

13 November 2024

Right to Know CLG
25 Herbert Place
Dublin 2

By email only: requests@righttoknow.ie

Re: AIE Request COSEC00375

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) and to previous correspondence in this matter, resting with yours of 11th October 2024.

Your initial request dated 30th June 2022 sought access to the following information held by or for Bord na Móna plc:

A list/database/or spreadsheet of all payments (or purchase orders) of over €20,000 for the period 2019, 2020, 2021, 2022, ideally the data to include the following:

- Date: As an actual PO date (e.g., 2020-12-04), also referencing the relevant year and quarter
- Name of Supplier(s)
- Description of goods and/or services provided
- PO Amount

By decision dated 23rd August 2022, the decision-maker refused your request on the basis that it did not constitute environmental information in accordance with Article 3(1) of the AIE Regulations. You sought an internal review of this decision and by internal review dated 21st September 2022, the initial decision was affirmed.

You appealed this decision to the Commissioner for Environmental Information and by decision dated 29th July 2024 (Case Ref: OCE-128538-M9C1X7), the Commissioner annulled the decision of Bord na Móna plc. that the information was not environmental information and directed a fresh internal review. In this regard the Commissioner determined that the relevant aspect of the definition of “environmental information” in Article 3(1) of the AIE Regulations was paragraph (c) i.e. any information in written, visual, aural, electronic or any other material form on “*measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs*

(a) and (b) as well as measures or activities designed to protect those elements.” The Commissioner identified the measure/activity involved as the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment.

Subsequent to the Commissioner’s decision, a preliminary review was carried out of the relevant spreadsheet, to remove any data that is not related to the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment, in accordance with the Commissioner’s decision.

The spreadsheet of purchase orders over €20,000 contains a total of 3,200 data fields. Following preliminary review, 988 fields were deemed not to relate to the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment, leaving 2,212 data fields which may constitute environmental information. (Please note these figures were incorrectly stated as 3201, 989 and 2,213 respectively in my letter dated 4th October 2024, as I failed to take account of the column headers in the first row of the spreadsheet).

The 2,212 data fields which may constitute environmental information relate to in excess of 500 distinct vendors, across a range of categories, which I outlined in my letter of 4th October 2024. Within that letter, I informed you that the preliminary review process had taken in excess of 3 full working days or 22.5 working hours. I estimated that the process of answering your request would take an additional 157 hours/ almost 21 days/over 4 full working weeks between reviewing each data field to consider whether it constitutes information “on” the measure/activity, a review of individual contractual arrangements with each of the remaining vendors, application of exemptions to the remaining data fields and the application of the public interest test.

In light of the estimated time it would take to answer your request and the consequent burden this would place on Bord na Móna plc, I asked you in my letter of 4th October 2024 to consider narrowing your request, perhaps by reference to the specific categories of information I identified in that letter and/or reducing the timeframe of the request, which I noted spanned a period of some 3.5 years. I offered my assistance in this regard and in the absence of such limitation, warned you that consideration may have to be given as to whether the request was manifestly unreasonable, having regard to the volume or range of information sought, in accordance with Article 9(2)(a) of the AIE Regulations.

By emailed response dated 7th October 2024, you asserted that there was no need for you to restrict the scope of the request, as there was a requirement for all public authorities to disclose purchase orders over €20,000 and therefore Bord na Móna plc. did not need to review the records. By letter in reply dated 11th October 2024, I pointed out that there was no requirement for commercial semi-state entities, such as Bord na Móna plc, to publish purchase orders over €20,000, such a requirement only applying to Government Departments or Agencies under Paragraph 9.4 of the Public Service Reform Plan 2011. As the request was made under the AIE Regulations, it must be considered on that basis.

In accordance with Article 7(1), a public authority is only required to make available to the applicant any environmental information the subject of the request held by or for it

Once again I asked you to consider narrowing your request and repeated my offer of assistance in this regard. By email dated 11th October 2024, you confirmed that you did not wish to narrow the scope of the request.

Decision

Article 9(2)(a) of the AIE Regulations allows a public authority to refuse to make environmental information available where the request is manifestly unreasonable, having regard to the volume or range of information sought.

In T-2/03 *Verein fur Konsumenteninformation v. Commission of the European Communities*, the CJEU recognised the right of an institution to “*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*” (paragraph 102).

The estimated time to answer your request is in excess of 4 weeks. Such a prolonged period of time dealing with a single request will cause a significant and unreasonable interference with my duties as Company Secretary & General Counsel. Within this role, I am a member of the senior leadership team of Bord na Móna plc. and provide comprehensive legal and administrative support and guidance to the Board on matters of strategic importance, regulation and governance. I am also responsible for ensuring Bord na Móna plc. complies with all relevant statutory and regulatory requirements. I play a pivotal role in the governance of Bord na Móna plc. and my diversion from the key duties of my role for a prolonged period to focus exclusively on answering a single AIE request would have a significant adverse effect on Bord na Móna plc, would involve it in disproportionate effort and would obstruct or significantly interfere with the normal course of its activities, particularly in the area of corporate governance.

I am of the view that the administrative burden entailed in dealing with your request is a particularly onerous one and am therefore of the view that the request is manifestly unreasonable having regard to the volume of information sought, pursuant to Article 9(2)(a).

It should be noted that this is not a situation as envisaged by Article 10(5) of the AIE Regulations where environmental information which, although held with information to which Article 8 or 9 relates, may be separated from such information. All of the information is contained within a single spreadsheet and each data field needs to be reviewed in order to determine whether it is information “on” the measure in question and whether any of the grounds for exemption under Articles 8 or 9 apply.

Public Interest

In accordance with Articles 10(3) and (4) of the AIE Regulations, I have considered the public interest served by disclosure against that served by refusal. In favour of disclosure is 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 informed as to spending by public authorities over a certain level on matters arising out of their operations which have an environmental impact.

Answering a request under the AIE Regulations of necessity places an administrative burden on public authorities, which administrative burden is generally outweighed by the public interest in disclosing the environmental information. However, the Regulations through Article 9(2)(a) recognise that there is a limit as to the administrative burden that ought to be placed on public authorities in answering a request and allows a public authority to refuse a request where it is manifestly unreasonable having regard to the volume or range of information sought.

Clearly, there is a public interest in ensuring the proper administration of public authorities and ensuring that the administrative burden placed on public authorities is not unduly onerous or is such as could negatively affect their day-to-day administration or operations. Further, when the decision-maker in this case is as I am, the Company Secretary & General Counsel, there is also a public interest that I am not unduly diverted from my key duties on matters of strategic importance, regulation and governance within Bord na Móna plc, which duties serve to ensure its good corporate governance.

In addition, a factor to also be taken into account in the public interest, is that efforts were made by Bord na Móna plc. to try to reduce the administrative burden entailed in answering your request by seeking for it to be narrowed either temporally or by reference to the categories of information held, which request was refused without reason.

Therefore, when balancing the competing public interests served by disclosure and refusal, I am of the view that the public interest in favour of refusal outweighs that in favour of disclosure.

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

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 if I can assist you in any matter relating to your request.

Yours sincerely,



Sonya Mallon
Company Secretary & General Counsel