



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-133697-G6F9K9

Date of decision: 11 December 2023

Appellant: Ms. X

Public Authority: Coillte

Issue: Whether Coillte was justified in refusing the appellant's request on the basis that no environmental information within the scope of that request could be located

Summary of Commissioner's Decision: The Commissioner annulled Coillte's decision and directed it to undertake a fresh decision making process in respect of the appellant's 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 7 December 2021, the appellant made a request to Coillte under the AIE Regulations, seeking access to all information relating to the impact of forestry under the Forestry Programme 2014-2020 (both afforestation and reforestation) on tourism, including ecotourism, for the period 1 January 2014 to the date of the request, to include, inter alia:
 - Internal and external correspondence (any media, including text and WhatsApp messages);
 - Advice received, including legal advice, including drafts;
 - Any analysis, review or consideration etc. of any material and / or draft proposals relevant to the request;
 - Consultations (including public consultations);
 - Draft reports and final reports (including all appendices or annexes);
 - Notes of all telephone conversations where any part of the conversation is relevant to the request
 - Notes of all meetings (actual or virtual), including agendas, where any part of the meeting is relevant to the request;
 - Investigations, either conducted internally, or externally by any third parties that are relevant to the request.
2. This request was subject to a previous appeal by the appellant to this Office in [OCE-120559-S8Q1J5](#). In a decision on that appeal, dated 27 July 2022, this Office annulled Coillte's decision under article 9(2)(a) of the AIE Regulations to refuse access to information coming within the scope of the request and directed Coillte to process the request afresh.
3. On 24 October 2022, Coillte issued a fresh decision, refusing the appellant's request under article 7(5) of the AIE Regulations on the basis that it had been unable to locate any records relevant to the appellant's request, "[having] examined material held by Coillte and having taken all reasonable steps to locate the requested information and establish whether the information requested exists."
4. The appellant sought an internal review on 23 November 2022.
5. Coillte issued its internal review outcome on 22 December 2022, affirming refusal on the basis of article 7(5) of the AIE Regulations. At both original decision and internal review stages of this request, the respective decision makers outlined identical steps taken to identify and locate information relevant to the appellant's request, as follows:
 - A physical search of all relevant areas of the organisation in which the records sought might be held.
 - A search of the electronic databases and records held both on mainframe computers and individual staff computers.
 - Interviews with individual members of staff who may have dealt with such records.
 - Detailed discussions with the records management staff.



6. The appellant brought an appeal to this Office on 6 January 2023.
7. 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 Coillte in this matter. 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’](#)).
8. What follows does not comment or make findings on each and every argument advanced, but all relevant points have been considered.

Scope of Review

9. 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.
10. I have given consideration to submissions from the appellant in relation to Coillte’s general handling of this request and in particular the delays ensuing from Coillte’s initial refusal of this request under article 9(2)(a) of the Regulations, followed by a refusal under article 7(5) on the second occasion of processing.
11. This review is concerned with whether Coillte is entitled to refuse access to the information requested by the appellant on the basis that no information within the scope of the request is held by or for it.

Analysis and Findings

12. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned.



