



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-133378-G5P8J6

**Date of decision:** 19 February 2024

**Appellant:** Mr. X

**Public Authority:** Coillte

**Issue:** Whether Coillte were justified in refusing release of information under article 8(a)(iii) of the AIE Regulations.

**Summary of Commissioner's Decision:** The Commissioner annulled the decision of Coillte and directed release of the information concerned.

**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 10 October 2022, the appellant requested access to unredacted ‘updated’ Appropriate Assessment Determination (AAD) documents associated with nine (9) individual felling licences granted to Coillte and in respect of which Coillte had been notified by the Forest Service, over the period June – July 2022, of a new Hen Harrier nesting site which overlaps with the licenced area.
2. The licence numbers concerned had been provided to the appellant by Coillte in response to a separate AIE request, being information on “licence numbers where Coillte has been notified by the Forest Service FM of a new Red Area (Hen Harrier nesting site) which overlaps the licenced area... [and whereby] the means of notification was an updated Appropriate Determination document.” The appellant’s request stated that “not all of these documents are available on the FLV and those that are available contain redactions which have not been justified under the AIE Regulations.”
3. Coillte provided its original decision to the appellant on 09 November 2022, refusing access to the information on the following bases, and having given consideration to the requirements of article 10(3) and 10(4) of the AIE Regulations:
  - i. In respect of eight (8) licence numbers, on the basis that disclosure would result in the release of sensitive environmental information, contrary to the mandatory exemption in article 8(a)(iii) of the AIE Regulations. In this regard, Coillte noted that “information relating to the location of a nesting site of a Hen Harrier, which is an annexe 1 species, is highly confidential, with Coillte only receiving information of nesting sites as a third party and on a site-by-site basis, and for operational purposes only.” The decision went on to note that “to release the unredacted records would expose the exact location of the nesting sites to the general public which could result in disturbance of the nesting sites in question”, compromising the work of the Hen Harrier working group and potentially create conflict between Coillte and statutory bodies concerned with the protection of hen harrier populations.
  - ii. In respect of one (1) licence number, on the basis that the information cannot be located, in line with the grounds of article 7(5) of the AIE Regulations.
4. The appellant requested an internal review on 14 November 2022. He noted his view that “an AA Determination is a legal determination which must be subject to legal challenge.”
5. Coillte delivered its internal review decision on 13 December 2022 in which it affirmed its original decision.
  - i. In respect of eight (8) licence numbers, Coillte stated that “the information on the updated Appropriate Determination Documents, for the sites that you requested, can



be found on the Forestry Licence Viewer (FLV) and any redactions have been intentionally made by the Department of Agriculture, Food and the Marine (the Department) so as not to release information on the nesting birds.” Coillte further advised the appellant that “it is not the role of Coillte to undermine the Regulator and release to you, which would also release information to the public at large, the information which would provide you with the location of the Hen Harrier.” Lastly, Coillte advised the appellant that the Department may hold some of the information requested and that he may, if he so wished, submit a separate AIE request to the Department.

- ii. In respect of one (1) licence number, Coillte reaffirmed refusal under article 7(5) of the AIE Regulations and set out the steps taken to find the relevant record, being, “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; [and] detailed discussions with the records management staff.”

6. The appellant brought an appeal to this Office on 20 December 2022, his position being that the ‘updated’ AAD documents concerned have not been made available, **either in redacted or unredacted form**.
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 all submissions made by the appellant and Coillte and taken account of submissions received from relevant third parties in this matter. I have also examined the contents of the records at issue.

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.



## Preliminary Matters

9. It should be noted that, while I am required by article 12(5)(b) of the AIE Regulations to specify reasons for my decision, I must also be careful not to disclose sensitive information in my decisions. This means that the detail that I can give about the content of the record(s) and the extent to which I can describe certain matters in my analysis is limited.

