request an internal review of this decision. An internal review involves a complete reconsideration of the matter by a member of the staff of Coillte, unconnected with the original decision, of the same or higher rank than the original decision-maker, who may affirm, vary or annul the original decision.

If you wish to request an internal review, you can do so by writing to:

Nicola Wall
Information and Data Protection Officer
Coillte CGA
Email: Nicola.Wall@coillte.ie

referring to this decision, quoting the AIE reference number. This request must be made within one month of the date of receipt of this decision. The decision of an internal review will be communicated to you within one month of receipt of your request for an internal review.

Please contact me if I can assist you in any matter relating to your request.

Yours sincerely,

Sent by email, no signature

Nicholas Egan
Acting Environmental information Officer,
Coillte CGA
Email: nicholas.egan@coillte.ie

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