



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-148308-J1V2C8, OCE-148335-C1Y3P0, OCE-148824-T9S9R3, OCE-151808-M7B5Y2

**Date of decision:** 22 October 2024

**Appellant:** Mr. Neil Foulkes

**Public Authority:** Department of Agriculture, Food and the Marine (the Department)

**Issue:** Whether the Department was justified in refusing access to monitoring information that may be in the possession of licensees under article 7(5) of the AIE Regulations on the basis that any relevant information is not held for the Department for the purposes of the AIE Regulations.

**Summary of Commissioner's Decision:** The Commissioner affirmed the Department's decisions under article 7(5) of the AIE Regulations.

**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. This decision concerns four appeals to this Office against the Department's decisions on four requests submitted by the appellant under the AIE Regulations.
2. Request 1 (Appellant Reference: LM09-FL0050 Post Licence Issue; Department Reference: AIE 24 176; OCEI Reference: OCE-148308-J1V2C8)
  - On 4 March 2024, the appellant submitted a request to the Department seeking access to “[a]ll information generated post-licence issue for LM09-FL0050” including “1) Date of site inspections 2) Inspections Reports / Statements of Facts 3) Photographs 4) Monitoring records 5) Internal and external correspondence.”
  - On 12 March 2024, the Department issued its decision. While the Department stated that it was granting the appellant's request in full, it part-granted access. Regarding parts (1) and (2) of the appellant's request, the Department noted that the information is available on the Department's Forestry Licence Viewer. Regarding part (3), the Department stated that there were no records available. Regarding part (4), the Department stated that the monitoring records consist of the records requested in parts (1) and (2). Regarding part (5) the Department stated that it was granting access to four records.
  - On 13 March 2024, the appellant sought an internal review of the Department's decision on part (4) of his request, stating “DAFM has failed to identify records which are held FOR DAFM by the licensee as a result of licence conditions, in particular Licence Condition 12. It is DAFM's responsibility to source this information held by Coillte FOR DAFM.”
  - On 2 April 2024, the Department issued its internal review decision, wherein it provided the appellant with one additional record identified.
  - On 17 April 2024, the appellant submitted an appeal to this Office regarding the Department's decision on part 4 of his request.
3. Request 2 (Appellant Reference: KY04-FL0075, Knockauncurragh, Co. Kerry - Licence implementation issues; Department Reference: AIE 24 116; OCEI Reference: OCE-148335-C1Y3P0)
  - On 14 February 2024, the appellant submitted a request to the Department seeking access to “information on the monitoring (including ground conditions and rainfall) and operational adjustment and postponement information recorded by the licensee in response to the licence conditions.”
  - On 13 March 2024, the Department issued its decision, wherein it refused the appellant's request on the basis that the information sought did not exist.
  - Also on 13 March 2024, the appellant sought an internal review of the Department's decision.