## Positions of the Parties

10. The appellant provided submissions to this Office on 28 December 2022 in support of his appeal.
11. The appellant submits that the grounds for refusal of one (1) record under article 7(5) of the AIE Regulations (see 3. ii. and 5. ii. above) appears confusing, given that his request to obtain this record was based solely on information provided to him by Coillte which confirmed the existence of such a record.
12. In respect of the remaining eight (8) records, the appellant argues that the ‘updated’ documents are **not** available on the FLV, noting that the dates of published AAD documents range from March 2021 – February 2022, where none of these dates correspond to notification dates of updated AAD documents as provided to the appellant separately by Coillte, i.e. June – July 2022.
13. The appellant further submits that he informed Coillte on 14 December 2022 and again on 20 December 2022 that he could not locate the updated documents on the FLV and requested confirmation of their precise location on the viewer application; stating that he did not receive a response from Coillte on either occasion.
14. In relation to Coillte’s reliance on article 8(a)(iii) of the Regulations, the appellant submits that “the fact that a record contains information that is deemed restricted is not a sufficient basis on which to withhold the whole record.” The appellant submits that the updated AAD documents could have been released with Coillte applying redactions (if necessary) to ensure compliance with the Regulations, but this was not done.
15. The appellant further submits that Coillte has failed to adequately apply the required public interest test to its decision. The appellant understands that an AAD is a legal determination regarding the potential for a project to have an adverse impact on the conservation objectives of a Natura 2000 site, which is subject to public consultation. The appellant submits that there is no evidence that public consultation occurred in respect of the updated AAD documents associated with the individual felling licences concerned. The appellant submits that “the failure of [the Department] to carry out a required public consultation adds to the public interest case for the release of the requested information.”



- 16.** The appellant submits that comments made by Coillte regarding potential adverse impact on the Hen Harrier Working Group and creation of conflict between Coillte and relevant statutory bodies are irrelevant to the decision on his request and in his view “indicate [to him] that Coillte’s basic position is one of not wanting to release information rather than one of accurately applying the Regulations.” In addition, the appellant submits that Coillte proffering advice that he may wish to submit a separate AIE request to the Department is irrelevant to the decision on his request and states that “it is not for Coillte to try and deflect [his] request to another public authority [where Coillte holds the information requested].”
- 17.** The appellant argues that an AAD document does not contain a level of detail regarding the nesting location of Hen Harriers such that the release of that information would have an adverse effect on the species. By way of supporting argument, the appellant draws attention to two (2) published AAD document versions for a single listed licence number which are available on the FLV and compares the content of the redacted and unredacted versions of same.
- 18.** Finally, the appellant submits that he recognises the importance of the provisions of article 8(a)(iii) of the AIE Regulations and makes clear that he is not seeking details of Hen Harrier nest locations or any other information which could compromise the protection of the species. However, the appellant remains of the opinion that “such information is most unlikely to be contained within the records and even if it is, then the remainder of the record could be released”, as provided for in article 10 of the Regulations.
- 19.** Coillte provided submissions to this Office on 17 January 2023, noting that the Department has published redacted copies of the AA Documents on the FLV, a platform accessible to the public. Coillte submits that the reason the Department has published redacted copies is to protect and keep confidential the location (or potential location) of Hen Harrier nesting sites.
- 20.** On 20 April 2023, this Office wrote to Coillte and outlined some key questions or issues regarded as particularly relevant based on an initial examination of the case file, and provided Coillte with an opportunity to make further submissions. At this stage, the appellant’s submissions were also outlined for the information of Coillte.
- 21.** On 10 May 2023, Coillte provided further submissions to this Office.
- 22.** In relation to one (1) record refused under article 7(5) of the AIE Regulations (see **3. ii.** and **5. ii.** above), Coillte submits that it does not hold an updated, unredacted AAD document for this licence number. It explains that there was a typographical error in one of the licence numbers contained in the Coillte decision letter in respect of the appellant’s previous AIE request and it goes on to confirm the correct licence number concerned.
- 23.** In relation to the substantive element of the request, Coillte submits that the ‘updated’ AAD documents are publicly available on the FLV application (albeit in redacted form), in that “the



copy AAD documents currently published on the FLV are, in fact, the updated AADs.” Coillte submits that there is apparent “confusion” caused by the appellant’s assumption that the updated documents would have a ‘new’ date. In this regard, Coillte submits that its understanding of the procedure in operation by the Department is that the AAD documents still bear the original date on which the document was first completed being that “[the Department] simply update whatever is the relevant section of the document and republish the document retaining the original date.”