Article 7(5) of the AIE Regulations

13. This Office's approach to dealing with cases where a public authority has refused a request under article 7(5) of the AIE Regulations is to assess whether adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply. It is not normally this Office's function to search for environmental information.
14. In her appeal to this Office, the appellant notes that Coillte has provided some limited information on the steps taken to locate information relevant to her request, however she submits that it is a possibility that the steps undertaken by Coillte have been inadequate.
15. The appellant provided further submissions to this Office on 5 February 2023 in support of her argument that the handling of her request by Coillte was not consistent with the requirements of the AIE Regulations.
16. In support of the existence of information relevant to her AIE request, the appellant references page 35 of Coillte's strategic plan '[Coillte-Strategic Vision for our Future Estate](#)', published April 2022, wherein it states that "... the Coillte estate is in a strong position to play a key role in supporting the provision of new tourism and recreation uses, including thematic tourism and active recreational projects at appropriate locations."
17. The appellant submits that such statement(s) could not have been made without any research or evidence to support them, unless they were "purely speculative... without factual basis and not evidenced by relevant information". For example, the appellant submits that relevant information might be expected to include "the different types of new tourism to which Coillte are referring" or, "what criteria need to apply for a location to qualify, in Coillte's opinion, as an 'appropriate location'".
18. The appellant submits that afforestation can have a negative impact on tourism. By way of example she references a specific afforestation application (with supporting documentation provided to this Office) which was seemingly refused by the Department of Agriculture, Food and the Marine (the Department) in January 2020, for reasons including, in the opinion of the Department, that the proposed afforestation application would affect the scenic tourist route of the Wild Atlantic Way adjoining the proposed afforestation site.
19. On 2 June 2023, this Office wrote to Coillte and asked that it provide further details of the steps taken to search for relevant information relating to the appellant's request. This included a number of specific queries as to the locations searched, the search methods used and the individuals consulted. At this stage, a summary of the appellant's submissions was also provided to Coillte.



20. In its submission to this Office dated 27 June 2023, Coillte acknowledged that it would have been more efficient if it had sought to engage with the appellant and invite her to make a more specific request, in particular as it considers that the request for information in this instance uses broad and “trawling” language and lacks specificity as to the actual environmental information being sought.
21. Coillte rejects the appellant’s viewpoint concerning statements made in its strategic vision publication. It submits that given Coillte’s significant involvement in and contribution to recreational projects across the country, it is entirely reasonable for Coillte to hold the view that its estate “is in a strong position to play a key role in supporting the provision of new tourism and recreation uses, including thematic tourism and active recreational projects at appropriate locations”, and points to the following additional extracts from the same publication:
- “Coillte is the leading provider of outdoor recreational activities, with over 6,000 forest properties throughout Ireland, 3,000 km of way-marked trails, 12 forest parks, 6 mountain-bike trails, and 260 recreational sites. Every year there are over 29 million visits to forests across the country. Forest recreation is very important to people’s wellbeing, and Coillte’s ‘Woodlands for Health’ programme helps to provide mental health support.” (page 5)
 - “Coillte, through our assets, experience, and leadership, is well positioned, in partnership, to support the growth in Tourism and Recreation in Ireland through:
 - World Class Visitor Destinations
 - Adventure & Activity
 - Private Investment.”
- Coillte has strategic partnerships in place with both Fáilte Ireland and the Department of Rural and Community Development to enhance recreational facilities to support increased tourism and economic activity in rural areas. Coillte has also partnered with councils, communities, agencies, and businesses in supporting the development of large-scale facilities across the estate from Lough Key Forest Park in Roscommon to Rossmore Park in Co. Monaghan to Center Parcs in Longford.” (page 36)
22. Coillte also rejects the appellant’s contention that “relevant information” might be expected to include “the different types of new tourism to which Coillte are referring” or, “what criteria need to apply for a location to qualify, in Coillte’s opinion, as an ‘appropriate location’”, considering such specific information to be outside of scope of the appellant’s original request.
23. In relation to the example provided by the appellant concerning the refusal of an afforestation licence by the Department allegedly based on its impacts on tourism, Coillte submits that said application did not involve Coillte-owned lands. Furthermore, it submits that having made enquiries with relevant staff, it is not aware of any Coillte afforestation application that was refused on the grounds of adverse impacts on tourism or ecotourism.