- On 11 April 2024, the Department issued its internal review decision. The Department affirmed its decision to refuse the appellant's request under article 7(5) of the AIE Regulations. It referred to article 7(6)(b) of the AIE Regulations and informed the appellant that it believed that Coillte was the appropriate public authority for him to direct his request.
  - On 18 April 2024, the appellant submitted an appeal to this Office.
4. Request 3 (Appellant's Reference: Monthly Monitoring Records Leitrim February 2024; Department Reference: AIE 24 163; OCEI Reference: OCE-148824-T9S9R3)
- On 1 March 2024, the appellant submitted a request to the Department seeking access to "[f]or all harvesting sites in County Leitrim that were active during February 2024; by licence number, A) On-site monitoring records generated and maintained by the licensee (or agent) to meet the conditions of the licence, including rainfall monitoring records. B) Details of any operational adjustments and postponements maintained by the licensee (or agent) to meet the conditions of the licence. Licence conditions include any mitigation generated as a result of an Appropriate Assessment. These records may not currently be held by DAFM but they will be held for DAFM by the licensee (or agent) and therefore fall within the scope of the Regulations."
  - On 26 March 2024, the Department issued its decision, wherein it refused the appellant's request on the basis that the information sought did not exist.
  - Also on 26 March 2024, the appellant sought an internal review of the Department's decision. The appellant stated "[t]here is no evidence that the decision maker has explored the possibility of the information sought being held for DAFM. Adequate searches have not been conducted."
  - On 23 April 2024, the Department issued its internal review decision. The Department affirmed its decision to refuse the appellant's request under article 7(5) of the AIE Regulations.
  - On 8 May 2024, the appellant submitted an appeal to this Office.
5. Request 4 (Appellant's Reference: Monthly Monitoring Records Leitrim December 2023; Department Reference: AIE 24 008, OCEI Reference: OCE-151808-M7B5Y2)
- On 3 January 2024, the appellant submitted a request to the Department seeking access to "[f]or all harvesting sites in County Leitrim that were active during December 2023; by licence number, A) On-site monitoring records generated and maintained by the licensee (or agent) to meet the conditions of the licence, including rainfall monitoring records. B) Details of any operational adjustments and postponements maintained by the licensee (or agent) to meet the conditions of the licence. Licence conditions include any mitigation generated as a result of an Appropriate Assessment. These records may not currently be held by DAFM but they will be held for DAFM by the licensee (or agent) and therefore fall within the scope of the Regulations."
  - On 31 January 2024, the Department issued its decision, wherein it refused the appellant's request on the basis that the information sought did not exist.



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- On 1 February 2024, the appellant sought an internal review of the Department’s decision. The appellant stated: “The AIE Regulations cover information held by or for a public authority. FS-DAFM licences contain conditions which require monitoring records to be maintained by the licensee which must be available for inspection by DAFM. This information is held for the Department by the licensee and falls within the scope of my request. DAFM is required to make contact with the licensee to acquire the information that has been recorded in order to satisfy the licence conditions as this is environmental information that is held for the Department by the licensee. The decision maker has not contacted the relevant licensees for this information and has therefore failed to carry out adequate searches for the requested information and the request has not been completed in accordance with the Regulations.”
  - On 27 February 2024, the Department issued its internal review decision. The Department affirmed its decision to refuse the appellant’s request under article 7(5) of the AIE Regulations.
  - On 28 February 2024, the appellant submitted an appeal to this Office regarding the Department’s decision. The Commissioner issued a decision in that case [OCE-146824-G1D1J6](#) , annulling the Department’s decision and directing it to conduct a fresh internal review decision-making process in respect of the appellant’s request.
  - On 5 September 2024, the Department issued its new internal review decision in respect of the appellant’s request. It affirmed its decision under article 7(5) of the AIE Regulations. In doing so, it noted “Coillte Personnel were contacted who advised the following: Coillte may hold information relevant to the Request but any such information that we may hold is for our own records and is not held on behalf of DAFM”. It referred to article 7(6)(b) of the AIE Regulations and informed the appellant that it believed that Coillte was the appropriate public authority for him to direct his request.
  - Also on 5 September 2024, the appellant submitted an appeal to this Office regarding the Department’s new decision. In doing so, he stated “I remain dissatisfied with the decision and would like to pursue this appeal. DAFM have failed to address the issue of why the information is not held for the Minister by Coillte given that the information is created and required to be maintained as a condition of a licence in order that the Minister can carry out his enforcement role.”
6. I have carried out a review under article 12(5) of the AIE Regulations. In so doing, I have had regard to the correspondence between the Department and the appellant, as outlined above, and to correspondence between this Office and both the Department and the appellant on the matters involved in these requests. 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)



7. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

### **Scope of Review**

8. Having regard to correspondence between the appellant and this Office, I am satisfied that the scope of this review is concerned with whether the Department was justified in refusing access to monitoring information that may be in the possession of licensees under article 7(5) of the AIE Regulations on the basis that any relevant information is not held for the Department for the purposes of the AIE Regulations.

### **Preliminary Matter**

9. In the circumstances of these appeals, I have decided that a composite decision dealing with the appeals together is appropriate. I do so because the four requests, although dealt with separately by the Department, were submitted by the same requester to the same public authority, have similar subject matter, and involve the same provision of the AIE Regulations.

