



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-137264-J2R1S1

Date of decision: 25 June 2024

Appellant: Right to Know CLG

Public Authority: IDA Ireland (IDA)

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

Summary of Commissioner's Decision: The Commissioner found that the information requested was “environmental information” and remitted the matter to the IDA for further consideration.

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 February 2023, the appellant contacted IDA Ireland with the following request:
“Under the AIE Regs to request a map of the IDA landbank in shp format (GIS)”.
2. IDA responded to this request on 8 March 2023 and outlined that information on its land ownership is available from the Property Registration Authority. IDA noted that in accordance with article 7(3) of the AIE Regulations, it was directing the appellant to the [Property Registration Authority](#) website as this information is available for viewing and downloading by members of the public on their website.
3. The appellant requested an internal review on the same day. Within his request for internal review he also noted the following:

“Happy to receive the data on the IDA landbank in any common mapping format, it does not have to be shp file, but the sources referenced do not provide data in any GIS formats. PDF format is not a GIS format, and cannot be used for environmental mapping purposes”
4. IDA subsequently contacted the appellant to confirm if he wished to proceed with an internal review of the original decision, or if instead he wished to proceed with a new AIE request, requesting the data on the IDA land bank in any common mapping format as outlined above. The appellant noted that the original decision should proceed for internal review.
5. IDA issued its internal review decision on 6 April 2023, refusing the appellant’s request on the basis that the information sought is not environmental information as defined by article 3(1) of the AIE Regulations.
6. The appellant submitted an appeal to this Office on 11 April 2023.
7. I am directed by the Commissioner for environmental information to carry out a review under article 12(5) of the Regulations. In carrying out my review, I have had regard to all submissions made. I have also examined the contents of the records at issue. In addition, I have had regard to:
 - the judgments in *Minch v Commissioner for Environmental Information* [\[2017\] IECA 223 \(Minch\)](#), *Redmond & Anor v Commissioner for Environmental Information & Anor* [\[2020\] IECA 83 \(Redmond\)](#), *Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna* [\[2020\] IEHC 190](#) (ESB) and *Right to Know v Commissioner for Environmental Information & RTÉ* [\[2021\] IEHC 353 \(RTÉ\)](#);



- the judgment of the Court of Appeal of England and Wales in *Department for Business, Energy and Industrial Strategy v Information Commissioner* [2017] EWCA Civ 844 (*Henney*) which is referenced in the decisions in *Redmond*, *ESB* and *RTÉ*;
 - the decisions of the Court of Justice of the European Union in [C-321/96](#) *Wilhelm Mecklenburg v Kreis Pinneberg - Der Landrat (Mecklenburg)* and [C-316/01](#) *Eva Glawischnig v Bundesminister für soziale Sicherheit und Generationen (Glawischnig)*;
 - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
 - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide').
8. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

9. In accordance with article 12(5) of the AIE Regulations, the role of this Office is to review the public authority's internal review decision and to affirm, annul or vary it. Where appropriate in the circumstances of an appeal, I will require the public authority to make available environmental information to the appellant.
10. The Commissioner's powers apply only in respect of environmental information held by or for a public authority. It is clear from the IDA's internal review decision, along with its correspondence with the appellant and this Office, that it is the IDA's position that the information sought by the appellant is not "environmental information" such that it falls within the remit of the AIE Regulations.
11. In accordance with this Office's Procedures Manual, available at www.ocei.ie, the Commissioner's general practice in cases such as this, concerning a threshold jurisdictional issue, is to limit the review to the preliminary matter of whether the information sought is "environmental information" such that it falls within the remit of the AIE Regulations.



12. Accordingly, I am satisfied that the scope of this review concerns whether the requested information comes within the definition of “environmental information” contained at article 3(1) of the Regulations.

