



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-133489-X6P0R7

Date of decision: 13 February 2024

Appellant: Right To Know CLG

Public Authority: Environmental Protection Agency [EPA]

Issue: Whether the EPA was justified in refusing access to information relating to a request made by the appellant concerning Financial Provision Requirement Documents for EPA licensees under article 9(2)(a)

Summary of Commissioner's Decision: The Commissioner found that the EPA was not justified in refusing access to information relating to a request made by the appellant relating to Financial Provision Requirement Documents for EPA licensees under article 9(2)(a)

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 30 September 2022, the appellant made the following request to the EPA:

“In April 2022, an AIE was submitted for Financial Provision Requirement Documents (CRAMP & ELRA) for a sample licensee (Aughinish Alumina) The documents that were provided in April were in a redacted format that we now believe should be appealed under the AIE Regs, as release is in the public interest, and outweighs the commercial arguments made for those redactions at the time. I would therefore like to submit a request for the following under the AIE Regs:

1) copy of Financial Provision Requirement Documents (CRAMP & ELRA) for a Aughinish Alumina

2) copy of all existing Financial Provision Requirement Documents (CRAMP & ELRA) for all EPA licensees”

2. On 24 October 2022, the EPA asked the appellant to confine the request because of the number of documents it would have to retrieve and examine in order to satisfy the request. It said:

“Please note that your request is asking for a very broad range of information over an unspecified time period. The AIE Regulations require that you, the requester, state in terms that are as specific as possible, the environmental information that is the subject of the request to enable us to identify the records you require in accordance with Article 6(1)(d)

It is my opinion that your request, as currently worded, is manifestly unreasonable having regard to the volume or range of information sought and it is also formulated in too general a manner. If the request remains in its current format the EPA may have to consider refusing your request in accordance with Article 9(2)(a) (manifestly unreasonable) and / or 9(2)(b) (formulated in too general a manner) of the AIE Regulations due to the number of records concerned, the retrieval and examination of such number of records as to cause a substantial and unreasonable interference with or disruption of work of a particular functional area.

In accordance with Article 7(7) and 7(8) of the AIE regulations I wish to offer you assistance. It is suggested that you amend your request to avoid it being manifestly unreasonable having regard to the volume or range of information sought, in accordance with 9(2)(a) and to ensure it is not formulated in too general a format in accordance with 9(2)(b)

You could narrow the scope of your request by confining it to some or all of the following:

a) the current Aughinish Alumina CRAMP & ELRA,



b) current CRAMP & ELRA for another 4 sites from the list available on the website
c) information on each licensee's total costings for ELRA and CRAMP where these have been approved”.

3. On 25 October 2022 the appellant responded to the EPA confining their request. They said:

‘...We can absolutely reduce the request to current records, which negates requirement to specify a timeline’

4. On 25 October 2022 the EPA confirmed that it was treating the appellant's confined request as a new request but with the same reference.

5. The EPA issued its original decision to the appellant on 24 November 2022. It said:

“I have now made a final decision to refuse your request on 24th November 2022. The purpose of this letter is to explain that decision.

1. Summary of the Decision

There are over 1,800 documents whose details would have to be retrieved and examined in order to satisfy this request. The individual documents can vary in length from 15 to 100 pages in length. It is estimated that it could take the manager of the Financial Provision Unit, the person best placed to carry out this task, about 2 weeks to carry out this work. All of these documents contain financial information and it has been our experience in the past that we had to redact most of the financial information for commercial sensitivity reasons.

In addition, each document/record would have to be examined by the Office of Environmental Enforcement (OEE) AIE/FOI unit and it is estimated that it would take the unit at least 25 days to examine and if necessary, redact these documents and to produce a schedule. Hence the core work of two functional areas would be disrupted for weeks. The Financial Provision Unit is involved in ensuring that licensees put in place financial instruments to cover the costs of closure and other environmental liabilities associated with their sites that otherwise would have to be paid for by the state. The OEE AIE/FOI unit would not be able to process any other requests for weeks.

