



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)**

Cases: OCE-129497-C3R3C7 and OCE-132734-K2K5D8

Date of decision: 19 May 2023

Appellant: Mr. Neil Foulkes

Public Authority: Coillte

Issue: Whether Coillte was justified in its decisions, under article 9(2)(a) of the AIE Regulations, to refuse access to information relating to operational monitoring records coming within the scope of the appellant's requests.

Summary of Commissioner's Decision: The Commissioner annulled Coillte's decisions. He directed Coillte to undertake a fresh decision-making process in respect of each of the appellant's requests.

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 decision concerns two appeals to this Office against the decisions of Coillte on two requests submitted by the appellant under the AIE Regulations.
2. Request 1 (Coillte Reference: 20220242, OCEI Reference: OCE-129497-C3R3C7):
 - i. On 2 August 2022, the appellant submitted a request to Coillte seeking access to “...an electronic copy of all Operational Monitoring Records for works in Coillte’s BAU 1 and BAU 3 during the month of July 2022. Please include details of the relevant licences.”
 - ii. On 16 August 2022, Coillte wrote to the appellant, inviting him to refine his request. It referred to article 9(2)(a) of the AIE Regulations and noted that it considered his request, as worded, to be manifestly unreasonable, having regard to the volume or range of information sought. It outlined that his request did not identify a specific geographic location (county/forest code). It stated that while relevant records may exist, as was the case for two previous similar requests he had made, where access was granted to records requested for County Leitrim, his current request would involve the search, retrieval, validation, and collation of information for two business area units (BAUs) covering 13 counties, placing an unreasonable demand on Coillte’s resources and disrupting its ability to perform its core functions. Therefore, Coillte asked the appellant to refine his request to a particular county or forest(s). Coillte also indicated that it wished to offer further assistance regarding the request and suggested that the appellant make contact by email to discuss the matter further.
 - iii. On 17 August 2022, the appellant responded, stating that he did not wish to refine his request. Among other things, he referred to Coillte’s duties under article 5(1)(b) of the AIE Regulations, which provides that a public authority shall “make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means.” He noted his view that the information sought is a type of information that should be actively disseminated by Coillte and stored in a manner that enables it to be readily identified and reproduced. He also contended that his request was confined to a specific geographical location and timeframe.
 - iv. On 1 September 2022, Coillte issued its original decision, wherein it refused the appellant’s request in full under article 9(2)(a) of the AIE Regulations. On the same day, the appellant sought an internal review of Coillte’s decision. On 30 September 2022, Coillte issued its internal review decision, wherein it affirmed its original decision. On 6 October 2022, the appellant brought an appeal to this Office.
3. Request 2 (Coillte Reference: 20220257, OCEI Reference: OCE-132734-K2K5D8):
 - i. On 1 September 2022, the appellant submitted a request to Coillte seeking access to “...an electronic copy of all Operational Monitoring Records for works in Coillte’s BAU 1 and BAU 3 during the month of August 2022. Please include details of the relevant licences.”
 - ii. On 30 September 2022, Coillte issued its original decision, wherein it refused the appellant’s request in full under article 9(2)(a) of the AIE Regulations. On the same day, the appellant sought an internal review of Coillte’s decision. On 2 November 2022, Coillte issued its internal



review decision, wherein it affirmed its original decision. On 29 November 2022, the appellant brought an appeal to this Office.

4. I am directed by the Commissioner for Environmental Information to carry out a review under article 12(5) of the AIE Regulations. In so doing, I have had regard to the correspondence between Coillte and the appellant, as outlined above, and to correspondence between this Office and both Coillte and the appellant on the matters involved in these requests. In addition, I have had regard to:
 - the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister’s Guidance);
 - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
 - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (the Aarhus Guide)
5. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

6. In accordance with article 12(5) of the AIE Regulations, the role of this Office is to review the public authority’s internal review decision and to affirm, annul or vary it. Where appropriate, in the circumstances of an appeal, the Commissioner will require the public authority to make available environmental information to the appellant.
7. The scope of this review is concerned with whether Coillte was justified in its decisions, under article 9(2)(a) of the AIE Regulations, to refuse access to information relating to operational monitoring records coming within the scope of the appellant’s requests dated 2 August 2022 and 1 September 2022.

