



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-159854-Y5F8B8

Date of decision: 23 July 2025

Appellant: Mr Neil Foulkes

Public Authority: Department of Agriculture, Food and the Marine

Issue: Whether the Department was justified in refusing the appellant's request on the basis of article 7(5) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner found that the Department had conducted adequate searches with respect to the information sought and affirmed its 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 26 March 2025 the appellant requested the following under the AIE regulations:

“A copy of all information related to the screening under the EIA Directive for the afforestation of the lands which are subject to tree-felling licence TFL00946323. A copy of all information related to the screening under the Habitats Directive for the afforestation of the lands which are subject to tree-felling licence TFL00946323. TFL00946323 is subject to appeal and this information is required by the 4-4-25”.

2. On 7 April 2025 the Department issued its original decision stating it was “part-granting” the request, on the basis that:

“I have identified no records held by the Department in relation to screening under the EIA Directive or the Habitats Directive, as specified your request. However, in effort to interpret your request broadly, I am granting you six records that are relevant to your request. Where information has been refused or partially refused, the following article(s) of SI 133/2007 apply: 7(5) 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.

Searches Conducted

Following the assignment of this AIE request to me, the following searches were undertaken:

- *A search was conducted of iFORIS to identify afforestation licences relevant to your request.*
- *A search was conducted in the paper file storage area for the relevant licences.*

Schedule of Records

Please see schedule of records for information on records released. This lists the records that I consider relevant to your request. It provides a brief description of each record and the decision I have made on each record. Where I have decided to refuse or partially refuse access to a record, it specifies the article of the AIE Regulations under which this refusal has been made”.

3. On 7 April 2025 the appellant requested an internal review of the decision, on the basis of his view that the original decision did not cover “*the full extent of the area covered by TFL00946323*”.
4. On 20 May 2025 when the appellant had not received an internal review decision from the Department, he made an appeal to this Office.



5. Between May 20th and May 30th, 2025, contact was made between this Office, the Department and the appellant with respect to the lack of internal review decision response, which, the Department contended was as a result of the request being sent to the incorrect email address.
6. Ultimately this Office accepted the validity of the appeal and of the internal review request and, the Department committed to issuing an effective position.
7. On 17th June 2025 the effective decision was issued to the appellant which affirmed the original decision and reiterated the action undertaken with respect to the search for information, outlined in the original decision.
8. The appellant appealed to this Office on 18 June 2025.
9. 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 Department of Agriculture, Food and the Marine. 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').

Scope of Review

10. In accordance with article 12(5) of the AIE Regulations, my role 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.
11. Pursuant to article 7(5) of the AIE Regulations, the scope of this review is to investigate whether the Department has conducted adequate searches in order to locate all records which may come within scope of the original AIE request.



Position of the Parties

12. In the initial submission provided by the Department to this Office, it reiterated the searches it outlined at internal review decision stage and further stated that:

“Having reviewed the previous searches carried out at request and Internal Review stage, I find that adequate searches were carried out and relevant files identified and provided to the requestor as required. The afforestation licences associated with the TFL provided by the requester, namely OP6023 and OP8318 were applied for on 06th October 1993 and were approved on the 19th and 18th October 1993 respectively as shown in the approval letters attached. At this time, the EIA Directive had not yet come into effect as it was not introduced until 2011. The Habitats Directive was introduced in 1992 and therefore was new at the time of the licences being issued.

As shown in the Inspectors Pre-Planting Advisory Inspection Report (Form PFD3) for both contracts, the environmental considerations deemed appropriate at the time were considered in section (i). As these were in line with regulations at the time, it is reasonable that no information exists in relation to the EIA or Habitats Directives for the named TFL, given the age of the associated afforestation licences.

This is consistent with the original finding that no records existed relevant to the AIE request. Although not strictly relevant to the request, in an effort to interpret the request broadly, six records were provided as the nearest equivalent to what had been requested. In addition, the original Decision Maker was correct to refuse under Article 7(5)”.

13. In his original submission to this Office, the appellant states:

“My request is for information on EIA and AA Screening on the area that is the subject of felling licence TFL00946323. This licence is for an area of 88.11ha. The information provided by the Department indicates that the project area considered was OP6023 variously 29ha or 28.144ha depending on which document is considered. The map related to this project does not cover the whole area of TFL00946323 which can be viewed on the Forest Licence Viewer. OP8318 is for either 4.1ha or 3.8ha depending on which document is taken to be correct. In total a maximum of 33.1ha which is less than 40% of the full area of TFL00946323. I am therefore of the view that DAFM has not assessed the full area within the scope of my request and therefore I cannot be assured that all reasonable steps have been taken to identify the requested information.”