Analysis and Findings

Position of the parties

13. The appellant disagrees with IDA’s position that the map of the IDA landbank is not environmental information. By way of example, the appellant queried how he could locate other sites like the IDAs Loughmore Canal if the location of IDA sites is redacted. The Loughmore Canal is a drainage canal constructed to serve the Raheen Business Park in County Limerick. On 16 December 2022, RTE reported on allegations that contaminated water was flowing from the industrial estate to local farmland.
14. Beyond citing the article 3(1) definition of “environmental information”, IDA’s internal review position that the information requested is not environmental information was not accompanied by any further reasoning as to why IDA are of the view that the information does not fall under article 3(1) of the AIE Regulations.
15. IDA provided a submission to this Office on 17 May 2023. Included within its submission, IDA outlined the following:
- (i) It submitted that IDA Ireland has a large portfolio of properties and land, and that it is imperative for title purposes all maps and boundaries are accurately shown. It noted that the mapping department of IDA Ireland works to ensure that all of its maps and folio boundaries, as recorded in the Land Registry, contain correct and accurate information.
 - (ii) It submitted that the datasets received by IDA Ireland from the Land Registry contain both geographical and attribute data, and that the attribute data contains information such as folio numbers and plan numbers, and nothing more than that. It also noted that IDA Ireland has the capability to create its own attribute data but it has not done so to date.
 - (iii) IDA’s submission also made reference to the National Mapping Agreement, which provides Government Departments and public sector bodies with unrestricted access to Ordnance Survey Ireland’s (OSi) geospatial data. IDA Ireland are covered under the National Mapping Agreement and are entitled to access OSi data and Land Registry data.



- (iv) IDA outlined that the current primary use of the Land Registry data is for its use in working with the OSi's GeoHive basemaps (GeoHive Map Viewer– which is a GIS powered website). It explained that Geohive, OSi has a platform known as MapGenie which IDA Ireland is permitted to use under the National Mapping Agreement. This is a set of geospatial services (the same data as used on GeoHive Map Viewer) that provide online, immediate access to the most complete, highest quality and authoritative map data available for Ireland. IDA submitted that in using the Land Registry data and OSi mapping database, IDA Ireland is enabled to visualise the many different mapping layers that GIS provides such as Base Map Information, Orthophotography and Historical Map Information and to cross-check the mapping data against the Land Registry folio boundaries to ensure accuracy.
- (v) IDA submitted that the mapping data which is the subject of this request is acquired and used by IDA Ireland for the purpose of confirming legal ownership of land, and noted that “it merely shows that a topographical feature exists in a particular geographical position and it does not indicate either the state of a feature or whether any activity has an effect upon it”.
- (vi) It further noted that a member of the public could purchase a digital boundary of a property and insert it into a GIS software package, thus allowing that person to see the same mapping data. IDA Ireland receives this data under the National Mapping Agreement, whereas a member of the public must purchase digital boundaries from the Land Registry.
- (vii) IDA submitted that it rejects any assertion that the requested information might better inform the public on any environmental matter, and it does not believe that the requested information is integral or critical to any of the environmental factors at (a) to (f) of article 3(1) of the AIE Regulations.
- (viii) It submitted that it is IDA's position that the requested information in this case is not about an environmental factor under the AIE Regulations and that it does not relate to or concern an environmental factor in that sense. IDA submits that it is not "environmental information" within the meaning of article 3 (1) of the AIE Regulations and that access to the requested information should be refused.
- (ix) IDA also made reference to relevant case law which is outlined further in the findings below.

Findings

Definition of “environmental information”



16. Environmental information is defined in article 3(1) of the Regulations and article 2(1) of the Directive as “any information in written, visual, aural, electronic or any other material form on:
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements of the environment referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a), or, through those elements, by any of the matters referred to in (b) and (c).
17. The AIE Regulations transpose the AIE Directive at national level. The AIE Directive was adopted to give effect to the first pillar of the Aarhus Convention in order to increase public access to environmental information and enable an informed public to participate more effectively in environmental decision-making. It replaced Council Directive 90/313/EC, the previous AIE Directive.
18. According to national and EU case law on this matter, while the concept of “environmental information” as defined in the AIE Directive is broad (*Mecklenburg*, at paragraph 19), there must be more than a minimal connection with the environment (*Glawischnig*, at paragraph 25). Information does not have to be intrinsically environmental to fall within the scope of the definition (*Redmond*, at paragraph 58; see also *ESB* at paragraph 43). However, a mere connection or link to the environment is not sufficient to bring information within the definition of environmental information. Otherwise, the scope of the definition would be



unlimited in a manner that would be contrary to the judgments of the Court of Appeal and the Court of Justice of the European Union.

