



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-125761-K4H7Z1

**Date of decision:** 11 April 2025

**Appellant:** Right to Know CLG

**Public Authority:** Environmental Protection Agency (EPA)

**Issue:** Whether the EPA was justified in refusing information under article 8(a)(i) of the AIE Regulations

**Summary of Commissioner's Decision:**

The Commissioner found that the EPA was not justified in refusing the information sought under article 8(a)(i) of the AIE Regulations. He annulled the internal review decision of the EPA and directed release of the environmental information.

**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**

### **Domestic Waste Water Treatment Systems (DWWTSs)**

1. Waste water from domestic properties must be treated to remove polluting material so that it can be released safely back into the environment. In Ireland, waste water either goes to a public sewer (also known as urban waste water treatment plants) operated by [Uisce Éireann](#), or a property's own domestic waste water treatment system (for example, a septic tank).
2. About one-third of all houses (500,000) in Ireland rely on a DWWTS to collect, treat and discharge their wastewater. When not designed or operated properly, DWWTSs are in danger of contaminating domestic wells or water sources. Contaminated water from DWWTSs can carry pathogens (bacteria/germs/bugs) and harmful chemicals that can cause serious illness and damage to the environment. It is the responsibility of the owner of the septic tanks/DWWTSs to maintain them in full working order.
3. Owners hold a duty of care under the [Water Services Act 2007](#) to ensure that their systems do not cause a risk to human health or the environment or create a nuisance through odours. The [Water Services \(Amendment\) Act 2012](#) ("the Act") added to existing duty of care provisions with the introduction of a registration and inspection system for DWWTSs. The Law Reform Commission have published a revised version of the [Water Services Act 2007](#). Speaking at a meeting of the Oireachtas Committee on Environment, Culture and the Gaeltacht on 26 June 2012 to discuss the implementation of the Act, then Minister for the Environment, Community and Local Government Phil Hogan, TD stated:

"There are two main reasons for the implementation of the registration and inspection regime for septic tanks. First and foremost, the key objective is to enhance and protect public health and the environment which will, in turn, benefit rural dwellers in terms of a better quality of life and better quality water.

The second reason for the legislation is to ensure compliance with the European Court of Justice ruling against Ireland in October 2009 in relation to the treatment of waste waters from septic tanks and other on-site wastewater treatment systems.

I have ensured that this legislation has been deliberately framed to minimise the impact on householders. It is very simple, owners of septic tanks and on-site treatment systems must ensure that their systems do not cause a risk to human health or the environment. If a system is defective it is the owners, their families and their neighbours who will be at most immediate risk."

4. By way of further background, the above referenced European Court of Justice (ECJ) ruling (*Commission of the European Communities v. Ireland*, [Case C-188/08](#)) found that Ireland was failing to comply with the EU Waste Framework Directive 2006/12/EC (except in County



Cavan), as Irish legislation at that time lacked provisions to ensure that septic tanks were subject to adequate checks and inspections to protect human health and the environment.

### DWWTS Registrations

5. Since 2013, all households connected to DWWTSs are required to register their systems in line with the [Domestic Waste Water Treatment Systems \(Registration\) Regulations 2012](#) (SI No. 220 of 2012), as amended by [Domestic Waste Water Treatment Systems \(Registration\)\(Amendment\) Regulations 2013](#) (SI No. 180 of 2013). This includes households connected to septic tanks and similar systems. There are no exemptions. All owners of premises connected to DWWTSs must register their system. This includes owners of properties which are let, whether private landlords or local authorities etc., and employers who provide living accommodation to employees. All buildings, caravans, mobile homes, and other structures connected to a DWWTSs must be registered. A Certificate of Registration is required when the owner is selling or transferring ownership of a property. The certificate of registration is valid indefinitely.
6. Under the above legislation, a ‘water services authority’ is a local authority, i.e. a County or City Council. The Local Government Management Agency (LGMA) manages a central online registration system ([www.protectourwater.ie](http://www.protectourwater.ie)) and accepts registration fee payments on a shared-service basis for all water services authorities. The registration process captures whether the owner is a private individual or a company as well as the name and address of the owner and the address of the property being registered. Under the Act, it is an offence for an owner not to register and the penalty, on conviction, is a fine of up to €5,000.
7. The governing legislation also requires water services authorities to maintain and publish a register of DWWTSs including septic tanks and similar systems in their functional areas.

Section 70B(9) of the Act provides that:

“A register of domestic waste water treatment systems shall be maintained by a water services authority in such form (including electronic form) as the Agency may direct and shall contain—

- (a) details of domestic waste water treatment systems which have been entered on the register by the water services authority concerned, including the date on which each system was entered on the register and the date on which each certificate of registration is due to expire,
- (b) details of domestic waste water treatment systems in the functional area of the water services authority concerned which have been inspected under section 70H,
- (c) details of advisory notices issued by the water services authority concerned,
- (d) details of applications made under subsection (7) of section 70H,
- (e) details of appeals made under subsection (9) of section 70H,



- (f) details of notices of compliance made by the water services authority concerned under section 70H(17), and
- (g) such other information as may be determined by the Agency from time to time.”

Section 70B(10) of the Act provides that:

“A water services authority shall publish in such manner as it thinks fit, including by electronic means, and make available for inspection at all reasonable times by members of the public, the register of domestic waste water treatment systems maintained by it under this section.”

### DWWTS Inspections

8. The National Inspection Plan for DWWTSs is prepared by the Environmental Protection Agency (EPA) under Section 70(K) of the Act, and is implemented by water services authorities. The current plan is available here: <https://www.epa.ie/publications/compliance-enforcement/waste-water/national-inspection-plan-for-domestic-waste-water-treatment-systems-2022-2026.php>.
9. The objective of inspections is to check compliance, reduce the risk to human health and effect improvements in water quality. Where DWWTSs are deemed non-compliant, advisory notices are issued identifying the faults and providing time for the owner to rectify these. Measures necessary to comply with an advisory notice are planning exempt, and structural works may be subject to grants. Local authorities inspect over 1,000 systems each year. According to the EPA’s website (<https://www.epa.ie/environment-and-you/waste-water/inspections--repair/>), septic tank inspections show that typically half fail, with a quarter being a risk to human health or the environment.
10. Under Section 70H of the Act, inspectors are required to inform the owner of a treatment system and the relevant water services authority of the results of the inspection. Where a water services authority receives notification that a treatment system is causing or is likely to cause a risk to human health or the environment, the water services authority must issue an advisory notice to the owner within 21 days. An advisory notice will state that the water services authority considers that the particular treatment system is, or has potential to be, for stated reasons, a threat to human health or the environment. The notice will direct the owner to take the necessary remediation measures and will specify a timeframe for completion of those measures. Under the Act, failure to comply with the provisions of an advisory notice within the specified timeframe is also an offence.

### **The AIE Request**

11. The appellant’s request relates to DWWTSs where inspections have been carried out under the National Inspection Plan.



12. On 24 March 2022, the appellant submitted the following request for information to the EPA:

“Under the AIE [Regulations] to request the following dataset of geographic locations of national septic tank inspections

As per EPA website

<https://gis.epa.ie/geonetwork/srv/api/records/8a5209fe-554e-4f09-952c-2e596f813292>

*The following link (as above) is a dataset that "represents the site locations of Domestic Waste Water Treatment Systems where inspections have been carried out under the National Inspection Plan.*

*These locations have been captured by Local Authority Inspectors as part of the process of logging inspection details within the Domestic Waste Water Application*

My understanding is the dataset is used by EPA to create various pdf reports but the actual GIS data does not appear to be in the public domain

Statement on the dataset suggests that the locations in this dataset are captured using an integrated map part within the Domestic Waste Water Application whereby the Inspector selects the location on the map. Alternatively, the Inspector can enter the coordinates manually at which point the application then displays the location on the map for verification.

