



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-153024-X8M1H3

Date of decision: 25 April 2025

Appellant: Mr Neil Foulkes

Public Authority: Coillte

Issue: Whether Coillte was justified in refusing access to information under article 7(5) of the AIE Regulations on the grounds that the requested information is not held by or for it

Summary of Commissioner's Decision: The Commissioner found that Coillte was not justified in refusing access to the requested information under article 7(5) of the AIE regulations.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision, as set out in article 13 of the AIE Regulations. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.



Background

1. On 22 August 2024, the appellant submitted a request to Coillte seeking access to the following:

“I wish to receive, for the period 2022 to date Information on all field ecological surveys carried out by Coillte as part of licence applications which specifically included a bat survey/s. For clarity; This applies to pre-application surveys as well as surveys conducted during the forestry application process. The field survey can be part of a larger survey including a desk-based element. The survey can be specifically for bats or could include a survey for bats as a specific element of a broader ecological survey”.
2. On 20 September 2024, Coillte informed the appellant the request was refused under Article 7(5) of the AIE Regulations as Coillte had been unable to locate any records relevant to the request.
3. On 20 September 2024, the appellant requested an internal review of Coillte’s decision stating *“The decision indicates that bat surveys are undertaken but that no records exist”.*
4. On 18 October 2024, Coillte issued its internal review decision. In doing so, it affirmed its original decision *“as the information requested is not held by or for Coillte”.* It was stated *“that adequate steps have been taken by Coillte to identify and locate relevant environmental information relating to the Request”.*
5. On 21 October 2024, the appellant submitted an appeal to this Office.
6. I am directed by the Commissioner to carry out a review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the Coillte. In addition, I have had regard to:
 - the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister’s Guidance);
 - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
 - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (‘the Aarhus Guide’).
7. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.



Scope of Review

8. In accordance with article 12(5) of the AIE Regulations, my role is to review Coillte's internal review decision and to affirm, annul or vary it. Where appropriate in the circumstances of an appeal, I will require Coillte to make available environmental information to the appellant.
9. The scope of this review is to determine whether Coillte were justified in refusing access to the requested material under article 7(5) of the AIE regulations on the grounds that there are no actual records available.

Submissions

10. On 21 October 2024, the appellant provided this Office with a preliminary submission. The appellant stated;

“My request is not restricted to bat surveys. It is for information on ecological field surveys which included a bat survey. If a bat survey was included as part of a broader ecological survey that survey would fall within the scope of my request. Therefore, in the first instance, Coillte have misinterpreted my request”.

11. The appellant argues Coillte's statement, *“Bat surveys are undertaken in accordance with best practice, by a qualified ecologist”*, indicates that surveys are undertaken. The appellant highlights Coillte have failed to provide any detail on the searches undertaken or the subject matter experts contacted. The appellant also states *“The survey details that are indicated to be added to the Natura Impact Statements must be considered to fall within the scope of my request”*.
12. On 25 October 2024, Coillte were notified by this Office of the acceptance of the appeal and invited to make detailed submissions. As no response was received from Coillte a further request for a submission was sent to Coillte from this Office on 06 March 2025. On 31 March 2025, Coillte responded and stated;

“Coillte relies on its interpretation of the Request as set out in the IR Decision of 18 October 2024 (and also the Initial Decision of 20 September 2024). Coillte does not accept the Appellant's contention, as contained in his submissions, that Coillte have misinterpreted his request or that a restricted interpretation of the request has been applied”.

