



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-154128-B4C9Y0

Date of decision: 20 June 2025

Appellant: Right To Know CLG

Public Authority: Bord na Móna (BnM)

Issue: Whether BnM was justified in refusing the information sought relating to purchase orders over €20,000 for the period 2023 and 2024 to the date of the request under article 9(2)(a) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner affirmed BnM's decision under article 9(2)(a) 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 29 July 2024, the appellant submitted a request to BnM, seeking access to:

“a list/database/or spreadsheet of all payments (or purchase orders) of over €20,000 for the period 2023 and 2024 YTD
Please include the following
 - Date: As an actual PO date (e.g., 2020-12-04) also referencing the relevant year and quarter
 - Name of Supplier(s)
 - Description of goods and/or services provided
 - PO AmountPlease note
 - (1) Public Service Reform Plan of 2011, stating “in which publication of such data is an obligation for all public bodies.”
 - (2) Case: OCE-128538-M9C1X7 where OCEI found that BnM POs are environmental information which covered the period to 2022”
2. At the outset, I wish to clarify that in [OCE-128538-M9C1X7](#) I found that information relating *some* purchase orders over €20,000 (i.e. those integral to the undertaking of operations of BnM likely to affect the environment) is very likely to be environmental information within the meaning of paragraph (c) of the definition in article 3(1) of the AIE Regulations. That decision annulled BnM’s decision to refuse access to the information sought relating to **all** purchase orders over €20,000 contained on the identified spreadsheet in that case on the basis that it is not “environmental information” within the meaning of the definition in article 3(1) of the AIE Regulations.
3. On 28 August 2024, BnM applied an extension under article 7(2)(b) of the AIE Regulations. On 27 September 2024, BnM wrote to the appellant inviting it to refine its request. The appellant responded, noting that it did not wish to reduce the scope of the request.
4. On 29 October 2024, BnM issued its decision. It refused the appellant’s request under article 9(2)(a) of the AIE Regulations. On 27 November 2024, BnM issued its internal review decision, affirming its decision to refuse under article 9(2)(a) of the AIE Regulations. On 30 November 2024, the appellant submitted an appeal to this Office of BnM’s decision.
5. I am directed by the Commissioner to carry out a review under article 12(5) of the AIE Regulations. In so doing, I have had regard to the correspondence between BnM and the appellant as outlined above and to correspondence between my Office and both BnM and the appellant on the matter. 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 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.
8. I am satisfied that the scope of this review concerns whether BnM was justified in refusing the information sought (i.e. the date, name of supplier(s), description of goods/services provided, and amount) relating to purchase orders over €20,000 for the period 2023 and 2024 to the date of the request under article 9(2)(a) of the AIE Regulations.

Preliminary Matters

9. Both the appellant and BnM were invited to make submissions to this Office. The appellant did not provide submissions. BnM did provide submissions, which essentially reiterated what was set out in BnM's correspondence with the appellant and in its original and internal review decisions. In the circumstances, I formed the view that all material issues had already been put to the appellant and it was not necessary for this Office to provide BnM's submissions to this Office to the appellant.
10. During the course of this review, BnM provided this Office with six records entitled:
 - PO Listing 01.01.2023 to 29.03.2023 IRE Org - Value Higher 20K.xlsx
 - PO Listing 01.01.2023 to 29.03.2023 IRE Org - Value Higher 20K (Not Environmental Info).xlsx
 - PO Listing Mar 2023 to July 2024 - Value Higher 20K.xlsx
 - PO Listing Mar 2023 to July 2024 - Value Higher 20K (Not Environmental Info).xlsx
 - PO Listing Jan 2023 to July 2024 JV Org - Value Higher than 20K.xlsx
 - PO Listing Jan 2023 to July 2024 JV Org - Value Higher than 20K (Not Environmental Info).xlsx
11. Having examined BnM's correspondence with the appellant and this Office (discussed in further detail in the Analysis and Findings section below), I am satisfied that the spreadsheets with "(Not Environmental Info" in the title, indicate purchase orders over €20,000 for the relevant period, which BnM essentially "scoped out" on the basis that it definitively did not consider them to be "environmental information", leaving a remaining 1,180 purchase orders which it considered required further examination as to whether they each were or were not "environmental information".
12. As noted, in my decision in [OCE-128538-M9C1X7](#) I found that information relating *some* purchase orders over €20,000 (i.e. those integral to the undertaking of operations of BnM likely to affect the environment) is very likely to be environmental information within the meaning of paragraph (c) of the definition in article 3(1) of the AIE Regulations. I have looked at the lists of purchase orders over €20,000 that BnM definitively did not consider to be "environmental information", and I wish to note that I do not agree with BnM's position in respect of every PO on those lists. However, I am satisfied that this does not preclude BnM from seeking to rely on article 9(2)(a) of the AIE Regulations at this stage or my examination of that provision in this appeal. Furthermore, notwithstanding that there could, in my view, be more than the 1,180 purchase orders which BnM submitted required further examination as to whether they each were or were not "environmental information", I will proceed on the basis of the position put forward by BnM in respect of the 1,180 purchase orders.