Preliminary Matter

8. The appellant submitted, and paid the required fees for, two separate appeals to this Office. In the circumstances of these appeals, I have decided that a composite decision dealing with both appeals together is appropriate. I do so because the two requests, although dealt with separately by Coillte, were submitted by the same requester to the same public authority, have similar subject matter, and involve the same provision of the AIE Regulations.



Analysis and Findings

9. Article 9(2)(a) of the AIE Regulations 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. This provision seeks to transpose Article 4(1)(b) of the AIE Directive, which provides that Member States may provide for a request for environmental information to be refused if the request is manifestly unreasonable, and, in turn, is based on part of Article 4(3)(b) of the Aarhus Convention. Article 9(2)(a) of the AIE Regulations must be read alongside article 10 of the AIE Regulations.
10. The Minister's Guidance, at paragraph 12.8, states that article 9(2) of the AIE Regulations "clarifies that a public authority may refuse to make information available if the request is considered unreasonable due to the range of material sought, if the request is too general or if the material requested is not yet completed. Public authorities are requested to invoke these grounds for refusal sparingly, **and to assist the applicant (to reformulate a request, for example) as appropriate**" (my emphasis). In light of this, I am of the view that where a public authority intends to refuse a request under article 9(2)(a) of the AIE Regulations, it should first assist the appellant to reformulate the request as appropriate. Both public authorities and appellants should seek to liaise constructively with a view to processing the request as efficiently as possible.
11. As set out in the background section, there was correspondence between Coillte and the appellant concerning the reformulation of Request 1. Having regard to that correspondence, I am satisfied that Coillte invited the appellant to refine Request 1; suggested, by way of assistance, how this might be done (limiting it to a particular county or forest(s)); and offered further assistance by indicating that he could email to discuss the matter further. I am also satisfied that, in response, the appellant indicated that he did not wish to refine his request.
12. In respect of Request 2, Coillte confirmed to this Office that it did not seek to assist the appellant with a view to reformulating that request. It noted that this approach was taken in circumstances where the appellant had refused to refine Request 1. I acknowledge that this was a reasonable position for Coillte to take, given that the appellant's refusal to refine Request 1 was within weeks of his submission of Request 2. It would, however, have been useful for Coillte to confirm that the appellant's position remained as it had been in respect of Request 1.
13. The European Commission's First Proposal for the AIE Directive envisaged that the exception in Article 4(1)(b) would cover requests "variously described in national legal systems as vexatious or amounting to an *abus de droit*." It noted that "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." The Aarhus Convention Compliance Committee (ACCC) has emphasised 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." (Report adopted on request for advice by Belarus, ACCC/A/2014/1, paragraph 28).
14. In respect of a request which is voluminous or wide-ranging, within the meaning of article 9(2)(a) of the AIE Regulations, it is clear that more than simple volume or complexity is required. Both article



7(2)(b) of the AIE Regulations and Article 3(2)(b) of the AIE Directive specifically envisage that public authorities will deal with voluminous or complex requests, albeit in a longer timeframe. I further note the parallel duty in Article 7(1) of the AIE Directive to ensure that public authorities organise environmental information with a view to its active and systematic dissemination to the public, and article 5 of the AIE Regulations which seeks to implement that provision. In his Opinion in *C-217/97 Commission v Germany* at paragraph 30, Advocate General Fennelly stated that the duty in Article 7 of the AIE Directive indicates that individual requests should, in principle, be on matters of detail. Accordingly, the fact that a request is detailed does not mean that it is necessarily unreasonable.

