



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: OCE-133525-W9Z4B9

Date of decision: 13 December 2023

Appellant: Mr. X

Public Authority: Department of Agriculture, Food and the Marine (the Department)

Issue: Whether information requested by the appellant is “environmental information” within the meaning of article 3(1) of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner found that the Department was not justified in refusing the information sought on the basis that it was not environmental information. He annulled the Department’s decision and directed a fresh decision-making process in respect of the request.

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. On 4 November 2022, the appellant wrote to the Department of Agriculture, Food and the Marine (the Department) requesting that the following information, “with reference to Briefing note for Minister, Meeting with Coillte – 10/02/2021”:
 - (1) All information which informed the following content in the Ministerial Briefing:

“Coillte and DAFM teams have been working closely in preparation for the next batch of 1,900 applications. The aim is to synchronise each other’s work streams so that DAFM inspectors can work on a catchment basis and that Natura impact statements arrive from Coillte just as applications exit the DAFM referral process. Other efficiencies and improvements are being identified”

Information to include (but not restricted to);

 - (a) All information relating to the synchronisation of work streams
 - (b) All correspondence and communications (all media) relating to the timing of the submission of Natura Impact Statements from Coillte
 - (c) Details of other efficiencies and improvements that have been identified
 - (2) Information on the Administrative support that has been allocated to the Felling Inspectorate
2. The appellant also stated in his request that “This information is environmental information as it relates to a Plan or Programme (Forestry Programme). The content relates to water catchments so involves information which has the potential to affect the elements and factors referred to in paragraphs (a) and (b) of Article 3 (1) of the Regulations.” He added that “the content is relevant to the referrals process which permits for prescribed bodies and the public to input in to forestry licence applications process. Such comment is intended to better inform the process leading to better environmental outcomes. This means that requested information relates to factors which are likely to affect the elements and factors referred to in paragraphs (a) and (b) of Article 3 (1) of the Regulations.” Finally, the appellant requested, “With reference to the decision in OCE-116197-B6X0M5... [that] the information is provided in an electronic format as soon as is possible” and also that the Department inform him, “with its best estimate”, when he would be likely to receive the requested information.
3. The Department responded to the appellant on 25 November 2022, refusing access to the information on the grounds that “the request does not meet the definition of ‘environmental information’ as set out in article 3(1) of the AIE Regulations”. By way of explanation, the Department stated that “internal decisions as to how the DAFM will conduct their business to ensure efficiencies and improvements or administrative staff allocated is not environmental information.”



4. The Department advised the appellant that “Public consultation on the new Forestry Programme is currently underway”, and provided a link to where suggestions could be submitted. It further advised that the public is consulted throughout the licensing process and that legislation specifically provides for public consultation on a licence application at three potential phases in the process, and provided the following list of available links and explanations:
 - Applications received since 11/01/2021 can be viewed on the Forestry Licence Viewer (FLV): [Forestry Licence Viewer \(FLV\)](#) Each application is open to a submission by the public when the application is advertised. This public consultation period lasts 30 days and applications can be viewed on the DAFM website, link below, as well as details on how to make a submission: [Public Consultation on Licence Applications for Felling, Afforestation, Forest Roads and Aerial Fertilisation](#)
 - There may be an additional consultation period, where once again, the application is open to submissions for a further 30 days. Any application which requires advertising in this period can also be viewed on the website: [Public Consultation on Additional Information in relation to certain Forestry Licence Applications](#)
 - Once a Licence is issued, if a submission has been made, the submitter will be informed of the Licence decision. Alternatively, these decisions can be viewed at: [Licence Applications for Felling, Afforestation and Forest Roads - Register of Decisions](#) Once a decision has been made there is a window of 14 days from the date of decision for the public to lodge an appeal with the Forestry Appeals Committee (FAC). If this appeal is deemed valid by FAC the licence will be suspended pending the outcome of the appeal.
5. The Department then outlined that it had considered the appellant’s request in line with article 10(3) of the AIE Regulations, as such that it had weighed the public interest served by disclosure against the interest served by refusal. The Department outlined the factors in favour of release of this information as, “the making available to the public, where practical and allowed under the law, in a transparent manner, information affecting the environment.” It outlined the factors in favour of withholding information as being that, “internal work practices within the Department are not considered environmental information”, concluding that “the public interest is best served by refusal to disclose this information.”
6. On 28 November 2022, the appellant sought an internal review of the Department’s decision, submitting that the Department had “not provided any reasoning to counter [his] contention that the information sought is environmental information.” The appellant reiterated his view that “the information is environmental information as it relates to a Plan or Programme (Forestry Programme)”, and that “the content relates to water catchments, so involves information which has the potential to affect the elements and factors referred to in paragraphs (a) and (b) of Article 3 (1) of the Regulations.” In addition, he submitted that “the content is relevant to the referrals process which permits for prescribed bodies and the public