Analysis and Findings

Article 9(2)(a) of the AIE Regulations

13. Article 9(2)(a) of the AIE Regulations provides that a public authority may refuse to make environmental information available where the request is manifestly unreasonable having regard to the volume or range of information sought. This provision seeks to transpose Article 4(1)(b) of the AIE Directive, which provides that Member States may provide for a request for environmental information to be refused if the request is manifestly unreasonable, and, in turn, is based on part of Article 4(3)(b) of the Aarhus Convention.
14. Article 9(2)(a) of the AIE Regulations must 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. 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.

Reformulation/Refinement

15. The Minister's Guidance, at paragraph 12.8, states that article 9(2) of the AIE Regulations "clarifies that a public authority may refuse to make information available if the request is considered unreasonable due to the range of material sought, if the request is too general or if the material requested is not yet completed. Public authorities are requested to invoke these grounds for refusal sparingly, **and to assist the applicant (to reformulate a request, for example) as appropriate**" (my emphasis). In light of this, I am of the view that where a public authority intends to refuse a request under article 9(2)(a) of the AIE Regulations, it should first assist the appellant to reformulate the request as appropriate. Both public authorities and appellants should seek to liaise constructively with a view to processing the request as efficiently as possible.
16. As indicated in the "Background" section there was correspondence between the parties in respect of reformulation/refinement of the request. On 27 September 2024, BnM wrote to the appellant seeking refinement and including the following comments:

- "The following records have been identified as coming within the scope of your request:

Schedule of Records

1. P.O. Listing 01.01.2023 – 29.03.2023 IRE Org – Value Higher €20k
 2. P.O. Listing March 2023 to July 2024 – Value Higher €20k
 3. P.O. Listing to July 2024 JV Org – Value Higher €20k"
- "Not all of the information contained within the above Schedule of Records constitutes environmental information. As was affirmed by the Commissioner in the decision of the Commissioner of Environmental Information in Case Ref: OCE-128538-M9C1X7, the relevant paragraph of the definition of environmental information under Article 3 of the AIE Regulations is paragraph (c) i.e. any information in written, visual, aural, electronic or any other material form on



“measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements.” The Commissioner identified the measure/activity involved as the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment.

