

23 December 2024

Right to Know CLG  
25 Herbert Place  
Dublin 2

By email only: [requests@righttoknow.ie](mailto:requests@righttoknow.ie)

### Re: AIE Request COSEC00468

Dear Sir/Madam,

I refer to the above-mentioned request which you made under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (S.I. No. 133 of 2007, S.I. No. 662 of 2011, S.I. 615 of 2014 and S.I. No. 309 of 2018) (hereafter referred to as the AIE Regulations) for access to the following information on afforestation on the Bord na Móna landbank:

- 1) shp file of afforested lands on Bord na Móna [landbank];
- 2) any ecology reports on afforestation lands on Bord na Móna [landbank];
- 3) list of Bord na Móna lands leased for forestry, indicating where the lease is to state forestry or private forestry company.

### Original Decision

By decision dated 25<sup>th</sup> November 2024, the decision maker, Ms. Ciara O'Loughlin, informed you that a single record was identified in respect of Category 1) of your request, to which you were granted access in full. In respect of Category 2), 4 records exist. You were granted partial access to Record 1) with redaction of out of scope information. Records 2) – 4) are publicly available and you were provided with the relevant links to access same. In relation to Category 3), a single record was identified, to which you were granted partial access, with redaction of commercially confidential information regarding rent agreed and areas of lands leased, in accordance with Article 9(1)(c) of the AIE Regulations.

### Internal Review

By email dated 26<sup>th</sup> November 2024, you sought an internal review referencing the “*extensive and unexplained redactions*”, which presumably relates to record 1) of Category 2) and also the redaction of the areas leased in record 1) of Category 3).

### Category 2) Record 1

With regard to record 1) of Category 2), BnM Coillte Native Woodlands Establishment Report 26042019 Final, this is not an “*ecology report on afforestation lands on Bord na*

*Móna* [landbank]", as was requested. Rather, it is a feasibility study in relation to a proposed joint initiative between Coillte and Bord na Móna with a view to increasing native forest cover on cutover peatlands at a national level. Therefore, this report contains a substantial amount of material which could not be deemed an ecological report and as such is outside the scope of your request. Rather than refuse your request, notwithstanding that the report in question is not an ecology report, the original decision maker decided to grant you partial access to this record, with redaction of non-ecological material.

I am in agreement with this approach, which is in line with Article 10(5) of the AIE Regulations which requires public authorities not to refuse access to all the information requested where there are grounds (in Articles 8 and 9) for refusing only part of the information sought and where it is possible to separate information which cannot be disclosed from that which can.

### **Category 3) Record 1**

The original decision maker redacted information regarding rent agreed and areas of lands leased on the basis of commercial confidentiality in accordance with Article 9(1)(c) of the AIE Regulations. Within your email of 26<sup>th</sup> November 2024, you accepted the commercial sensitivity of the rent agreed. Therefore, the only matter for review involves the size of the area leased.

I am in agreement with the original decision maker that the size of the area leased as well as the rent agreed, is commercially confidential. Knowledge of the areas in hectares of specific bogs Bord na Móna Energy Limited (and/or related entities) have leased to Coillte, would provide third parties with an indication of the size of lands and the general locations in which Bord na Móna would potentially be willing to grant leases over its lands, which information could be used by such parties to strengthen their position during any future lease negotiations. Additionally, disclosure of information regarding the areas in hectares leased of the various bogs could potentially enable the rent per hectare to be calculated, if the total sum and/or sums paid in respect of each individual bog in rent to Bord na Móna Energy Limited by Coillte for a particular year, became known.

As was pointed out by the original decision maker, information which would enable third parties to calculate the sums Bord na Móna Energy Limited (and/or related entities) have agreed to accept in respect of lands leased could negatively affect Bord na Móna Energy Limited's bargaining position with regard to future leases of lands with third parties, driving down the rent such parties are prepared to pay for the lease of Bord na Móna lands, to the ultimate commercial detriment of Bord na Móna Energy Limited (and/or related entities).

The confidentiality of commercially sensitive information is recognised in Regulation 49.1 of the Constitution of Bord na Móna Energy Limited, which provides that, "*Every Director, Chairperson, chief officer, auditor, trustee, member of a committee, officer, servant, agent, accountant, or other person engaged in the business of the Company, shall keep strictly*

*secret and confidential, and shall not disclose to any person save as may be authorised by the Board, or by some person duly authorised by the Board, or use otherwise than solely for the benefit of the Company in the course of his duties, or as may be required by law, any confidential information or any books, documents or records relating to the business, affairs and accounts of the Company and its dealing with customers, suppliers and others.”*

In addition, Section 32(1) of the Turf Development Act 1998 places the protection of confidentiality in respect of Bord na Móna plc. and its subsidiaries, including Bord na Móna Energy Limited, on a statutory footing. This provides that, “A person shall not disclose confidential information obtained by him or her in his or her capacity as, or while performing duties as, a director or director of a subsidiary or member of the staff of, or an adviser or consultant to, the Company or a subsidiary unless he or she is duly authorised or required by law to do so.”

Of note confidential within the context of Section 32 of the 1998 Act is defined as “that which is expressed by the Company or the subsidiary concerned, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description”. Therefore, it is clearly left to the absolute discretion of Bord na Móna plc. and its subsidiaries what information they consider to be confidential.

### **Public Interest**

In accordance with Articles 10(3) and (4) of the AIE Regulations, I have considered the public interest served by disclosure of Category 3) Record 1 against that served by refusal. I agree with the original decision maker that the interests in favour of disclosure include the public interest in members of the public being able to exercise their rights of access to environmental information under the AIE Regulations, making environmental information publicly available and of members of the public being able to understand the usage of lands owned by a public authority.

As was pointed out by the original decision maker, there is a public interest in ensuring that semi-state public bodies, which have a mandate to operate on a commercial basis and generate profit and if they do, to pay dividends to the Exchequer, are not unduly hindered in the conduct of such commercial operations by reason of the disclosure of commercially confidential information. The Oireachtas recognised the importance of ensuring confidentiality of information of Bord na Móna plc. and its subsidiaries, by virtue of Section 32 of the Turf Development Act 1998.

In weighing up the competing public interests, I am of the view that the public interest is best served by partial release to you of Category 3) Record 1, with redaction of commercially confidential information, being information in relation to rent agreed and areas of lands leased to Coillte for forestry.

Therefore, I am upholding the original decision maker’s decision to redact information not only in relation to the rent agreed but also the areas in hectares that are leased.

## **Right of Appeal**

In accordance with Article 12(3) of the AIE Regulations you may appeal this decision to the Commissioner for Environmental Information. If you wish to appeal, you must do so, within one month of receipt of this notification, to:

The Office of the Commissioner for Environmental Information,  
6 Earlsfort Terrace, Dublin 2, D02 W773.

Phone: +353-1-639 5689

Email: [info@ocei.ie](mailto:info@ocei.ie)

It is also possible to appeal online, see the website of the Commissioner for further details <https://www.ocei.ie/>.

The fee for such an appeal is €50 or €15 if you are the holder of a medical card or the dependent of the holder of a medical card.

## **Contact Details**

You can contact me at [Sonya.Mallon@bnm.ie](mailto:Sonya.Mallon@bnm.ie) if I can assist you in any matter relating to your request.

Yours sincerely,



Sonya Mallon

Company Secretary & General Counsel