



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-132562-W9P1C6

**Date of decision:** 7 February 2024

**Appellant:** Mr. F

**Public Authority:** Coillte

**Issue:** Whether Coillte was justified in refusing access to information requested on the basis that it was not held by Coillte in accordance with article 7(5) of the AIE Regulations.

**Summary of Commissioner's Decision:** The Commissioner found that the information was not held by or for Coillte and article 7(5) of the AIE Regulations applied.

**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 8 August 2022, the appellant requested from Coillte “[a]ll” information on a road extension carried out by Coillte on the site off, and during the implementation of felling licence LM03-FL0067.”
2. On 7 September 2022, Coillte responded by letter (dated 9 September 2022) to the appellant identifying one record relating to his request and granting him access to a copy of same. The record in question was a document described in the letter as “AIE 20220246 – Activity Pack” (the Activity Pack).
3. On 4 October 2022 the appellant requested an internal review of Coillte’s decision, indicating that “[a]ll information has not been provided.” He noted also that he had not been provided with information on the need for the road extension, that the record provided to him indicated that a planned 99-metre road extension had only resulted in a 60-metre extension and that no information had been provided regarding the reasons for this reduction.
4. In its internal review decision of 3 November 2022, Coillte stated that it had made a final decision on the review following a re-examination of the request. It did not explicitly affirm, annul or vary its original decision. It went on to state that no record existed of the “exact purpose” of the road extension in question but that there was a record relating to the “requirement” of the road extension, the details of which were summarised in the activity pack provided to the appellant as part of its initial response to his request. It further noted that the road extension facilitated forestry operations, including to service timber operations. It stated that the proposal for the length of the road would have been initially drafted on a map and that the management and operations would have discussed it and made a decision on site to limit the extension to 60 metres.
5. The appellant brought this appeal to this Office on 23 November 2022 on the basis that not all information covered by his request had been provided.
6. By letter dated 23 January 2023, Coillte sought to rely on its internal review decision pending any request for submissions from this Office.
7. The appellant made submissions to this Office, on two separate occasions as noted below, in support of his appeal. The first was made on 9 January 2023 and the second on 18 December 2023.
8. At the request of the investigator assigned to this appeal, Coillte lodged submissions with this Office on 19 May 2023 and submitted a copy of the activity pack that had been appended to the original decision and furnished to the appellant. Its submissions clarified that its internal review decision affirmed the original decision. Coillte contends that no information within the scope of the appellant’s request exists, other than the information provided to him with the original decision.
9. I have now completed my review under article 12(5) of the AIE Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and Coillte. In addition, I have had regard to:
  - i. the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations;



- ii. Directive 2003/4/EC (the “AIE Directive”), upon which the AIE Regulations are based;
  - iii. 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
  - iv. the Aarhus Convention—An Implementation Guide (Second edition, June 2014) (the “Aarhus Guide”).
10. What follows does not comment or make findings on each and every argument advanced but I have considered all materials submitted in the course of the investigation.

### **Scope of Review**

11. In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decision and to affirm, annul or vary it. This review is concerned firstly with whether Coillte was justified in refusing access to information requested by the appellant on the basis that the information did not exist, in other words, that it was not held by or for it, in accordance with article 7(5) of the AIE Regulations; and secondly, given its assertion that no information other than that already furnished to the appellant was held by Coillte, whether the searches for information carried out by Coillte were sufficiently thorough such as to confirm that the information it released to the appellant was all the information it held that was relevant to his request.