Please provide the data in the GIS format as collected

Note this is not a request for the inspection plans themselves, the annual reports or a breakout by Local Authority areas. It is a request for the mapping data of the inspections

If the dataset includes additional non-confidential fields along with the inspection locations (like the date of the inspection) please include in the file”

13. On 24 May 2022, the EPA issued its original decision, noting that the date for a decision was extended on 20 April 2022 to 24 May 2022 “because of the complexity of the records involved”. The decision identified and part-granted access to an excel sheet dated 24 November 2021 containing 10,006 rows of data. Certain columns were refused under article 8(a)(i) of the AIE Regulations.
14. The decision-maker stated that, “the confidentiality of the records in question is otherwise protected by law under Section 37(1) of the Freedom of Information Act 2014... [and] Further, the confidentiality of personal information is protected in Irish law under: a) the Data Protection Acts 1988 to 2018; b) the General Data Protection Regulation (EU) 2016/679; c) the European Convention on Human Rights; and d) the Irish Constitution.”



15. The decision-maker stated that regard had been made to the provisions of article 10 of the Regulations, including public interest considerations under article 10(3). He outlined that, in favour of release, the factor considered was in members of the public exercising their rights under the AIE Regulations and that the factors in favour of withholding the information were the right to privacy, the right to privacy of third parties and the public interest in protecting the ability of public bodies to carry out their functions and to be able to communicate effectively. The decision found that, “on balance, the public interest in this case is best served by withholding this information as its release could breach the rights of privacy of an individual”.
16. On 26 May 2022, the appellant sought an internal review of the EPA’s decision noting his position that “[t]he data refused removes all transparency from the domestic wastewater inspection regime.” The appellant went on to note that “the actual AIE was for the mapping data, and by redacting the co-ordinates, townlands and shp files, the data is rendered effectively unusable by the public”.
17. The appellant noted the data redacted, as follows, and highlighted that the meaning of some column headings was unclear (\*):
  - Co-ordinates of the locations of the inspections
  - Townland where inspection took place
  - Waste Water Disposal ID (\*unclear what this is)
  - System Design PE (\*unclear what this is)
  - Shared System (\*unclear what this is)
  - Total Contributing PE (\*unclear what this is)
  - Number Linked Properties
  - Shape GIS Details
18. The appellant stated the request for internal review “was based on the following factors in favour of open disclosure:
  - environmental data should be published by default, particularly locations of potential / actual pollution inspections;
  - public interest in an open and transparent national septic tank inspection regime;
  - adjoining properties have a right to know, as could adversely impact their lands, water supplies, farm payments etc.;
  - location of environmental hazards is absolutely core to AIE process (threats to human health/safety and environment);
  - EPA approach to redacting environmental enforcement data undermines the local authority process of enforcement inspections.”
19. The appellant added that, “Faulty systems can contaminate household wells and pollute river, so this data should be available to the public, to eNGOs, Lawpro, and community groups such as Rivers Trusts” and that, “For comparison, the inspection regime for non-domestic wastewater inspections is open and transparent, and information on site



inspections of Irish Water's WWTPs is readily available in a format that allows identification of the sites/locations of inspections”.

20. On 24 June 2022, the EPA issued its internal review decision wherein it affirmed its original decision to refuse the withheld columns of information which it states “will or could lead to the identification of a person/persons”.
21. The internal reviewer proffered the following links to published materials in relation to Domestic Waste Water Treatment System (DWWTS) inspections:
  - The National Inspection Plan is a public document available at:  
<https://www.epa.ie/publications/compliance--enforcement/waste-water/national-inspection-plan-for-domestic-waste-water-treatment-systems-2022-2026.php>
  - The Plan is developed through a public consultation process via the link:  
<https://www.epa.ie/publications/corporate/consultations/-consultations/national-inspection-plan-2022--2026-draft-for-consultation.php>
  - It is reported on every year, and again published online. The 2021 report is scheduled to be published by the end of June. Previous years reports can be found here:  
<https://www.epa.ie/publications/compliance--enforcement/waste-water/>
  - For example, the 2020 and 2019 reports are available at:  
<https://www.epa.ie/publications/compliance--enforcement/waste-water/domestic-waste-water-treatment-system-inspections-2020.php> and  
<https://www.epa.ie/publications/compliance--enforcement/waste-water/domestic-waste-water-treatment-systems-dwwts-inspections-and-enforcement-2019.php> respectively.
  - There is also information for householders online on the inspection process, remediation of Domestic Waste Water Treatment Systems, grants, etc. at the following links  
<https://www.epa.ie/environment-and-you/waste-water/> and  
<https://www.epa.ie/environment-and-you/waste-water/inspections--repair/#d.en.85596> respectively.
  - In addition to the above, the Department of Housing, Local Government and Heritage also have a webpage with information including grants and there will be information available from the Local Authorities who conduct the inspections and administer the grants systems:  
<https://www.gov.ie/en/publication/6cc1e-domestic-waste-water-treatment-systems-septic-tanks/?referrer=http://www.housing.gov.ie/water/water-quality/domestic-waste-water-systems-septic-tanks/domestic-waste-water-treatment-1>



22. The EPA stated that the information withheld does not distinguish whether a DWWTS could be adversely impacting on adjoining properties. It stated that, “the outcome recorded in the data is whether the DWWTS is ‘compliant’ or ‘non-compliant’ which refers to a range of technical and legal criteria”.
23. In the above regard, my Office notes that according to the EPA’s website, DWWTS inspections will check that:
- the system is registered with Protect Our Water;
  - the system is not leaking;
  - waste water is not ponding on the surface;
  - the system is not piped directly to surface water (which requires a license);
  - rainwater or surface water from yards is not entering the system;
  - the system is being properly maintained;
  - the system is being emptied (de-sludged) at appropriate intervals; and
  - the system does not affect human health or the environment.
24. In relation to the appellant’s contentions that the EPA approach to redacting environmental enforcement data undermines the local authority process of enforcement inspections, the EPA stated that the redacted data was provided to the EPA by Local Authorities and that “this has no bearing on Local Authority enforcement”, submitting that, “it is the Local Authority who completes the inspections and enters the data in the DWWA system... [and] they have full access to their own information”.
25. On 28 June 2022, the appellant brought an appeal to my Office stating that, “We would like to appeal EPA refusal to release GIS location (redacting the co-ordinates, townlands and shp files) of septic tank inspections”.
26. I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to all submissions made by the appellant and the EPA in this matter. I have also examined the information at issue. 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’);
  - The Aarhus Convention – An Implementation Guide (Second edition, June 2014) (‘the Aarhus Guide’);

What follows does not comment or make findings on each and every argument advanced, but all relevant points have been considered.



### **Scope of Review**

27. In accordance with article 12(5) of the AIE Regulations, the role of my 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 public authority to make available environmental information to the appellant.
28. This appeal concerns whether the EPA was justified in refusing release of the information in the withheld columns of the dataset identified by the EPA in response to the appellant's request, under article 8(a)(i) of the AIE Regulations.
29. It should be noted that, while I am required by article 12(5)(b) of the AIE Regulations to specify reasons for my decision, I must also be careful not to disclose withheld information in my decisions. This means that the detail that I can give about the content of the information and the extent to which I can describe certain matters in my analysis is limited.

### **Position of the Parties**

30. As outlined above, the EPA refused release of the information on the basis of article 8(a)(i) of the Regulations. In its original decision, which was upheld at internal review stage, the EPA submitted that the confidentiality of the records in question is otherwise protected by law under Section 37(1) of the Freedom of Information Act 2014 and furthermore under the Data Protection Acts 1988 to 2018; the General Data Protection Regulation (EU) 2016/679; the European Convention on Human Rights; and the Irish Constitution. In arriving at its decision, the EPA submitted that it had regard to the provisions of Article 10 of the Regulations and that "... on balance, the public interest in this case is best served by withholding this information as its release could breach the rights of privacy of an individual."
31. In submissions to my Office dated 03 August 2022, the EPA provided an unredacted copy of the dataset. It reiterated its original position and stated that its decisions contained comprehensive information regarding the reasons for this position, highlighting a number of points, which can be summarised as follows:
  - The EPA submitted that it had released as much information as possible to the requester with the exception of what the EPA deemed personal information. It submitted that the information excluded from the excel record could, if released, identify a person or persons.
  - The EPA submitted that it had provided the requester with links to substantial information in relation to the subject matter, which is all publicly available on the EPA and the Department of Housing, Local Government and Heritage websites. It submitted



that detailed reports are published by the EPA annually providing excellent metrics covering every county in Ireland. The EPA stated that, in its opinion, these reports provide detailed geographic information (county by county) on septic tanks, without the need for access to personal information i.e. the specific address of a person's property.

