

20 January 2025

Right to Know CLG
25 Herbert Place
Dublin 2

By email only: requests@righttoknow.ie

Re: AIE Request COSEC00473

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 held by or for Bord na Móna plc:

- Any 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
- Derryounce Bog
- Codd 2 / Sheridan Bog
- Clynan Bog

By email dated 22nd October 2024, you provided clarification that the request related to third party extraction only, applied to sites regardless of authorisation or rights and applied to the named bogs only.

Original Decision

By decision dated 19th December 2024, the decision maker, Dr. John McNamara, identified two records as coming within the scope of your request as follows:-

- 1) 2024.11.06 BnM IPC Overlaps Categorised 20220915_EMD Oct 2024; and
- 2) EPA Meeting Minutes 10.10.23.

Dr. McNamara also informed you that of the five bogs you specified in your request, Derryounce Bog and Codd 2/Sheridan Bog are the only bogs upon which Bord na Móna is aware of peat extraction having taken place in 2023/2024 by third parties and therefore, only information in respect of those two bogs was 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

Dr. McNamara decided that you should be granted access to record 2) in full but refused access to record 1) on the basis that it contained a considerable amount of information outside the scope of your request and that various exemptions applied, namely Article 8(a)(i) (adverse effect on the confidentiality of personal information); Article 8(a)(iii) (adverse effect on the protection of the environment to which the information relates) and Article 9(1)(b) (adverse effect on the course of justice).

Internal Review

By email dated 20th December 2024 you sought an internal review.

In circumstances where the only peat extraction by third parties on the five bogs you have referenced in your request that Bord na Móna is aware of during the period 2023 up to the date of your request, was on Derrycastle Bog and Codd 2/Sheridan Bog, only this information comes within the scope of your request. The additional information contained within the spreadsheet does not.

I have considered the various exemptions applied by the original decision maker below.

Article 8(a)(i)

The original decision maker decided that Article 8(a)(i) applied to the information on the spreadsheet in relation to Derrycastle Bog and Codd 2/Sheridan Bog. Article 8(a)(i) provides that a public authority shall not make available environmental information which would have an 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.”*

The identities of third parties contained within Record 1) constitutes personal information in accordance with GDPR/the Data Protection Act 2018 and the confidentiality of such information is protected under this legislation. Where such individuals have not consented to the disclosure of their identities by Bord na Móna plc. and where disclosure is likely to have an adverse effect on the confidentiality of that information, by virtue of its release into the public domain, I agree with the original decision maker that all such information should not be released on this basis.

Article 8(a)(iii)

As was outlined by the original decision maker, Record 1) contains confidential information regarding the investigations/actions Bord na Móna is taking on foot of apparent peat extraction in Derrycastle and Codd 2/Sheridan Bogs, together with maps which would enable the location of such alleged extraction activities to be identified. I agree with the original decision maker that Article 8(a)(iii), which provides that a public authority shall not make available environmental information, which would have an

adverse effect on, “*the protection of the environment to which that information relates*”, is applicable.

Disclosure of this information would if published or released potentially afford persons who may be engaged in such peat extraction activities, knowledge of what information is in the possession of Bord na Móna together with any actions contemplated by Bord na Móna arising out of same. This information could therefore influence such persons regarding decisions surrounding the continuation, extension or halting of their activities, based on what information is known to Bord na Móna. In addition, I agree with the original decision maker that knowledge of the specific location of such activities which can be identified via the maps included as part of the spreadsheet, could lead to an increase in such activities in the vicinity by other individuals/entities, giving them information with regard to potential access points to such lands and suitability of the lands for peat extraction.

Unregulated and unauthorised peat extraction activities, particularly if on an industrial level, have the potential to cause damage and degradation of the lands and therefore, disclosure of information which could lead to an increase in such activities would have an adverse effect on the protection of those peatlands.

Article 9(1)(b)

Article 9(1)(b) provides for an exemption from disclosure where disclosure would adversely affect the course of justice, (including criminal inquiries and disciplinary inquiries).

The original decision maker applied Article 9(1)(b) on the basis that unauthorised extraction of peat is the subject of current ongoing investigations by the Environmental Protection Agency and could potentially be the subject of criminal prosecutions and/or civil injunctive proceedings in the future or enforcement action brought by the relevant local authority/(ies). It was the original decision maker’s view that disclosure of information in the possession of Bord na Móna regarding apparent unauthorised peat extraction on Derrycastle and Codd 2/Sheridan Bogs, could prejudice those ongoing investigations by the EPA and potential future criminal or civil proceedings and 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. I am in agreement.

Public Interest

In accordance with Articles 10(3) and (4) of the AIE Regulations, I have considered the public interest served by disclosure of 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 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

As was set out by the original decision maker, 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; in the safeguarding and protection of the environment and in ensuring that investigations or legal proceedings into apparent unauthorised and/or unlawful activities are not prejudiced or impeded by disclosure of information. Given the importance of the rights and harm these public interests seek to respectively protect and prevent against, I am of the view that the public interest is best served by the refusal to release Record 1).

Therefore, I am upholding the original decision maker's decision to refuse access to Record 1).

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