### **Context of the request**

#### **Appellant’s arguments in first set of submissions**

12. This case concerns the construction by Coillte of an extension to an existing road at a site of forestry harvesting operations in County Leitrim, Coillte reference BAU3, LM03-Kiltyclogher.
13. The activity pack released to the appellant by Coillte, dated 20 May 2022, indicates that the road extension would be 99 metres in length. The road extension that was actually constructed, as confirmed by Coillte to the appellant in correspondence dated 9 September 2022, as also in its internal review decision and in its submissions to this Office, was of 60 metres in length.
14. In his first set of submissions received by this Office on 9 January 2023, the appellant maintains that in a document known as Operational Monitoring Records related to the construction, the road was extended by 10 June 2022. He argues that it is reasonable to assume that there are records in Coillte’s possession to indicate why Coillte modified its plans, namely the reasons for the reduction in length of the road extension from 99 to 60 metres, and also records providing for the need for the extension.
15. The appellant also contends that forest road works, including the construction of new or extended roads, are subject to the provisions of the Environmental Impact Assessment Directive [Directive 2011/92/ EU, as amended by Directive 2014/52/EU) (the EIA Directive)]. It is to be noted that provisions have been introduced in Irish legislation to provide a statutory basis for ensuring that forest road construction projects are assessed in accordance with the requirements of the EIA Directive, namely the European Communities (Forest Consent & Assessment) Regulations 2010



(S.I.558 of 2010) (as amended) (the Regulations). These Regulations require development consent from the Department of Agriculture, Food and the Marine (the Department), in the person of the Minister, for certain activities related to forestry development. The appellant points to the Department's administrative guidance of 2015, namely the Department's Forestry Standards Manual (the manual) of November of that year, which implements provisions from the Regulations. Section 19.9.4 of the manual, "Definition of 'forest road works'", lists a number of activities that do not require development consent, including that indicated at point no. 7, namely "[t]he extension of an existing forest road by up to one-third of its length, provided any such extension does not exceed 90 metres in length".

16. The appellant appears to agree that the road extension at issue in this appeal, of 60 metres in length, may meet the test at point 19.9.4 of the manual. However, he argues that the intention of Coillte, as expressed in the activity pack of 20 May 2022, was to construct an extension of 99 metres in length, which would have required development consent. He maintains that it is reasonable to assume that records exist which indicate why Coillte modified its plans and that Coillte's position is fundamentally inconsistent with regard to the road extension as it has not provided any records relating to any plans to seek consent for the planned 99 metre extension. He further contends that to amend a plan from one that would have required consent to one that did not so require it, at a stage when consent would already have had to be sought, lacks credibility, as he expects information to exist indicating the need for the extension and its length and location.
17. In his submissions to this Office, the appellant states that he made a related request on this matter to the Department and was provided with records, dated 26 August 2022 and 1 September 2022, respectively, which indicate that Coillte held other records in relation to his request that it had neither identified nor provided at the initial decision or internal review stages.
18. He further states that records of correspondence from Coillte, acquired from the Department, indicate that a Departmental archaeologist was on site during licenced works at the location at issue. This appears to be the email dated 1 September 2022. He maintains that the road extension was sufficiently proximate to an archaeological feature to have excluded it from the exemption to seek development consent at point no. 7 of the aforementioned manual and that records acquired from the Department indicate that the exemption at point no. 7 of the manual did not apply to the road extension at issue. These records appear to consist of an email of 16 September 2022 with reference to, and extracts from emails of 24 May 2022 and 30 May 2022. The former email of 24 May has a reference to the requirement for a Forest Road Licence for ancillary road works within 100 metres of a "recorded monument" (see next paragraph below), while an extract from the email of 30 May indicates that a visit to inspect the site by Department and National Monument Service officials would probably take place.
19. In order the better to understand the appellant's point here, the exemption at point no. 7 of the manual does not extend to extensions of road that are within 100 metres of the following:
  - a Registered Historic Monument or Archaeological Area under Section 5 of the National Monuments (Amendment) Act 1987
  - a Recorded Monument under Section 12 of the National Monuments (Amendment) Act 1994



- a National Monument in State or Local Authority ownership or guardianship or with a Preservation Order under the National Monuments Acts 1930-2004
20. Finally, the appellant maintains that he has not been provided with a copy of the map referred to by Coillte in its internal review decision and upon which it states that the proposal for the length of the road would have been initially drafted. A note on this matter is made below at paragraphs 46 and 47.