- The EPA submitted that it is not in the public interest to release information which provides the personal address of those persons living at the geographic locations of their septic tanks. It submitted that it is not in the public interest to disclose personal information and that the public interest lies with protecting the privacy of individuals.
- The EPA submitted that it is in the public interest to make environmental information available to the public and that the EPA is very proactive in this regard.
- The EPA submitted that it is in the public interest that both the EPA and Local Authorities are able to carry out their functions efficiently and communicate effectively with the public while protecting the privacy rights of individuals. It submitted that the EPA communicates effectively with the public by publishing a substantial amount of information on its website regarding this subject matter.
- Lastly, the EPA submitted that, "While the information refused may be personally interesting to the requester, there is a distinction drawn by the courts between what might be interesting to the public (irrelevant) and what might, properly speaking, be in the public's interest (relevant)".

32. On 15 February 2024, the investigator assigned to this case wrote to the EPA and outlined some key questions or issues regarded as particularly relevant based on an examination of the case file, and provided the EPA with an opportunity to make further submissions.

33. The EPA was asked to clarify whether it considered that article 8(a)(i) applies to all of the information redacted from the dataset provided to my Office. In submissions dated 14 March 2024, the EPA submitted that article 8(a)(i) of the AIE Regulations applies to all of the withheld information as "there is a risk that by process of combination, elimination and/or added to easily available local knowledge, the information becomes an identifier and results in disclosure of personal information". The EPA also provided a further description of the redacted data (see Appendix for detail).

34. The EPA was asked to outline the basis on which it considers the information at issue to be personal information relating to a natural person, who has not consented to its disclosure. In response, the EPA submitted that, as there is no definition of personal information in the AIE Regulations, it has used the definition of 'personal information' in the Freedom of Information Act 2014 as follows:

*"personal information" means information about an **identifiable individual that**, either—*



(a) would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual, or  
(b) is held by an FOI body on the understanding that it would be treated by that body as confidential, and, without prejudice to the generality of the foregoing, includes—  
'....  
(vi) information relating to any criminal history of, or the commission or **alleged commission of any offence**, by the individual,  
(xiii) information relating to **property of the individual** (including the nature of the individual's title to any property), and...'

**identifiable individual** A Guidance Note produced by the Data Protection Commission defines 'An identifiable individual 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 individual.'

35. The EPA submitted that the definition above reflects the wording of both the General Data Protection Regulation (GDPR) and the Irish Data Protection Act 2018 and that, in addition, the Data Protection Commission makes the following comment about Personal Data:

*'Personal data basically means any information about a **living person**, where that person either is **identified or could be identified**. Personal data can cover various types of information, such as name, date of birth, email address, phone number, address, physical characteristics, or **location data** – once it is clear to whom that information relates, or it is reasonably possible to find out.'*

36. In relation to 'consent to the disclosure of the information' the EPA submitted that the Department of Housing, Local Government and Heritage issued the following information at the start of the domestic wastewater treatment systems registration scheme which can be found on [www.protectourwater.ie](http://www.protectourwater.ie):

*'What will the information on the register be used for?  
Access to the information held on the Register will be restricted to the local authorities, the CSO and the EPA. Your personal information will not be shared with any other public or private body. The LGMA process registration data on behalf of the local authorities. A privacy statement can be viewed at <http://www.protectourwater.ie/Privacy.aspx>.'*

37. The EPA submitted that the public has provided the information on the understanding that it would be held as confidential information. It further submitted: "The Water Services Authority would have to communicate with a minimum of 10,000 homeowners to seek the consent from the homeowners. The EPA believe that this would place an undue burden on the Water Services Authority."



38. In relation to ‘Alleged commission of any offence’, the EPA noted that the site status ID data was released to the appellant and it submitted that “this data identifies whether the DWWTS is compliant or not and therefore whether the homeowner is subject to legal proceedings through a statutory notice under the Water Services Act.” It also submitted: “This data was released on the basis that additional data would not be released that would enable it to be linked to an individual case/person thus indicating if those individuals were the subject of an alleged offence.”
39. In relation to ‘Information relating to property of the individual’, the EPA submitted that “the easting and northing coordinates, townland ID, wastewater disposal ID, system design ID, shared system [status], total contributing PE, number of linked properties and shape file link are all information on the property of the individual” and that “different pieces of information, when collected together, can lead to the identification of an individual and constitute personal data.”
40. The EPA was also asked to identify where the confidentiality of the ‘personal information’ is protected by law. In response it submitted that Section 37(1) of the Freedom of Information (FOI) Act protects the confidentiality of information, which it considers to be personal information. It noted Section 37(2) of the FOI Act which states the incidences when section 37(1) does not apply and this includes the requirement for “**any individual to whom the information relates consents, in writing or such other form as may be determined, to its disclosure to the requestor**” and “*the consent of the individual is established to the satisfaction of the head*”. The EPA submitted that it has no knowledge of any consent provided by the homeowners or the Water Services Authority regarding the use or sharing or further processing of the homeowners’ data.
41. The EPA referenced part 5 of the Data Protection Act (DPA) 2018, as amended, and the interpretation of “personal data” under Section 69(1) of the DPA as information relating to—
- (a) *an identified living individual, or*
  - (b) *a living individual who can be identified from the data, directly or indirectly, in particular by reference to—*
    - (i) *an identifier such as a name, an identification number, location data or an online identifier, or*
    - (ii) *one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual*
42. The EPA submitted that it also considered the redacted information to be personal data “as it can directly or indirectly identify an individual’s location and contains data pertaining to the specific location of the DWWTS, DWWTS compliance/legal proceedings, DWWTS design information linked to number of bedrooms/persons in a residence and sharing arrangements around DWWTS”.



43. The EPA referenced Article 4 of the General Data Protection Regulation (GDPR) (EU) 2016/679 which defines ‘personal data’ as: “any information relating to an identified or identifiable natural person (‘data subject’)”. The EPA submitted that the location data of the DWWTS inspected could be used to identify natural persons and therefore constitute personal data for the purposes of the GDPR.
44. The EPA also referenced Article 4(2) of the GDPR which defines “processing” as including “disclosure by transmission; dissemination or otherwise making available”. The EPA submitted that releasing the information would constitute its ‘processing’. It also submitted that Article 5.1(b) of the GDPR provides that “personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes”. The EPA submitted that “the information was collected for specified, explicit and legitimate purposes and that releasing it in response to this AIE request would constitute the ‘further processing’ of the information in a manner that would be incompatible with the purposes of its collection.”
45. The EPA noted that Article 8 of the European Convention on Human Rights protects an individual’s right to respect for your private life, your family life, your home and your correspondence. It submitted that the redacted data “relates to the homes of individuals and the release and future unknown use of the data could, if identified, impact their private and family life”. The EPA also noted Article 40 of the Irish Constitution and submitted that “the courts recognise that the personal rights in the Constitution imply the right to privacy... [which has] sometimes been described as the right “to be let alone” in private settings. It submits that this data relates to persons’ homes i.e. private setting.”
46. The investigator asked the EPA to consider Section 70B of the Water Services Act 2007, as amended, as this law appears to provide for publication, and inspection by members of the public, of a register of domestic waste water treatment systems, to include details of systems which have been inspected under section 70H of the Act. In response, the EPA submitted that “Section 70B(1) of the [Water Services Act] requires each Water Services Authority to establish and maintain a register, not the EPA” and that “the information requested by the appellant is not the register under Section 70B.” It also noted that Section 70B(9) of the Water Service Act does not include specific personal information and it does not require information to be publicly released in a manner that would allow individuals and their personal data to be identifiable.
47. The EPA was asked to explain how disclosure of the information at issue would adversely affect the confidentiality of ‘personal information that is protected by law’. The EPA submitted: “It is reasonable to expect that these homeowners have a right to privacy regarding their addresses, number of occupants in their homes, the compliance status of their DWWTS and data that pertains to legal proceedings through the issue of statutory notices (for non-compliance). It should also be noted that unless the compliance data was



continuously updated it would continuously and incorrectly identify DWWTS as being non-compliant even after they are fixed and no longer non-compliant.”