- 24.** With regard to the non-release of the redacted elements of information concerned, Coillte submits that this is “clearly necessary for the protection of species as envisaged under article 8(a)(iii) of the Regulations.” It submits that the release of the information concerned would “expose the exact locations of nesting sites”, based on Coillte’s understanding that the AAD documents “can narrow down the location to 100 metres of the nesting sites.” It further submits that the required redactions are determined and applied by the Department and “[the Department] is best placed to determine what information is capable of public release and what information should be redacted for the protection of the species.”
- 25.** On 15 May 2023, this Office wrote to the appellant inviting further submissions with regard to Coillte’s latest position, which was summarised for the information of the appellant. A response was received from the appellant on 16 May 2023.
- 26.** The appellant was not in a position to verify Coillte’s explanation regarding a previously notified typographical error concerning the original list of felling licence numbers provided to him and highlighted that such an error was not referenced in Coillte’s correspondence regarding its decision on this request. Ultimately however, the appellant confirmed that the information sought referred to the corrected licence number now confirmed by Coillte.
- 27.** In relation to Coillte’s assertion that the ‘updated’ AAD documents are published on the FLV, the appellant contends that there is no evidence to support this, submitting that if the AA Determination has not had the date changed then, by definition, it is not an “updated” document and nor have any updated or amended licences been published (on the basis that the licence itself may also have required amendment). He further submits that “an updated AA Determination should have been open to legal challenge but this is not the case for any of the listed licences.”
- 28.** The appellant also rejects Coillte’s continued reliance on article 8(a)(iii) to refuse release of the unredacted documents. The appellant submits that even if Coillte are correct in applying article 8(a)(iii) it could still provide the requested information in line with article 10(5) of the AIE Regulations with only the necessary text redacted to protect the disclosure of a specific nest site.
- 29.** The appellant contends that the redactions applied by the Department to published documents available on the FLV “are excessive and cannot be considered to be consistent with



the AIE Regulations” and it is his view “that the requested information does not contain this level of specificity [to within 100 metres] in terms of nest location.”

- 30.** This Office wrote again to Coillte asking it to clarify, specific to each of the AAD documents concerned (wherein the project area locations are observed to range circa 5-15 hectares in size), the basis for its contention that the information can narrow down the location of nesting sites to 100 metres, i.e. where/how can the locations of hen harrier nesting sites be so closely identified.
- 31.** Coillte responded on 17 May 2023 restating that “the updating of an AAD for a site to highlight the presence of a new hen harrier nesting site can narrow down the general area that contains that nesting site” and that “the location of the new nest can be narrowed down quite specifically where the felling block is small, e.g. 1-2 hectares.” It added that “In general however, hen harrier breeding sites are very sensitive to human disturbance... [and] Forestry activities can potentially interact indirectly on hen harriers over a much wider area due to “edge effects” which may extend several hundred metres from forest boundaries.”
- 32.** Coillte argued that “in circumstances where the updated AAD is issued by the Regulator [the Department] with information redacted from public viewing, it is not within Coillte’s authority to make unredacted versions available to members of the public. Coillte submitted a view that “the appropriateness or otherwise of providing unredacted AADs is a matter for [the Department], and advised that the Department and the National Parks and Wildlife Service (NPWS) would be best placed to provide guidance on the rationale behind redacting the information.
- 33.** On 26 May 2023, both the Department and the NPWS were contacted by this Office and notified of the appeal at hand, presenting an opportunity for these relevant third parties to make submissions concerning the potential disclosure of the information at issue.
- 34.** The NPWS provided submissions to this Office on 12 June 2023 stating that “it would not support a decision that would release sensitive information such as contemporary and precise nest site locations of breeding Hen Harrier without ensuring that the recipient would be bound to certain conditions principal among such conditions would be to treat such location data as sensitive and not to disseminate it further.”
- 35.** This Office received submissions from the Department on 11 October 2023.
- 36.** The Department submits that “the condition that applies to Hen Harrier is redacted in order to conceal the fact that the application overlaps with a ‘High Likelihood of Nesting Area’ [and that] access to this information by the public could facilitate the location of breeding pairs of Hen Harrier which represents an unacceptable risk to these birds.” It goes to state that on the basis of article 8(a)(iii) of the AIE Regulations, “it is therefore unacceptable to the Department to allow public access to these unredacted AADs.”