### **Novel issues raised in Appellant's second set of submissions**

21. The appellant's second set of submissions was made in response to assertions made by Coillte to this Office about extracts contained within the emails between Coillte and the Department referred to above and which had been provided to this Office by the appellant. For the purpose of fair procedures, those assertions were conveyed to the appellant for comment. The broad thrust of the appellant's submissions is that the subject matter of the emails spans wider than purely the archaeological feature contended by Coillte and encompasses the road extension the subject of his appeal. In his submissions, he adduces an extract from one of those emails, namely the email of 30 May 2022 from a Department officer to Coillte officials and which he maintains is evidence of information, relevant to his request pertaining to the road extension and not only to the archaeological feature, but which has not been provided to him by the public authority. He contends, further, that there must be information in Coillte's possession that relates to communications between Coillte and the contractor engaged to carry out the extension works on the road, encompassing the change in the length of the extension from 99 metres to 60 metres and the terms of the tender process to engage the contractor for the works in question. The appellant also provided to this Office a copy of a Departmental inspection report of the site of a road extension and the archaeological feature which he contends demonstrates that the roads indicated in the photograph of this report do not align with the roads indicated in the Activity Pack. He also provided an aerial photograph from Google Maps which, he states, shows what he terms a "new road" that appears to be well in excess of the 62m detailed in the report's map, adding that Google Maps indicates that the planned 99m road has not been constructed and that what has been constructed is something altogether different from that indicated in the Activity Pack. A further document provided was a screenshot from his GIS showing the Black Pig's Dyke and information from Coillte's Forest Road layer which, in his words, "gives a good picture of what was in place prior to these works." Finally, while asserting the existence of a "massive information gap" regarding the works that are the subject of his request, he concedes that this does not mean that records, other than those provided to him by Coillte do, in fact, exist. I give consideration to the issues above further below at paragraphs 41-44.

### **Preliminary matters**

22. Before proceeding to my analysis and findings in this appeal, it is appropriate to refer to a point raised by Coillte in its submissions lodged with this Office. That point is that some of the appellant's contentions appear to be seeking information relating to earlier plans or estimates concerning the



road extension at issue in this appeal, rather than to the actual works carried out. Coillte maintains that information relating to earlier plans or estimates are not within the scope of the appellant's request. It notes that the wording of his request seeks "[a]ll information on a road extension **carried out** by Coillte...." [Coillte's emphasis]. I agree that this is a reasonable interpretation of the scope of the request. Notwithstanding this point, Coillte does note in its submissions that the appellant was furnished, at first instance decision stage, with the activity pack relating to the works carried out, which it states is the only record that exists setting out information relating to the original estimate for construction of a road extension measuring 99 metres.

23. It is clear from the definition of environmental information at article 3(1) of the AIE Regulations that the relevant date in determining whether information is "held" by a public authority is the date the AIE request was received by it, in this case 8 August 2022. The appellant asserts that he is in possession of records, acquired from the Department, dated 26 August 2022, 1 September 2022 and 16 September 2022 (see paragraphs 16 and 17 above). It is clear that such records, even if they should indicate the possession by Coillte of records that had not been released to him by that public authority, are outside the scope of his request, as they post-date it. Notwithstanding this fact, as Coillte has provided a response to this Office in respect of those records, the analysis below will touch briefly on their relevance to his request if only to shed light on the concerns of the appellant and clarify any doubts he may have.

### **Analysis and Findings**

24. A public authority is required by the AIE Regulations to make available only environmental information which is held by, or for, the public authority (see article 7(1) and 7(5) of the AIE Regulations).