19. The right of access to environmental information applies to information “on” one or more of the six categories set out at (a) to (f) of the definition. Within its submission the IDA point out that the key test as to whether information is “on” one or more of these categories is whether it is “about, relates to or concerns” that factor. IDA also noted that the courts have found that the following four questions are of assistance in determining whether a requisite degree of connection exists: (a) the purpose for which the information was produced, (b), how important the information is to that purpose, (c) how it is to be used, and (c) whether access to it would enable the public to be informed about, or to participate in, decision-making in a better way.
20. In his decision in RTÉ, Barrett J expressly endorses the approach set out in *Henney* to determine the “information on” element of the definition (see RTÉ, paragraph 52). This involves identifying the relevant element of the definition to which the information in question relates. In this case, the information requested is a map of IDA’s landbank. As noted above, IDA contends that this information is not “environmental information”. In my view, paragraph (a) of the definition is most relevant to this review. Paragraph (a) provides that “environmental information” means any information in written, visual, aural, electronic or any other material form on the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.
21. Turning to analyse the requested information, the Cambridge Dictionary defines a ‘map’ as a drawing of the earth’s surface, or part of that surface, showing the shape and position of different countries, political borders, natural features such as rivers and mountains, and artificial features such as roads and buildings. It also defines a ‘land bank’ as an area of land that is owned by a person or organisation that is considered an asset because it could be used for building property on in the future.
22. The IDA use public money to buy land banks and attract foreign companies by selling its available sites to them. IDA’s website outlines that it has a range of property solutions to suit business needs, including ‘land banks or sites for development’ which can assist foreign companies in finding their ‘European home’. It is evident by IDA’s main objective to encourage investment into Ireland by foreign owned companies that any land bank sold will likely be developed for industrial development purposes.
23. During the course of the investigation the IDA provided a copy of its land ownership in PDF format to this Office. I note that the appellant’s request specified that he is seeking the requested information in a mapping format and that PDF is not such a mapping format.



However, the form or manner of the information sought is not at issue in this appeal and I consider that it was satisfactory for the purposes of this appeal for me to review the information sought in PDF format. On inspection of this document, it is a map showing the locations of rivers, mountains, county borders and roads. Further, the map highlights areas where the IDA own land.

24. I consider that this map comes within category of 3(1)(a) of the definition of environmental information. This is due to the fact that the map is visual information on the state of elements of the environment, including water, land, landscape and natural sites.
25. Further, as referenced in the Aarhus Implementation Guide, Article 7 of the Convention covers “public participation in the development of plans, programmes and policies relating to the environment, which include sectoral or land-use plans, environmental action plans, and environmental policies at all levels”. Recital 1 of the AIE Directive also makes clear, that the purpose of the AIE regime is to promote “increased public access to environmental information and the dissemination of such information” in order to “contribute to a greater awareness of environmental matters, a free-exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment”.
26. In allowing the public to access landbank map locations, this will enable the public to have sight of any potential issues located near these sites likely to affect the environment, such as any impact on wetlands, soil, any noise or waste issues, and any potential changes to existing ecosystems which could affect the biological diversity of any given landbank location if the procured land is sold for industrial purposes. This in turn would also enable the public to engage in a more informed debate over any potential issues and provide the opportunity to highlight any concerns which may arise.
27. Having considered the above, it is my view that the map of IDA’s landbank as requested by the appellant falls within the definition of “environmental information” in article 3(1)(a) of the AIE Regulations, and therefore, the IDA was not justified in refusing the request.

Decision

28. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I annul the IDA’s internal review decision. A new internal review process should now be carried out in accordance with the provisions of the AIE Regulations.

Appeal to the High Court



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

29. 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
25 June 2024