15. In its submissions to this Office, Coillte stated that it did not seek an extension under article 7(2)(b) of the AIE Regulations in respect of processing either Request 1 or Request 2. Coillte acknowledged that, if an extension had been sought, a further month could have been available to reply to each of the requests. It contended that the volume of information sought in each request imposed a burden and cost on Coillte, which it considered to be disproportionate. It submitted that, at the time of the requests, it considered that the work required to comply with each request was voluminous and, even with extensions, there would have been a significant disruption to the work of the AIE team and harvesting teams.
16. When considering whether a request is manifestly unreasonable, it is necessary to examine the impact on the public authority of dealing with the request. In particular, I must examine whether responding to the request would involve the public authority in disproportionate cost or effort, or would obstruct or significantly interfere with the normal course of its activities. In light of the findings of the Court of Justice of the European Union in *T-2/03 Verein für Konsumenteninformation v. Commission*, at paragraphs 101-115, I consider that the exception in article 9(2)(a) is only available where the administrative burden entailed by dealing with the request is particularly heavy. The burden is on the public authority to demonstrate the unreasonableness of the task entailed by the request. I expect that if a public authority wishes to rely on the manifestly unreasonable nature of a request, that public authority will clearly demonstrate the actual and specific impact that dealing with the request would have on its normal activities.
17. As indicated above, it is also important to bear in mind article 5 of the AIE Regulations and Article 7 of the AIE Directive, which place duties on public authorities to organise and actively disseminate environmental information. Given the information sought in the requests at issue, I draw particular attention to article 5(1)(b) of the AIE Regulations which provides that a public authority shall “make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means” and to article 5(2) of the AIE Regulations which provides that environmental information specified in article 5(1)(b) shall include at least “(d) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment.”
18. It is not within this Office’s powers to examine the implementation of article 5 of the AIE Regulations or article 7 of the AIE Directive by public authorities. However, I am satisfied that the exemption in article 9(2)(a) is not intended to endorse any failure by a public authority to comply with its duties to organise and disseminate environmental information under those provisions. Furthermore, in every case, regard should be had to the purpose of the AIE Regime, as reflected in Recital 1 of the Preamble



to the AIE Directive, which provides that “increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental decision-making and, eventually, to a better environment.”

19. As indicated above, article 9(2)(a) of the AIE Regulations must also be read alongside article 10 of the AIE Regulations. Article 10(3) of the AIE Regulations requires a public authority to consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal and article 10(4) of the AIE Regulations provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest served by disclosure. Article 10(5) of the AIE Regulations provides that nothing in article 8 or 9 shall authorise a public authority not to make available environmental information which, although held with information to which article 8 or 9 relates, may be separated from such information.
20. In its submissions to this Office, Coillte outlined the following:
 - i. In respect of Request 1, Coillte noted that the appellant sought all operational monitoring records for works in BAU 1 and BAU 3 during July 2022, including details of the relevant licences. It noted that this request captures 13 counties and 160 forest codes and would comprise approximately 120 reports covering 29 forests. It stated that each report takes 30 minutes to generate, export to excel, extract the required data, and check that the site is not active. I note that this amounts to a total of approximately 60 hours of work. Coillte stated that the work would be carried out by one member of the AIE Team.
 - ii. In respect of Request 2, Coillte noted that the appellant sought all operational monitoring records for works in BAU 1 and BAU 3 during August 2022, including details of the relevant licences. It noted that the request captures 13 counties and 160 forest codes and would comprise approximately 80 reports covering 28 forests. It stated that each report takes 30 minutes to generate, export to excel, extract the required data, and check that the site is not active. I note that this amounts to a total of approximately 40 hours of work. Coillte stated that the work would be carried out by one member of the AIE team. Coillte also explained that the initial estimate of 31 hours outlined in its internal review decision assumed that only 60 reports existed.
 - iii. Coillte explained that since the time that Request 1 and Request 2 were processed, it developed a new procedure for dealing with AIE requests for operational monitoring records. It stated that, as it had received approximately 30 AIE requests for operational monitoring records from the appellant, a senior manager on the AIE team received training to develop the skills necessary to extract and validate operational monitoring records, allowing the work to be centralised within the AIE team. Coillte outlined that prior to this, each report would have taken approximately 1 hour to generate, extract, and validate. It noted that the work would have been completed by members of the relevant harvesting and operational teams. Under the new procedure, Coillte’s AIE team engages with the relevant forest work manager(s) to inform them that records are being retrieved centrally for each forestry site and to clarify records as needed.
 - iv. In respect of Request 1 and Request 2, Coillte explained that the information sought is held electronically on a web-based platform. It stated that a completed form can be recalled from the database by running a query by forest and timeframe. It noted that the record can be