Hence having considered the volume and range of records which are relevant to your request, it is my opinion that your request remains manifestly unreasonable. The supply of such a large volume/range of records and the examination of the kind of records concerned would place an unreasonable demand on the EPA's resources so as to cause a substantial and unreasonable interference with would disrupt the work of the EPA and its ability to perform its core functions. Therefore, I refuse your request, having regard to Article 9(2)(a) of the AIE Regulations.



9(2) A public authority may refuse to make environmental information available where the request- (a) is manifestly unreasonable having regard to the volume or range of information sought,

Public Interest Test

Furthermore, in accordance with Article 10(3) and 10(4) I have weighed the public interest served by disclosure against the interest served by refusal of your request. While there is a very strong public interest in the openness and accountability in relation to the EPA carrying out its environmental functions there is also a very strong public interest in giving the EPA the space and time to carry out our environmental protection functions allowing the EPA ensure that there are financial provisions in place at sites in order to ensure that the state does not have to pick up the cost of closing or remediating sites and in allowing the EPA process other AIE requests. I find that the public interest served by disclosure in this case does not outweigh the interests served by refusal.”

6. On 25 November 2022 the appellant requested an internal review from the EPA. They said:

“I would like to pass OEE AIE 2022 32 for internal review. Financial provisions should be actively published in the public interest; therefore this request cannot be manifestly unreasonable. There is a body of case law that supports the view that even 1000s of documents are not necessarily unreasonable under AIE. In this case the request is made voluminous by the unilateral decision of EPA to redact 1800 financial provisions to keep them out of the public domain. I believe this decision is not in the public interest, and active publication of unredacted financial provisions on the EPA website is a more appropriate route than AIE.

I would welcome a speedy response on review as I feel this is potentially a significant public interest appeal for OCEI, and addresses one of the key areas of transparency in environmental enforcement.”

7. The EPA issued its internal review to the appellant on 21 December 2022. It stated:

“Having examined both your original request and your request for internal review, I hereby affirm the decision of the original decision maker to refuse access to the information requested, under Article 9(2)(a) of the AIE Regulations as I consider your request to be manifestly unreasonable having regard to the volume and range of information sought. I affirm on the following grounds:

- 1. It is my understanding that your original request was for a copy of all current Financial Provision Requirement Documents for all EPA Licensees.*
- 2. It is my understanding that the number of records sought by you exceeds 1,800.*



3. *I note that each document is likely to contain financial information which would be deemed by the EPA to be commercially sensitive and therefore have to be redacted. The commercially sensitive information contained in the documents would include detailed costings such as figures which reflect revenue and real or quoted costs for services and waste management. Therefore, before such documents can be released, each document must be examined individually by a manager in the Financial Provisions Unit and the Office of Environmental Enforcement (OEE) AIE/FOI unit. The commercially sensitive information in each document would need to be identified as part of this examination and redacted.*
4. *I am of the opinion that, to retrieve, examine and redact commercially sensitive information from at least 1,800 documents (each individual document could vary in length from 15 to 100 pages), it would take such time (a number of weeks) as to interfere with the functions of the relevant work area in the EPA.*
5. *I note that you or any member of the public can be provided with access to the relevant documents for a particular EPA licensee on request. The overall closure plan or environmental liability risk assessment costs would be provided, however, the commercially sensitive information associated with detailed costings would be redacted.*
6. *The EPA publishes 'keystone enforcement documents' and documents such as Annual Environmental Reports online to provide an overview of the overall enforcement status of each licence as outlined in Appendix I of Licensee Guidance: Online Publication of Enforcement Documentation*

In light of the above grounds, it is my opinion that your request remains manifestly unreasonable and I refuse access to the records under Article 9(2)(a) of the AIE Regulations 2007 to 2018.

Public interest test

Furthermore, in accordance with Article 10(3) and 10(4) I have weighed the public interest served by disclosure against the interest served by refusal of your request.