### **Positions of the Parties**

#### **The Department's Position**

10. The general thrust of the Department's position is that any relevant monitoring information in the possession licensees is not held for the Department and, accordingly, it was not required ask the licensees to carry out searches when processing the appellant's requests.

11. The Department, in its internal review decision regarding Request 2, stated:

“Monitoring records are held by Coillte in the event of possible inspection by DAFM. These records are not held by DAFM and there is no requirement for the Department to hold these documents as part of our records. Having consulted with Inspectors...I wish to advise that these records are examined in situ should there be an inspection of a site by DAFM. To date there has been no inspection of this site. DAFM have not had sight of these records and do not hold these records at this time. Accordingly, this request is refused in accordance with Article 7(5) of the AIE Regulations.”

12. The Department, in its internal review decision regarding Request 3, included the following comments:

- “The Department of Agriculture, Food and the Marine (DAFM) does not maintain any records related to site monitoring. However, during an on-site inspection, DAFM can request access to these records for review and examination. This process allows for the real-time assessment and evaluation.
- “In the event of unforeseen circumstances necessitating the postponement of a harvesting operation, it is not required to notify the Department of Agriculture, Food and the Marine (DAFM). However, should any operational adjustments be required during the course of the harvesting operations, as long as such adjustments fall within the scope of the license and its associated conditions, it is not necessary to inform DAFM.”



- “The list below is a comprehensive list of all Coillte harvesting sites inspected during February 2024, where soil and water conditions were identified and requiring monitoring record inspections. These inspections were conducted on-site and were requested by the inspector on the day of the inspection. DAFM do not require the retention of these documents just that they are made available to the inspector on the day of inspection.” The list provided was: GY11-FL0440, GY21-FL0058, KY04-FL0084, KY04-FL0092, KY05-FL0060, KY10-FL0132, KY10-FL0133, KY10-FL0134, LK07-FL0188, LM08-FL0158, MO11-FL0042, MO18-FL0139, and TY10-FL0161.
  - The Department stated that it was unaware of any incidents in February 2024 that necessitated the postponement of any harvesting operations.
13. The Department, in its new internal review decision regarding Request 4, as indicated above, stated: “Coillte Personnel were contacted who advised the following: Coillte may hold information relevant to the Request but any such information that we may hold is for our own records and is not held on behalf of DAFM”.

### **The Appellant’s Position**

14. The general thrust of the appellant’s position is that any relevant monitoring information in the possession of licensees is held for the Department and, accordingly, the Department should have asked the licensees to carry out searches when processing his requests.
15. I have summarised below the appellant’s submissions to this Office regarding Request 1:
- The appellant stated that “Licence Condition 12 of LM09-FL0050”, provides – “Operations should be carried when ground conditions are drier where there has been no significant rainfall for at least two weeks. Relevant operations must cease during and after periods of rainfall sufficiently heavy to result in the loss of nutrients and/or the mobilisation of sediment, fine organic matter and debris into receiving waters. Ground conditions must be monitored during rainfall, and records of such monitoring and of any resulting operational adjustments and postponements must be kept for possible inspection. For information, forecast details for the nearest meteorological station can be found on the Met Éireann website [www.met.ie](http://www.met.ie). Reason: In the interest of the protection of soil stability and water quality during harvesting and restocking operations.”
  - The appellant submitted that this condition requires the licensee to create and maintain monitoring records. He stated that such records must be available for the Department for inspection.
  - The appellant contended that such records should exist and where they do, they are held by the licensee on behalf of the Department in order that the Department can ensure that the implementation of the licence results in statutory compliance. The appellant stated that “the only reason such records would not exist is that the licensee is in default of the licence condition.”
  - The appellant submitted that there is no evidence that the Department has taken all reasonable steps to identify the information sought at part (4) of his request.



