



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-139328-M4W5V4

**Date of decision:** 14 November 2024

**Appellant:** Right To Know CLG

**Public Authority:** Department of Housing, Local Government and Heritage [“the Department”]

**Issue:** Whether the Department was justified in withholding information under article 8(a)(ii) of the AIE Regulations

**Summary of Commissioner's Decision:** The Commissioner found that the Department was not justified in withholding information under article 8(a)(ii) 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. On 11 April 2023, the appellant requested the following information from the Department:

*“Under the AIE Regs to request the following for the DAAAB (Designated Areas Appeals Advisory Board.)*

- 1. List of DAAAB members*
- 2. Agenda and minutes for the years 2017 to 2023 (to date)*
- 3. Reports to the Minister for the same period*
- 4. Details of the number of appeals heard by the Board and the outcome of each appeal from 2017 to 2023 (to date), to include details of the area that was subject to appeal”*

2. The Department issued its original decision on 10 May 2023. It said:

*“In regard to Point 1. The record does not exist but as discussed I had offered to create the record and provide it to you outside of AIE. ....*

*• In regard to Point 2 and 3 I have identified 145 records. I have made the decision to refuse access to these records in accordance with articles 8(a)(ii) of the AIE Regulations.*

*• In regard to Point 4, the record does not exist but as discussed, I had offered to create a summary table of the number of appeals by year, the outcome of the appeal, the designated site.*

*Following discussion between the AIE Unit of this Department and you, the requester, you had indicated you were not willing to refine or amend the request to information offered in regard to Point 1 & 4. As such, I must now refuse your full request having regard to the following provisions of article 8(a)(ii) of the AIE Regulations.*

*Article 8(a)(ii) This article provides that a public authority shall not make available environmental information in accordance with article 7 where disclosure of the information would adversely affect the interests of any person who, voluntarily and without being under, or capable of being put under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information.*

### *Public Interest*

*In line with Article 10(3), my deliberations in regard to Article 8(a)(i) and Article 8(a)(ii) have included weighing the public interest served by disclosure against the interest served by refusal.*



*I consider the following public interest factors favouring the release of the records are relevant:*

- *Accountability and objectivity in the decision-making processes*
- *The public interest in members of the public exercising their rights under the AIE Regulations.*

*I consider the following public interest factors favouring the withholding of the records are relevant:*

- *Protecting the right to privacy of members of the public*
- *Ensuring a public body is able to perform their functions effectively*
- *Safeguarding the flow of information to a public body*

*I consider that the public interest in preserving the privacy of the third parties involved outweighs the public interest that would be served were the records to be released to you. I wish to note, all relevant documents pertaining to point 2 and 3 are almost entirely composed of personal information supplied by appellants and their ecologists to the Department as part of their appeal. Releasing these records would enable the appellants to be easily identified, as well as including details of their land and other personal information contained within the reports.*

*Redaction of this information would take considerable time and the degree of redaction would render the reports incoherent. I have included a sample of one appeal with the relevant personal information redacted to demonstrate, the degree of redaction. Personal information belonging to over 70 people is contained within the requested documents. The majority of these 3rd parties are only contactable by post. The time required to contact the 3rd parties and receive responses would be substantial and outside the time afforded under AIE provisions, including extensions. Based on previous correspondence with the 3rd parties, it can take several months to receive replies, if at all. Finally I also wish to note that the personal information contained in the records is not required in order to interpret the boundary of the sites involved.*

#### *Schedule of records*

*I have attached a schedule of records with this letter. This lists the records that I consider relevant to your request. It provides a brief description of each record and the decision I have made on each record. Where I have decided to refuse or partially refuse access to a record, it specifies the Article of the AIE Regulations under which this refusal has been made. For these records, it also records how I have applied the public interest test pursuant to Article 10(3) and 10(4)."*

3. On 11 May 2023, the appellant responded to the Department, requesting an internal review stating: *"Please pass for Internal Review. As discussed, if 1 & 4 are available outside AIE process, then they can be excluded from the Internal Review. I would note, that in 2 & 3, I have not seen this level of redaction before. In similar cases, the only element that would*