Factors in favour of granting access:

- *The public interest in individuals being able to exercise their rights under the AIE Regulations to the greatest extent possible in order to access environmental information; and*
- *The public interest in environmental information being made available and disseminated to the public.*

Factors in favour of refusing access:



- *The disruption it would cause to the unit within the EPA to retrieve, examine and redact such number of records (in excess of 1800 documents).*
- *While access is refused to the requester for in excess of 1,800 documents, a member of the public can access the relevant redacted documents for any individual licensee they require, which is considered reasonable.*
- *The public interest in the ability of public bodies to carry out their functions.*

In light of the above, I have determined that the public interest would not be served by granting access to the documents you request.”

8. The appellant appealed to this Office on 9 January 2023.
9. I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the Environmental Protection Agency. 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’).
10. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

11. 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, I will require the public authority to make available environmental information to the appellant.
12. The appellant’s request is made up of two parts. Part 1 of the appellant’s request refers to a “*copy of Financial Provision Requirement Documents (CRAMP & ELRA) for a Aughinish Alumina*”. The appellant and the EPA both acknowledge the appellant had requested this information previously and it was part granted to him in April 2022.
13. It should be noted that there is no provision within the AIE Regulations which negates the obligations on a public authority under article 7, in circumstances where an appellant has



previously submitted the same or similar request for environmental information to the public authority.

14. The EPA contacted the appellant on 24 October 2022, inviting and offering assistance in confining the requests. In response, the appellant confined the request to “*current records*”. As such with regards Part 1 and Part 2 of the request, I consider the scope of this review is concerned with whether the EPA was justified in its decision to refuse access to information relating to current Financial Provision Requirement Documents (CRAMP & ELRA) for EPA licensees under article 9(2)(a) of the AIE Regulations.

Submissions

15. The appellant sent the following submission to this Office on 22 December 2022:

“EPA are only making this request voluminous by the unilateral decision to deem financial obligations as 'commercially sensitive' ... these obligations are relatively modest numbers in the scale of the turnover of the plants concerned, and having the data in the public domain would have little or no impact commercially on the companies they relate to.

The companies have no choice in complying with the financial obligations. There is a review process, the scope and frequency of which is unknown, so if this AIE is successful, it will be followed with an Open Data request to ensure updates are actively published

1800 pdfs are not voluminous in relation to EPA data, both the EDEN and LEAP databases published by EPA would contain in excess of 200,000 records. The data is held in a very structured format, organised by licence ID number. It would be a small task for ICT to upload to a cloud based system, and we would receive in excess of 1800 documents on a regular basis from DAFM FS and others

If 1800 records are deemed voluminous, what number is not voluminous? In this case, the EPA are refusing active publication, and thereby preventing the public from knowing the financial risks of each site. If it was acceptable to publish a % of the records, then applicants would be forced to request a % of records over time, which is ridiculous.

The EPA position is that any member of the public can be provided with access to the relevant documents for a particular EPA licensee on request. The overall closure plan or environmental liability risk assessment costs would be provided, however, the commercially sensitive information associated with detailed costings would be redacted. This position suggests that EPA will provide elements of the records, but not within an active publication regime. The records do not appear on EPA website, or elsewhere, details on when records are updated are not readily available to the public, so they cannot know when to request an update on a specific site, eg when level of environmental risk increased, and financial obligations increase



This type of record is exactly the type of environmental record envisaged by the AIE Regs. It's what AIE is about!"

16. The EPA made a detailed submission to this office on 7 February 2023. It said:

"The EPA deems the request to be voluminous due to the number of records relevant to the request that the EPA would have had to retrieve, examine and redact, to satisfy the request. As stated in the Decision letter there are over 1,800 documents whose details would have to be retrieved and examined in order to satisfy this request. The individual documents can vary in length from 15 to 100 pages in length and it is noted that it would take the manager of the Financial Provision Unit, the person best placed to carry out this task, an excessive amount of time to carry out this work. All of these documents contain financial information, and it has been the EPA's experience in the past that it had to redact most of the financial information for commercial sensitivity reasons.