16. I have summarised below the appellant's submissions to this Office regarding Request 2:

- The appellant noted that his request was for “information on the monitoring (including ground conditions and rainfall) and operational adjustment and postponement information recorded by the licensee in response to the licence conditions for felling licence KY04-FL0075”. The appellant submitted that “licence contains a condition to apply with the mitigation of an Appropriate Assessment carried out under Article 6(3) of the Habitats Directive” and “that mitigation includes item D” – “Operations should be initiated when ground conditions are dry and firm where there has been no significant rainfall for at least two weeks. Relevant operations must cease during and after periods of rainfall sufficiently heavy to result in the loss of nutrients and/or the mobilisation of sediment, fine organic matter and debris into receiving waters. Ground conditions must be monitored during rainfall, and records of such monitoring and of any resulting operational adjustments and postponements must be kept for possible inspection. For information, forecast details for the nearest meteorological station can be found on the Met Éireann website [www.met.ie](http://www.met.ie) Reason: In the interest of the protection of water quality and to ensure the protection of the European site(s) during harvesting operations.”
- The appellant stated that the Department failed to consider that the requested information may be held for the Department by Coillte. The appellant contended that because the information must be generated by the licensee and must be available to the Department it is being held for the Department by the licensee, commenting “(t)here is no legal compulsion for a licensee to generate and maintain the information requested in the absence of the licence condition / AA mitigation.”
- The appellant contended that the Department does not dispute that the records do/may exist, but that reasonable searches have not been taken. He commented that the request has been refused because the Department does not hold the information, not because it does not exist. He contended that the Department failed to correctly apply the AIE Regulations in taking the step of sourcing information that has been created as a condition of a licence issued by the Department.
- The appellant noted that the Department states that there is no requirement for it to hold the documents. He submitted that this “is not the material point – DAFM has a right to access the information that they have required to be generated.”
- The appellant contended “Unless there was an online system in place it would not make sense for the information to be held by DAFM during the operational phase of the project. The licensee is recording information so that DAFM can fulfil its monitoring and enforcement functions.”
- The appellant submitted that the Departments reference to article 7(6)(b) of the AIE Regulations was not valid, commenting: “A public authority should not redirect a requester to another public authority in circumstances where the information falls within the scope of the Regulations and where they are in a position to provide the information themselves. Coillte could refuse the information on the basis that they are holding the information on behalf of DAFM. Additionally, had the licensee not been a public authority then, applying DAFM's position would put the requested monitoring information outside the scope of the Regulations. The information requested is of a type that should be being actively disseminated under Article 7(2)(e) of the AIE Directive. Therefore, for this type of information to be available to the public across the board it must be held by or for DAFM.”



17. I have summarised below the appellant's submissions to this Office regarding Request 3:

- The appellant contended that the information requested is required to be created and maintained as a condition of felling licences (including, where relevant, an Appropriate Assessment under Article 6(3) of the Habitats Directive) and is environmental information held by the licensee on behalf of the Department.
- The appellant submitted that the information is required by the Department to ensure that the licensee is in compliance with licence conditions in order that the Department can carry out its enforcement role and ensure that forestry works do not impact the protection of the environment.
- The appellant referred to the Department's statement in its internal review decision that it "does not maintain any records related to site monitoring. However, during an on-site inspection, DAFM can request access to these records for review and examination. This process allows for the real-time assessment and evaluation." The appellant contended that this "does not reflect the requirements of the Regulations. DAFM has not contested that the information sought is not DAFM's information." He further contended that "the fact that DAFM has the power to access the information that they have required the licensee to create and maintain in the first instance, through licence conditions, means that the information is held FOR DAFM. The licensee is under no compulsion of their own to create and maintain this information. It is created to enable DAFM to monitor the compliance of the activity with the conditions of the licence."
- The appellant referred to the Department's statement in its internal review decision that "[i]n the event of unforeseen circumstances necessitating the postponement of a harvesting operation, it is not required to notify the Department of Agriculture, Food and the Marine (DAFM). However, should any operational adjustments be required during the course of the harvesting operations, as long as such adjustments fall within the scope of the license and its associated conditions, it is not necessary to inform DAFM." The appellant stated "[n]otification of the Department is not relevant to this request in the context of the Regulations. The issue is whether the information generated and held by the licensee is generated and held on behalf of DAFM. I contend that it is."
- The appellant noted that his request was not restricted to Coillte licences.
- The appellant stated that the searches carried out have been for information held by the Department. He commented that at no point did the Department address the fact that requested records may be being held by the licensee for the Department.
- The appellant referred to the Department's statement in its internal review decision that "DAFM do not require the retention of these documents just that they are made available to the inspector on the day of inspection." The appellant contended that the Department is at liberty to inspect or make copies of the documents. The requested information does not have to be held by DAFM to be releasable under AIE; it can be held FOR DAFM. DAFM can source the information and assess it for release it under AIE."
- The appellant submitted that "In failing to request the information from the licensee/s DAFM has failed to take all reasonable steps to identify the requested information." As a consequence the request has not been conducted in conformance with the Regulations.