- “Record 1) contains 2,955 data fields across two tabs. These fields have been reviewed to remove any data that is not related to the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment. This amounts to some 495 data fields, leaving 2,460 data fields, which may potentially constitute environmental information.”
- “Record 2) contains 363 data fields across two tabs with 92 fields not related to the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment, leaving a balance of 271 data fields, which may potentially constitute environmental information.”
- “Record 3) contains 216 data fields with 49 fields not related to the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment, leaving a balance of 167 data fields, which may potentially constitute environmental information.”
- “Therefore, in total across the 3 records, there are 2,898 data fields which may potentially constitute environmental information, with hundreds of different vendors. These data fields have been classified into the following [10] categories of information: • Plant, Machinery & Equipment • Works to Facilities & Upgrades • Fleet Costs • Environmental Monitoring & Research • Public & Community Obligations • Biomass Business • Peat & Horticulture Business • Wind Energy Business • Waste Management Business • Inter-Company Payments”
- “In order to make a decision on your request, the remaining 2,898 data fields need to be reviewed to first consider whether they constitute information “on” the measure/activity, which requires a careful analysis of each payment. Thereafter, each remaining payment must be considered and analysed, exemptions in accordance with Articles 8 and 9 of the AIE Regulations applied and a weighing of the public interest in favour of and against disclosure, in accordance with Articles 10(3) and (4). This will be an extremely laborious and time consuming process, which will also entail analysis of the contracts with the hundreds of separate vendors to determine whether any contractual confidentiality provisions apply.”
- “It is conservatively estimated that this process will take at least 144 hours/ in excess of 19 working days (based on a working day of 7.5 hours)/almost 4 full working weeks as follows:
 - 5 hours – review of information to consider whether it constitutes information “on” a measure/activity;
 - 12 hours – review of each individual contractual arrangement with each vendor;
 - 125 hours – 5 minute review of 1,500 data fields to apply exemptions, applying a reduction to the total data fields of 2,898 based on the above review and taking account of the fact that there is a certain degree of repetition amongst some of the payments. Clarifications may also need to be sought in respect of the precise nature and purpose of some of the payments, thereby potentially increasing this further.
 - 2 hours – application of public interest test.”



- “In such circumstances, answering your request would have a significant adverse effect on my ability to engage in my day-to-day duties of Legal Services Manager. It would involve Bord na Móna plc. in disproportionate effort and would obstruct or significantly interfere with the normal course of its activities.”
 - “Therefore, I would ask you to consider narrowing your request, perhaps by reference to specific categories on information as identified above and/or reducing the timeframe of the request. I am happy to offer you any assistance you may require in this regard.”
 - “In the absence of such limitation, consideration may have to be given as to whether the request is manifestly unreasonable, having regard to the volume or range of information sought, in accordance with Article 9(2)(a) of the AIE Regulations.”
17. On 27 September 2024, the appellant responded to BnM’s request for refinement, commenting “RTK do not wish to take the opportunity to reduce the scope of the request. The request is very specific in terms of dates/size of PO. All other public bodies have no issues releasing all POs over 20k. In line with the Programme for Government commitment, public bodies publish details of Purchase Orders. These are for goods or services with a value greater than or equal to €20,000. RTK is not requesting the list of processes that BnM outline, simply the list of POs over 20k. For context, this is a sample format <https://www.nationaltransport.ie/publications/2024-purchase-orders-e20000-and-over/>”
18. Having examined BnM’s correspondence to the appellant and the detail provided therein, it is clear that it set out the estimated breakdown of time and work involved in processing the request, offered help to the appellant to refine the request, and provided examples of how this might be done (e.g. reduction of timeframe, confinement to specific categories). I am satisfied that BnM provided the appellant with reasonable assistance in reformulating/refining the request.
19. In response, the appellant did not provide a narrower timeframe or specify any of the categories identified by BnM to which the request could be confined. Although the appellant stated “RTK is not requesting the list of processes that BnM outline, simply the list of POs over 20k”, having reviewed BnM’s correspondence, it is unclear to me to what “list of processes” the appellant was referring. While a requester’s refusal to refine a request and reduce the volume or range of information sought may impact whether a request is manifestly unreasonable, and this Office would encourage both parties to liaise constructively, a requester’s unwillingness to engage with a public authority is not, in and of itself, a basis for refusal under article 9(2)(a) of the AIE Regulations.

Meeting the Manifestly Unreasonable Threshold

20. The European Commission’s First Proposal for the AIE Directive envisaged that the exception in Article 4(1)(b) would cover requests “variously described in national legal systems as vexatious or amounting to an abus de droit.” It noted that “compliance with certain requests could involve the public authority in disproportionate cost or effort or would obstruct or significantly interfere with the normal course of its activities. Public authorities should be able to refuse access in such cases in order to ensure their proper functioning.” The Aarhus Convention Compliance Committee (ACCC) has emphasised that “whether or not a request is manifestly unreasonable relates to the nature of the request itself, for example, its volume, vagueness, complexity or repetitive nature, rather than the reason for the request, which is not required to be stated.” (Report adopted on request for advice by Belarus, ACCC/A/2014/1, para. 28).



