



**Iascach Intíre Éireann
Inland Fisheries Ireland**

Right To Know

requests@righttoknow.ie

BY EMAIL ONLY

21st January 2025

Our Ref: AIE-024-064-IFI | Decision

Dear Right To Know

I refer to the 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. No. 615 of 2014 and S.I. No. 309 of 2018) (hereafter referred to as the AIE Regulations) for access to environmental information held by Inland Fisheries Ireland (IFI). Your request is seeking:

“Any records related to a specific fish kill at the following location: 3km stretch of the river near Coats Bridge, downstream from Aughrim village, Wicklow

Please provide any records / correspondence between IFI and the following

- 1) Company involved in aquaculture called IDAS**
- 2) Uisce Éireann**
- 3) Wicklow CoCo**

For context see

<https://scanner.topsec.com/?d=142&r=show&u=https%3A%2F%2Fwww.epa.ie%2Four-services%2Fcompliance--enforcement%2Fwhats-happening%2Fincidents-at-epa-regulated-sites%2Fnotifications-of-recent-incidents%2Ffish-kill-aughrim-river-co-wicklow%2F&t=f58965470c190c3adf705ebf65c3967662ee8cc7.> ”

Your request was submitted and received via the aie@fisheriesireland.ie inbox afterhours on Monday 23 December 2024, therefore deemed received the next working day on **Tuesday 24 December 2024**.

Summary of Decision

I have made a decision on your request today, 21st January 2025 to refuse the information falling within the scope of your AIE request having regard to the provisions of Articles 7(3)(a)(i), 8(a)(i) and 9(1)(b) of the AIE Regulations subject to Article 10 (3) and (4) of the AIE Regulations. I have re-reviewed the case taking into consideration the possibility of any future court dates or discovery request.

For ease of reference, set out hereunder are the relevant articles of the AIE Regulations and the grounds which apply to the part-refusal of some information.

Search Effort

As the Fisheries Environmental Officer for the Wicklow area I hold the relevant information within the scope of the request. I used the following search terms "IDAS, Uisce Eireann, Wicklow, Aughrim and Analysis Results (TMS and Fera)" on my electronic device (laptop) and Outlook.

Exemptions Provisions and reasons for Decisions to Deny Access to Records

For ease of reference, set out hereunder are those articles of the AIE Regulations based on which I have had to deny access to parts of record.

Action on request

7(3)(a) Where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless –

- (i) The information is already available to the public in another form or manner that is easily accessible**

Record 12 - All information that IFI can share in relation to the incident has been made publicly available at the following location: <https://www.eplanning.ie/ClareCC/AppFileRefDetails/188000/0>

Grounds that, subject to article 10, mandate a refusal

8. A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information –

(a) would adversely affect –

(i) 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 4 of EU Regulation 2016/679 the General Data Protection Regulation ("GDPR") defines "personal data" as:

"any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person."

Record 14 is withheld under this section contains personal information (first names surnames , and personal phone number) of a data subject, from whom we have not received consent to release their personal information and in the circumstance, I do not believe it is appropriate for me to seek their consent. It is therefore my decision that these sections are exempt from release.

Subject to Article 10(3) and (4) I have also considered the following in relation to the public interest test:

Public Interest

We have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- The public interest in members of the public knowing that information held by public bodies about them, or those they represent, is accurate.
- The public interest in members of the public exercising their rights under the AIE regulations.

In considering the public interest factors which favour withholding the records I have taken account of the following;

- the public interest in public bodies being able to perform their functions effectively
- the public interest in protecting the right to privacy of individuals/third parties to whom the information relates.

On balance we have decided that it is not in the public interest to release the redacted part of record 1 as it would impinge on the rights of the "data subject" under Article 4 of GDPR.

Discretionary grounds for refusal of information

9. (1) A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect –

(b) the course of justice (including criminal inquiries and disciplinary inquiries).

Records 1-11, 13 and 14 are refused under the above article. The wording of article 9(1)(b) of the AIE Regulations makes it clear that there must be some adverse effect on the course of justice in order for the exception to apply. Accordingly, when relying on article 9(1)(b) Inland Fisheries Ireland must set out the reasons why it considers that disclosure of the information at issue could specifically and undermine the course of justice (see C-619/19 Land Baden-Württemberg v DR). The risk of the course of justice being undermined must be reasonably foreseeable and not purely hypothetical therefore the below Harm Test has been conducted to set out what the risk and adverse effects of the disclosure would be to the ongoing legal proceedings. Inland Fisheries Ireland would like to be clear that the information being withheld relates to ongoing legal proceedings being taken by a statutory agency the epa in which Inland Fisheries Ireland are assisting and providing expert advice and witness testimony if required to do so.

Harm Test

The information being sought as listed in the attached Schedule of Information which relate to ongoing legal proceedings being taken by the epa as they are records/ information which will be submitted as part of the epa's legal proceedings to be heard in a court of law at a date yet to be determined.

The disclosure of information could undermine the epa's legal proceedings should the case be defended by the accused. There is a considerable risk that the disclosure of information could influence the accused to consider a course of action that they may not otherwise have been considered, resulting in adverse consequences for all parties involved in the legal proceedings.

This would as a result, adversely affect the course of justice, within the meaning of Article 9(1)(b) of the AIE Regulations [legal proceedings which may occur or are in process].

Subject to Article 10(3) and (4) I have also considered the following in relation to the public interest test:

Public Interest Test

I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- the public interest in openness, transparency and accountability
- the public interest in members of the public exercising their rights under the AIE regulations.
- the general interest in the disclosure of environmental information to meet the purpose of the AIE Directive.

In considering the public interest factors which favour withholding the records I have taken account of the following:

- the public interest in legal proceeding which have yet to be heard in a court of law being done so in a manner which is unbiased
 - the public interest would not be served by potentially influencing opinion before all of the facts are presented in a court of law
 - the public interest in not having unfair presumptions of guilt or innocence in advance of a prior court hearing.

On balance I have concluded that the public interest in disclosure is not sufficient to outweigh the fundamental importance of the interest of fairness and impartiality to ensure the proper administration of justice.

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 the record and the decision I have made on the record.

Where the decision has been made to refuse or partially refuse access to a record, it specifies the Article of the AIE Regulations under which this refusal has been made.

Right of Review

Under Article 11 of the AIE Regulations you have a right to request an internal review of a decision. An internal review involves a complete reconsideration of the matter by a member of the staff of Inland Fisheries Ireland, 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 by writing to AIE Officer, Inland Fisheries Ireland, 3044 Lake Drive, Citywest Business Campus, Dublin D24 CK66 or by e-mail to aie@fisheriesireland.ie, referring to this decision and quoting the AIE reference number **AIE-024-064-IFI**. 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.

Please do not hesitate to contact me on matthew.carroll@fisheriesireland.ie if I can assist you in any matter relating to your request.

Yours sincerely,

A handwritten signature in blue ink that reads "Matth Carroll". The signature is written in a cursive style and is positioned above a thin horizontal line.

Matthew Carroll

Decision Maker

Cc AIE Officer