*be redacted is the personal name of the applicants, and I would be interested in the rationale for redacting elements like cSAC maps, site photos, and NPWS biodiversity reporting (all of which would be available in similar AIEs). I attach an ALAB appeal record by way of example, as ALAB is a good benchmark for DAAAB disclosure*

*<https://alab.ie/media/alab/AP1-2023%20Cleggan%20Bay,%20Co.%20Galway%20redacted.pdf>*

4. The internal review was issued by the Department to the appellant on 8 June 2023.

*“As you will be aware from the acknowledgement of your request for an internal review, I was assigned to review your request. I made a decision on this review on 8 June 2023. As part of my review, I have examined each of the records relevant to this request, including those records to which you were granted partial access as samples. Having done so, I must affirm the decision of the original decision maker to refuse access to the information requested under Article(s) 8(a)(ii) of the AIE Regulations.*

#### *Schedule of records*

*I have attached a schedule of records with this letter. This lists the records that I consider relevant to your request and provides a brief description of each record and my decision on each record. Please note that during the course of the internal review, an administrative error in the schedule that formed part of the original decision was noticed; the date for record 19 should be 20/08/2021 and 01/09/2021. This error has been rectified in the schedule associated with the internal review.*

#### *Emissions*

*In reaching the above decision and where information has been refused under Article 8 and/or 9(1)(c), I have in accordance with Article 10(1), examined whether your request relates to information on emissions into the environment and have determined that it does not.*

#### *Public interest test*

*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. I have determined that the public interest would not be served by disclosing the information you request. The level of personal information contained in the relevant records, information which was provided in good faith on the expectation of confidentiality, is significant. In considering the public interest of releasing this information, I have concluded that such an approach would hinder the future workings of the Designated Areas Appeals Advisory Board and potentially undermine its role”*



5. The appellant appealed to my Office on 9 June 2023.
6. 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 Department of Housing, Local Government and Heritage. 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. 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 Department to make available environmental information to the appellant.
9. The appellant has clarified that he has received from the Department items 1 and 4 of his request – therefore I consider this part of his request outside of the scope of this appeal. The Department has identified 145 records in relation to parts 2 and 3 of his request.
10. The Department has refused access to all 145 records identified, on the basis of article 8(a)(ii) of the AIE Regulations. My review is therefore concerned with whether the Department was justified in its refusal of the information sought.

### **Submissions**

11. The following submission was made by the appellant on appeal to this Office:

*"This committee acts in a quasi judicial role, making determinations on land designations.*

*All the hearings are in secret, only the parties to the hearings know they are on, and have access to the documents*



*Unlike any comparative body (ALAB <https://alab.ie/>) or ABP there is no DAAAB website and no records are made available on NPWS or [gov.ie](http://gov.ie)*

*Decision maker has redacted records here that in two years of submitting AIEs, I have never seen such a 'redact everything' approach on a topic that is clearly public interest (the designation of SACs)*

*RTK understand that each hearing has minutes, maps (even basic OSI maps were redacted), site photos, a report funded by NPWS to allow applicant to hire an ecologist to argue against designation, a NPWS on the relevant site biodiversity and associated documentation*

*Dept refusal based on GDPR does not stand up to even a basic level of scrutiny, RTK never ask for personal details. All Dept have to do is redact applicants name/phone/email and release all other environmental records.*

*For me, this refusal underlines that some Dept's require additional training on AIE Regs, and how you cannot just make blanket refusals for 'public policy'.*

12. On 21 July 2023, the Department made its submission to this Office, and included the records at issue. In its submission it gave a detailed account of how the DAAAB process works:

***“Site designation***

*EU Member states are required to designate a variety of habitats and species under the EU Habitats Directive (92/43/EEC) and the EU Birds Directive (2009/147/EC). These Directives have been transposed into Irish law by the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011). SACs and SPAs, jointly referred to as Natura 2000 sites, are designated under these Regulations.*

*Natural Heritage Areas are designated under the Wildlife (Amendment) Act, 2000 (2000, 38)*