- outputted in a number of formats (e.g. pdf, excel, word, and xlm). It reiterated that this process can now be completed centrally within the AIE team and submitted that this has delivered efficiencies by reducing the time required for processing individual reports from approximately 1 hour to approximately 30 minutes.
- v. Coillte provided the following further detail regarding the steps that would be necessary to compile the information sought by each request:
- (a) “Run a query based on the criteria within the AIE request e.g., forest/county/ specified time frame (e.g., September).
 - (b) List harvest units returned for that month.
 - (c) Run a report in LRM (Coillte’s key system of record) and filter for harvest units listed at Step (b) above.
 - (d) From report, check answers to (i) harvest complete column (must be “Yes”) and (ii) date harvest complete (must have a date). If either column is blank, this means the harvest site is still active and records cannot be released.
 - (e) For those harvest sites that have been marked complete, run an individual Operational Monitoring Record report for each site and export to Excel.
 - (f) Run a separate report to identify and cross-reference felling licence numbers associated with each completed harvest site.
 - (g) Manually insert the associated felling licence number into the Operational Monitoring Record
 - (h) Upload the completed Operational Monitoring Record to the relevant AIE folder.”
- vi. Coillte set out its position that processing each of the requests would cause significant disruption to the work of the AIE team, impacting its ability to carry out their daily AIE-related tasks to the detriment of other AIE requests received. As noted, Coillte indicated that it would take the senior manager on the AIE team approximately 60 hours to process Request 1 and 40 hours to process Request 2.
- vii. Coillte stated that the AIE team “is comprised of three staff members working on a 2.5 FTE basis, with management and legal support from the writer on a 0.5 FTE basis. 1.5 staff members deal exclusively with first instance decisions. One staff member deals exclusively with internal review decisions. The writer deals exclusively with OCEI appeals. The team has no clerical or administrative support.”
- viii. Coillte provided further detail regarding the work of the AIE team. Coillte stated that throughout 2022 there had been a significant burden on the AIE team. Coillte explained that in 2021 it received a total of 74 AIE requests, however in 2022 it received a total of 655 AIE Requests. Coillte contended that of those 655 AIE Requests, 441 were received from the appellant. Request 1 is dated 2 August 2022 and Request 2 is dated 2 September 2022. Coillte stated that during the four-month period 1 June 2022 to 30 September 2022, Coillte received 143 AIE requests. Coillte



contended that of those 143 AIE requests, 90 were received from the appellant. Coillte also commented:

“As you will appreciate, the period between June and September is the usual time for staff to take annual leave, both within the AIE Team and the wider business divisions upon whom the team rely on to provide relevant records. This, together with the high volume of requests received each month resulted in a significant burden on Coillte [in] continuing to respond to AIE requests.”

- ix. Coillte made a number of comments in response to the Investigator’s position that the information requested appeared to be the kind of environmental information one would expect to be organised by Coillte in a manner that enables its easy dissemination and the appellant’s contention that the request concerns the kind of environmental information Coillte should be actively disseminating. These comments are summarised below.
- (a) Coillte stated that the operational monitoring system was developed as a management tool to monitor operational performance in real-time, so as to ensure the protection of the environmental status of the site when it is at its most vulnerable. It stated that it was never envisaged that the public would seek granular day-to-day management details and, from a logistical point of view, it is not possible to disseminate the information in real time.
 - (b) Coillte stated that information relating to operational monitoring is collated by operational and field staff on an ongoing basis. It stated that, once collated, the data is subject to continuous updates and validation covering a wide range of operations such as harvesting, establishment, and maintenance. Coillte noted that its estate is made up of 440,000 hectares, equivalent to 7% of the total land area of the country. It stated that these lands comprise approximately 6,000 forest properties, 3,000km of way-marked trails, 12 forest parks, 6 mountain-bike trails, and 260 recreational sites. It stated that hundreds, and often thousands, of records are generated on a daily basis relating to multiple aspects of its sites. Coillte outlined its view that the dissemination of information at this level is not possible. It stated that any expectation that it should be done is unreasonable and not in the spirit of the AIE Directive.
 - (c) Coillte submitted that it manages its business in full compliance with all applicable law and a number of voluntary externally accredited schemes. Coillte stated that it proactively disseminates environmental information on an ongoing basis, for example in its forest management plans for each 5-year period, which are published after two rounds of public consultation. Coillte stated that these plans contain summarised outputs of operational monitoring, as is required by its certifying bodies. It contended that they also align with the expectation set out in article 5(2)(d) of the AIE Regulations.
 - (d) Coillte further explained that “[o]perational monitoring records substantiate the summarised information published in its forest management plans, and both are subject to examination by external auditors on an annual basis.” Coillte also stated “[a]s the Directive and Regulations clearly stipulate, space and time must be afforded to public bodies to allow them carry out administration that leads to transparency by way of publication of summarised information, which in turn demonstrates compliance as required by relevant regulatory authorities and certifying bodies”.