18. I have summarised below the appellant's submissions to this Office regarding Request 4:

- The appellant submitted that the information is required by the Department to ensure that the licensee is in compliance with licence conditions in order that the Department can carry out its enforcement role and ensure that forestry works do not impact the protection of the environment. He contended that the fact that the Department has the power to access the information that they have required the licensee to create and maintain in the first instance, through the licence conditions, means that the information is held for the Department and falls within the scope of his request.
- The appellant referred to the Department's comment in its internal review decision that Coillte personnel were consulted and contended that it is for the Department determine whether the records are created and held for the Department, not for Coillte to determine ownership. He stated that the Department is the competent authority for forestry licensing and has a right under the conditions of the licence to access the information and assess it in terms of release under the AIE Regulations. In the remainder of his submission, the appellant included the following points:
  - The Department, as the competent authority for forestry licensing, should not defer to Coillte.
  - The Department is at liberty to inspect or make copies of the documents. The requested information does not have to be held by the Department to be releasable under AIE; it can be held for the Department. The Department can source the information from Coillte and other licensees within the conditions of the licences and assess it for disclosure under AIE.
  - If information is held for the Department, Coillte has no power to prevent release.
  - In the case of Coillte holding the information, it is feasible for the same environmental information to be held by or for two public authorities simultaneously. If environmental information is held by or for a public authority, that authority is obliged to consider those records for release even if that information may also be held by another authority.
  - The request was not restricted to Coillte licences. Therefore, the searches conducted by the Department do not represent the complete scope of the request.
  - The decision cannot apply to private licence owners as they are not public authorities. The Department is required to make a determination on whether information is held for the Department as there is no other mechanism for me to access the information.
  - The information sought cannot be solely for the licensee's own records. The licensee is under no compulsion of their own to create and maintain this information, it is required by the Department. The information is created and maintained to enable the Department to monitor the compliance of the activity with the conditions of the licence.
  - In failing to request the information from the licensee/s the Department failed to take all reasonable steps to identify the requested information and consider it for release.
  - From the manner in which the Department has addressed this and similar requests it does not want to consider taking responsibility for this information. This is not consistent with the Department's role in terms of licence enforcement and overall monitoring of compliance with European Law.
  - It would make more sense if the conditions of felling licences were to require monitoring records to be submitted to the Minister on completion of any stage of the execution of the licence. The Department would then be in a position to monitor compliance more broadly rather than just selectively.