***Public notification***

*When a site is proposed for designation, a public notification process takes place. Landowners, known to the Department, are notified directly in writing. Advertisements are placed in National and local newspapers and notices are placed in various public offices.*

***Objections process***

*Any person who feels that their interests may be affected by the designation of the site may lodge an objection. Any objections must be lodged within three months of the date of the notification and must be on scientific grounds.*



*Objections should include a map showing the location of the property/area in question and should be accompanied by a declaration made by the person objecting stating that the person—*

- (a) has or is entitled to an interest in or over the area comprising the site or*
- (b) has or is entitled to an interest in or over an area outside the site whose interest may potentially be affected by the proposal.*

*Objections are a two-stage process with Stage 1 (internal review) conducted by the National Parks & Wildlife Service (NPWS). Stage 2 is available only where an objection is unsuccessful at the internal review stage. The appellant is informed of the outcome of the internal review and is given the option of appealing the outcome to the Designated Areas Appeals Advisory Board. The Board is comprised of an independent chairperson appointed by the Minister and equal representation of interested parties' groups and conservationists. Members representing the interested parties would be selected by and from farming organisations including the IFA and ICMSA. Those representing conservationists would be nominated by the Irish Environmental Network and would be chosen from a range of environmental NGOs. In deciding Stage 2 objections, the Minister is advised by this Board.*

### **Board recommendation**

*In making their recommendation to the Minister, the Board only considers the land that they have seen (if a site visit took place), ecological reports produced by the appellant and the NPWS and corresponding comments and any other relevant information produced by the appellant or their ecologist at the hearing. All of these documents, as well as the Board's recommendation are submitted directly to the Minister for a decision. At this point the recommendation is confidential. Once the Minister makes a decision, the outcome of the appeal, a copy of the recommendation, the Minister's decision and any appropriate map are issued directly to the appellant.*

### **AIE**

*AIE 054-2023, which is the subject of this review, requested the following:*

- 1. List of DAAAB members*
- 2. Agenda and minutes for the years 2017 to 2023 (to date)*
- 3. Reports to the Minister for the same period*
- 4. Details of the number of appeals heard by the Board and the outcome of each appeal from 2017 to 2023 (to date), to include details of the area that was subject to appeal.*

*Please note, items 1 and 4 did not exist in the format requested. They were created and supplied to the requester outside of the AIE process. In relation to item 2, agendas were not produced for the hearings and only the minutes of the meetings form part of this appeal. Item 3 also remains part of this appeal.*

*The Department identified 145 records for items 3 and 4, these documents are listed in the Schedule of Records and are attached in their original form. These records are required in*





*this format to make an informed decision, for release to the public they would need to have the personal information redacted.*

*The Minutes for each Board hearing contain the landowner's name, often the ecologist's name and a detailed discussion of the land under appeal. The reports produced by the appellant's ecologist and the NPWS are often mentioned or quoted in the minutes. It is the Department's view that information relating to a person's land is personal information and so all details of the appellant and their land would be redacted, making the minutes unreadable.*

*The recommendation supplied by the Board to the Minister includes the appellant's report on the land in question, the NPWS report on the same land, any corresponding comments and any documents supplied by the appellant at the site visit or appeal hearing. It is the Department's view that the reports almost entirely contain personal information belonging to the appellant. Releasing these reports would enable the appellants to be easily identified, as well as including details of their land and other personal information. The appellant's report is produced by a third party specifically for the appeal. There is no agreement in place with the third party that the information contained within the report can be shared publicly. The report is only seen by interested parties including the appellant, the relevant scientific staff of the NPWS when the reports are exchanged for comment, the Board and the Minister.*

## **AIE Appeal**

### Hearings

*The requester has stated in their appeal that hearings are held in secret. This is not the case. Hearings are attended by the relevant parties including the appellant, the Board members and relevant experts. The hearings are not open to the public. However, the appellant is welcome to invite any party to the hearing to assist with his defence. The Department is not represented at the hearing. The Department has given the requester the dates of all hearings for the time period requested, the number of appeals dealt with and the outcomes of these appeals.*