- (e) Coillte noted that, as part of its annual certification and audit process, its forest management plans have been found to be sufficient with regard to the dissemination of environmental information to its stakeholders. Coillte also stated that the forest management plans are subject to ongoing review and any updates and/or reviews are published. It further stated that it notifies its stakeholders of any changes to proposed felling set out in the forest management plans on an annual basis.
 - (f) Coillte noted that its public MapViewer has recently been updated to provide greater access to Geographic Information System (GIS) layers and maps. It stated that this tool is used by third parties, including members of the public, to access a considerable amount of GIS properties and activities. It commented that it also provides comprehensive information on an ongoing basis to the Department of Agriculture, Food, and the Marine (the Department) as part of the felling licence process, all of which is published and subject to public consultation via the Department's Forestry Licence Viewer.
 - (g) Coillte stated that it engages with stakeholders on a regular basis regarding local matters and submitted that it provides all relevant information in a transparent and timely fashion.
- x. Coillte stated that the operational monitoring system is designed to be used by professionals who are trained in the process and understand the terminology used. It explained that it provides timely updates to contactors, site managers, and harvesting managers to ensure the best standards are implemented. It noted its belief that the public interest is not served in publishing granular details on the day-to-day operation of any site. Coillte indicated that it had considered whether the public interest in disclosure of the information at issue outweighed the interest served by refusal and also stated that it has applied a presumption in favour of disclosure. Coillte set out the factors it considered in favour of granting and in favour of refusing access, in accordance with article 10(3) of the AIE Regulations, as follows:

"Factors in favour of granting access:

- The public interest in openness and transparency. In this regard, Coillte makes as much information as possible available through its public files, BAU Plans, Public MapViewer and our website.
- The public interest in individuals being able to exercise their rights under the AIE Regulations to the greatest extent possible in order to access environmental information.
- The public interest in environmental information being made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information.

Factors in favour of refusing access:

- The information requested is wide-ranging and covers a large number of records and we have estimated that processing the requests would take 7.9 and 5.5 working days respectively of one person's time to identify, locate and extract the information requested.
- A senior member of the AIE Team would have to devote a total of 13.4 days searching, extracting and reviewing all of the records within scope of the requests.



- To comply with the requests would place a substantial and disproportionate burden on Coillte and would result in an unreasonable diversion of limited resources.
 - There would be an adverse effect on the AIE Team's ability to deliver services and answer other requests.
 - There was engagement with the appellant in one request in an effort to reduce the scope of the request so that it did not fall to be refused but he did not avail of the opportunity to do so.
 - There is also a strong public interest in the efficient and effective performance of Coillte and in ensuring we do not have to divert limited resources in dealing with voluminous AIE requests."
- xi. Coillte acknowledged that it had previously provided operational monitoring records for requests which it had deemed reasonable e.g. Coillte Reference: 20220157 and Coillte Reference 20220171. Coillte noted that in those cases the appellant had limited his requests to one county and one month. Coillte submitted that the requests at issue concerned a much great amount of information. Coillte stated that, as the appellant declined to reduce the scope of Request 1 to a particular county or forest, it considered that it was not possible to separate out any environmental information for partial disclosure under article 10(5) of the AIE Regulations in respect of either Request 1 or Request 2.
21. I accept that Coillte provided this Office with specific detail regarding the volume and range of information sought and the work required to process each of the appellant's requests. In this regard, I note that Request 1 would comprise approximately 120 reports, requiring 60 hours of work (30 minutes per report) for one member of the small AIE team and that Request 2 would comprise approximately 80 reports, requiring 40 hours of work (30 minutes per report) for one member of the small AIE team. Also, while I have not asked the appellant for his comment on Coillte's statements regarding the number of requests submitted by him, I accept that Coillte is generally experiencing an increased number of AIE requests, whether submitted by the appellant or otherwise, which are dealt with by the AIE team.
22. The details set out in the paragraph above appear to me to indicate that to process each of the appellant's requests would require a substantial amount of work to be carried out by one individual on the small AIE team and would significantly disrupt the other day to day work of that team, which is responsible for Coillte's obligations under the AIE Regulations and is particularly busy. However, I also wish to make a number of comments regarding some of the other details provided by Coillte.
23. First, I note that Coillte was established pursuant to the Forestry Act 1988 (as amended) to carry out the business of forestry and related activities. While I accept that there has been a significant increase in the level of AIE activity over the past year and that this has presented challenges for a number of public authorities, including Coillte, the fact remains that the administration of the AIE Regulations is a statutory obligation which should be afforded as much weight as any other statutory obligation, the carrying out of other operational or commercial functions, or compliance with any accreditation standards.
24. I acknowledge that Coillte, since the time that Request 1 and Request 2 were being processed and, as a result of the number of AIE requests being made by the appellant regarding operational monitoring records, revised its procedure for dealing with such requests. I note that a senior manager on the AIE