21. In respect of a request which is voluminous or wide-ranging, within the meaning of article 9(2)(a) of the AIE Regulations, it is clear that a request is not necessarily covered by the “manifestly unreasonable” exception just because it is voluminous or complex. Both article 7(2)(b) of the AIE Regulations and Article 3(2)(b) of the AIE Directive specifically envisage that public authorities will deal with voluminous or complex requests, albeit in a longer timeframe. I further note the parallel duty in Article 7(1) of the AIE Directive to ensure that public authorities organise environmental information with a view to its active and systematic dissemination to the public, and article 5 of the AIE Regulations which seeks to implement that provision. In his Opinion in C-217/97 Commission v Germany at paragraph 30, Advocate General Fennelly stated that the duty in Article 7 of the AIE Directive indicates that individual requests should, in principle, be on matters of detail. Accordingly, the fact that a request is detailed does not mean that it is necessarily unreasonable.
22. When considering whether a request is manifestly unreasonable, it is necessary to examine the impact on the public authority of dealing with the request. In particular, I must examine whether responding to the request would involve the public authority in disproportionate cost or effort, or would obstruct or significantly interfere with the normal course of its activities. In light of the findings of the Court of Justice of the European Union in T-2/03 Verein für Konsumenteninformation v. Commission, at paragraphs 101-115, I consider that the exception in article 9(2)(a) is only available where the administrative burden entailed by dealing with the request is particularly heavy. The burden is on the public authority to demonstrate the unreasonableness of the task entailed by the request. I expect that if a public authority wishes to rely on the manifestly unreasonable nature of a request, that public authority will clearly demonstrate the actual and specific impact that dealing with the request would have on its normal activities.
23. This position is supported by recent comments from Advocate General Medina in his opinion on Coillte v Commissioner for Environmental Information Case C-129/24, in which he stated “in so far as it constitutes an exception to the general rule that information must be provided, refusal on the ground of a manifestly unreasonable request must remain exceptional”. In this opinion he also states “In particular, with regard to the volume of the information requested, according to Article 3(2)(b) of Directive 2003/4 that factor (as well as the complexity of the information requested) justifies an extension of the one-month time limit in which the administration must reply. It follows from a combined reading of Article 3(2)(b) of Directive 2003/4 and Article 4(2)(b) of that directive that the volume of the requested information alone does not render a request manifestly unreasonable”. He concludes however that a holistic view must be taken of each case, stating “it follows that determining whether a request is manifestly unreasonable depends not on the number, the nature or the frequency of requests taken in isolation, but on all the circumstances of each case.”
24. It is also important to bear in mind article 5 of the AIE Regulations and Articles 7 and 3(5) of the AIE Directive, which place duties on public authorities to organise and actively disseminate environmental information, to support the public in seeking access to information and to put practical arrangements in place to ensure the effective exercise of the right to access environmental information. It is not within this Office’s powers to examine the implementation of article 5 of the AIE Regulations or article 7 of the AIE Directive by public authorities. However, I am satisfied that the exemption in article 9(2)(a) is not intended to endorse any failure by a public authority to comply with its duties to organise and disseminate environmental information under those provisions. Furthermore, in every case, regard should be had to the purpose of the AIE Regime, as reflected in Recital 1 of the Preamble 6 to the AIE Directive, which provides that “increased public access to environmental information and the



dissemination of such information contribute to greater public awareness of environmental decision-making and, eventually, to a better environment.” Accordingly, in cases involving article 9(2)(a) this Office may consider whether the information requested is the kind of environmental information that one would expect to be organised by the public authority in a manner that enables its easy dissemination.