13. Coillte's initial decision dated 20 September 2024 stated;

“Following receipt and initial review of this Request by the AIE Team, it was assigned to the Ecology Team for their attention. Calls were subsequently held with both the Wildlife Ecology Lead on 04.09.2024 and 06.09.2024 to discuss the Request in detail. The Wildlife Ecology Lead



carried out searches to confirm if information relating to the Request exists. This involved key word searches of Sharepoint Online and Microsoft Outlook as these would be the systems used to generate and share information on this subject. On 09.09.2024 it was confirmed that no information exists. To clarify, pre-application bat surveys are undertaken as part of Appropriate Assessment. The purpose of these surveys is to identify features used by bats, to inform impact assessment and to apply mitigations. The trigger for bat surveys is related to the distance of the proposed HB to the Qualifying Roost within the SAC:

- *Within 2.5km – Bat habitat suitability assessment using desktop information*
- *Within 600m – Bat habitat suitability assessment using desktop information and a walkover survey*
- *Within 100m – Bat detector survey*

Bat surveys are undertaken in accordance with best practice, by a qualified ecologist and at the appropriate time of year for the type of survey. All survey details are added directly to the NIS, and individual survey reports are not held separately. I am satisfied based on engagement with the Ecology Team that a reasonable search was conducted and clarification has been provided”.

14. Coillte’s internal review decision dated 18 October 2024 stated;

“The Request sought information that specifically related to “all field ecological surveys carried out by Coillte as part of licence applications which specifically included a bat survey/s.” The Decision dealt with the Request within the scope of licence applications which specifically included bat surveys.

To clarify, as part of a licence pre-application bat surveys are undertaken as part of Appropriate Assessment. The purpose of these surveys is to identify features used by bats, to inform the impact assessment and to apply mitigations. The trigger for bat surveys is related to the distance of the proposed harvest block to the Qualifying Roost within the SAC:

- *Within 2.5km – Bat habitat suitability assessment using desktop information*
- *Within 600m – Bat habitat suitability assessment using desktop information and a walkover survey*
- *Within 100m – Bat detector survey*

Bat surveys are undertaken in accordance with best practice, by a qualified ecologist and at the appropriate time of year for the type of survey.

In response to your following comments in which you wrote “the decision indicates that bat surveys are undertaken but that no records exist.” However, in the Decision you were informed that all survey details are added directly to the Natura Impact Statement (NIS), and individual survey reports are not held separately.



Following on from your comments in the request for internal review, seeking information on “bat surveys that are undertaken in areas where a Natura Impact Statement is not required?.” All felling licence applications are subject to Appropriate Assessment and a NIS is prepared where significant effects cannot be ruled out and mitigation measures are required. Where a NIS is not required, all information used to screen out the project for potential significant effects is provided in the Pre-Screening Report”.

Analysis and Findings

15. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information or any further environmental information is held by or for the public authority concerned. It provides as follows:

“Where a request is made to a public authority and the information requested is not held by or for the authority concerned, that authority shall inform the applicant as soon as possible that the information is not held by or for it”.

16. This Office’s approach to dealing with this type of case is to assess whether adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness is applied.
17. What will be considered reasonable will vary from case to case, but as a general guide, I set out below the type of information that my Office would generally expect to be set out in a decision where a public authority is relying on article 7(5) of the Regulations;
- I. an outline of exactly which areas/units etc. of the organisation were searched for the information.
 - II. an explanation of how searches were carried out (i.e. manually, by computer, by name, by key words). Keywords should be recorded and provided in the decision as appropriate.
 - III. details of the individuals consulted in connection with the search.
 - IV. a description of the searches carried out to cover the possibility of misfiled/misplaced records.
 - V. details of guidelines, practices, procedures and arrangements in relation to the storage, filing, archiving, retention and destruction of the type of information requested in this case.
 - VI. the basis on which the public authority has concluded that it does not hold any information within the scope of the appellant’s request and that no such information is held by any other person or body on its behalf.