48. The EPA submitted that “if released, the data would effectively become uncontrolled and could appear on any public forum... [and] there is a risk of personal information/remarks being made/published about homeowners which could impact homeowners personally. It further submitted: “If this data was to be released, it would not encourage engagement between homeowners and the Water Services Authority which is essential in ensuring inspection targets are met and statutory notices are closed out in a timely manner. Release of this data could negatively impact on the implementation of the National Inspection Programme of DWWTS’s and would be counterproductive from an environmental protection and a public interest perspective.”
49. The EPA was asked to explain why it considers that the interest served by refusal of the information at issue outweighs the public interest served by disclosure of the information at issue, in accordance with article 10(3) of the AIE Regulations. In response, the EPA submitted that a factor in favour of release is: “In members of the public exercising their rights under the AIE Regulations” and that the factors in favour of withholding this information are as follows:
- “- The right to privacy of third parties who may be identified through the release of the information.
  - The public interest is served by the information provided in the annual reports published by the EPA on DWWTS inspections.
  - Public interest is best served by having an inspection programme implemented by the Water Services Authority where DWWTSs are inspected, and issues are brought to resolution. Releasing the redacted information would create significant legitimate concerns from individual homeowners which could create a strong deterrent from them engaging with the system.
  - The homeowners have not consented to release of the redacted information. The data consists of approximately 10,000 datasets for approximately 10,000 homeowners who have not consented to the release of their personal information.
  - The redacted information is personal and private information on a homeowner’s specific location of their Septic Tank, it’s compliance or non-compliance with Regulation, it’s design information linked to number of bedrooms/persons in a residence and sharing arrangements around the DWWTS.
  - Public Interest in protecting the ability of public bodies to carry out their functions and to be able to communicate effectively.”
50. On 20 May 2024, the investigator wrote to the appellant, providing a comprehensive summary of the submissions received by the EPA and inviting any further submissions/comments in respect of the appeal. As part of this correspondence, in particular given the EPA’s reference to personal data and the GDPR, the investigator also asked the



appellant to set out why they believe they have a legitimate interest in receiving the information sought.

51. Subsequently, in a telephone call with the appellant on 21 May 2024, the appellant expressed concern over the question posed in relation to “legitimate interest” and they highlighted that a requestor is not required to state an interest when making a request. The investigator noted that this was correct, in that a requester is not required to declare an interest or give reasons for requests made under the AIE Regulations. However, she went to note that I consider that if the exemption in article 8(a)(i) of the AIE Regulations is engaged, an assessment of whether the processing of the personal data will be allowed under Article 6(1)(f) of the GDPR may be required. In this regard, understanding an appellant’ motives in requesting the information will allow me to consider whether the appellant, as the requestor, has a legitimate interest in receiving the information sought.
52. In light of my current approach to personal data under the AIE Regime, as set this out in detail in recent decisions including [OCE-148418-H9S5F9](#) and [OCE-125751-P6M5Y9](#), the investigator wrote again to the EPA in February 2025 in this context, seeking any final submissions or comments.
53. On 27 February 2025, the EPA submitted that it continues to rely on article 8(a)(i) of the AIE Regulations to refuse access to the information concerned and that it wished to reaffirm the reasons identified in its previous submission dated 14 March 2024 as to why the redacted data should not be released. In particular, the EPA submitted that the following two points “are substantive in nature and should ensure the data remains redacted”.
54. Firstly, the EPA highlighted the “Consent by homeowners”, as follows:  
“Individual homeowners register their septic tanks on the understanding that the personal data they submit is held confidential (see Section 35(1) of the FOI Act 2014). Disclosing the data to the world at large could prejudice the further giving or the continued giving by homeowners of similar information. Data gathering during inspections relates to individual homeowners. The EPA has no knowledge of any consent provided by the homeowners or the Water Services Authorities regarding the use or sharing of further processing of the homeowners’ data.”
55. Secondly, the EPA highlighted “Risk of interpretation of compliance data”, as follows:  
“Release of data which will allow for homeowners to be identified and the results of an inspection on their DWWTS may lead to the public misinterpreting the results of the inspection process. Whether they have received a compliant or non-compliant result does not confirm whether there is an issue with emissions from the DWWTS and whether the DWWTS is or could be impacting off-site. However, if this data is released to the public in this context incorrect assumptions are likely to be drawn. Incorrect assumptions may cause the homeowners stress and reputational damage.”



56. In light of the particular circumstances of this case, I decided that it would be appropriate to issue a draft decision to the parties and to invite their submissions on any additional point of fact, error of fact or error of law with reference to same. On 19 March 2025, a draft decision was provided to the parties.
57. The appellant responded on 19 March 2025 and requested that the following points would be noted:
- The appellant submitted that the concept of “personal information” is an EU concept and therefore is the same as personal data under GDPR. It submitted that the FOI Act concept of “personal information” is not the correct reference.
  - The appellant submitted that I have incorrectly interpreted personal data as information “that allows a person to be identified”. It submitted that information is personal data if it relates to a person by reason of its content, purpose or effect. The appellant cited *Nowak v Data Protection Commissioner* [C-434/16](#) (paragraph 40) and submitted that in this case the information does not relate to a person on any of these three bases. It submitted that the information in the current matter is not personal data; rather it is information about septic tanks and not about the individual owner/occupier. The appellant submitted that this Office has taken too broad a scope of personal data and, in its view, on this logic, everything would be personal data since all information is ultimately attributable to an individual.
  - The appellant submitted that the information is not confidential and that article 8(a)(i) only applies to confidential personal information. It submitted that the GDPR is not a legal basis for confidentiality since it treats confidential and non-confidential personal data in the same way. It also submitted that legitimate interest basis for processing does not apply to public authorities. It argued that the basis for processing here is “statutory obligation”, namely the AIE Regulations.
  - Lastly, the appellant submitted that it is “concerned that EPA is not informing people about the possibility of access under AIE and is representing to them that the information won’t be disclosed”.
58. On 1 April 2025, the EPA provided a final submission to this Office, which may be summarised as follows:
- The EPA submitted that the withheld information is not limited to location data: eastings, northings, townland ID, GIS shapefile; and that it also includes the following for each DWWTS: disposal ID, design PE, shared yes/no, contributing PE, number of linked properties.



- The EPA submitted that if the specific location data (eastings, northings, townland ID, GIS shapefile) is released, it will pinpoint the exact location of every DWWTS inspection and the associated individual (and the information associated with their inspection) will be identifiable as information on property ownership may be known to third parties or is available publicly through the property register. Therefore, it will be possible to identify/link entries/information to individuals. It submitted that, as a secondary point, there was also a risk of identification of individuals by combining some of the data such as county/number of properties sharing the system etc., even without the specific location data (eastings, northings, townland ID, GIS shapefile).
- The EPA submitted that the compliance/non-compliance information is already released, but that was without location data; whereas it will be possible to link it to individual properties/persons with release of the information in this case.
- The EPA submitted that the compliance/non-compliance information does not identify whether or not a DWWTS is causing pollution and/or impacting off-site. It submitted: “This is because of the nature of the inspection (most of a DWWTS is underground and not visible, so issues may not be detected) and the pass/fail criteria (which extend to maintenance and other issues, which do not necessarily cause pollution or impact off-site). Therefore, it is not the basis for making assumptions about the impact or not of a DWWTS. This is important in practical terms and in terms of the value of the information and therefore the weight of the public interest argument as balanced against individual persons right to privacy.”
- The EPA submitted that Section 70H(5) of the Water Services Act specifically requires a notice in every case where a DWWTS is found to be non-compliant. The EPA submitted that the finding of non-compliance is specifically a finding in relation to an individual’s behaviour in relation to their responsibilities under the law (reference 70C(1) and 70H(6) of the Water Services Act). It submitted that publishing legal compliance/non-compliance information in a manner that can be linked to individual persons, without the context or meaning being fully understood, clearly risks undue reputational damage. The EPA also submitted that once the data is released there will be no control on how it is presented thereafter.
- The EPA submitted that the matter of whether the data subjects have consented to the disclosure of personal data captured as part of the inspection process has not been considered.
- The EPA submitted that the information under consideration is not held under 70B of the Water Services Act (as amended) which refers to a register kept by Water Services Authorities. It also submitted: “The draft decision has not considered whether 70B of the Water Services Act as interpreted by the Commissioner to apply to release of information at individual DWWTS/inspection level is compatible with GDPR and AIE/FOI,



noting that the draft decision would be contrary to the position of the Local Government Management Agency in relation to information under 70B [in its [Privacy Notice](#)] which states: *“It is not intended that any personal data (i.e. information which personally identifies you) which you submit as part of your application will be published by the Councils or by the Agency as part of the register provided for under Section 70B(10) of the Act.”*