25. On 28 August 2024, BnM applied an extension under article 7(2)(b) of the AIE Regulations. In its original decision dated 29 October 2024, BnM referred to its previous correspondence with the appellant regarding refinement and included the following comments:
- “As you will recall from my letter of 27th September, I informed you that the records identified as coming within the scope of your request comprise some 2,898 data fields which may potentially constitute environmental information, involving hundreds of different vendors.”
 - “In circumstances where I estimated that answering your request would take at least 144 hours/ in excess of 19 working days/almost 4 full working weeks, I asked you to consider narrowing your request either by reducing the timeframe of the request or by reference to particular categories of information. In this regard, I provided you with a broad list of 10 categories within which the information fell into, to assist you in identifying the types of information involved.”
 - “By your email of 27th September, you declined to reduce the scope of your request. You asserted that the request was very specific in terms of dates/size of purchase order. This however does not detract from the fact that the request encompasses a very large volume of data, which needs to be considered and analysed. You also maintained that all other public bodies have no issue releasing purchase orders over €20,000 and that in line with the Programme for Government commitment, public bodies publish details of purchase orders for goods or services with a value greater than €20,000. The requirement for publication of such purchase orders only applies to Government Departments and Agencies under Paragraph 9.4 of the Public Service Reform Plan 2011. Bord na Móna plc. is neither.”
 - “This request has been made under the AIE Regulations and therefore falls to be considered and answered in accordance with those Regulations. Whether or not other public authorities choose to publish information regarding purchase orders with a value of over €20,000 is not relevant to this request, which involves in the first instance a consideration of whether or not the information in question is environmental information. Under Article 7(1) of the Regulations, a public authority is only required to make available to the applicant any environmental information the subject of the request held by or for it. There is no requirement to grant access to information that is not environmental information.”
 - “It was accepted in a decision of the Commissioner for Environmental Information in Case OCE-128538-M9C1X7, Right to Know CLG v. Bord na Móna plc, with regard to a previous similar request by your organisation, that not all of the purchase orders in relation to that request, constituted environmental information. In that case the Commissioner found that the only basis upon which the information could be deemed environmental information was under paragraph (c) i.e. “measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those



elements”. The measure identified in the decision was the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment.”

- “Therefore, as a preliminary step the purchase orders need to be screened to determine which could be deemed to relate to the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment. This preliminary exercise has been carried out with 2,898 data fields remaining. However, in order to answer your request, a number of further steps need to be followed:
 - 1) An assessment as to whether or not the information is “on” the measure in accordance with the decision in Henney, adopted in this jurisdiction by Redmond and applied in ESB v. Commissioner for Environmental Information.
 - 2) In respect of any information which is “on” the measure, consideration of and application of any relevant exemptions under Articles 8 and 9.
 - 3) The application of the public interest test in accordance with Articles 10(3) and (4).”
- “Within my letter of 27th September, I informed you that having regard to the estimated timeframe it would take to answer your request, this would have a significant adverse effect on my ability to engage in my day-to-day duties of Legal Services Manager, which in addition to dealing with AIE requests also involves providing legal advice and support to Bord na Móna plc. with regard to a range of critical commercial and regulatory matters.”
- “I also informed you in that letter that in the absence of any narrowing of your request, consideration may have to be given as to whether the request was manifestly unreasonable, having regard to the volume or range of information sought, in accordance with Article 9(2)(a) of the AIE Regulations.”
- “The CJEU in T-2/03 Verein fur Konsumenteninformation v. Commission of the European Communities, recognised the right of an institution to “retain the right, in particular cases where concrete, individual examination of the documents would entail an unreasonable amount of administrative work, to balance the interest in public access to the documents against the burden of work so caused, in order to safeguard, in those particular cases, the interests of good administration” (paragraph 102).”
- “Noting that you have declined to narrow your request, I am of the view that your request is manifestly unreasonable within the meaning of Article 9(2)(a) of the AIE Regulations, as it would have a significant adverse effect on a critical member of staff’s ability to engage in the day-to-day duties of employment, would involve Bord na Móna plc. in disproportionate effort in answering same, would impede the proper functioning of Bord na Móna plc. by diverting a critical staff member to one particular matter for an unduly lengthy period of time to the exclusion of all other duties of their employment and would obstruct or significantly interfere with the normal course of Bord na Móna plc’s activities.”

26. The appellant in its internal review request simply asked BnM to refer to this Office’s decision in [OCE-130555-Z5P6H0](#).