### Comparison with other bodies

*The requester has compared the DAAAB to the Aquaculture Licences Appeals Board (ALAB) and An Bord Pleanála (ABP), both of which are statutory bodies. The ALAB determines appeals that the Minister has already decided on. ABP determines appeals under the Planning and Development Act. Both of these bodies decide the outcome of the appeals they are considering. The DAAAB is a non-statutory body. The DAAAB does not decide on the outcome of appeals. It makes a recommendation to the Minister based on information submitted to them. The Minister determines the outcome of the appeal, having been supplied with all the information considered by the DAAAB. The Minister may also consider other documents. The Minister may decide to accept the DAAAB's recommendation in full, in part or decide on another outcome. The Board has no remit to recommend the new designation of lands to the Minister, they are making a recommendation on whether an area which has been designated should remain designated.*

*Both the ALAB and ABP advise appellants from the outset that their information may be made available on their websites or in the public domain. The DAAAB has no agreement*





*from third parties (appellants or ecologists) that their information may be shared outside the appeals process. The Department considers that information relating to a person's land is personal information and so would need to be redacted. Redaction of the personal information from the documents requested would take considerable time and the reports available for release would be incoherent.*

#### Public Interest

*As required under AIE Regulations 10(3), the Department weighed the public interest served by disclosure against the interest served by the refusal.*

*The Department determined that the public interest would not be served by disclosing all of the information requested. It considered the public interest issues that arose in this case and took into account the following factors:*

- *The Public interest in having access to environmental information.*
- *The Public interest in members of the public exercising their rights under the AIE Regulations.*
- *Accountability and objectivity in the decision-making processes*
- *Protecting the right to privacy of members of the public.*
- *Ensuring a public body is able to perform their functions effectively.*
- *Safeguarding the flow of information to a public body.*

*The Department considers that the public interest, in preserving the privacy of the third parties involved, outweighs the public interest that would be served were the records to be released to the requester. The Department considered that the redacting of personal information from the records would render the records unreadable. The Department offered a sample of records with all personal information redacted to show the volume of personal information involved. The public can be supplied with the number of appeals, their outcomes and the sites involved outside of the AIE process which the requester received in this case. The boundary of designated sites, including the change to reflect the outcome of appeals is available to the public, this serves the public interest while also preserving the privacy of the third parties.*

#### Redaction

*The requester has complained that basic OSI maps were redacted. These are not original OSI maps. They have been amended to highlight the appellant's land, making the appellant and their land clearly identifiable. Through maps, photos and description of the land provided in the reports, land ownership could be identified by the public if these documents were to be released. The report supplied by the appellant's ecologist is provided for use by the Board. Permission has not been given by the appellant or the writer of the report to publish this report or use it for any other reason. The NPWS report clearly identifies the land in question, contains maps and often photos of the land and gives a detailed description of the land. Disclosure of this information could facilitate the identification of the appellant.*

#### Personal information



*Personal information for over 70 third parties is contained in the documents requested under this AIE. Having weighed the public interest, in accordance with Article 10(3) and 10(4), served by disclosure of the requested information against the interest served by refusal to disclose the information, it has been determined that the public interest would not be served by disclosing the information.*

*The level of personal information contained in the relevant records, which was provided in good faith on the expectation of confidentiality, is significant. In considering the public interest of releasing this information, it has been concluded that such an approach would hinder the future workings of the Designated Areas Appeals Advisory Board and potentially undermine its role. The DAAAB guidelines relating to disclosure of information is included in Appendix 1 attached."*