### ***Was the information held by Coillte?***

25. To recap, in his first submissions to this Office, the appellant contends that Coillte has refused to grant him access to the following information which he maintains it should have in its possession:
- i. information on the planned road extension of 99 metres, the reasons for said extension and the location; and the reasons Coillte modified its plans to extend the road from 99 to 60 metres;
  - ii. information on plans to seek development consent for the extension of 99 metres;
  - iii. information that was referred to in records provided to him by the Department, dated 26 August 2022, 1 September 2022 and 16 September 2022;
  - iv. correspondence from Coillte (dated 1 September), acquired by him from the Department, which indicates that a Departmental archaeologist was on site during licenced works at the location at issue and records, again from the Department, which indicate that the exemption at point no. 7 of the manual did not apply to the road extension at issue, namely references in an email dated 16 September 2022 to emails of 24 May and 30 May 2022;
  - v. a copy of the map referred to by Coillte in its internal review decision and upon which it states that the proposal for the length of the road would have been initially drafted.
26. In detailed submissions to this Office, Coillte responded to the appellant's contentions as follows:



- i. the decision to construct a 60-metre extension to the forest road was an operational decision made by engineering and operational staff following an on-site inspection. No record exists of the decision to reduce the length from 99 metres to 60. This was clarified to the appellant in previous correspondence; moreover, Coillte does not create such records or record such information because the exact purpose of the construction, extension, upgrade or maintenance of a forestry road will be evident to experienced forestry professionals;
  - ii. the road extension in this case falls into one of the categories of development that do not require development consent, as reflected in the aforementioned manual; the exemption means that no development consent was required as the road extension falls under section 13.6.4(j) of the January 2015 version of the manual (a copy of which, in relevant part, was provided to this Office during the course of the review) which is identical substantively with point no. 7 of the November 2015 version of the manual to which the appellant alludes in his submissions; in other words, consent is not required for an extension of up to one third of an existing road's length, "provided any such extension does not exceed 90 metres" as in this case; further, Coillte maintains that it does not submit applications for development consent based on preliminary assessments, as in this case, only when an on-site engineering survey has concluded that proposed works require such consent;
  - iii. Coillte is unaware of what the appellant is referring to when he states that records provided to him by the Department indicate that Coillte held "other records" in relation to his request that it had not identified nor provided to him at the initial decision or internal review stages;
  - iv. Coillte is not aware of the records the appellant refers to in relation to the presence of an archaeologist on-site during the works; it maintains there was no Departmental archaeologist on-site in relation to the road extension in question and, further, there is a minimum buffer zone of 100 metres from registered historic monuments or archaeological areas as set out in the aforementioned manual; Coillte maintains that the road extension in this case was 200 metres from the nearest archaeological feature;
  - v. the map referred to by Coillte in its internal review decision is the map contained within the activity pack provided to the appellant at the time of its first instance decision; the decision to limit the extension to 60 metres was made verbally on-site by the relevant staff and as clarified to the appellant in the internal review decision of 3 November 2022; no record exists relating to this decision; moreover, there is no requirement to record or document such decisions, rather, the operational decision is communicated verbally to the contractor undertaking the works.
27. As the correspondence or records acquired from the Department to which the appellant alludes had not been provided either to Coillte or to this Office during the course of the appellant's request or early part of the investigation, the investigator assigned to the appeal requested copies from the appellant with a view to reviewing them and to share them with Coillte for its own review and response. The correspondence was received by this Office and was, accordingly, forwarded to Coillte for review and comment.



28. It is appropriate briefly to examine each of these records in turn, as follows, in order to have a clear picture of their relevance to the appellant's request, or otherwise. A summary of their relevance, or otherwise, follows the analysis in each case. In addition, it behoves me to make reference to the points made in the appellant's second submission, which I shall address also below.

***Correspondence dated 26 August 2022***

29. Upon review by the investigator of the correspondence dated 26 August 2022, it became apparent that its content was not relevant to the appellant's request as it refers to matters not related to the road extension but to nearby felling operations. I therefore consider it outside the scope of the request. Coillte is of the same view. In addition, as stated above, the record post-dates the date of the request, for which reason it is also out of scope. During the course of this appeal, the appellant in his second set of submissions conceded this point.