59. I have carefully considered all of the submissions made by the parties, including those made on my draft decision. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

### **Analysis and Findings**

#### **Article 8(a)(i) of the AIE Regulations**

60. Article 8(a)(i) of the AIE Regulations provides that a public authority shall not make available environmental information where disclosure of the information would adversely affect 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. This provision seeks to transpose Article 4(2)(f) of the AIE Directive, which in turn is based on Article 4(4)(f) of the Aarhus Convention.
61. Article 8(a)(i) must also be read alongside article 10 of the AIE Regulations. 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 and 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. Article 10(5) of the AIE Regulations provides 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.
62. When relying on article 8(a)(i) of the AIE Regulations a public authority must show that –
- a) the information at issue is personal information relating to a natural person, who has not consented to its disclosure;
  - b) the personal information has an element of confidentiality,
  - c) the confidentiality of that personal information is protected by law; and
  - d) the disclosure of the information at issue would adversely affect that confidentiality.
63. In this case, the EPA seeks to withhold nine (9) columns of information (as described at Appendix A), in their entirety, in respect of 10,006 row entries (site locations) in the dataset concerned, on the basis of article 8(a)(i) of the AIE Regulations. As stated in the appellant’s



AIE request, per information taken from an EPA website, this dataset contains details of the site locations of all DWWTSs where inspections have been carried out under the National Inspection Plan, with such locations having been captured by Local Authority Inspectors as part of the process of logging inspection details.

64. The AIE Regulations do not contain a definition for “personal information”. However, section 2 of the FOI Act defines personal information as information about an identifiable individual that either (a) would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual or (b) is held by an FOI body on the understanding that it would be treated by the body as confidential. The FOI Act details fourteen specific categories of information that is personal without prejudice to the generality of the foregoing definition. As noted by the EPA, of particular relevance in this case, the definition of personal information includes at category (vi) information relating to any criminal history of, or the commission or alleged commission of any offence, by the individual, and at category (xiii) information relating to property of the individual. In addition, while article 8(a)(i) refers to “personal information”, it may be noted that both the AIE Directive and the Aarhus Convention refer to “personal data”. Article 4(1) of the General Data Protection Regulation (Regulation (EU)2016/679 – the ‘GDPR’) defines personal data as “any information relating to an identified or identifiable natural person (‘data subject’)”.
65. In respect of article 8(a)(i) of the AIE Regulations, the Minister’s Guidance (at section 11.2) states:
- “Where the confidentiality of personal information is protected by law, such personal information must not be made available without the consent of the person to whom the information relates. In applying this exception, public authorities should have regard to the FOI and Data Protection Acts, as well as to any other statutory provisions that may be relevant in the particular case. Where information is protected under these legislative codes, it must also be protected for the purpose of the provisions of the AIE code unless the person concerned consents to its release. In general, unless obvious sensitivities are involved (or where it would impose an undue burden on the public authority to contact the person concerned), an opportunity should be given to an individual to give consent to the release of personal information before a request for such information is refused.”
66. It is important to note that personal information is information about an identifiable individual. Where information may not, on the face of it, be about an identifiable individual, it may still be personal information if it allows the individual to be identified. An individual may not be named in a record (as is the case here), yet may still be identifiable.
67. As outlined above, the EPA considers that each of these columns of information, “when collected together, can lead to the identification of an individual and constitute personal data”. The EPA submits that if the specific location data (eastings, northings, townland ID, GIS shapefile) is released, it will pinpoint the exact location of every DWWTS inspection and



the associated individual (and the information associated with their inspection) will be identifiable as information on property ownership may be known to third parties or is available publicly through the property register. The EPA also submits that there is a risk of identification of individuals by combining some of the data such as county/number of properties sharing the system etc., even without the specific location data (eastings, northings, townland ID, GIS shapefile). As part of its submissions to my Office, the EPA provided a number of practical examples based on the content of the dataset at issue which demonstrate how various combinations of the withheld data could lead to the identification of individuals. In this regard, I must bear in mind that it is not the function of my Office to disclose information, meaning that the detail that I can give about the content of the data is limited. I am also restricted in describing the live examples furnished by the EPA, in my analysis. However, based on my examination of this material, I am satisfied that all of the withheld data, combined with local knowledge and other available information, may in some circumstances lead to the identification of individuals residing at the geographic locations of the DWWTSs concerned.

68. All owners of DWWTSs are required to register their systems with the water services authority in whose functional area the systems are located. It can also be noted that there are two (2) ownership categories with regards to registration, being – (a) Private (i.e. You own or jointly own the property) and (b) Corporate (i.e. You represent a company or organisation).
69. My Office notes that the Central Statistics Office (CSO) analyses DWWTS registration data obtained from the LGMA on an annual basis. In this regard, the CSO uses the company name information on the register to allocate systems to Domestic, Public authority, or Other non-domestic. The CSO's background notes explain that local authorities, schools, etc. are classified as Public authorities and that the Other non-domestic category contains a broad range of companies including stud farms, financial institutions, golf clubs, building companies, etc. (See <https://www.cso.ie/en/releasesandpublications/ep/p-dwwts/domesticwastewatertreatmentsystems2023/backgroundnotes/>)
70. In this case, the EPA has relied on article 8(a)(i) of the AIE Regulations in seeking to refuse access to the information at issue in respect of all of the 10,006 site locations coming within the scope of this review. Whilst there is no visible indicator in the dataset to distinguish between private and corporate ownership, I consider it at least possible that some of the DWWTSs concerned are corporate in nature as opposed to household owners. Accordingly, it is possible that some information may not be personal information, with the required quality of confidence, relating to a natural person as is necessary to engage article 8(a)(i) of the AIE Regulations. As such, I am of the view that the EPA may have adopted a 'blanket approach' to its refusal of all of location data by claiming that article 8(a)(i) applied to all of the information concerned, regardless of its specific nature, which is not an appropriate application of this exemption.



71. That being said, I am satisfied that it is very likely that the vast majority of the information at issue relates to “personal information” within the meaning of the FOI Act and similarly, information relating to an identifiable natural person, such that it constitutes “personal data” within the meaning of the GDPR. Indeed, the CSO published data for 2023 shows that Household owners accounted for 97% of all registered waste water treatment systems in 2023, with Public authorities and Other non-domestic owners accounting for 1.5% each.
72. The appellant submits that the information at issue is not personal data; rather it is information about septic tanks and not about the individual owner/occupier. It cited C-434/16 and argued that information is personal data if it relates to a person by reason of its content, purpose or effect. I note that the judgment in C-434/16, as cited by the appellant states:
- “34. The use of the expression ‘any information’ in the definition of the concept of ‘personal data’, within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a wide scope to that concept, which is not restricted to information that is sensitive or private, but potentially encompasses all kinds of information, not only objective but also subjective, in the form of opinions and assessments, provided that it ‘relates’ to the data subject.
35. As regards the latter condition, it is satisfied where the information, by reason of its content, purpose or effect, is linked to a particular person.”
73. I consider that the above is clearly a wide definition and I am satisfied that the information in this case clearly relates to the "owners of premises connected to DWWTs" and their obligations under the Water Services Act.
74. On the basis of the above, I consider it appropriate at this stage to briefly set out the approach to personal data under the AIE Regime. I have set this out in detail in recent decisions, [OCE-135716-R4G8T1](#) and [OCE-137000-X7Y9N3](#); these decisions should be referred to for a more detailed analysis of same.
75. As outlined above, article 8(a)(i) of the AIE Regulations seeks to transpose Article 4(2)(f) of the AIE Directive, which enables Member States to provide for refusal of a request where disclosure would “adversely affect ... the confidentiality of **personal data and/or files relating to a natural person** where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law” (my emphasis). The final paragraph of Article 4(2) states, referring to the predecessor to the GDPR: “Within this framework, and for the purposes of the application of subparagraph (f), Member States shall ensure that the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data are complied with.”



