

19th December 2024

Right to Know CLG  
25 Herbert Place  
Dublin 2

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

## Re: AIE Request COSEC00473

Dear Sir/Madam,

I refer to your request 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 records in relation to peat extraction on the Bord na Móna landbank for the timeframe 2023 – 2024 YTD.

For the purposes of this AIE please include records related to the following sites:

- Glenlough Bog
- Kilaun Bog and/or Erin Peat
- Derrycastle Bog
- Codd 2 / Sheridan Bog
- Clynan Bog

By email dated 22<sup>nd</sup> October 2024, you provided clarification that the request relates to third party extraction only, applies to sites regardless of authorisation or rights and applies to the named bogs.

### Decision Maker

By acknowledgement letter dated 22<sup>nd</sup> October 2024, you were advised that Ms. Ciara O'Loughlin, Legal Services Manager, would be the officer handling your request. However, due to annual leave, I have now been appointed in her place to make a decision in respect of your request.

The following records were identified as coming within the scope of your request:

### Schedule of Records

1. 2024.11.06 BnM IPC Overlaps Categorized 20220915\_EMD Oct 2024
2. EPA Meeting Minutes 10.10.23

## **Decision**

### **Record 1)**

Firstly, as a preliminary point you should note that the only bogs of the five you specified in your request, upon which Bord na Móna is aware of peat extraction having taken place in 2023/2024 by third parties, are Derryounce Bog and Codd 2/Sheridan Bog. In such circumstances, only information in respect of these two bogs is within the scope of your request. However, neither Codd 2/Sheridan Bog nor the section of Derryounce Bog upon which such extraction apparently occurred are in the occupation or control of Bord na Móna plc. or any of its subsidiaries.

Record 1) is only partially within the scope of your request, with a considerable amount of information outside of scope. In respect of the information that is within scope with regard to Derryounce Bog and Codd 2/Sheridan Bog, exemptions under Article 8(a)(i) (adverse effect on the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law; Article 8(a)(iii)(adverse effect on the protection of the environment to which that information relates) and Article 9(1)(b)(adverse effect on the course of justice (including criminal inquiries and disciplinary inquiries)), are applicable.

### **Article 8(a)(i)**

Record 1) contains the identities of third parties, which constitute personal information in accordance with GDPR/the Data Protection Act 2018. These individuals have not consented to the disclosure of their identities by Bord na Móna plc. and disclosure is likely to have an adverse effect on the confidentiality of such personal information.

### **Article 8(a)(iii)**

Record 1) also contains confidential information regarding the investigations/actions Bord na Móna is taking on foot of apparent peat extraction in Derryounce and Codd 2/Sheridan Bogs. The record also contains maps which would enable the location of such alleged extraction activities to be identified.

Knowledge of Bord na Móna actions/investigations on foot of apparent peat extraction on these bogs, together with the specific location/(s) of such extraction activities, would be of interest to persons engaged in such activities and/or persons who may be contemplating engaging in such activities. Such knowledge could influence decisions by such persons as to whether or not to cease/ not engage in such activities or to persist/ commence same. In addition, knowledge of specific location/(s) on which peat extraction is apparently taking place could prompt persons seeking to engage in such activities to seek out such locations, with a view to themselves engaging in unauthorised peat extraction activities in the vicinity.

Any peat extraction on boglands, particularly if on an industrial level, has the potential to damage such lands possibly irreparably or to a degree that will require considerable remediation. Therefore, in such circumstances I believe the exemption in Article 8(a)(iii) is

applicable – adverse effect on the protection of the environment to which the information relates.

### **Article 9(1)(b)**

Unauthorised extraction of peat is the subject of current investigations by the EPA and could potentially be the subject of criminal prosecutions and/or civil injunctive proceedings in due course. Further, such unauthorised extraction may in the future be the subject of enforcement action brought by the relevant local authority/(ies).

Disclosure of the information contained within Record 1) may prejudice ongoing investigation/(s) into alleged unauthorised activities and in turn any future criminal prosecution and/or civil proceedings instituted and may hinder the detection and identification of persons engaged in such activities, by alerting such persons to information in the possession of Bord na Móna, which may assist such persons in evading detection. Therefore, I am of the view that disclosure of the information would adversely affect the course of justice in accordance with Article 9(1)(b).

### **Record 2)**

I have decided that you should be granted access to Record 2) in full.

### **Public Interest**

I have considered the public interest in accordance with Articles 10(3) and (4) of the AIE Regulations. The interests in favour of disclosure include the public interest in making environmental information publicly available, in facilitating members of the public in exercising their rights of access under the AIE Regulations and in enabling members of the public to be informed in respect of peat harvesting by third parties on bogs within the State.

However, the public interest in ensuring the right of access to environmental information is not unlimited and the AIE Directive and in turn the AIE Regulations, recognise that there are situations where environmental information should not be disclosed in the public interest. There is a public interest in the protection of personal information and in its disclosure only in accordance with the provisions of the Data Protection Act 2018/GDPR. Further, there is also a public interest in the safeguarding and protection of the environment. Where disclosure of information could potentially lead to an increase in and/or persistence of activities which may be unauthorised and/or unlawful and which have the potential to damage and harm that environment, the public interest against disclosure must outweigh that in favour. Additionally, there is a public interest in ensuring that investigations into apparent unauthorised and/or unlawful activities are not prejudiced or impeded by disclosure of information.

Weighing up the competing public interests, I am of the view that the public interest is best served by refusal of Record 1).

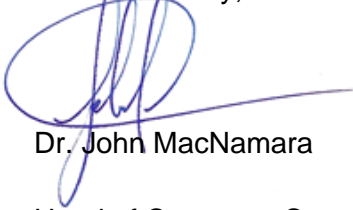
## Right of Review

Under Article 11 of the AIE Regulations you have a right to request an internal review of this decision. An internal review involves a complete reconsideration of the matter by a member of the staff of Bord na Móna plc, unconnected with the original decision, of the same or higher rank than the original decision-maker, who may affirm, vary or annul the original decision.

If you wish to request an internal review, you can do so in writing to [InformationOfficer@bnm.ie](mailto:InformationOfficer@bnm.ie), referring to this decision and quoting the AIE reference number. This request must be made within one month of the date of receipt of this decision. The decision of an internal review will be communicated to you within one month of receipt of your request for an internal review.

You can contact [InformationOfficer@bnm.ie](mailto:InformationOfficer@bnm.ie) if you require any assistance in relation to your request.

Yours sincerely,



Dr. John MacNamara

Head of Corporate Sustainability