***Correspondence dated 24 and 30 May 2022***

30. Whilst the actual emails of these dates were not provided to this Office by the appellant, reference is made to them in one of two emails provided by him dated 16 September 2022. The author of the email of 16 September 2022, the Department's senior archaeologist, makes reference to attached correspondence of his to a Coillte engineer, specifically to an email dated 30 May 2022 in which he "reminded [Coillte] of the requirement for a Forest Road Licence for ancillary road works within 100m of a Recorded Monument" and to an email of 24 May 2022 in which he averred to the probability of "officials from [the Department] and [the National Monument Service]" of making a visit "to inspect the arrangement and its operation." The body of the email of 16 September 2022 also refers to "felling works near the Black Pig's Dyke", which is the archaeological feature or national monument that gives rise to the appellant's assertion that it is within 100 metres of the road extension the subject of his request for information.
31. From a reading of this email of 16 September 2022, it might appear that it offers evidence that the archaeological feature (or recorded monument) lies within 100 metres of the road extension in question, as otherwise there would be no sense in the reminder about the requirement for a Forest Road Licence nor about the probable visit of officials. However, as the remarks are divorced from the source from which they came, namely the full emails of 24 and 30 May, respectively, and the email threads of which they form part, they are deceptive.
32. Coillte maintains that the content of the emails is not relevant to the appellant's request as they relate to discussions regarding a temporary crossing of, or bridging structure over the Black Pig's Dyke and to the various engineering solutions being considered, and are not related to the road extension. Specifically, in relation to the email of 24 May 2022, it considers that upon a full reading of the email, it is clear that the works being referred to relate to the spanning of the dyke and not to the road extension. In this regard, I find relevant the fact that all emails in this email thread have in their subject line the title "Spanning of Black Pigs Dyke" and that no reference is made, in any of the emails that form part of the thread, to the road extension or to any matter not related to the spanning of the archaeological feature. In relation to the comment in the email of 30 May 2022, from a full reading of the email Coillte considers that this is the repetition of an extract from the





Forestry Standards Manual that cannot in any way be considered specific to the proposed road extension on the site. It infers that it is a mere standard, *pro forma* reminder that is given by Department officials but is not an indication in this case that the Department official in question was of the view that the Black Pig's Dyke was within 100 metres of the road extension.

33. In this regard, it is relevant to remember that in submissions to this Office, Coillte states that the road extension in this case “was 200 metres from the nearest archaeological feature.” The investigator in this appeal has had occasion to view copies of the full version of these emails and of the email threads of which they form part and concurs with the view of Coillte that, from a full reading of the emails, their content refers exclusively to operations at the site of the Black Pig's Dyke and not, crucially, to the road extension, the subject of the appellant's request for information. Accordingly, I am of the view that the aforementioned emails whose contents discuss developments, plans and other details relating to the Black Pig's Dyke site, the archaeological feature at issue, are outside the scope of the appellant's request as they are not related to the road extension. This being the case, it was not incorrect of Coillte to refuse to release them to the appellant as they are not relevant to his request.