In addition, each document/record would have to be examined by the Office of Environmental Enforcement (OEE)AIE/FOI unit and it is estimated that it would take the unit at least 25 days to examine and make the necessary redactions to these documents and to produce a schedule. Hence the core work of two functional areas would be disrupted for weeks. The Financial Provision Unit is involved in ensuring that licensees put in place financial instruments to cover the costs of closure and other environmental liabilities associated with their sites that otherwise would have to be paid for by the state. The OEE AIE/FOI unit would not be able to process any other requests for weeks. Hence the volume and range of records which are relevant to the request makes it manifestly unreasonable.

The supply of such a large volume/range of records and the examination of the kind of records concerned would place an unreasonable demand on the EPA's resources so as to cause a substantial and unreasonable interference which would disrupt the work of the EPA and its ability to perform its core functions.

The requester refers to the financial obligations of the EPA licensed communities as 'these obligations are relatively modest numbers in the scale of the turnover of the plants concerned'. Please note that the EPA had agreed €1118million in total costs for environmental liabilities at priority sites as identified in Environmental Liability Risk Assessment documents (ELRA) and Closure and Aftercare Management Plans (CRAMP) which is a significant amount.

A number of licensees are obliged to provide ELRA and CRAMP documents to include detailed, line-by-line costings with quantities, unit rates and sources detailed. This information is essential and must be included in these documents so that the EPA can properly assess the potential liabilities associated with the licensed activities. The EPA has received requests, over the years, from several licensees to keep this information confidential because they deemed it to be financially/commercially sensitive, e.g. figures



can reflect revenue and real or quoted costs for services provided to their customers, such as waste management services (as provided by those licensees in the waste sector). Releasing this financial information could have a negative impact on a licensee's business. The EPA would have to assess each of the 1,800 documents and to consult with the licensees in each case before deciding to release the documents in their entirety.

The appellant is correct that "the companies have no choice in complying with the financial obligations" as they are required to do so under the conditions of their licence. However, they provide the information to the EPA on the established understanding with the EPA that it will not be published and if it is released under AIE/FOI, it will be subject to redaction".

While the Financial Provision Documents are all stored in our LEMA system (Licence Enforcement & Monitoring Application) (CRM system) associated with the appropriate Licensees EPA Licence Registration Number, they are not held in a manner that can be easily extracted from LEMA. The Financial Provision documents can include standalone ELRA's, CRAMPS's, updated complete ELRA's, CRAMPS's or revisions or documents with just the updated parts of the ELRA and CRAMP provided. It would take a significant amount of time as already detailed to search for, retrieve and examine the records to determine if one had the current ELRA & CRAMPS for a particular licensee.

It should be noted and reassuring to the public that the EPA have a risk-based approach to enforcement. This means that we concentrate at securing financial provision from those sites with significant environmental liabilities, referred to as Financial Provision Priority Sites. In addition to the information on our website, we have a project in train to begin publishing summary information on the EPA website including such things as, a. licensee name and register number b. ELRA and CRAMP details (date of most recent, values agreed) c. Financial Provision instrument in place (value and expiry date) The EPA plans to publish this information to the EPA website in Q1 2023 and we anticipate that it will be updated at a regular frequency, e.g. quarterly

Public Interest Factors in favour of granting access:

- The public interest in individuals being able to exercise their rights under the AIE Regulations to the greatest extent possible in order to access environmental information; and*
- The public interest in environmental information being made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information.*
- Openness, Transparency and accountability in decisions of public authorities.*

Factors in favour of refusing access:

- The public interest in providing records where commercially sensitive confidential information is protected and is not released to the world at large.*



- *Allowing licensees provide the EPA with confidential information without fear of release.*
- *In not preventing or impeding a licensee from the effective pursuit of their legitimate business.*
- *The public interest in ensuring that the EPA has the public's trust to not release confidential information.*
- *The public interest in protecting the ability of public bodies to carry out their functions. If the particular functional area within the EPA had to retrieve and redact the volume of records sought, it would have a significant impact on the functions of work area concerned. In light of the above, the EPA is of the view that the public interest would not be served by releasing the information requested.*

17. An investigator from this Office, reviewing the case, wrote to the EPA in December 2023 asking for a further submission in relation to the information that is actively published on the EPA's website. The EPA responded with the following:

1. *I can confirm that we have not been in touch with the appellant regarding the addition to the EPA'S website.*
2. *I can confirm that the addition to the EPA's website is summary information and does not cover the information sought by the appellant. The appellant sought access to a copy of all existing Financial Provision Requirement Documents (CRAMP & ELRA) for all EPA licensees. As outlined in our decisions and submissions, the EPA is of the view that the appellant's request is voluminous and was refused on that basis due to the fact that there were approximately 1,800 relevant records at the time which contain commercially sensitive information and to retrieve and redact the volume of records sought, would have a significant impact on the functions of the work area concerned.*
3. *For your information, in relation to part one of Mr. Glover's request i.e. '.....1) copy of Financial Provision Requirement Documents (CRAMP & ELRA) for a Aughinish Alumina. I wish to advise that (the appellant) previously made an AIE request in February 2022 (OEE AIE 2022 08) for these particular documents. The EPA identified 3 relevant records and Mr. Glover was part-granted access in March 2022, to the attached 3 documents where sensitive confidential information was redacted.*

Analysis and Findings

Article 9(2)(a) – manifestly unreasonable

18. Article 9(2)(a) of the AIE Regulations provides that a public authority may refuse to make environmental information available where the request is manifestly unreasonable having regard to the volume or range of information sought. This provision seeks to transpose Article 4(1)(b) of the AIE Directive, which provides that Member States may provide for a request for environmental information to be refused if the request is manifestly unreasonable, and, in turn, is based on part of Article 4(3)(b) of the Aarhus Convention.



19. Article 9(2)(a) of the AIE Regulations must be read alongside article 10 of the AIE Regulations. 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.
20. When considering whether a request is manifestly unreasonable, it is necessary to examine the impact on the public authority of dealing with the request. In particular, I must examine whether responding to the request would involve the public authority in disproportionate cost or effort, or would obstruct or significantly interfere with the normal course of its activities.
21. The findings of the CJEU in T-2/03 Verein für Konsumenteninformation are of particular relevance when considering the application of the “manifestly unreasonable” exception. Although these findings relate to Regulation No 1049/2001, that Regulation contains a similar exception to that contained in article 9(2)(a) of the AIE Regulations. Paragraphs 101 to 103, 112, 113 and 115 in particular, provide useful guidance:

“...[I]t is possible for an applicant to make a request for access...relating to a manifestly unreasonable number of documents...thus imposing a volume of work for processing of his request which could very substantially paralyse the proper working of the institution.

[...]

An institution must therefore retain the right, in particular cases where concrete, individual examination of the documents would entail an unreasonable amount of administrative work, to balance the interest in public access to the documents against the burden of work so caused, in order to safeguard, in those particular cases, the interests of good administration...

However, that possibility remains applicable only in exceptional cases.

[...]

... [I]t is only in exceptional cases and only where the administrative burden entailed by a concrete, individual examination of the documents proves to be particularly heavy, thereby exceeding the limits of what may reasonably be required, that a derogation from that obligation to examine the documents may be permissible.

...[I]t is with the institution relying on an exception related to the unreasonableness of the task entailed by the request that the burden of proof of the scale of that task rests.



[...]

...It follows that the institution may avoid carrying out a concrete, individual examination only after it has genuinely investigated all other conceivable options and explained in detail in its decision the reasons for which those various options also involve an unreasonable amount of work.”

22. In light of the findings of the CJEU in Verein für Konsumenteninformation, I consider that the exception in article 9(2)(a) is only available where the administrative burden entailed by dealing with the request is particularly heavy. The burden is on the public authority to demonstrate the unreasonableness of the task entailed by the request. I expect that if a public authority wishes to rely on the manifestly unreasonable nature of a request, that public authority will clearly demonstrate the actual and specific impact that dealing with the request would have on its normal activities.
23. The EPA has dealt with Part 1 and Part 2 of the appellant’s request together, and determined the request as a whole to be manifestly unreasonable under article 9(2)(a) of the AIE Regulations. There is no evidence to suggest that any analysis was carried out by the EPA as to whether the two requests could simply have been separated out in order to provide a response, in accordance with article 10(5) of the AIE Regulations.
24. Article 10(5) stipulates:

“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.”
25. As set out above, article 10(5) of the AIE Regulations requires that, in circumstances where some of the information requested is subject to an exception, the EPA must still consider whether parts of the request can be answered. This includes where the EPA is relying on article 9(2)(a) of the AIE Regulations in stating that the request is manifestly unreasonable.
26. From my review of the request, it appears to me that it was not reasonable for the EPA to have considered Part 1 and 2 together, and that it should have made an effort to answer Part 1 of the appellant’s request separately. I say this for the following reasons. Firstly, the EPA acknowledged that a request for financial provision documents involving an individual licensee, like that made in Part 1, is reasonable, when it said in its internal review that *“a member of the public can access the relevant redacted documents for any individual licensee they require, which is considered reasonable.”* Secondly, the EPA previously processed the same request for the appellant, part-releasing the information requested, in a redacted format, in March 2022. The EPA sent a copy of these records to this Office in January 2024.
27. Furthermore, I note that in the initial correspondence between the EPA and the appellant, the EPA made suggestions to the appellant on how they could confine their request. These



included a suggestion, that to my mind is tantamount to Part 1 of the appellant's request. They said: "You could narrow the scope of your request by confining it to some of all of the following: A) The current Aughinish Alumina CRAMP & ELRA."

28. Having regard to all of the above, I believe the EPA has not justified its decision to refuse access to all of the information sought relating to requests Part 1 and Part 2 together under article 9(2)(a) of the AIE Regulations. I am therefore satisfied that it is not appropriate to refuse the appellant's requests on the grounds that, considered together, they are manifestly unreasonable within the meaning of article 9(2)(a) of the Regulations.

Request Part 1

29. Part 1 of the request involves financial provision documents for one individual licensee. Taking the points laid out in paragraph 29 and 30 into account, in particular considering the records which pertain to Part 1 of the request appear to be readily available as it was dealt with in a previous AIE request, I do not consider the threshold for Part 1 of the request to be manifestly unreasonable has been reached.
30. Accordingly, the EPA has not justified its decision to refuse access to all of the information sought relating to Part 1 individually under article 9(2)(a) of the AIE Regulations. The decision in *Verein für Konsumenteninformation* makes it clear that "it is with the institution relying on an exception related to the unreasonableness of the task entailed by the request that the burden of proof of the scale of that task rests" (paragraph 113).
31. The EPA has not demonstrated that the processing of Part 1 of the request would impose a sufficiently heavy administrative burden of the type envisaged in *Verein für Konsumenteninformation*. I am not satisfied, based on the information before me that refusal on the basis of article 9(2)(a) is justified in the circumstances of Part 1 of this request.
32. I consider the most appropriate course of action in relation to Part 1 of the request is to annul the EPA's decision to refuse access to information under article 9(2)(a) of the AIE Regulations and direct it to undertake a fresh decision-making process in respect of same. As the EPA may need to consider if exemptions apply in line with their obligations under the AIE Regulations I do not consider it appropriate to direct release of this information at this time. The appellant will have the opportunity to seek an internal review of this new decision and to appeal again to this Office if he is not satisfied with the outcome.

Request part 2- copy of all existing Financial Provision Requirement Documents (CRAMP & ELRA) for all EPA licensees (current)

33. The EPA has said it deems the request to be voluminous due to the number of records relevant to the request that the EPA would have had to retrieve, examine and redact, to



satisfy the request. It stated that *“there are over 1,800 documents whose details would have to be retrieved and examined in order to satisfy this request. The individual documents can vary in length from 15 to 100 pages in length and it is noted that it would take the manager of the Financial Provision Unit, the person best placed to carry out this task, an excessive amount of time to carry out this work.”*