to input in to forestry licence applications process [and that] such comment is intended to better inform the process leading to better environmental outcomes.”

7. The appellant drew attention to the part of his request which sought “all correspondence and communications (all media) relating to the timing of the submission of Natura Impact Statements from Coillte” and queried in particular how this could be considered not to be environmental information as, “it is information regarding Natura 2000 sites which must be put in to the public domain for consultation and should be available to prescribed bodies as part of a licencing process under the Forestry Programme.” In conclusion, the appellant stated that “[the Department] holds environmental information on behalf of the public and [he is] of the view that the Department is deliberately obstructing [his] access to environmental information.”
8. The Department issued its internal review decision on 22 December 2022. The Internal Reviewer affirmed the original decision to refuse the request under article 3(1) of the AIE Regulations. By way of explanation the Internal Reviewer stated that “internal decisions as to how the [Department] may conduct their business to ensure efficiencies and improvements in administration or administrative staff allocated is not environmental information as this does not change the licensing process or the environmental requirements for receiving a licence, so does not affect the environment.” The internal review outcome goes on to say that “the public are consulted throughout the licensing process, details of which are publicly available and have been provided to [the appellant].
9. The internal review outcome also references article 10(3) and 10(4) of the AIE Regulations, and finds that “decisions that may be undertaken to improve efficiencies in work practices nor information on the administrative support, is not environmental information and does not serve the public interest.” Lastly, the outcome proffers that, “Detailed information as to how the public can participate in licensing matters is publicly available.”
10. The appellant submitted an appeal to this Office on 23 December 2022.
11. I am directed by the Commissioner for Environmental Information to complete a review under article 12(5) of the Regulations. In doing so, I have had regard to submissions made by the appellant and the Department in this matter and I have examined the contents of records provided by the Department to this Office. I also 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’](#));
- The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ([‘the Aarhus Guide’](#));
- the judgments of the Superior Courts in *Minch v Commissioner for Environmental Information* [2017] IECA 223 (*Minch*), *Redmond & Anor v Commissioner for Environmental Information & Anor* [2020] IECA 83 (*Redmond*), *Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna* [2020] IEHC 190 (*ESB*) and *Right to Know v Commissioner for Environmental Information & RTÉ* [2021] IEHC 353 (*RTÉ*);
- the judgment of the Court of Appeal of England and Wales in *Department for Business, Energy and Industrial Strategy v Information Commissioner* [2017] EWCA Civ 844 (*Henney*) which is referenced in the decisions in *Redmond*, *ESB* and *RTÉ*; and
- the decisions of the Court of Justice of the European Union in *C-321/96 Wilhelm Mecklenburg v Kreis Pinneberg - Der Landrat (Mecklenburg)*, and *C-316/01 Eva Glawischnig v Bundesminister für soziale Sicherheit und Generationen (Glawischnig)*.

12. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Positions of the Parties

13. The appellant made submissions to this Office on 23 December 2022 in support of his appeal. The appellant submits that his request “relates to the processing of forestry licences by DAFM.” The appellant submits that the awarding of a forestry licence (whether for the afforestation of lands, Forest Road Works or the Felling of Trees) is a measure or activity which is likely to affect the environment within the meaning of paragraph (c) of the definition as there is a real and substantial possibility that it will affect the environment in line with the test set out by the Court of Appeal in *Redmond* [2020] IECA 83 and *Right to Know v Commissioner for Environmental Information & RTÉ* [2021] IEHC 353.
14. The appellant also submits that, “A decision by the Department to synchronise its work streams with Coillte so that DAFM inspectors can work on a catchment basis and that Natura impact statements arrive from Coillte just as applications exit the [Department] referral process is information “on” the measure as access to such information would make the public better informed regarding how the consenting authority interact with the State Forestry body regarding the provision of information supporting licenced activities.”