#### **Correspondence dated 1 September 2022**

34. This is an email that is one of the records (see paragraph 17 above) which, the appellant asserts, demonstrates that a Department archaeologist had been on the site in question, owing to the road extension being sufficiently proximate to an archaeological feature such as to have precluded it from being exempt from the requirement for development consent, a matter in relation to which the appellant maintains information has been withheld from him. He asserts it must be held by Coillte because of development consent being required in this case. In respect of this record, Coillte notes that it, also, post-dates the date of the request and maintains that it is therefore outside of scope. I agree. During the course of the appeal, the appellant in his second set of submissions conceded this point.
35. It is important to note that a comment at the bottom of the email of 1 September, out of scope as it post-dates the appellant's request, from a Coillte official, to the effect that a Department archaeologist had been on the site in question, as maintained by the appellant, is rebutted by another Department official in an email of 16 September, who clearly states that the archaeologist “did not visit the project area” in respect of whose felling operations the archaeological feature and the road extension have been associated by the appellant. The official in this email seeks to correct the record in this respect. A copy of this email was provided to this Office by the appellant himself. Moreover, in a different email of the same date provided to this Office by the appellant, the Department archaeologist asserts that the prior statement of the Coillte official in the email of 1 September 2022 to the effect that he, the archaeologist, had been on site “is erroneous.” In submissions to this Office, Coillte has categorically stated that no archaeologist had been present on the site.
36. Given the agreement of both the Department and Coillte on this matter, I concur that the emails of 1 September and 16 September 2022 contradict the assertion of the appellant that a Departmental archaeologist was on site due to the road extension being within 100 metres of the archaeological



feature at issue and are out of scope on substantive grounds as well as they predate the appellant's request.

37. It appears from this correspondence that the appellant is mistaken in his belief that information on the works at the Black Pig's Dyke was related to the road extension and was being wrongly withheld from him by Coillte. That is clearly not the case, evident from the correspondence provided to this Office between the Department and Coillte. In addition to the correspondence which post-dates the appellant's request being out of scope due to its timeframe, it is out of scope because it refers to matters not related to the road extension but rather to matters concerning extraneous operations.
38. I take the opportunity to state my view generally that the incorrect conflating of issues or the widening of the scope of a request, once it has been submitted to a public authority, is not permitted under the AIE Regulations and that public authorities are entitled in such cases to restrict their responses to the request actually submitted to them by requesters.
39. Given Coillte's explanations above, I have no evidence to conclude other than that Coillte is not in possession of the information that the appellant asserts is held by it.

#### **Novel issues raised in Appellant's second set of submissions**

40. In his second set of submissions, the appellant raised matters not previously included in his first set of submissions, as set out above at paragraph 21. The main thrust of his second set of submissions is premised on a site inspection report drawn up by a Departmental officer, dated 16 September 2022, an aerial photograph from Google Maps and a GIS screenshot as described at paragraph 21.
41. It appears these matters had not been raised directly by the appellant with Coillte but only with this Office. Accordingly, on 16 January 2024, the second set of submissions, together with the documents alluded to in the previous paragraph were forwarded to Coillte for review and comment.
42. By letter dated 30 January 2024, Coillte responded to the novel issues raised by the appellant by stating that it had adequately explained its position with regard to the road extension, noting that Coillte gave an explanation to the appellant by email on 8 September 2022 in response to a query from him regarding development consent for what he described as a "new Forest Road" and Appropriate Assessment Screening. A copy of this email thread was provided to this Office. It contains an explanation and clarification that "the 99m of new road referred to in the activity pack was not built. Actual works completed involved the extension of an existing road by 60m, therefore excluding the requirement for an AA screening." The letter notes a reference to this email in Coillte's letter to this Office of 19 May 2023 in which it is stated that "[t]he decision to construct a 60-metre extension to the forest road was an operational decision made by engineering and



operational staff following an on-site inspection. No record exists of the decision to reduce the length from 99 metres to 60. This was already clarified to the appellant on 8 September 2022.”