14. In response to the Department’s submission, the appellant further noted:

“The EIA Directive came in to force in 1989, not 2011. It has been subject to a number of revisions. In response to the comment;



'The Habitats Directive was introduced in 1992 and therefore was new at the time of the licences being issued. As shown in the Inspectors Pre-Planting Advisory Inspection Report (Form PFD3) for both contracts, the environmental considerations deemed appropriate at the time were considered in section (i). As these were in line with regulations at the time, it is reasonable that no information exists in relation to the EIA or Habitats Directives for the named TFL, given the age of the associated afforestation licences.'

This acknowledges that the Habitats Directive was in force which means that records should exist. DAFM do not state what "regulations" they are referring to that their assessment was in line with ("in line with regulations at the time"). What DAFM

"considered appropriate at the time" was not compliant with the law. The law has not changed in the interim. Therefore, it is not reasonable that no information should exist.

I accept that information may not exist but it would only not exist in circumstances where the Department had failed to comply with its legal duties".

15. In sharing the appellant's submission with the Department and inviting any further comment, it stated:

"The contracts I have identified from iForis as relevant to TFL00946323 are OP6023, OP8318, CN1111 and CN13286 with associated areas as follows:

OP8318: 3.8ha

OP6023: 29ha

CN1111: 16ha

CN13286: 8.1ha

Total: 56.9ha

This is approximately 65% of the area of TFL00946323 of 88.11ha.

From searches conducted on iForis, I have found no other contracts in respect to the above TFL.

In response to the implementation of the 'Habitats Directive', the checks as outlined in the inspection reports as provided were deemed appropriate by DAFM at the time. While less extensive than current inspection reports reflecting current legislation, the reports provided are dated in 1992-1993 and were typical of inspection reports filled out at the time.



Pre-Planting Advisory reports have previously been provided for OP8318 and OP6023 showing the areas of each. For completeness, please find attached approval forms and maps for CN1111 and CN13286 showing the areas they cover as listed above.

While there are approximately 31ha without contracts according to iForis, these may not necessarily require afforestation licences, as prior to the Forestry Act 2014, licences were only required in certain circumstances.

From a sample of 6 parcels (parcel numbers 631-636) without contracts, the current age of the trees are 35 years old, dating back to approximately 1990. For licences issued before January 2021, only those which were paid premiums were uploaded to iForis. Therefore, these contracts may be ones which were not paid premiums and therefore there would be no records on iForis. Please find attached maps from the FLV and iForis to compare the parcels I have found contracts for against those that have no records on iForis.

From searches carried out, I have found no records relevant to the original request specifically, and therefore I have no records to add apart from the above for further information”.

Analysis and Findings

16. 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”.

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. 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.
19. In its original and internal review decision the Department outlined its digital and paper copy search for contracts associated with the licence, which is the subject of the appeal, further detail within the Department's submission, outlined in paragraph 15, notes the numbers associated with these contracts and the associated acreage.
20. It is the Department's position that no information exists with respect to screening under the EIA Directive or the Habitats Directive as *"the EIA Directive had not yet come into effect as it was not introduced until 2011. The Habitats Directive was introduced in 1992 and therefore was new at the time of the licences being issued"*, referencing the environmental considerations it states were relevant at the time of the licence, noted in paragraph 12.
21. With respect to the land associated with licence, which is not covered by the contracts identified, the Department contends that *"these may not necessarily require afforestation licences, as prior to the Forestry Act 2014, licences were only required in certain circumstances"*.
22. I am of the view that the level of detail and search methods the Department have provided at internal review stage and in its subsequent submissions to this Office are sufficient with respect to the information requested. While I acknowledge the appellant's view that further information with respect to screening under the EIA Directive and the Habitats Directive should exist and be held by the Department, it is outside the remit of this Office to adjudicate on how public authorities carry out their functions generally, including with respect to their environmental information management practices. I have no role in assessing how public authorities collect, maintain and disseminate environmental information. My role concerns reviewing appeals of requests for access to environmental information within the scope of the request, which is held by or for the relevant public authority and no more than that. If the information sought is not held by or for the public authority then that is the end of the matter, regardless of whether or not the requester believes that the information ought to exist based on his or her views as to what constitutes good administrative practice.



23. Having considered the submissions of the parties and the information already released by the Department, I am satisfied that the Department has taken reasonable steps to identify information within the scope of the request.

24. Accordingly, I will affirm the decision of the Department.

Decision

Having carried out a review under article 12(5) of the AIE Regulations, I affirm the Department's decision.

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 the Commissioner for Environmental Information

23 July 2025