19. During the course of this review, the Investigator wrote to the appellant regarding this Office's approach to information "held by or for" public authorities, in this case, the Department (discussed in further detail in the Analysis and Findings section below). She indicated her view that any relevant monitoring information in the possession of licensees is not held for the Department within the meaning of article 3(1) of the AIE Regulations and therefore, the Department was not required to ask the licensees to carry out searches for that information and its decision was justified under article 7(5) of the AIE Regulations. She offered the appellant a final opportunity to comment on the matters.
20. In response, the appellant made the following contentions to this Office:
- The appellant stated that if the Department has the power to get the information then it is sufficient for it to be "held for the Department" when the Department is a licensing authority and has required the information to be produced as a condition of a licence.
  - The appellant stated that only if the licensees do not have the information would a refusal under article 7(5) of the AIE Regulations apply.
  - The appellant stated that the decision of this Office in [OCE-93469-W3X0R6](#), that was upheld in in [Bord na Móna PLC v Commissioner for Environmental Information \[2023\] IEHC 57](#) contained the following statement "Fourth, while I accept that the board of BnM Biomass may, in accordance with section 32(1) of the 1998 Act and regulation 49.1 of its constitution, refuse consent to disclosure of information to persons outside BnM Biomass, I do not consider that it could realistically refuse consent to disclosure of information to BnM plc. As set out above, BnM plc has an express power under section 37(5) of the 1998 Act to direct BnM Biomass as to the performance of its functions. That power is not subject to any limitation. BnM plc could, if it wished to do so, exercise that power to require BnM Biomass to take steps in relation to information that it holds, including requiring it to provide BnM plc with information for BnM plc's own purposes." (the appellant's emphasis)
  - The appellant submitted that within each licence there is no limitation on the power of the Minister in terms of exercising his power to acquire the requested information.
  - The appellant commented that it is absurd and completely contrary to the principle of the Aarhus Convention that monitoring data held by a licensee cannot be copied for the purpose of AIE when there is an express term in the licence that allows the public authority to inspect a copy and the Minister has the power to take a copy of any such information or compel the licensee to submit it to the Minister under Section 24 (1) of the Forestry Act.
  - The appellant submitted that if the Minister had previously requested the information and was in possession of the information (i.e that he actually holds the information), he would not require the permission of the licensee to disclose that information to him.

### **Analysis and Findings**

21. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request.



22. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned. In cases where a public authority has effectively refused a request under article 7(5), this Office must be satisfied that adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply. It is not normally this Office's function to search for environmental information.
23. Article 7(5) of the AIE Regulations refers to information "held by or for" a public authority. In light of a query raised by the appellant, I wish to clarify that instances can arise where the same information is held simultaneously by two public authorities, being held by one public authority and held for that public authority by another public authority.
24. Article 3(1) provides that environmental information held for a public authority "means environmental information that is physically held by a natural or legal person on behalf of that authority." For clarity, any references I make in this decision to information "in the possession of" should be taken as meaning "physically held by".
25. Both the Aarhus Guide and the preparatory documents for the AIE Directive, available at [here](#), provide assistance in interpreting the term "on behalf of". The Aarhus Guide states: "[i]n practice, for their own convenience, public authorities do not always keep physical possession of information that they are entitled to have under their national law. For example, records that the authority has the right to hold may be left on the premises of a regulated facility. This information can be said to be "effectively" held by the public authority."
26. Similarly, the European Commission's First Proposal for the AIE Directive defined information held for a public authority as meaning "environmental information which is held by a legal or natural person on behalf of a public authority under arrangements made between that authority and that person". The Proposal explained:

"In many cases, experience shows that environmental information which public authorities are entitled to hold on their own account is kept physically on their behalf by other entities. Access to such information may be requested by the public. Public authorities should not be entitled to refuse access to this information simply on grounds that it is not physically in their possession. The proposal ensures that, if such information exists and is kept for the public authority concerned under arrangements with another person or body, it should be made available by the public authority in the normal way."
27. The proposal was later amended by the European Council to its current wording. The European Council explained that "information held" means "physically held" and deleted the First Proposal's limitative requirement for an arrangement between the holder and an authority. The European Commission noted that by the European Council's amendments the definition was simplified, but the "underlying principle of the definition in the Commission proposal is however ensured".
28. These sources indicate that the purpose of the provision is to ensure that public authorities cannot avoid their obligations under the AIE Directive by simply outsourcing the storage of that information to a third party.