76. In light of this, I consider that the reference to “personal information” in article 8(a)(i) of the AIE Regulations to be consistent with the meaning of “personal data” under the GDPR, a concept with which every public authority is now very familiar. It is clear from this final paragraph of Article 4(2) of the AIE Directive that the AIE regime is intended to interact harmoniously with the European data protection regime. In the same vein, Article 86 of the GDPR (read with recital 152) permits the disclosure of personal data in accordance with information access regimes under EU or national law, where those regimes reconcile the right of access to information with the right to protection of personal data. This again indicates that the GDPR is intended to interact harmoniously with national and European regimes offering public access to information.
77. In Ireland, Article 86 of the GDPR is implemented by section 44(2) of the Data Protection Act 2018, which provides: “For the purposes of Article 86, personal data contained in environmental information may be disclosed where the information is made available under and in accordance with the [AIE] Regulations pursuant to a request within the meaning of those Regulations.” On one view, this could be considered to be a standalone ‘gateway’ for the disclosure of personal data under the GDPR, permitting disclosure of all personal data contained in environmental information pursuant to an AIE request. However, the CJEU has repeatedly confirmed that the legal bases for processing in Article 6 of the GDPR are exhaustive list of the cases in which processing of personal data can be regarded as lawful (*Meta vs Bundeskartellamt* [Case C-252/21](#), at paragraph 90; *SCHUFA Holding and Others (Discharge from remaining debts)* [Joined Cases C-26/22 and C-64/22](#), at paragraph 73).
78. The appellant submits that GDPR is not a legal basis for confidentiality since it treats confidential and non-confidential data in the same way. However, in order to determine whether the confidentiality of personal data is protected by the GDPR, one must consider whether there is a lawful basis under Article 6(1) of the GDPR for disclosure. If there is a lawful basis for disclosure, the personal data may lawfully be disclosed and the confidentiality of the personal data is not protected by the GDPR. Conversely, if there is no lawful basis for disclosure, the personal data may not be disclosed and the confidentiality of the personal data is protected by the GDPR.
79. There are six lawful bases for processing personal data set out in Article 6 of the GDPR. I do not consider that the legal basis in Article 6(1)(a), (b) or (d) could apply in the context of this particular request. Neither of the parties has suggested otherwise.
80. The appellant submits that the appropriate legal basis for processing is “statutory obligation, namely the AIE Regulations”, which I consider to mean Article 6(1)(c) or (e) of the GDPR. The former permits the processing of personal data where ‘necessary for compliance with a legal obligation’ and the latter where ‘necessary for the performance of a task carried out in the public interest or in the exercise of official authority’. I do not agree that either legal basis assists in this context. Under Article 6(1)(c), there could only be a legal obligation to disclose information pursuant to an AIE request if no exception to the right of access applies. Under



Article 6(1)(e), it could only be ‘necessary’ to disclose the personal data pursuant to an AIE request if no exception to the right of access applies. In either case, protection of the confidentiality of personal data could be one such exception. If I were to accept that either provision applied to require or permit the disclosure of personal data pursuant to an AIE request, I would need to accept the proposition as a general principle, meaning that all personal data is required or permitted to be disclosed simply by virtue of an AIE request having been made (assuming no other exception is applicable). In my view, this would not be consistent with the AIE regime or the broader requirements of EU law. First, the AIE Directive clearly indicates that personal data should be appropriately protected. A blanket approach to the disclosure of personal data would be inconsistent with this indication. Second, individuals have a fundamental right under the Charter to respect for private and family life and to the protection of personal data. While such rights are not absolute, any limitations must respect the essence of the fundamental rights and observe the principle of proportionality. A blanket approach to release of personal data would be inconsistent with the Charter. In the same vein, the CJEU has found in successive cases that “derogations and limitations in relation to the protection of personal data must apply only in so far as is strictly necessary” (see, for example, *Mircom International Content Management (M.I.C.M) Limited v Telenet and others* [Case C-597/19](#), at paragraph 110). Third, it is clear from [Case C-740/22 Endemol Shine Finland](#) that public access to official documents may be a public interest capable of justifying the disclosure of personal data contained in such documents, but such access must be reconciled with the fundamental rights to private life and to the protection of personal data. Again, a blanket approach to release of personal data would be inconsistent with this finding.

81. Accordingly, it appears that the most relevant basis to consider is Article 6(1)(f), ‘necessary for the purposes of the legitimate interests pursued by the controller or by a third party.’
82. There are “three cumulative conditions” in order for processing to be lawful in accordance with Article 6(1)(f): “... first, the pursuit of a legitimate interest by the data controller or by a third party; second, the need to process personal data for the purposes of the legitimate interests pursued; and third, that the interests or freedoms and fundamental rights of the person concerned by the data protection do not take precedence” ([Case C-597/19](#), at paragraph 106). For convenience, this is known as the “legitimate interest test”.
83. In relation to the first condition, the CJEU has confirmed that a wide range of interests is, in principle, capable of being regarded as legitimate (see [Joined Cases C-26/22 and C-64/22](#) at paragraph 76). Taking this into account, once a person has made a valid request for environmental information, I consider the first condition of the legitimate interest test is met.
84. Where the environmental information in question is or includes personal data, the only way in which the legitimate interest in receiving the environmental information can be met is by



providing access to the personal data in question. Accordingly, the second condition of the legitimate interest test is met.

85. As a result, in practice, it is the third condition of the legitimate interest test on which public authorities must focus most of their attention. The third condition requires “the balancing of the opposing rights and interests at issue”, depending on the specific circumstances of the particular case (see [Case C-597/19](#), at paragraph 111).
86. In this context, the opposing interests will be, on the one hand, the right of the data subject to respect for privacy and protection of personal data and, on the other hand, the public interest in the disclosure of the environmental information at issue. This balancing exercise is almost identical to the balancing exercise that is required under Article 4(2) of the AIE Directive and article 10(3) of the AIE Regulations, where personal data is concerned. This means that, although as a matter of principle a public authority must carry out the balancing exercise in Article 6(1)(f) first and again (if needed) under article 10(3) of the AIE Regulations, in practice it is unnecessary for a public authority to go through the exercise twice because the analysis is the same.
87. To summarise, once a public authority is satisfied of the following matters, the public authority may be satisfied that the requester has a ‘legitimate interest’ in receiving the personal data pursuant to that request and that its disclosure is ‘necessary’ to meet that interest:
- a) that an AIE request has been made,
  - b) that the requested information is environmental information,
  - c) that the environmental information is or includes personal data, and
  - d) that the data subject has not consented to the disclosure of the personal data.
88. The public authority must then weigh the rights of the data subject against the public interest in the disclosure of the environmental information. In weighing that balance, the public authority should consider the specific interests at issue. As with any other exception to release under the AIE regime, if the public authority concludes that the balance falls against release of the personal data, it should go on to consider whether the personal data may be separated from the other environmental information at issue, for example by means of redaction (see Article 4(4) of the AIE Directive and article 10(5) of the AIE Regulations).

#### Legitimate Interest – Application in this case

89. In this case, I am satisfied that a valid AIE request has been made (this is not in dispute), and that the requested information is environmental information (this is also not in dispute). I also consider that the environmental information at issue includes personal data. Even if it is the case that EPA have adopted a ‘blanket approach’ to its refusal of all of the information concerned (see paragraph 66. above), I believe that it is appropriate for me to deal with the



substantive issue of whether any of the information sought is exempt from release under article 8(a)(i).

