



Mr. Tommy Gavin

15th August 2023

requests@righttoknow.ie

**Re: Request for Information under the provisions of the European Communities (Access to Information on the Environment) Regulations 2007 as amended**

Dear Mr. Gavin,

I refer to your AIE Request submitted in the above regard.

Your request is as follows;

*“Under the AIE regs to request any licencing, monitoring/inspection or enforcement records in relation to a quarry operation at Rinaghan, Kildare”*

We have reviewed our original decision made on the 5<sup>th</sup> of May 2023 and consider that the decision should have been a Part Grant decision.

I enclose for your attention a schedule of records on UD file 5010 that advises records you can have access to and attach for your information,

- Directors Order dated 08/10/2012
- Enforcement Notice redacted dated 08/10/2012
- Enforcement Notice redacted dated 08/10/2012
- Withdrawal of enforcement Notice 09/05/2013
- Section 160 Directors Order 24<sup>th</sup> July 2017
- Warning letter redacted 27th June 2022

Records that you have been refused access to are also listed on the schedule and the reasons for their refusal.

**Article 9 (1) (b) . S.I. No. 133/2007 - European Communities (Access to Information on the Environment) Regulations 2007** provides that;

A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect—

(b) the course of justice (including criminal inquiries and disciplinary inquiries),

Under Article 10 we have also considered the request and weighed the public interest served by disclosure against the interest served by refusal.

Sections of the Freedom of Information Act which can apply to deny access to documents are known as its exemption provisions.

**Section 32 provides that ,**

- (1) A head may refuse to grant an FOI if access to the record concerned could, in the opinion of the head, reasonably be expected to -

- (a) Prejudice or impair -
- (i) The prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,
- (ii) The enforcement of, compliance with or administration of any law,
- (iii) the fairness of criminal proceedings in a court or a civil proceedings in a court or other tribunal.

**Section 35 provides that;**

(1) Subject to this section, a head shall refuse to grant an FOI request if-

a) The record concerned contains information given to an FOI body, in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of such importance to the body that such further information as aforesaid should continue to be given to the body."

With regard to the documents that you have been refused access to the documents , having reviewed the file, the explanation and reasons why records are exempt, is that under Sections 151 - 159 of the Planning and Development Act, 2000 (as amended), court proceedings may be initiated and any person who is guilty of an offence could be liable to a fine not exceeding €10,000,000 and/or imprisonment. All aspects of the file are therefore extremely sensitive and are likely to come under great scrutiny and we cannot prejudice any potential legal and court proceedings. There have been a number of objections and interest in this case. It is the Council's intention to serve the public interest in the best manner possible by keeping their records completely confidential.

As this case has already been appealed to the OCEI, we will also forward a copy of this letter to the OCEI.

Yours sincerely



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Mary Mc Carthy

A/Senior Executive Officer