



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-152817-D3L8H3

Date of decision: 9 May 2025

Appellant: Mr F

Public Authority: Coillte

Issue: Whether Coillte conducted adequate searches to identify the information requested in accordance with article 7(5) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner found that Coillte was not justified in refusing access under article 7(5) of the AIE regulations as reasonable efforts had not been made to identify information relevant to the request. The Commissioner annulled the decision of Coillte and directed it to provide the appellant with a new internal review decision.

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 12 August 2024 the appellant made a request of Coillte for the following:

“Information related to a visit in 2022 by a Coillte team to Forestry and Land Scotland (FLS), to explore their approach to protecting wildlife during forest operations. To include, but not restricted to, related pre and post visit correspondence between Coillte and FLS.”

On 12 September 2024, Coillte issued its first decision, stating that it was ‘partially’ granting the request, further stating that:

“Upon receipt of this Request, the AIE Team liaised with the relevant subject matter expert, being Coillte’s Environmental Technical Lead, who confirmed that environmental information specifically relating to pre visit correspondence between Coillte and Forestry and Land Scotland is held by Coillte. Access to these records will be granted upon receipt of payment of applicable charges which are set out below.

In relation to post visit correspondence between Coillte and Forestry and Land Scotland, I examined material held by Coillte and having taken all reasonable steps to locate the requested information and establish whether the information you have requested exists, I have been unable to locate any records relevant to your request. I therefore refuse your request under Article 7(5) of the AIE Regulations.”

2. On 12 September 2024 the appellant requested an internal review of the decision, stating that:

“The searches are not adequate to identify information falling within the scope of my request. The Subject Matter Expert should have examined correspondence with the parties concerned based on their email address rather than just restrict the search to limited keywords.”

3. On 11 October 2024 Coillte issued its internal review decision, affirming the original decision, providing the below by way of response:

“Information on pre visit correspondence between Coillte and Forestry and Land Scotland
I am satisfied that, within the scope of the Request, this information was appropriately identified and provided in full. A total of 9 documents were identified and issued to you, following payment of charges as set out in the Decision, on 17 September 2024.



Information on the post visit correspondence between Coillte and Forestry and Land Scotland

I am satisfied that reasonable steps were taken to try to identify and locate the relevant environmental information and that no material records exist with this information. I affirm the refusal of this element of the Request on the basis of Article 7(5) of the AIE Regulations.

I am aware from the decisions of the Commissioner in Mr G and Department of Agriculture, Food and the Marine and Mr X and Environmental Protection Agency that I am required to justify how I concluded that the records do not exist. I am satisfied that reasonable steps were taken to try to identify and locate the relevant environmental information. I have detailed below the steps taken to search for the information requested and have provided some information about the records management practices of Coillte, insofar as those practices relate to the requested categories of information.

This type of information would be searched for on the; cloud-based storage and Office 365/emails, Microsoft Teams. I am satisfied that the First Instance Decision maker carried out a comprehensive search in conjunction with the relevant Subject Matter Expert, being the Head of Ecology, who coordinated the visit. Arising from consultations with the relevant subject matter expert, I was satisfied to accept that the information requested does not exist. The Head of Ecology linked in with one representative, from Forestry and Land Scotland, to coordinate the visit which in turn made the search process more streamlined.

Following these detailed enquiries, the SME confirmed that, following a search of emails on the system using the key word searches outlined in the decision, the information on this element of the Request does not exist. I am satisfied to confirm that information in relation to this element of the Request, focusing on the language used, does not exist in Coillte. The information is not held by or for Coillte within the meaning of Article 7(1) of the AIE Regulations.”

4. The appellant appealed to my Office on 15 October 2024, based on his view that Coillte had not carried out searches adequate enough to identify information within the scope of his request.
5. 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 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').
6. What follows does not comment or make findings on each and every argument advanced, but all relevant points have been considered.

Scope of Review

7. 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.
8. Pursuant to article 7(5) of the AIE Regulations, the scope of this review is to investigate whether the Department has taken all reasonable steps to identify the requested information.