18. Article 7(5) of the AIE regulations allows public authority to refuse a request if it does not hold the requested information. In order for a public authority to successfully rely on this provision, it must, among other things, provide evidence that it carried out adequate searches for the environmental information requested.
19. Coillte has confirmed that bat surveys are conducted under certain conditions related to the distance of the harvest block from the qualifying roost. Coillte has also stated *“All survey details are added directly to the NIS, and individual survey reports are not held separately”*. Coillte have indicated that such surveys are carried out, but did not explain why the relevant NIS documents or sections of those documents could not be provided. I consider that this information would fall within the scope of the request, in particular where the appellant referred to bat surveys that may be *“a specific element of a broader ecological study”*.
20. The appellant’s request was for information on field ecological surveys which included a bat survey, including desk based elements. In my view, Coillte appears to have taken an overly restrictive interpretation of the request as they have confirmed *“The Decision dealt with the Request within the scope of licence applications which specifically included bat surveys”*. The appellant’s request was for any field ecological surveys which included a bat survey, regardless of whether the bat survey was a standalone document or part of a larger ecological assessment.
21. All bat species found in Ireland are listed under Annex IV of the EC (Birds and Natural Habitats) Regulations 2011 – 2021 and as a result works which would capture or kill them, damage or destroy their roosts or disturb them at important parts of their life cycle cannot take place without first obtaining a derogation. Coillte has not explained whether it consulted with staff members who hold derogation licences for protected species, nor has it clarified how survey data recorded within the NIS is stored. Coillte did not specify what keywords were used in its SharePoint Online or Outlook searches or whether other file storage systems or NIS documents were searched.
22. All Irish bats are protected under the European Habitats Directive (Council Directive 92/43/EEC). The lesser horseshoe bat is the only Irish bat listed in Annex II of the Directive, requiring the designation of special areas of conservation. This Office notes that the Department of Housing, Local Government, and Heritage has published a dataset of records of Lesser Horseshoe bats from known bat roosts, which is available [here](#). When this is viewed in conjunction with [Coillte’s felling license dataset](#) there is a clear overlap between certain felling licenses and the location of known bat roosts. Felling licence LK02-FL0022 which was issued in 2022 shows a clear overlap with an identified location of a lesser horseshoe bat roost. Felling licences, MO25-FL0015 in 2022, KY14-FL0056 in 2022, and KY14-FL0066 in 2023, provide further examples of felling licences in areas of lesser horseshoe bat roosts. It would appear reasonable to expect that bat surveys would have taken place in relation to these licenses.
23. The Appropriate Assessment Pre-Screening Report for Felling licence MO25-FL0015 states;



“The third largest felling site of the proposed project area is approx. 40 m north of the Moore Hall (Lough Carra) SAC which is designated for the lesser horseshoe bat. However, the proposed continuous cover forestry (CCF) project will increase the broadleaves cover by thinning conifers only, retaining the existing broadleaves and thus creating conditions for the broadleaves to naturally regenerate. According to map 2 in the site-specific Conservation Objective document (NPWS, 2018b), the project area is located approx. 40 m north of the closest identified roost. Therefore, the project area is located within the core foraging range of the lesser horseshoe bat (2.5km, NPWS 2018) the potential for adverse effects on this QI cannot be ruled out and mitigation is considered necessary”.

As Coillte have stated *“The trigger for bat surveys is related to the distance of the proposed harvest block to the Qualifying Roost”*, so in this instance it would appear a bat detector survey should have been conducted.

24. Coillte have previously relied on external consultants to conduct bat surveys on their behalf. MKO Planning and Environmental Consultants conducted bat surveys on behalf of Coillte in relation to the proposed developments at Derryclare, and the published report is available [here](#). There is no indication if any searches were conducted with external consultants to confirm if they hold information for Coillte that may be relevant to this request.
25. Finally, I note that the appellant’s request was for *information on all field ecological surveys carried out by Coillte as part of licence applications which specifically included a bat survey/s*, and not solely for the surveys in and of themselves. It therefore may be the case that there is additional information such as correspondence in relation to these surveys that would fall within the scope of the request.

Decision

26. Having regard to the above, I cannot find that Coillte has taken adequate steps to identify and locate all relevant environmental information held by it. As such, I am unable to find that article 7(5) of the AIE Regulations can be relied upon by Coillte.
27. Accordingly, I annul the decision of Coillte in its entirety and direct it to consider the appellant’s request afresh and make a new internal review decision in accordance with the provisions of the AIE Regulations, and in particular the requirement to take adequate steps to identify and locate all environmental information held by it within the scope of the request.



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Appeal to the High Court

28. 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.

Julie O'Leary

On behalf of the Commissioner for Environmental Information

25 April 2025