29. There have been a number of decisions of the Commissioner in recent years on the question of whether information is “held for” a public authority, including the cases of [OCE-93477-D5V8B6](#) and [OCE-97484-R5V6V1](#). While I am not bound by previous decisions of the Commissioner, these decisions provide helpful guidance as to how this issue should be considered.
30. In summary, the Commissioner must have regard to the overall factual position in a particular case and come to a conclusion as to whether or not the requested information is “physically held on behalf of” the public authority, taking into account the interpretative assistance provided by the preparatory documents to the AIE Directive. Where there is any doubt, the Commissioner must give an expansive meaning to the term “physically held on behalf of” a public authority, given the duty under article 10(2) of the AIE Regulations and article 4(2) of the AIE Directive to interpret grounds for refusal in a restrictive way.
31. The High Court decision in [Bord na Móna PLC v Commissioner for Environmental Information \[2023\] IEHC 57](#) clarifies that the factual background to the case must be considered by the Commissioner when determining whether the public authority may be said to have control or ownership over the relevant environmental information held by a third party. This consideration may further include examining the nature of relationship between the public authority and the third party. Finally, the Court concluded that the AIE Regulations and AIE Directive require a broad interpretation of the phrase “on behalf of” to be employed when considering if information is held for a public authority. On that basis, the Court found that a legal person may be said to hold information both for their own purposes whilst concurrently holding the information on behalf of a public authority.
32. The Commissioner has also considered a number of cases dealing with the question of whether requested information is “held for” a public authority by a third party in circumstances where it is alleged that the information relates to that third party’s compliance with, e.g., regulatory obligations or planning permission conditions. Examples of such cases include [OCE-97484-R5V6V1](#), [CEI/16/0035](#), and [CEI/13/0001](#).
33. These decisions provide that although a public authority may have a right or power to compel a third party to provide it with information in particular circumstances, this does not necessarily mean that the third party holds the information on behalf of that public authority. The question as to whether information is “held for” a public authority thus depends in part on the degree of control that the public authority holds over the information in question. It is therefore necessary for the Commissioner to examine the factual background to each case and the basis upon which the requested information is created or held before coming to any conclusions on this point.
34. Here, the question at issue is whether any relevant monitoring information that may be in possession of forestry licensees is held for the Department for the purposes of the AIE Regulations. The Forestry Act 2014 confers powers on the Minister for Agriculture, Food, and the Marine to grant and enforce forestry licences. The Forestry Act 2014 is the primary legal basis for issuing forestry licences, detailed further by other specific regulations e.g. the Forestry Regulations 2017 and the European Communities (Forest Consent and Assessment) Regulations 2010. Given the appellant’s reference to this Office’s decision in [OCE-93469-W3XOR6](#), I wish to highlight that the factual background in that case was distinctly different, involving BnM plc and its subsidiary BnM Biomass. There is a significantly different legal relationship between a company and a subsidiary as compared to a licensor/licensee relationship.



35. In his submissions to this Office, the appellant referred to conditions in licences granted which provide, for example, that “records of such monitoring and of any resulting operational adjustments and postponements must be kept for possible inspection”. It is the appellant’s position that conditions in licences granted require licensees to create and maintain monitoring records, which would not occur if there were no such conditions and which must be available for the Department for inspection (i.e. the Department has a right of access) in order to ensure that the Department can assess compliance with the licences and carry out its enforcement role. The appellant submitted that Coillte indicated that information such as that sought exists, however is maintained for its own records and not held for the Department, which he disputes. I am satisfied that it is the appellant’s view that the monitoring information sought in the possession of the licensees, is held on behalf of / for the Department.
36. In addition to licence conditions which require, for example, that monitoring information be “be kept for possible inspection”, I note that the Forestry Act 2014 at Part 6 (Enforcement), section 24 (Powers of authorised officers) provides that authorised officers have various powers for the purposes of the relevant statutory provisions provided for under that Act, including:
- “(b) while on the lands or at the place referred to in *paragraph (a)*, may inquire into, search, examine and inspect—(i) any tree and anything relating to trees, including plants, soil, compost or seeds, (ii) any timber or timber products, (iii) any activity, installation, process, procedure or matter at that place, (iv) any records relating to any of the foregoing matters;
- ...(f) inspect and take copies of or extracts from any such records or any electronic information system at that place, including in the case of information in a non- legible form, copies of or extracts from such information in a permanent legible form or require that such copies be provided;
- ...(g) remove from that place and retain such records (including documents stored in a non-legible form) and copies taken and detain the records for such period as the authorised officer reasonably considers to be necessary for further examination or until the conclusion of any legal proceedings;”
37. Having regard to the appellant’s latest contentions to this Office, I accept that if it were the case that the information sought was in the possession of the Department, then it would be for the Department to process that information in accordance with the AIE Regulations, assessing whether any of the exemption provisions properly applied. However, while I note his comments that “if the [Department] has the power to get the information, then I contend that this is sufficient for it to be “held for” the Department, when the Department is a licensing authority and has required the information to be produced as a condition of a licence” and that “[i]t is absurd and completely contrary to the principle of the Aarhus Convention that monitoring data held by a licensee cannot be copied for the purpose of AIE when there is an express term in the licence that allows the public authority to inspect a copy and the Minister has the power to take a copy of any such information or compel the licensee to submit it to the Minister under Section 24 (1) of the Forestry Act)”, I do not agree.
38. In my view, while the Department requires, through licence conditions, the creation of and is able to inspect monitoring information, can take copies of / retain that information, and requires that information for the purposes of undertaking its enforcement role, I do not consider the information that is in the possession of the licensees is physically held by the licensees on behalf of the Department.