team received relevant training and the work is now centralised and carried out by that individual. I also note Coillte's comments that this had the effect of reducing the disruption and impact to operational teams across the business and the overall time required to process those requests. While I appreciate that there may be efficiencies in processing requests centrally, the work appears to now be confined, for the most part, to one individual and one team, rather than seemingly spread to an extent across multiple individuals and teams. Notwithstanding the already increased demands on the small AIE team due to the increased number of AIE requests generally and the increased workload that occurred on foot of the new procedure for processing operational monitoring records, there is no evidence to suggest that the AIE team has received additional resources. I would note that in many public authorities, particularly large public authorities, it is often the case that staff members outside the AIE team who have other roles and duties separate to AIE, are often involved in the processing of AIE requests. Furthermore, while I appreciate that the summer months are a usual time for annual leave, this is not an appropriate consideration when assessing whether a request is manifestly unreasonable.

25. Second, I note Coillte stated that one of the steps required to compile the information sought by each request was to "check answers to (i) harvest complete column (must be "Yes") and (ii) date harvest complete (must have a date)." Coillte noted "[i]f either column is blank, this means the harvest site is still active and records cannot be released." I also note that Coillte indicated that "validation" came within the hours of work required to compile the information sought by each request.
26. It is not clear to me why Coillte considers that information relating to harvest sites that are still active cannot be released, for example, whether it is on the basis that such information does not fall within the scope of the appellant's request, that such information is to be refused under another provision of the AIE Regulations, or, while I am not exactly sure what Coillte means by "validation", that such information may be inaccurate. I wish to note that matters such as whether information falls within the scope of a request or whether another exemption provided for under the AIE Regulations properly applies, are matters which may be considered by a public authority when calculating the time required to process a request. However, I also wish to note that the fact that a public authority may have concerns about the factual accuracy of information held or that can be extracted, is not, of itself, an appropriate consideration when calculating the time required. Furthermore, it is always open to a public authority to include contextual explanatory background information in their decision letters, when providing details of extracted data on a spreadsheet.
27. Third, it is important to consider whether the information requested is a kind of environmental information that one would expect to be organised by Coillte in a manner that enables its easy dissemination. Both Coillte and the appellant stated that information was granted in respect of two similar requests previously submitted by him. In those previous requests, the appellant sought access to information relating to operational monitoring records for May and June 2022, with the prefix LM (i.e. for County Leitrim). Coillte in its decisions on each request released one spreadsheet record, which contained information under 29 headings (May 2022) and 28 headings (June 2022) in respect of 15 entries (May 2022) and 12 entries (June 2022). In respect of 22 of the headings, it appears that a Yes, No, or N/A answer could be inputted onto the sheet, and for some headings, notes could also be added.



28. I acknowledge Coillte's comments that it was not envisaged that the public would seek day to day management details and it is not possible to disseminate the information sought in real time. I also note that hundreds, and often thousands of operational records are generated on a daily basis. However, it is important to remember that the information sought in these cases is time bound and for two specific business area units.
29. The general thrust of Coillte's submission appears to be that sufficient information is publicly disseminated through its forest management plans for each five year period, WebViewer, and engagement with its stakeholders. I also note Coillte's statement that "[o]perational monitoring records substantiate the summarised information published in its forest management plans, and both are subject to examination by external auditors on an annual basis."
30. I have no reason to doubt Coillte's explanation that, as part of its annual accreditation process, its forest management plans have been found to be sufficient with regard to the dissemination of environmental information to its stakeholders. I also accept that Coillte has been involved in greater publication and dissemination of environmental information. However, the appellant had the right to request the information sought, regardless of what other information might already be publicly available or be disseminated by Coillte to comply with other statutory obligations and/or accreditation standards.
31. Furthermore, article 5(2) of the AIE Regulations clearly states that the environmental information specified in article 5(1)(b) of the AIE Regulations shall include **at least** the information set out at paragraphs (a) – (d), with (d) referring to "data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment" (my emphasis). Accordingly, article 5(2) of the AIE Regulations provides examples of the minimum amount of environmental information that should be maintained in accordance with article 5(1)(b) of the AIE Regulations, which, as indicated, provides that that a public authority shall "make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means." At this point, I also wish to recall Recital (1) of the AIE Directive, as well as Recitals (9), and (21) and Article 7(1), which provide:

Recital (1): "Increased public access to environmental information and the dissemination of such information contribute 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."