15. The Department provided submissions to this Office on 28 March 2023 together with a copy of certain records identified as the subject of the appellant's request.
16. The Department submits, in response to the contents of the appellant's appeal submission to this Office, as outlined above, that "The purpose of the synchronisation was to make the process more efficient and improve the turnaround time on approval of licences." It argues that "These efficiencies are not changes to the statutory obligations which [the Department] abides by for licencing, it is purely to ensure a faster administrative process. Delays to the process could cause longer wait times for licences issuing and could cause financial hardship for applicants."
17. The Department submits that "Any new processes or procedures implemented by the Department to aid in having less "down time" where applications are waiting at one status to be moved to another is an internal administrative improvement." It argues that "the content of the applications, referrals, expected submissions, NI Statements etc. (all of which are Environmental Information) has not changed in any form, neither is how they are assessed, it is purely how quickly they are processed". It adds that "the information involved and received as well as issued on each application within those 1,900 applications can and is considered Environmental Information however the process of how administrative works are done on them cannot be."
18. The Department submits that "internal procedures for improvement do not fall under the parameters [of article 3(1) of the AIE Regulations] and therefore were not issued at original request or internal review stages." It submits that "All of the documents relating to the Coillte applications, referrals, Inspectors notes and comments, Ecology documents, final sign off by Inspectorate etc. are all available on the Forestry Licence Viewer and all licences are subject to submission and appeals periods throughout the licencing process", adding that "any member of the public has access to these at any time they wish and can save copies if required".
19. This Office wrote to the Department on 13 July 2023, inviting it to provide further detail in a focused submission. No further submissions were received.

Preliminary Matters

20. The appellant in his submissions has suggested that requests are being refused by the Department based on article 3(1) of the AIE Regulations in a systemic manner and requested that this be addressed in this decision. The function of this Office however, is to review the decision made by the Department at internal review stage, with regard to the decision on this individual AIE request. As such, I do not consider it necessary or appropriate, to extend the remit of this Office's enquiry beyond whether the Department's refusal, on this occasion, is justified on the basis of article 3(1) of the Regulations.



21. Notwithstanding the above, I am disappointed by the approach adopted by the Department in this case. In processing the appellant's request, it did not identify the extent to which the actual information sought by the appellant at parts (1) and (2) of his request was held by or for it, prior to its refusal. I consider that this renders the Department's stated consideration under article 10(3) and 10(4) as superfluous.
22. Furthermore, during the course of this appeal, the Department provided this Office with a schedule of records and a copy of certain records identified as the subject of the appellant's request. Upon review of same, it is apparent that there are deficiencies with this material; not least in that some of the listed records are clearly outside of scope of the information sought. For example, one record consists of the appellant's internal review request dated 28 November 2022, another consists of a "search" email transmitted between Department officials in November 2022 in light of the appellant's request.
23. I would ask the Department to take my findings in this decision into account in future when processing requests where it considers that article 3(1) may arise.

Scope of Review

24. In accordance with article 12(5) of the AIE Regulations, the role of this Office is to review the Department'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.
25. The powers conferred on the Commissioner for Environmental Information apply only in respect of environmental information held by or for a public authority. In accordance with this Office's Procedures Manual, available at www.ocei.ie, the general practice in cases such as this, concerning a question of the Commissioner's jurisdiction, is to limit the review to the preliminary matter of whether the information at issue is "environmental information", such that it falls within the remit of the AIE Regulations.
26. Accordingly, I am satisfied that it is appropriate to limit the scope of this review to whether the Department was justified in refusing access to relevant records on the basis that they do not constitute "environmental information" within the definition provided at article 3(1) of the AIE Regulations.