## **Analysis and Findings**

### **The records**

13. The Schedule of Records provided by the Department shows that 145 records relevant to the appellant's request have been identified – and that each has been refused on the basis of article 8(a)(ii). The Department has also provided this Office with a copy of the records at issue. Records 1-19 are made up of Minutes of the DAAAB meetings (part 2 of the appellant's request). These records contain various items including as the Department describes, *"the landowner's name, often the ecologist's name and a detailed discussion of the land under appeal. The reports produced by the appellant's ecologist and the NPWS are often mentioned or quoted in the minutes."*
14. Records 20 onwards are made up of various reports sent to the Minister (part 3 of the appellant's request). The Department has described the contents of these records as including: *"the appellant's report on the land in question, the NPWS report on the same land, any corresponding comments and any documents supplied by the appellant at the site visit or appeal hearing."* From a cursory look at records 20-145 I can see they contain amended OSI maps, which the Department says highlights the appellant's land, aerial photographs of land, and descriptions of the land.
15. The Department has also provided this Office with a sample selection of records which it has applied redactions to. It provided redacted versions of 11 of the 145 records. The reason the Department did this was *"to show the volume of personal information involved"*. Some of the records have been redacted in their entirety. It is unclear to what extent the remaining 134 records have been considered by the Department. In any event the Department has been clear in its Schedule of Records that it is refusing access to *all* identified records (rather than part-granting access to them).



Article 8(a)(ii)

16. The original decision and internal review both primarily refer to article 8(a)(ii) as the basis for refusing the information request. The Schedule of Records provided at internal review stage, and in submission to this Office both also clearly state that the Department is relying on article 8(a)(ii) to withhold the records. The Department's submission to this Office quoted above in paragraph 12 does not directly refer to *any* exemption – but it does make many references to “*personal information*”. The original decision is the only document supplied by the Department that refers to article 8(a)(i) – and it does so in one isolated reference “*In line with Article 10(3), my deliberations in regard to **Article 8(a)(i)** and Article 8(a)(ii) have included weighing the public interest served by disclosure against the interest served by refusal.*” (my italics).
17. As article 8(a)(ii), rather than article 8(a)(i), is consistently referred to in the original decision, internal review and Schedule of Records, I have considered whether the Department was justified in applying this exemption and if it did so correctly.
18. *Article 8(a)(ii) provides that “A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information— (a) would adversely affect— (ii) the interests of any person who, voluntarily and without being under, or capable of being put under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information.”*
19. In order to correctly apply article 8(a)(ii) the public authority must, provide an explanation as to why it was satisfied that the person or persons was/were not legally obliged (and could not be legally obliged) to supply the information at issue. The public authority when applying article 8(a)(ii) must also demonstrate that there would be an adverse effect on the interests of the person who volunteered the information, if it is disclosed.
20. For some wider context, I note the Ministerial Guidance for Public Authorities and others on implementation of the Regulations May 2013 when seeking to apply article 8(a)(ii) state the following:  
  
*“This provision is intended to safeguard informal and voluntary communications between public authorities and third parties which are essential to good public administration generally. The prohibition on release of this kind of information only applies where the third party in question has supplied information on a voluntary basis and has not consented to its release. It does not apply where the provider of the information is, or is capable of being put under, a legal obligation to provide the information”.*
21. Based on my review, it would not seem to me at this stage that the information sought relates to “informal and voluntary communications”. However, I also cannot see that the Department in this case engaged in any detailed examination of whether the information



supplied, that it is seeking to withhold, was provided in a voluntary capacity. Rather, the Department's decision was to blanketly apply this provision to withhold all records on the basis that they contained personal data. This is not an appropriate application of the provision. There is no evidence to suggest that any substantive consideration was given to the actual information concerned in each of the 145 records (which is made up of a variety of data including maps, aerial pictures, names and locations) to determine if article 8(a)(ii) of the AIE Regulations properly applies.

22. Article 8(a)(ii) must also be read alongside article 10 of the AIE Regulations. In particular, 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. The Department has attempted to weigh the public interest in disclosing, versus the public interest in withholding, this information, albeit prematurely as for the reasons I have set out above, I do not consider it has satisfied the basis on which article 8(a)(ii) can be engaged in the first instance.
23. Article 10(5) stipulates 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. The Department has not given a satisfactory explanation why it has not made available the information which may be separated from information which article 8 relates. I note the Department has acknowledged that not all the information within the records is covered by the exemption it is seeking to apply. Rather its reasoning was that it would be too time consuming a task for the Department and would make the records unreadable due to the level of redactions involved.
24. For the above reasons I do not consider that the Department has correctly applied article 8 (a)(ii).