34. The EPA has said all the financial provision documents are stored in its internal CRM system but that they are not held in a manner that allows for the easy extraction of the *“current ELRA & CRAMPS for a particular licensee”*. It has not given a persuasive explanation as to why this is the case. Further, the EPA has not set out how it reached the conclusion that over 1,800 documents would have to be retrieved and examined in dealing with the request. Given its statement that the relevant documents are not held in a manner that is easily searchable, it is difficult to understand how it concluded that 1,800 documents would have to be examined in order to deal with the request.
35. The EPA has said that the manager of the Financial Provision Unit is *“best placed”* to carry out the work, but has not explained if there are alternative staff members who could carry out or assist in the work – for example under supervision of this manager. The EPA has said this Financial Provision Unit manager would have to *“retrieve, examine and redact”* and that it would take an *“excessive amount of time”* that the Financial Provisions Unit would have to dedicate to this activity. The original decision estimates that this would take the manager of the Financial Provision Unit *“about 2 weeks”* to complete. It is unclear how this time estimate was reached, and the EPA has not set out in sufficient detail the steps that would be required to retrieve and examine each document.
36. The EPA also says that *“each document/record would have to be examined by the Office of Environmental Enforcement (OEE)AIE/FOI unit and it is estimated that it would take the unit at least 25 days to examine and make the necessary redactions to these documents and to produce a schedule. Hence the core work of two functional areas would be disrupted for weeks.”* It is unclear what specific activities the AIE/FOI unit would be carrying out here, in a way that avoids duplication of work, if the Financial Provision Unit has already *“retrieved, examined and redacted”* the documents. The EPA has also has not explained how many individuals within the AIE/FOI unit would be involved in this work – it has merely said it would take the AIE/FOI unit as a whole at least 25 days. It has not set out how the calculation that this part of the process would take 25 days was reached.
37. The EPA has stated that it would be required to redact financial information from the requested documents. It has not set out whether the documents are broadly similar in format and content or whether a detailed examination of each document would be required. It has also stated that it would be required to contact each licensee, but has not



stated exactly how many licensees would be involved and how long this process would take. Please note that I am making no finding in this appeal as to whether any exemption other than article 9(2)(a) may apply to this request.

38. I have also borne in mind that the EPA could have requested an extension under article 7(2)(b) of the AIE Regulations in respect of processing the request – meaning a further month could have been available to reply to each of the requests. It does not appear to have considered this. Both article 7(2)(b) of the AIE Regulations and Article 3(2)(b) of the AIE Directive specifically envisage that public authorities will deal with voluminous or complex requests, albeit in a longer timeframe. It should be noted that just because a request is voluminous or complex does not in itself equate to it being “manifestly unreasonable” within the meaning of article 9 (2)(a).
39. Considering all of the above, I am not persuaded by the explanation as it stands that the EPA has given as to why processing this request would impose a sufficiently heavy administrative burden of the type envisaged in *Verein für Konsumenteninformation*.
40. I note article 9(2)(a) of the AIE Regulations is an explicit acknowledgement of the fact that public authorities should not be required to undertake the processing of AIE requests where to do would place an unreasonable burden on what are often limited resources. However, it must also be remembered that the administration of the AIE Regulations is a statutory obligation which should be afforded as much weight as any other statutory obligation or the carrying out of any other operational or commercial functions.
41. In the circumstances, I do not find that the threshold for Part 2 of the request to be manifestly unreasonable has been reached. Accordingly, the EPA has not justified its decision to refuse access to the information sought relating to Part 2 of the request under article 9(2)(a) of the AIE Regulations. As with Part 1 of the request, I consider the most appropriate course of action in relation to Part 2 of the request is to annul the EPA’s decision to refuse access to information under article 9(2)(a) of the AIE Regulations and direct it to undertake a fresh decision-making process in respect of same. Should the EPA maintain its position that the request as it stands is manifestly unreasonable, it should set out the reasons why in sufficient detail, bearing in mind my findings above and the decision of the CJEU in *Verein für Konsumenteninformation*.

Decision

42. Having carried out a review under article 12(5) of the AIE Regulations, I hereby annul the EPA’s decisions refuse access to information relating to requests Part 1 and Part 2 under article 9(2)(a) of the AIE Regulations and direct it to undertake a fresh decision-making process in respect of same.



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Appeal to the High Court

A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

Julie O'Leary

On behalf of the Commissioner for Environmental Information

13 February 2024