37. The Department's submissions validated Coillte's understanding of the Department's procedures for updating/publishing AAD documents, confirming that "the relevant section of the document is updated and the document is republished retaining the original date... meaning that the latest version of the AAD has been uploaded to the FLV."
38. The Department submits that the amendment to the AAD [in these cases] concerns a specific detail regarding one of the Hen Harrier conditions which needed to be updated following access to more up to date information." The Department states that "this amendment doesn't constitute a change in the licence decision or in the Appropriate Assessment itself and therefore a fresh public consultation process is not required."
39. In the course of this review, this Office brought to the Department's attention that in the case of two (2) of the felling licence records concerned, different versions of the AAD documents appeared published on the FLV, including unredacted copies. The Department stated that this "represents an error on behalf of the Department as only the latest version should appear."

### Scope of Review

40. In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decision and affirm, annul or vary it. Where appropriate in the circumstances of the appeal, I will require the public authority to make available environmental information to the appellant.
41. In light of the content of submissions from parties, as summarised above, and a review of all information at issue, I am satisfied that the nine (9) felling licence reference numbers concerned with this request have been clarified, such that refusal of any information on the grounds of article 7(5) of the AIE Regulations cannot be said to apply; therefore, this article is no longer of relevance to my review.
42. I am also satisfied, in particular based on confirmation received from the Department, that the redacted 'updated' AAD documents, i.e. those notified to Coillte over the period June-July 2022, are publicly available on the FLV.
43. Accordingly, my review in this case is concerned with whether Coillte was justified in its refusal to release the **unredacted** 'updated' AAD documents concerned, under article 8(a)(iii) of the AIE Regulations which provides that "a public authority shall not make available environmental information in accordance with article 7 where disclosure of that information would adversely affect the protection of the environment to which that information relates."

### Analysis and Findings





## Context

44. The Forest Service of the Department has statutory responsibility for forestry in Ireland. As required under the European Habitats Directive ([Council Directive 92/43/EEC](#)) and the Birds & Natural Habitats Regulations 2011 ([S.I. 477 of 2011](#)), the Forest Service is required to undertake screening, and where necessary, an appropriate assessment, in relation to applications for consent, grant approval and licensing for various forestry activities, in order to evaluate projects within the context of any potential impact on a Natura site.
45. Under Article 4 of the Birds Directive ([Directive 2009/147/EC](#)), six (6) Special Protection Areas (SPAs), covering a total land area of c.1,671km<sup>2</sup>, have been classified for the conservation of the Hen Harrier in Ireland. Specific procedures (see Appendix C of the Department's [Forestry Circular 02/2012](#)) apply in relation to AA Procedure requirements regarding Hen Harrier SPAs, felling and other disturbance operations.
46. These procedures, agreed with the NPWS, focus on disturbance operations within so-called 'Red Areas' during the Hen Harrier breeding season. Red areas are 1.2 km radius areas centred on known Hen Harrier nesting areas. Depending on the location of their centre point, Red Areas may encapsulate land outside the boundary of the SPA. The remainder of the SPA is referred to as 'Green Area'.
47. It is my understanding that the Department, on occasion, are required to notify felling licence holders (including Coillte) that project areas, previously approved on the basis of being within a Green Area are now considered to be within a Red Area and hence subject to restrictions. The NPWS supplies the Department with information on 'High Likelihood of Nesting Areas' (HLNAs) specifically for use as the Red Area underpinning the Disturbance Operations procedures.

### Article 8(a)(iii) of the AIE Regulations

48. Coillte, under article 8(a)(iii) of the AIE Regulations has refused access to the unredacted 'updated' AAD documents coming within the scope of this review. This provision states:

"8. (a) A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information would adversely affect—....  
(iii) the protection of the environment to which that information relates."

49. This provision seeks to transpose Article 4(2)(h) of the AIE Directive, which in turn is based on Article 4(4)(h) of the Aarhus Convention. I note that the AIE Directive and the Aarhus Convention provide examples of the type of information intended to be protected, respectively referring to "the location of rare species" and "the breeding sites of rare species."