43. The letter from Coillte goes on to state that its position remains as stated in previous correspondence submitted in reply to queries raised by this Office. It contends that any information coming into existence after the date of the request, as in the case of the site inspection report of 16 September 2022, falls outside the scope of the request and, accordingly, outside the scope of this appeal. As stated above at paragraph 23, the relevant date in determining whether information is “held” by a public authority is the date the AIE request was received by it, in this case 8 August 2022. For this reason, I concur with Coillte’s view that the novel issues raised by the appellant in his second set of submissions, based as they are, on information post-dating the date of his request, are outside the scope of his request and, for the purposes of this appeal, shall be disregarded.
44. It is opportune for me to note at this point that the appellant, in his extensive first set of submissions to this Office and in copies of his correspondence with Coillte following its original and internal review decisions and provided to this Office, made no reference to the matter of the contractor appointed to carry out the road extension nor, indeed, to any correspondence maintained between Coillte and said contractor, matters which he has raised in his second set of submissions. It plainly did not occur to Coillte nor to the appellant that such information could conceivably fall within the scope of the appellant’s request. As I have indicated below my satisfaction that the public authority has conducted adequate searches to identify and retrieve information that is relevant to the request, I am of the view that this matter is outside the scope of the request and could be considered an attempt by the appellant to widen its scope. It is not a function of this Office to broaden the scope of a request, which would, in addition, place an intolerable burden on public authorities. Should it occur to an appellant at an advanced stage of the review of an appeal to this Office that information not originally considered to be relevant to a request for information, by him or her or by the public authority, becomes so relevant, then that information can simply form the basis of a new request. If this were not the case, appeals to this Office, and communications with parties to appeals, could extend for indefinite periods of time. That would mitigate against this Office’s goal of processing appeals in as short a time as practically possible.

#### **Note on maps contained within the Activity Pack**

45. It was a contention of the appellant that he had not been provided with a copy of the map referred to by Coillte in its internal review decision and upon which it states that the proposal for the length of the road would have been initially drafted. Coillte maintains that the map referred to by it in its internal review decision is the map contained within the activity pack provided to the appellant at the time of its first instance decision.
46. The investigator assigned to this appeal has had the opportunity to view the four maps included in the Activity Pack provided to the appellant by Coillte. From all four maps it is apparent that the road extension the subject of the appellant’s request is in one part of an area that is clearly marked



“Work Site Area” surrounded by a yellow border. Moreover, in two of the maps, within a similarly delineated area, the road extension can clearly be seen marked with a dotted orange-coloured line, and in the legend of these maps it is described as “In Design/Construction”. This means that, as indicated on the maps, one of which is dated “08/06/2017” and two of which are dated “20/05/2022”, the road extension would have been either at a pre-construction stage or then under construction. It is important to note that the Activity Pack released to the appellant by Coillte relates not only to the originally planned 99m road but to two other roads also. While the pack describes the activity to be conducted on these other two roads as “upgrade”, the activity related to the 99m road is described as “new”. Page 1 of the Activity Pack associates road numbers with each of the three roads to which the pack relates. The map that contains the road numbers has the respective numbers indicated beside each of the two roads due to undergo an upgrade. Importantly, however, the number of the “new” road is not indicated on this map, which points to the fact, as Coillte has indicated to the appellant, that this new road was not constructed. However, that the maps dated 20 May 2022 delineate an area as “in design/construction” indicates that construction was to be carried out, or indeed had commenced, in the area delineated on the maps, and specifically on the stretch marked on one of those maps dated 20 May 2022 with a dotted orange-coloured line. This aligns with Coillte’s position that an extension to an existing road was carried out. It also aligns with the text of the appellant’s request, which was in relation to a “road extension”.

### **Adequate Searches for Information**

47. The final issue I will consider is whether Coillte has complied with articles 7(1) and 7(5) of the AIE Regulations. Cumulatively, these articles require public authorities to make available to requesters any environmental information relevant to their requests and, should they not hold such information, to inform requesters of this fact as soon as possible. In cases where public authorities assert that requested information does not exist or is not held by them, a prerequisite to show compliance with these articles is that they carry out, and demonstrate they have carried out, adequate searches for the requested information.
48. Arising from Coillte’s inference in its internal review decision that all the information that related to the appellant’s request had been released in the one record provided to him at the original decision stage, namely the activity pack, the investigator in this appeal conveyed a series of questions to Coillte with a view to determining if, and to what extent, it had carried out sufficiently thorough searches for relevant records, as well as the steps taken for this purpose, given the fact that the appellant maintains that he has been refused access to information that he contends is in fact held by Coillte.