90. Regarding the issue of consent, the EPA submits that the individuals concerned have not consented to release of the information and it notes that to contact them to seek consent would give rise to an undue burden on the relevant public authority.
91. As outlined above, this request relates to a dataset which an EPA website has stated “represents the site locations of [DWWTSs] where inspections have been carried out under the National Inspection Plan [and] [t]hese locations having been captured by Local Authority Inspectors as part of the process of logging inspection details within the Domestic Waste Water Application”.
92. The EPA asserts that the public has provided the information on the understanding that it would be held as confidential information. The EPA drew attention to the Privacy statement governing the registration of DWWTSs which advises registrants as follows: “It is not intended that any personal data (i.e. information which personally identifies you) which you submit as part of your application will be published by the Councils or by the Agency as part of the register provided for under Section 70B(10) of the Act.” This Privacy statement (available at <https://www.protectourwater.ie/Privacy.aspx>) describes such personal data as follows: “This is data that identifies you or can be used to identify or contact you and may include your name, address, ESB Meter Point Reference Number (MPRN), email address and telephone number.”
93. It is important to note that the information in the dataset concerned is not the data which is submitted by members of the public as part of the registration process. Rather, the information at issue here consists of inspection details, as logged by Local Authority Inspectors. It is the understanding of my Office that the LGMA (Protect Our Water Bureau) which processes registration data on behalf of the water services authorities are not involved in any way with the inspection process. Furthermore, according to the EPA’s website, “... the inspection system uses the Geodirectory which includes all houses in Ireland, so everyone has a chance of being picked, with priority given to non-registered systems in high-risk areas where possible, so you may have a greater chance of inspection if you do not register”. As such, it is clear that the information at issue here is not information which has been provided by the public as part of the registration process on the understanding that it would be held as confidential information, even if there is some overlap between the two categories of information. Nonetheless, I accept that that there is no evidence before me to suggest that the data subjects concerned have consented to the disclosure of personal data captured as part of the inspection process itself. For the reason proffered by the EPA (see paragraph 37), it is similarly not possible to contact the data subjects in this matter. In any event, I do not consider it appropriate or necessary to seek consent for the purposes of my assessment. Consent is just one of the legal basis for



processing personal data under the GDPR and I have set out above my reliance on a different legal basis.

94. Having determined the above matters, I am satisfied that the requester has a 'legitimate interest' in receiving any personal data at issue pursuant to an AIE request and that its disclosure is 'necessary' to meet that interest. I must go on to weigh the rights of the data subjects against the public interest in the disclosure of the environmental information.
95. In respect of the individuals' interests in the protection of their personal data in this case, I note that location data does not fall under any of the special categories of personal data meriting higher protection (see Article 9, GDPR).

### AIE Public Interest Test

#### *Factors in favour of disclosure*

96. The appellant, in their request for internal review, outlined why they believe that there is a clear public interest in the location data being released, i.e. "public interest in an open and transparent national septic tank inspection regime". Moreover, as set out in the background to this decision, there is a clear legal requirement to **maintain and publish** a register containing details of DWWTSs which have been inspected under the National Inspection Plan (Section of 70B(9)(i) of the Act). It was clearly the intent of the legislature to provide for such transparency. Indeed, relevant [Oireachtas debates](#) relating to the Water Services (Amendment) Bill 2011 (Bill 63 of 2011), show that an amendment was tabled to reflect that it would "not be appropriate to retain on a record to be made available to the public, details of prosecutions brought for non-compliance with the provisions of the Bill". This amendment was accepted and an original provision for water services authorities to enter details of prosecutions on the register was deleted; however, the requirement for a public register to be made available and to contain details as set out at Section 70B(9) of the Act was passed.
97. The EPA has argued that the requirement to maintain and make available a register of DWWTSs is a function of each water services authority, and not the EPA. Whilst this is correct, in my view this argument is immaterial, as in any event, it can be observed that the water services authorities have failed to comply with the provisions of Section 70B(9).
98. The appellant also placed considerable emphasis in their internal review request on the requirement for open disclosure of data on DWWTS inspections, stating that the "location of environmental hazards is absolutely core to AIE process". I too consider that there is an important general interest in the disclosure of environmental information to meet the purpose of the AIE Directive and the core objectives of the Aarhus Convention, which include to ensure that the public has access to environmental information held by public authorities.



99. In relation to the appellant's statement that faulty systems can contaminate household wells and pollute rivers, firstly, it is important to acknowledge, as pointed to by the EPA in its internal review outcome, that the information withheld does not distinguish whether a DWWTS could be adversely impacting on adjoining properties. DWWTSs are not the only ways that domestic wells or water sources can be contaminated. Other possible sources of contamination include, manure/slurry, faeces from farm animals/pets, fertilizers, pesticides and sheep dips, run-off from industrial premises, workshops or mines/quarries, or lead pipe work. (Source: [https://www.protectourwater.ie/Leaflets/3\\_POW-IsYourWellAtRisk\\_Eng.pdf](https://www.protectourwater.ie/Leaflets/3_POW-IsYourWellAtRisk_Eng.pdf))
100. The EPA notes that Section 70H(5) of the Act specifically requires a notice in every case where a DWWTS is found to be non-compliant. I acknowledge that the data at issue here, if released, will identify those systems listed as non-compliant. This is due to a column entitled 'SiteStatusID' (containing entries of either 'Compliant', 'Non-compliant' or 'Unknown') having already been released to the appellant by the EPA. However, I cannot see how an entry of 'compliant' or 'non-compliant' alone, could be sufficient to infer "whether the homeowner is subject to legal proceedings through a statutory notice under the Water Services Act", as was suggested by the EPA in its submissions of 14 March 2024. Section 70H(5) notices are described as advisory notices. In my view, it implies a direction to remedy an issue, which can be appealed to the District Court and failure to comply may result in prosecution for an offence under the Act. An appeal to the District Court is only possible if the advisory notice has been confirmed by an inspection under Section 70H(7)(c)(i) or (ii). The fact that a notice has been served under Section 70H(5) does not necessarily mean that the homeowner is subject to legal proceedings.
101. Furthermore, in its correspondence to my Office of 27 February 2025, the EPA again outlined that "Whether [the homeowner has] received a compliant or non-compliant result does not confirm whether there is an issue with emissions from the DWWTS and whether the DWWTS is or could be impacting off-site". In its final submission of 1 April 2025, the EPA qualified this further by stating that this was due the nature of the inspection (most of a DWWTS is underground and not visible, so issues may not be detected) and the pass/fail criteria (which extend to maintenance and other issues, which do not necessarily cause pollution or impact off-site). The EPA submits that the information is not a basis for making assumptions about the impact or not of a DWWTS.
102. Notwithstanding the above, I believe that there is a clear public interest in allowing property owners to be aware of the status of DWWTSs in their area and whether systems have been subject to adequate checks and inspections. In a situation where an adjoining property owner is concerned that a nearby DWWTS is affecting their property, knowledge of the status of the DWWTS may either allay their concerns if the DWWTS has been recently inspected or may provide a starting point for further investigations or enquiries if it was non-compliant. Indeed, the most recently [published EPA statistics](#) show that nearly half of all septic tanks tested in Ireland in 2023 failed inspections, with a significant number identified as a risk to human health and the environment. The EPA has stated that failure to fix faulty



septic tanks cannot be allowed to continue and that enforcement by local authorities is inconsistent and needs to improve. With this in mind, it is clear that there is a significant public interest in the information at issue in this case, and in general, concerning accountability and transparency in respect of the operation and implementation of the National DWWTS Inspection Plan.