50. Article 8(a)(iii) must be read alongside article 10 of the AIE Regulations. Article 10(1) of the AIE Regulations provides that notwithstanding articles 8 and 9(1)(c) of the AIE Regulations, a request for environmental information shall not be refused where the request relates to information on emissions into the environment. Article 10(3) of the AIE Regulations requires a public authority to consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal. Article 10(4) of the AIE Regulations provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest served by disclosure. Article 10(5) of the AIE Regulations provides that nothing in article 8 or 9 shall authorise a public authority not to make available environmental information which, although held with information to which article 8 or 9 relates, may be separated from such information.
51. The Minister's Guidance, in considering "Material the disclosure of which would make it more likely that the environment to which such material related would be damaged" outlines:
- "This exclusion is designed to cover information such as that pertaining to the location of endangered species where, for example, disclosure of detailed information would pose a risk to the continued integrity of rare specimens" (paragraph 11.4).
52. The Aarhus Guide notes that the equivalent provision in the Aarhus Convention allows public authorities "to protect certain sites, such as the breeding sites of rare species, from exploitation — even to the extent of keeping their location a secret. It exists primarily as a safeguard, allowing public authorities to take harm to the environment into consideration when making a decision whether or not to release information."
53. I am satisfied that the purpose of article 8(a)(iii) of the AIE Regulations is to allow for the withholding of information where disclosure would be harmful to the protection of the environment. When relying on article 8(a)(iii) the public authority must identify the environment to which the information at issue relates and explain how disclosure of the information at issue would adversely affect the "protection" of that environment.

### Findings

54. The Hen Harrier species (*Circus cyaneus*) is listed on Annex 1 of the Birds Directive (Directive 2009/147/EC), and in Ireland is protected under [The Wildlife Act 1976 & Amendment Act 2000](#). I am sensitive to the fact that protected bird species are vulnerable to damage, disturbance or commercial exploitation if data or information concerning their location, particular nesting site locations are made public.
55. In this case, Coillte has argued that the withheld AAD documents can narrow down the location of nesting sites to 100 metres. I appreciate that key stakeholders consider that to release information at this detailed level increases the potential risk of harm to the species, however I find myself in agreement with the appellant in that the AAD documents do not



appear to contain this level of specificity. The redacted information in each document either notes the site of the project overlaps with a 'High Likelihood of Nesting Area', or that the project lies wholly within a 'Green Area'. As set out above, a "High Likelihood of Nesting Area" is a 1.2km buffer zone of a nest site. The redacted information does not provide any detail on the exact parameters of the "High Likelihood of Nesting Area" or the extent to which it overlaps with the project site. No submissions or evidence have been provided to this Office by any party to show how the redacted information could allow for the exact location of nesting sites to be discovered.

- 56.** In the course of this review, I have observed that the Felling Licence Application Maps for each of the Felling Licences concerned are publicly available as part of the licence information on the Department's FLV application. These maps are provided at a scale of 1: 10,000 or 1cm = 0.1km. As such, it is my view that Coillte, in having provided the appellant with individual "licence numbers where Coillte has been notified by the Forest Service FM of a new Red Area... which overlaps the licenced area", already has, by default, identified the spatial extent of the project areas concerned, and to a detailed scale. Having carefully reviewed the contents of the redacted information in each of the withheld AAD documents I am satisfied that this material does not contain any additional detail that could further narrow down the locations of nesting sites, other than that already identifiable from the Felling Licence Application Maps concerned.
- 57.** I cannot see how disclosure of the information requested in this case would adversely affect the protection of the environment to which it relates in circumstances where the spatial extent of the project areas has already been identified by Coillte in response to the appellant's previous AIE request, from which the Felling Licence reference numbers concerned appear to have emanated.
- 58.** In conclusion, I find that Coillte's refusal to release the unredacted AAD documents under article 8(a)(iii) of the AIE Regulations was not justified under the provisions of the Regulations.
- 59.** Taking account of the information being withheld, the observations above and the limitations of the submissions provided by Coillte, the Department and the NPWS, I can find no link between disclosure of the withheld information and any adverse effect on the protection of environment concerned such that article 8(a)(iii) could be said to apply.
- 60.** Having found that the exception in article 8(a)(iii) has not been shown to apply in the circumstances of this case, the question of considering the public interest in refusing or granting the request does not arise.

## **Decision**



Coimisinéir um Fhaisnéis Comhshaoil  
Commissioner for Environmental Information

61. 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 in this case and direct release of the information concerned to the appellant.

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

62. 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.

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**Julie O'Leary**  
**On behalf of the Commissioner for Environmental Information**  
**19 February 2024**