### ***Were adequate searches carried out by Coillte?***

49. In its submissions to this Office, Coillte explains that activity packs, such as that issued to the appellant, are generated within LRM, Coillte’s key system of record, in advance of operational activities and all information relating to an activity is contained within an activity pack. Activity packs issue to contractors and are viewed also by users within Coillte. It further states that, prior to



the development of LRM, all activity packs were hardcopy documents contained in files stored in local Coillte offices.

50. The activity pack provided to this Office was examined by the investigator in this appeal to review the information that it contained. As well as site-specific location and contact details, it contains information regarding the activity or project to be carried out, the identity of the project supervisor, an environmental risk assessment checklist, a site hazard notification, a list of site-specific risks, site safety rules and relevant maps.
51. Coillte further indicates that records relating to this appeal were searched for in LRM and, in addition, the AIE team at Coillte had detailed discussions with relevant managers and staff within the Engineering and Harvesting teams to interpret the appellant's request and to ensure that all records had been provided within the scope of the request.
52. It goes on to explain that records were searched for by electronic search within LRM using a unique harvesting reference (HU) number associated with the site in question. This HU number was itself found by reference to the felling licence number, LM03-FL0067, provided by the appellant in his request. Following discussions with relevant managers and staff within the Engineering and Harvesting teams, the AIE team was satisfied that no additional records, other than those on the LRM, existed. According to Coillte, activity packs are the repository for all information relating to road extensions and the activity pack provided to the appellant was found in the electronic search, meaning that no other records could exist. For this reason, it states, there is no possibility of its having misfiled or misplaced records.
53. Coillte concludes, following discussion with relevant staff responsible for making decisions and directing the carrying out of such works, that no other information within the scope of the appellant's request exists. It reiterates the point that where a change is made to the length of a road to be constructed, this is an operational decision that is made by competent and qualified staff on site and that there is no requirement to record or document such decisions. In such cases, it states, the operational decision is communicated verbally to the contractor undertaking the works.
54. In its submissions to this Office, Coillte responds to the appellant's contention that a record should exist as to the "exact purpose of the road extension", by asserting that Coillte does not create such records or record such information because the "exact purpose" of the construction, extension, upgrade or maintenance of a forestry road will be very evident to experienced forestry professionals.
55. From the responses submitted by Coillte to my investigator's detailed questions on the searches undertaken for the requested information in this case, I am satisfied that it has complied with articles 7(1) and 7(5) of the AIE Regulations by having conducted adequate searches. It is clear from the explanations given that all information relating to a forestry road work site is lodged to an electronic activity pack, which precludes the possibility of written records not being filed, going astray or being misfiled, as might happen if Coillte had continued to use hardcopy documents to record activities.



56. I note, for completeness, that the LRM in this case, as indeed the activity pack, relating as they do to the road extension, did not contain information concerning the archaeological feature at the Black Pig's Dyke as this feature was 200 metres from the site of the road extension and was, therefore, irrelevant to the LRM and the activity pack in this case, as also to the appellant's request. In addition, as is evident from the responses to the investigator's probing questions on the searches for information carried out by Coillte, the map that the appellant contends was not provided to him, was in fact the map, or one of the several maps contained within the activity pack released to him with the first instance decision. Lastly, as I find that the LRM and activity pack that issued to the appellant contained all the information relating to his request, there is no extant information on the reason for the extension of the road, contrary to his assumption, other than the explanation provided to him in Coillte's internal review decision.
57. In the circumstances, I accept that Coillte does not hold information relevant to the appellant's request other than that already released to him.

### **Decision**

58. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner of Environmental Information, I affirm Coillte's decision in this case on the basis that no other information relevant to the appellant's request, other than that already released, was held by it.

### **Appeal to the High Court**

59. 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**

**7 February 2024**