Positions of the Parties

9. In his appeal to this Office the appellant stated that:

"Information was provided but I am not satisfied that Coillte has disclosed all of the information falling within the scope of my request. At such exchanges there are often presentations made and I would be very surprised if Coillte did not make some form of presentation to Forest Land Scotland.

In the email of 25-10-22 Subject Matter Expert states; 'I can send you some topics or questions tomorrow, if that would help?' Was any information sent?

As stated in my request for an internal review the searches are not adequate to identify information falling within the scope of my request.

The Subject Matter Expert should have examined correspondence with the parties concerned based on their email address rather than just restrict the search to limited keywords."

10. In response to the appellant's contentions, which were provided to Coillte, it provided a submission to this Office, stating:



“For the purpose of appeal submissions, Coillte relies for its full effect and meaning on the contents of the internal review decision of 11 October 2024 with one clarification to address the following comments in the Appellant’s submissions:

‘Information was provided but I am not satisfied that Coillte has disclosed all of the information falling within the scope of my request. At such exchanges there are often presentations made and I would be very surprised if Coillte did not make some form of presentation to Forest Land Scotland. In the email of 25-10-22 Subject Matter Expert states; “I can send you some topics or questions tomorrow, if that would help?” Was any information sent?’

In response Coillte now submits that all information relevant to the Request has been provided. I have consulted with Coillte’s Head of Ecology as SME and she has confirmed that there was no slide presentation. The Coillte representatives spoke to the attendees and described our processes for planning and operations, as described in the topics. Coillte’s main focus was to meet FLS staff who are engaged in forest operations and planning and share their experiences.

The Appellant refers to SME’s email of 25.10.22. He should scroll down through the earlier emails attached to that email, to SME’s email of 13.10.22, where she has listed Coillte’s 2 main topics of interest, which were: Protection of birds and other environmental features during forest planning and operations; and Forest planning and licensing. Subsequently, the second topic was removed because the dates of the visit didn’t suit the forest planning team.

Our FLS contact subsequently added peatland restoration and a trip to Glenfeshie to see the effects of deer control on forest regeneration. This is all reflected in the email threads that we have already provided.”

11. Coillte’s submission was shared with the appellant for consideration and on 14 March 2025 by way of response, he provided the following:

“I made a parallel request to the request to Coillte to Forest Land Scotland. I received substantially more records from them than I did from Coillte, including a Coillte slide presentation (entitled HH_Merlin_FLS_Visit_Nov2022_Redacted.pdf) which was prepared by Coillte and which must have been provided by Coillte. There was also a slide presentation by FLS which may well have been provided to Coillte.

There is more correspondence than has been provided by Coillte. I gave Coillte an opportunity to declare information that I know to exist and they failed to do so”.

12. The appellant shared copies of the records received from FLS, to include what appears to be a presentation created by Coillte for the purposes of the trip to FLS.



13. The Investigator assigned to this appeal shared the abovementioned records with Coillte for comment on 27 March 2025, however no further response or submissions were received by Coillte with respect to same.

Analysis and Findings

14. In this case, the appellant contends that the Department should hold further information relevant to his request. 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”.*
15. 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.
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. What will be considered reasonable will vary from case to case.
17. As noted in point 13 above, the Investigator assigned to this appeal shared records with Coillte, which were provided by the appellant, associated with his AIE request to Forestry Land Scotland. It would appear that these records should also be held by Coillte and



therefore would come within the scope of this request and should have been provided to the appellant.

18. As no response was forthcoming from Coillte in relation to the additional information obtained by the appellant from Forestry Scotland, I cannot be satisfied that adequate searches were carried out, as required under article 7(5) of the AIE Regulations. As such I am annulling the decision made by Coillte and directing that it provides the appellant with a new internal review decision.

Decision

Having carried out a review under article 12(5) of the AIE Regulations, I annul Coillte's decision. Coillte should now issue a new internal review decision to the appellant.

Appeal to the High Court

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 Commissioner for Environmental Information
9 May 2025