39. Instead, the Department's ability to access the information arises from its function as the forest licensing authority. The Minister or authorised officers of the Department are entitled to access the information for the purpose of assessing compliance with the licence conditions / carrying out enforcement functions under the relevant forestry legislation. Outside of this role, the Department has no role in managing or overseeing this information. It would be open to the licensee to choose not to create the relevant monitoring information and keep it for possible inspection as necessary, albeit this would be in contravention of licence conditions. If that was the case, action could be taken by the Department under the relevant forestry legislation. Therefore, while the Department can access the monitoring information sought for the purpose of its forestry licensing functions, that does not, in my view, equate to there being no limitation on the Minister's power to acquire the requested information, as suggested by the appellant, or equate to the information being held for the Department, within the meaning of article 3(1). While the Aarhus Guide, mentioned above, refers to information that may be "left on the premises of a regulated facility", I am not convinced that this refers to the relationship between a regulatory body and an entity under its remit. As set out above, the ability of the Department to access monitoring information in its role as forestry licensing authority is set out in legislation, and is not the equivalent of information simply being left on the premises of another body. As well as this, I note that the Aarhus Guide is an aid to interpretation and I am not bound by its contents.
40. Finally, I also note the appellant's contention that had the Minister had previously requested the information and was in possession of the information (i.e that he actually holds the information), he would not require the permission of the licensee to disclose that information to him. While the Department might not require the permission of the licensee to disclose information relevant to an AIE request, the Department might be required to consider the interest of the licensee when considering whether exemptions under the AIE Regulations apply to the information sought, depending of the particular factual circumstances. This may extend to seeking the views of the licensee on the disclosure of the information, again depending of the nature of the information at issue.
41. In all the circumstances, I am satisfied that any relevant monitoring information in the possession of licensees is not held for the Department within the meaning of article 3(1) of the AIE Regulations. I find therefore that the Department was not required to ask the licensees to carry out searches for that information and was justified in refusing access to that information under article 7(5).
42. For the sake of completeness, I wish to note that article 7(6) of the AIE Regulations provides that "[w]here sub-article (5) applies and the public authority concerned is aware that the information requested is held by another public authority, it shall as soon as possible— (a) transfer the request to the other public authority and inform the applicant accordingly, or (b) inform the applicant of the public authority to whom it believes the request should be directed". I acknowledge that in processing two of the requests and applying article 7(5) of the AIE Regulations, the Department referred to article 7(6)(b) and informed the appellant to direct his request to Coillte. In all cases where the Department is relying on article 7(5) of the AIE Regulations, it should that ensure it has appropriate regard to article 7(6) of the AIE Regulations.



### **Decision**

43. Having carried out a review under article 12(5) of the AIE Regulations, I hereby affirm the Department's decisions to refuse access to any relevant monitoring information that may be in the possession of licensees under article 7(5) of the AIE Regulations on the basis that the information is not held for it.

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

44. 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**  
22 October 2024