Analysis and Findings

Environmental Information



27. Article 3(1) of the AIE Regulations is the relevant provision to consider where the issue is whether information is “environmental information”. In line with article 2(1) of the Directive, article 3(1) of the AIE Regulations provides that “environmental information” means:

“any information in written, visual, aural, electronic or any other material form on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,
- (d) reports on the implementation of environmental legislation,
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c) ”.

28. The right of access under the AIE Regulations is to information “on” one or more of the six categories at (a) to (f) of the above definition. According to national and EU case law on the definition of “environmental information”, while the concept of “environmental information” as defined in the AIE Directive is broad (*Mecklenburg* at paragraph 19), there must be more than a minimal connection with the environment (*Glawischnig* at paragraph 25). Information does not have to be intrinsically environmental to fall within the scope of the definition (*Redmond* at paragraph 58; see also *ESB* at paragraph 43). However, a mere connection or link to the environment is not sufficient to bring information within the definition of environmental information. Otherwise, the scope of the definition would be unlimited in a manner that would be contrary to the judgments of the Court of Appeal and the CJEU.



29. In my view, paragraph (c) of the definition, which provides that “environmental information” means any information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements, is the most relevant to this review.
30. Paragraph (c) requires the identification of a relevant measure or activity, which the information sought is “on”. Information may be “on” more than one measure or activity (*Henney* at paragraph 42). In identifying the relevant measure or activity, one may consider the wider context and is not strictly limited to the precise issue with which the information is concerned (*ESB* at paragraph 43). The list of examples of measures and activities given at paragraph (c) is not exhaustive, but it contains illustrative examples (*Redmond* at paragraph 55). The CJEU stated in *Mecklenburg* that the term ‘measure’ serves “merely to make it clear that the acts governed by the directive included all forms of administrative activity” (*Mecklenburg* at paragraph 20, emphasis added), and a similarly expansive approach should be taken to the term ‘activity’ (*RTÉ*, at paragraph 19).

Identification of a measure or activity

31. In this case, the appellant’s request relates to the content of a briefing note for the Minister [for Agriculture, Food and the Marine] for meeting to be held with Coillte on 10 February 2021. The briefing note summarises the statistical position with licencing in respect of the Coillte 2021 harvest. The note also includes an average monthly target for issuing forestry licences over the period March 2021 to February 2022 and sets out a list of actions underway to help achieve those targets. The appellant is seeking to be provided with information which informed those actions. The appellant’s request stated that the requested information related to the Forestry Programme. The Department has not disputed this in its decisions on this request, or in its submissions to this Office.
32. Ireland’s most recent [National Forest Strategy](#) outlines that “the overriding objective between now and 2030 is to urgently expand the national forest estate on both public and private land in a manner that will deliver lasting benefits for climate change, biodiversity, water quality, wood production, economic development, employment and quality of life. The associated Forestry Programme, managed by the Department, sets out national targets designed to achieve this objective. Coillte, Ireland’s semi-state forestry company, is the nation’s largest forester and a key contributor to these targets. A consent system or Forest Licencing system is in place in Ireland to regulate forestry activities including afforestation, felling, thinning, replanting, and the construction of forest roads, all of which have the potential to have significant impacts on the environment.
33. Based on the above, I consider that the Forestry Programme is a measure within the meaning of paragraph (c).



Whether the measure or activity is likely to affect or designed to protect the environment

34. A measure or activity is “likely to affect” the elements and factors of the environment if there is a real and substantial possibility that it will affect the environment, whether directly or indirectly. While it is not necessary to establish the probability of a relevant environmental impact, something more than a remote or theoretical possibility is required (*Redmond* at paragraph 63). It is also important to note that the actual outcome of a measure or activity is irrelevant.
35. As noted above, forestry activities have the potential to have significant impacts on the environment. EU Member States are required to have a regulatory system which ensures that proposed forestry activities are assessed, before they are permitted to proceed, to ensure that the objectives of relevant Directives, including the Water Framework Directive, Habitats and Birds Directives, and the EIA Directive, are met. As the consenting authority for forestry activities, the Department must ensure that activities take place in a way that complies with environmental legislation and enhances the contribution forests can make to the environment and to the provision of ecosystem services, such as carbon capture, water protection and landscape enhancement. The Forestry Programme is one of the ways in which the Department fulfils this obligation. Accordingly, the Forestry Programme and licensing system both affect and protect the environment by ensuring that forestry activities are carried out in an orderly and regulated manner.
36. I find, therefore, that the Department’s Forestry Programme and Licencing system are measures/activities likely to affect and designed to protect the environment.