Recital (9): "It is also necessary that public authorities make available and disseminate environmental information to the general public to the widest extent possible, in particular by using information and communication technologies. The future development of these technologies should be taken into account in the reporting on, and reviewing of, this Directive."

Recital (21): "In order to increase public awareness in environmental matters and to improve environmental protection, public authorities should, as appropriate, make available and disseminate information on the environment which is relevant to their functions, in particular by means of computer telecommunication and/or electronic technology, where available."



Article 7(1): “Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology, where available...”

32. Coillte explained that the operational monitoring records, such as those sought in the requests at issue, substantiate the summarised information in the forest management plans, which are subject to public consultation, and are also subject to examination by external auditors on an annual basis. In my view, where a request relates to raw data or information which forms the basis of published information or information that is provided to external auditors, there is a reasonable expectation that the raw data or supporting information would be organised by Coillte in a manner that facilitates its dissemination to the public, whether that dissemination is proactive or in response to an AIE request.
33. Finally, I note that in its submissions to this Office, Coillte outlined that it considered that the interest served by refusal of the information at issue outweighs the public interest served by disclosure of the information at issue. It stated that it applied a presumption in favour of disclosure and provided details of factors in favour of and against release considered. However, I do not intend to assess in any detail Coillte’s application of articles 10(3) and (4) of the AIE Regulations in these cases. This is because, crucially, Coillte did not properly deal with the issue of whether partial disclosure was possible in line with 10(5) of the AIE Regulations.
34. While it is unfortunate that the appellant declined to engage with Coillte to refine Request 1, and I would remind all parties that they should seek to engage constructively with each other in the spirit of the AIE regime, I would also remind Coillte that it alone is required to implement article 10(5) of the AIE Regulations. In these cases, notwithstanding that certain similar information had previously been released for a smaller area, Coillte refused access to all of the information sought in the requests concerned under article 9(2)(a) of the AIE Regulations. Article 10(5) of the AIE Regulations requires that, in circumstances where some of the requested information is subject to an exception, Coillte must still consider whether parts of the request can be answered. This includes where Coillte is relying on article 9(2)(a) of the AIE Regulations.
35. In all the circumstances, Coillte has not justified its decisions to refuse access to the information sought in either of the appellant’s requests under article 9(2)(a) of the AIE Regulations. I consider that the most appropriate course of action is to annul Coillte’s decisions in respect of the requests and direct it to undertake a fresh decision-making process in respect of each. In doing so, the parties may care to note the following matters.
36. First, it is important to note that this decision should not be taken meaning that Coillte cannot rely on article 9(2)(a) of the AIE Regulations, subject to article 10, as a ground for refusal when considering the requests afresh or, indeed, any subsequent related requests. However, in processing the requests afresh, Coillte should have full regard to the provisions of the AIE Regulations.
37. Second, Coillte should also ensure that any information relating to active sites is dealt with properly.
38. Finally, while it is unfortunate that the appellant declined to engage with Coillte, I believe that, prior to the processing of the requests afresh, there is merit in the appellant and Coillte working together to determine if there may be a more appropriate way of dealing with how the information sought is



made available to him. It is worth noting that if Coillte accepts that a right of access exists to such operational monitoring information, as it decided to release in the previous similar cases, albeit for a smaller area, there is nothing to stop it from publishing such information regularly, thereby avoiding the need to process AIE Requests seeking these reports. Indeed, greater proactive publication of environmental information is a significant tool in managing the number of AIE requests made on such matters.

Decision

39. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I hereby annul Coillte's decisions in these cases. I direct Coillte to undertake a fresh decision-making process in respect of each of the appellant's requests.

Appeal to the High Court

40. A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

Deirdre McGoldrick

On behalf of Commissioner for Environmental Information

19 May 2023