24. Coillte submits that its AIE Team carried out the following searches in respect of the information sought:
- A search of Coillte's LRM and SharePoint systems using several keyword searches including words and phrases such as 'tourism' and 'impact' and 'Forestry Programme'.
 - Discussions with staff in the Recreation Team to enquire if they had any relevant records.
 - Discussions with staff in the Resource Team (who have responsibility for submitting felling licence applications).
25. Coillte submits that the above searches did not reveal the existence of any relevant records and as such, the AIE Team formed the view that no such records were likely to exist. It further submits that, following discussions with relevant staff in the Recreation and Resource teams, it concluded that the Forestry Programme 2014-2020 was a Department programme and that there was no requirement or obligation on Coillte to conduct any monitoring or assessment of the impacts of forestry on tourism.
26. Coillte explains that the Forestry Programme 2014-2020 is a government programme issued by the Department setting out information relating to the provision of state aid in order to build and maintain the national forest resource and its services and which includes information relating to a number of schemes such as an Afforestation Scheme, a Native Woodland Establishment Scheme and a Woodland Improvement Scheme.
27. Coillte submits that all schemes established under the Forestry Programme 2014-2020 are managed by the Department and that Coillte has no involvement in the rollout or management of the Programme. On that basis, Coillte submits that it has no reason to hold any information relating to the impact of forestry under the Programme on tourism including ecotourism, as it would be entirely a matter for the Department to measure, track or assess any such impact.

Findings

28. I accept that Coillte's submissions to this Office demonstrate that it did engage in detailed searches to identify information within the scope of the appellant's request. I also accept that primary responsibility for the Forestry Programme 2014-2020 rests with the Department, not Coillte, and that it might reasonably be the case that there is no further information held by Coillte relevant to the appellant's request.
29. However, the primary issue in this case appears to me to be that the appellant's request for "all information relating to the impact of forestry under the Forestry Programme 2014-2020...on tourism" is too general. This was identified by Coillte itself in its submissions as set out at paragraph 20 above.
30. It is reasonable to expect that a public authority may not be in a position to identify and retrieve information within the scope of a request if that request "lacks specificity" as Coillte puts it. This is recognised by the AIE Regulations and the Directive which allow public



authorities to refuse requests on the basis that they are “formulated in too general a manner” (see article 9(2)(b) of the Regulations and 4(1)(c) of the Directive). However, both the Regulations and the Directive make it clear that before a public authority can refuse a request on this basis, it must invite the appellant to make a more specific request and offer assistance to the appellant in the preparation of such a request. That did not occur in this case and, although I appreciate that Coillte did carry out searches on the basis of the general request, I consider that to hold that Coillte is entitled to refuse the request on the basis of article 7(5) in the circumstances risks undermining the clear obligation in the Regulations on public authorities to make an attempt to engage with a requester to refine broad requests before refusing them.

31. On that basis, I am remitting the matter to Coillte so that it can engage with the appellant in an attempt to refine the request before making a fresh decision on the matter. I would note that the Regulations also provide that requesters should “state, in terms that are as specific as possible, the environmental information that is the subject of the request” (see article 6(1)(d)) and this should be borne in mind by the appellant in her engagement with Coillte. The appellant should also take note of the points raised by Coillte in the course of this appeal, and should make every effort to refine her request using terms that are as specific as possible.
32. If Coillte remains of the view that no information within the scope of the request is held by or for it following engagements to refine the request or that the request has not been sufficiently refined, it should provide reasoning for that position to the appellant in accordance with the requirements of article 7(4) of the Regulations and the general duty to give reasons as set out in cases such as *Meadows v Minister for Justice* [2010] IESC 3 and *Balz & Anor v An Bord Pleanála & Ors* [2019] IESC 90. Given its reference to the Department’s responsibility for the Forestry Programme, Coillte may also wish to consider the provisions of article 7(6) of the Regulations.
33. Lastly, while I am directing remittal of the matter to Coillte on the above basis, it is observable that Coillte provided considerably more detail regarding the approach and steps taken to identify and locate information when requested to do so by this Office, in comparison with the limited information made available to the requestor at original decision and internal review stages. I wish to emphasise that the AIE Regulations make it clear that where a requester has all or part of a request refused, they are entitled to be provided with clear reasons for that refusal, and that in future, when refusal under article 7(5) arises Coillte should aim to provide a level of detail to requestors at the earliest stage of the process which allows them to understand the reasons for the conclusion that no relevant information is held by or for it.

Decision

34. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I annul Coillte’s decision and direct it to carry out a fresh decision-making process having regard to the comments above.



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Appeal to the High Court

35. 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.

Emma Libreri
on behalf of the Commissioner for Environmental Information
11 December 2023