Whether the information is on the measure or activity

37. The final question to consider here is whether the information requested by the appellant is information “on” the measure/activity. In *Henney* (paragraph 43), the Court suggests that, in determining whether information is “on” the relevant measure or activity, it may be relevant to consider the purpose of the information such as why it was produced, how important it is to that purpose, how it is to be used, and whether access to it advances the purposes of the Aarhus Convention and the AIE Directive.
38. The requested information relates to actions underway by the Department to support achievement of monthly forestry licence targets which were listed in a briefing document prepared by Department officials for the purposes of a meeting to be held with Coillte, a key forestry industry stakeholder. I note the Department’s main argument in this case is that the actual assessment of forest licence applications, which is subject to statutory requirements, has not changed, and that the administrative efficiencies concerned relate “purely [to] how quickly they are processed”. The Department has not suggested that the requested information is not information “on” the Forestry Programme. It has instead stated that internal



procedures for improvement do not fall under the parameters of the definition of environmental information as provided for by the Regulations.

39. The guidance provided by the Courts suggests that there is sliding scale with information integral to a measure at the one end (in the sense that it is quite definitively information “on” a measure) and information considered too remote from the measure on the other end (in the sense that it is not). The example referred to in *Henney* noted that a report on PR and advertising strategy might be considered information “on” the Smart Meter Programme (the measure at issue in that case) “because having access to information about how a development is to be promoted will enable more informed participation by the public in the programme”. However, information relating to a public authority’s procurement of canteen services in the department responsible for delivering a road project would likely be considered too remote (paragraph 46).
40. The information in this case relates to administrative efficiencies introduced to achieve forestry licence targets, and thus further the objectives of the Forestry Programme and National Forestry Strategy and the wider environmental aims therein. In addition, the information which informed the actions/administrative improvements constitutes information which might enable greater public awareness of the functioning and effectiveness of the Forestry Licencing system which, as outlined above, encompasses significant environmental assessment activities. As the Department itself notes, delays to the licencing process could cause longer wait times for licencing and financial hardship for applicants.
41. In a [Regulatory Review Report](#) commissioned by the Department, published on 29 June 2022, it is noted that Ireland “needs a forestry model and regulatory regime which can achieve multiple wins, a system which facilitates an urgent increase in tree planting and native woodland conservation, while also protecting and enhancing biodiversity and water quality.” The Aarhus Convention confers rights directly on individuals to access environmental information, to participate in environmental decision-making, and to have access to a legal review procedure to challenge the validity of environmental decisions. In the context of information concerning the functioning and effectiveness of the Forestry Licencing system, I consider that such information is also capable of impacting on public participatory activities; participation which advances the purposes of the Aarhus Convention and the AIE Directive.
42. To this end, I consider the information at issue to be “on” the Department’s Forestry Programme and Licencing system which, as outlined above, are category (c) measures/activities within the meaning of article 3(1) of the AIE Regulations.
43. The statement in the Department’s submissions that “internal procedures for improvement do not fall under the parameters [of article 3(1) of the AIE Regulations]” does not provide a sufficient level of analysis to ground a decision that the requested information is not environmental information. This type of information does come within the definition of environmental information where it is information “on” a relevant measure under paragraph



(c) of the definition as set out in article 3(1). I would ask the Department to take note of the manner in which I have arrived at this decision.

Conclusion

44. I am satisfied that the information requested by the appellant in this case falls within the definition of “environmental information” contained in article 3(1)(c) of the AIE Regulations. On that basis, and in circumstances where the relevant information coming within the scope of the appellant’s request has not been properly identified, I am remitting the matter to the Department for further consideration in accordance with the provisions of the AIE Regulations.

Decision

45. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I hereby annul the Department’s decision in this case. I direct the Department to undertake a fresh decision-making process in respect of the request.

Appeal to the High Court

46. 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.

Julie O’Leary

On behalf of the Commissioner for Environmental Information

13 December 2023