#### *Article 8(a)(i) and personal data*

25. While the Department does not seem to be directly relying on article 8(a)(i), the submission from the Department to this Office makes numerous references to "*personal information*" being withheld. The original decision issued to the appellant also makes reference to personal information being the reason the request has been refused. It summarises the Department's decision by stating "*all relevant documents pertaining to point 2 and 3 are almost entirely composed of personal information supplied by appellants and their ecologists to the Department as part of their appeal. Releasing these records would enable the appellants to be easily identified, as well as including details of their land and other personal information contained within the reports.*"



26. If the Department's concern is with personal information contained in the requested information, it should rely on article 8(a)(i) of the AIE regulations, which is the exemption that a public authority would typically rely on when seeking to withhold "*personal information*". The exemption provides that a public authority must show that: the information at issue is personal information relating to a natural person, who has not consented to its disclosure, that the confidentiality of that personal data is provided by law; and that the disclosure of the data at issue would adversely affect that confidentiality. To rely on this exemption, the public authority must demonstrate a clear link between disclosure of the data that has actually been withheld and any adverse effect. The risk of the confidentiality being undermined must be reasonably foreseeable and not purely hypothetical.
27. While some of the information contained within the records at issue may well be personal data relating to a natural person, the Department has sought to blanketly apply the provision (if indeed it did mean to invoke article 8(a)(i)), to justify withholding the information). As I have already outlined, the Department has said the reason for the blanket application is that it would be a time consuming exercise and would render some of the documents meaningless once the redactions were applied. Neither of these points explains or justifies the blanket application of article 8(a)(i). I say this bearing in mind the requirement of article 10(5) to make available information which although held with information to which article 8 relates, may be separated from such information.
28. I would remind the Department that if it does wish to rely on article 8(a)(i) it must satisfy each of the limbs of that article – including identifying a law which protects the confidentiality of the information at issue. The appellant has stated in submission to us that it thinks the Department is trying to rely on the General Data Protection Regulation (GDPR) to withhold the records. The GDPR has not been referenced or identified directly by the Department in relation to the information at issue in this case. If the Department wishes to invoke article 8(a)(i) it might be helpful for it to consult my recent published decisions, OCE-135716-R4G8T1 and OCE-137000-X7Y9N3, which set out the approach a public authority should take to personal data under the AIE Regime.
29. Article 8(a)(i) must also be read alongside article 10 of the AIE Regulations. In particular, 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. If the Department does wish to rely on article 8(a)(i) it must weigh the public interest served by disclosure of the information against the interest served by refusal. This is likely to involve consideration of the particular nature of the information in, and the appellant's assertion that appellant's in other comparable situations have had their names published or have had public hearings. I note the Department's comments that the information was provided with an "expectation of confidentiality". However, the



Department has not provided any evidence that this is the case. The absence of provision for a public hearing or for publication of documents provided to the Department does not automatically, in my view, create an expectation of confidentiality. The Department should also consider whether the release of the information would likely lead to any adverse effects, and weigh any such adverse effect against what would appear to be a high public interest in the information at issue.

30. To conclude, rather than explain in any level of satisfactory detail what information within the records is specifically is being withheld and why, the Department has sought to blanket apply article 8(a)(ii) to withhold the records in their entirety, regardless of its specific nature. It also has referred to the information consisting of personal data which indicates article 8(a)(i) may have been intended to be used.
31. In these circumstances, where the Department has not fully engaged with its obligations under the AIE Regulations and correctly assessed the actual information at issue, I do not believe that it is appropriate for me to direct the release of information at this point. I consider that it is not the best use of this Office's resources to carry out the task of reviewing significant amounts of information where public authorities have neglected to do so at first instance. I consider that the most appropriate course of action to take is to annul the Department's decision and require the Department to provide the appellant with a new internal review decision. The Department should take note of the comments in this decision when carrying out that new internal review process.

### **Decision**

32. Having carried out a review under article 12(5) of the AIE Regulations, I annul the Department's decision. The Department should provide the appellant with a new internal review decision.

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

33. 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.



Coimisinéir um Fhaisnéis Comhshaoil  
Commissioner for Environmental Information

**Julie O'Leary on behalf of the  
Commissioner for Environmental Information  
14 November 2024**