*Factors in favour of maintaining the exception*

103. The EPA's arguments in favour of withholding the information relate primarily to privacy concerns. I too am mindful that the right to privacy has a constitutional dimension having been recognised as an unenumerated right under the Constitution, and of the strong protection afforded to privacy rights under the Freedom of Information regime and under Article 8 of the European Convention on Human Rights. I have more broadly considered the individual data subjects interest in the protection of their personal data, taking into account the nature of the specific personal data at issue and the data subject's rights under Articles 7 and 8 of The Charter of Fundamental Rights of the European Union. When considering individuals' interest in the protection of their personal data, I have taken into account whether there is likely to be any adverse effect for the individuals or otherwise, if their data is released.
104. In its submissions of 14 March 2024, the EPA outlined how it believes that there is "a risk of personal information/remarks being made/published about homeowners which could impact homeowners personally"; however, it did not elaborate on what type of remarks were foreseen or how this could impact on individual homeowners. In further correspondence dated 27 February 2025, the EPA added that the results of an inspection on a DWWTS may lead to the public "misinterpreting the results of the inspection process" and that, "Incorrect assumptions may cause the homeowners stress and reputational damage."
105. I am not persuaded by the arguments made by the EPA in relation to an adverse effect on individual homeowners.
106. Firstly, as outlined above at paragraphs 66. – 71., whilst there is a risk that the location data concerned may lead to the identification of individuals through a combination of factors. However, it by no means clearly identifies individual homeowners (there are no individuals named in the dataset), nor does it contain any of the following data which homeowners may have provided as part of the DWWTS registration process – name, address, ESB Meter Point Reference Number (MPRN), email address and telephone number.
107. Secondly, the assertion that the reputation damage could be caused to individual homeowners as a result of the public misinterpreting inspection results is tenuous. In any event, given the nature of the obligations concerned, I do not consider that release would cause undue reputational damage. I have noted the EPA's contention that unless the compliance data was continuously updated, it would continuously and incorrectly identify



DWWTSs as being non-compliant even after they are fixed and no longer non-compliant. However, I consider that this issue could be easily addressed by adding an appropriate caveat regarding the correct interpretation of compliance data to allow for disclosure of the information. I also note the EPA's concerns regarding lack of control of the data once released; however, this does not dissuade my position.

108. I am also not persuaded by the arguments made by the EPA in relation to a broader adverse effect on DWWTS registration and inspection regime.
109. The argument that release of the information could prejudice the further giving or the continued giving by homeowners of similar information is hypothetical and far from a foreseeable outcome. I say this, given that it is a legal requirement for homeowners both to register their systems and to comply with inspection results; it being an offence not to do so.
110. The EPA has also argued that, "If this data was to be released, it would not encourage engagement between homeowners and the Water Services Authority which is essential in ensuring inspection targets are met and statutory notices are closed out in a timely manner. Release of this data could negatively impact on the implementation of the National Inspection Programme of DWWTS's and would be counterproductive from an environmental protection and a public interest perspective." However, on the contrary, I consider that active publication of the information may in fact encourage greater compliance with the DWWTS registration and inspection regime, including enforcement by local authorities.

#### *Balance of the public interest*

111. The scheme of the AIE Regulations, and of the AIE Directive, makes it clear that there is a presumption in favour of release of environmental information. Subject to that presumption, a public authority may refuse to release environmental information where an exemption under articles 8 or 9 applies, and the interest in maintaining that exemption outweighs the public interest in disclosure under article 10.
112. Under the governing legislation, owners of DWWTs are required to ensure that their systems are on the register, and that register is required to be publicly accessible. The EPA has argued that the register required under section 70B(9) of the Water Services Act (as amended), does not include specific personal information and it does not require information to be publicly released in a manner that would allow individuals and their personal data to be identifiable. However, it is difficult to see how anything other than the publication of the locations of DWWTSs concerned could fulfil the requirements of this section. The register is also required to contain comprehensive information on inspections under section 70H – details of the DWWTSs inspected, details of advisory notices issued, details of applications made under subsection (7) of section 70H, details of appeals made under subsection (9) of section 70H, and details of notices of compliance under section 70H (17).



113. The EPA highlights the availability of reports published by it on an annual basis, which detail the findings of inspections completed by local authorities in the previous year. However, the governing legislation does not restrict the details of DWWTs to be only made available on a county by county basis. In addition, the appellant is very clear in that they are seeking the mapping data of the inspections, which is information not currently in the public domain.
114. Public interest considerations should always be relevant to the exception being relied upon, and to the specific nature of the request and of the withheld information. I consider that the specific direction under section 70B(10) of the Water Services Act (as amended) that a water services authority “... **shall** publish... and make available for inspection at all reasonable times by members of the public, the register of domestic waste water treatment systems”, facilitates broad public access and transparency. The legislative intent behind these provisions is clearly to ensure transparency and public oversight of domestic wastewater treatment systems, which is crucial for environmental protection and public health.
115. In this case, the appellant is seeking the details of DWWTs which have been inspected under the National Inspection Plan and this information is clearly comparable to the information that is required to be made publicly available in accordance with Section 70B of the Water Services Act (as amended). Based on the above, I have concluded that in the circumstances of this case, the public interest in disclosure of the information outweighs the interest in preserving the privacy of relevant data subjects. It follows therefore, that the EPA was not entitled to rely on article 8(a)(i) to withhold the information.
116. I wish to note that the EPA placed emphasis in its submissions on section 37 of the FOI Act as the law which protects the confidentiality of the information here (as required by article 8(a)(i)). However, as I have already found that the information should be released when applying the GDPR as the law relied on to protect the confidentiality of the information, I do not consider it necessary to consider section 37 of the FOI Act in this regard. I say this because I would be required to apply the same public interest balancing test under AIE regardless of the law relied on to protect the confidentiality of the information – and therefore the outcome would be the same. I have set out my analysis of the public interest balancing test and why the information should be released, starting at paragraph 88. of this decision. The effect of this is that where both section 37 of the FOI Act and the GDPR apply to information held by a public authority relevant to an AIE request, the public authority should consider whether to release or withhold the information by weighing the rights of the data subject against the public interest in the disclosure of the requested environmental information, as I have set out above. I consider that this approach is consistent with a public authorities range of legal obligations in relation to both personal information and access to environmental information.
117. Finally, I note the EPA’s position regarding Section 70B of the Water Services Act, as considered by me to be relevant to the release of information at individual DWWT/inspection level. It clearly falls outside the remit of this Office to determine



whether this provision is compatible with the GDPR. This Office also has no role in assessing how public authorities collect, maintain and disseminate environmental information. The role of this Office concerns reviewing appeals of requests for access to environmental information within the scope of a request, which is held by or for the relevant public authority and no more than that.

### **Decision**

118. Having carried out a review under article 12(5) of the AIE Regulations, I find that the refusal of the information sought was not justified under article 8(a)(i) of the AIE Regulations. I annul the internal review decision of the EPA and I direct release of the environmental information.

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

119. 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.

**Ger Deering**  
**Commissioner for Environmental Information**  
11 April 2025



**Appendix – EPA Description of Redacted Data (Information withheld)**

<b>Column headers</b>	<b>Description of redacted data:</b>
Easting Coordinates	This data identifies the location of DWWTSs being used by households as a means of treating their domestic waste water. The Easting coordinates are part of a six-grid reference that would identify the location where a natural person is living.
Northing Coordinates	As above. The 6-grid reference covers an area of 100m by 100m square on a map.
Townland ID	A townland is a small geographical division of land used in Ireland, typically covering 100–500 acres (40–202 ha) and is the smallest subdivision of a geographical division of land in Ireland. It can provide a traceable address. Some individual farmhouses are on areas of 100 – 500 acres. In addition, the EPA Geographic Information System (GIS) Team carried out some analysis and determined that there are 2,202 townlands with only 1 house and another 2000ish with only 2 houses in Ireland. This information can identify the address of a property.
Waste Water Disposal ID	This data identifies whether there is a DWWTS connected to a household for the collection/treatment of domestic waste water. This type of information along with other information can identify which property it refers to.
System Design Population Equivalent (PE)	This data identifies the population equivalent (PE) the DWWTS has been designed to treat based on the number of bedrooms or people in a residence. This type of information along with other information can identify which property it refers to.
Shared System Yes/No	This data identifies if the system is shared with multiple households. This data along with data pertaining to PE can aid in the location of DWWTSs and which property it refers to.
Total Contributing Population Equivalent	This data identifies the amount of domestic wastewater being generated by household(s) for treatment in a DWWTS. This data will give an indication of how many people reside at a specific location. This type of information along with other information can identify which property it refers to.
Number of linked properties	This data identifies how many households share the DWWTS. This data along with data pertaining to PE can aid in the location of DWWTSs and which property it refers to. This type of information along with other information can identify which property it refers to.
Shape file GIS link	This is geospatial vector data formatted for the Geographical Information System which relates to the location of the DWWTS on a map. They pinpoint the location of the DWWTS. This type of information along with other information can identify which property it refers to.