27. In its internal review decision, BnM referred to its correspondence with the appellant and its original decision. It included the following comments:



- “The original decision maker carried out a preliminary screening of the purchase orders to remove any data not related to the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment. Following her review, she concluded that there were 2,898 data fields across the three spreadsheets, which may constitute environmental information.”
- “For the purposes of this internal review, I have carried out my own screening exercise of the data on the spreadsheets as follows:
 - Spreadsheet 1 contains a total of 229 separate POs (Tab 1 173, Tab 2 56), with a total of 333 data fields (Tab 1 267, Tab 2 66). After carrying out a review, a total of 69 POs (Tab 1 66, Tab 2 3), comprising 92 data fields (Tab 1 89, Tab 2 3) are not environmental information. This leaves a balance of 160 POs, containing a total of 241 data fields, which may be environmental information.
 - Spreadsheet 2 contains a total of 1,194 separate POs (Tab 1 906, Tab 2 288), with a total of 3,017 data fields (Tab 1 2,583, Tab 2 434). Following a review, a total of 299 POs (Tab 1, 295, Tab 2 4), comprising 498 data fields (Tab 1 494, Tab 2 4) are not environmental information. This leave a balance of 895 POs, containing a total of 2,519 data fields which may be environmental information.
 - Spreadsheet 3 contains a total of 150 separate POs, with a total of 216 data fields. After a review, a total of 25 POs, comprising 54 data fields are not environmental information, resulting in a balance of 125 POs, containing 162 data fields which may be environmental information.
 - Therefore, across the three spreadsheets, there are a total of 1,180 POs, comprising 2,922 data fields, which may constitute environmental information. Spreadsheet 1 involves 25 different vendors, Spreadsheet 2 320 vendors and Spreadsheet 3 43 vendors.”
- The original decision maker set out a number of required steps in order to answer your request: 1) An assessment as to whether or not the information is “on” the measure in accordance with the decision in Henney, adopted in this jurisdiction by Redmond and applied in ESB v. Commissioner for Environmental Information. 2) In respect of any information which is “on” the measure, consideration of and application of any relevant exemptions under Articles 8 and 9 of the AIE Regulations. 3) The application of the public interest test in accordance with Articles 10(3) and (4).
- “She estimated the process would take at least 144 hours/ in excess of 19 working days (based on a working day of 7.5 hours)/almost 4 full working weeks to complete. Given that I have approached the data on the spreadsheets from the point of view of total purchase orders, in addition to total data fields, I have also carried out my own estimate of the length of time it is likely to take to answer your request. In this regard, I am of the view that rather than carrying out an overall preliminary review of the information to establish whether information constitutes information “on” a measure/activity, this should be incorporated into the review of each individual purchase order, which would thereby increase the time for the review of the purchase orders. I have estimated the time as follows:



- 130 hours – Review of each individual purchase order to consider firstly whether it constitutes information “on” a measure/activity and secondly to establish whether any exemptions are applicable and application of same – allowing a 7 minute review of 1,180 purchase orders constitutes 137 hours, with an allowance made for a degree of repetition amongst some of the purchase orders. As highlighted by the decision maker, clarifications may also need to be sought in respect of the precise nature and purpose of some of the payments, thereby potentially increasing this timeframe further.
 - 10 hours – Review of each individual contractual arrangement with the in excess of 300 vendors.
 - 2 hours – Application of the public interest test.
- “My total estimate is therefore similar to that of the original decision maker, involving a total of 142 hours/approximately 19 working days/almost 4 working weeks.”
 - “The original decision maker concluded that your request was manifestly unreasonable in accordance with Article 9(2)(a) of the AIE Regulations. I agree with this conclusion.”
 - Article 9(2)(a) of the AIE Regulations allows a public authority to refuse to make environmental information available where the request is manifestly unreasonable, having regard to the volume or range of information sought. The original decision maker referred to T-2/03 Verein fur Konsumenteninformation v. Commission of the European Communities, in which the CJEU recognised the right of an institution to “retain the right, in particular cases where concrete, individual examination of the documents would entail an unreasonable amount of administrative work, to balance the interest in public access to the documents against the burden of work so caused, in order to safeguard, in those particular cases, the interests of good administration” (paragraph 102).
 - The estimated time to answer your request is in excess of 4 weeks. Such a prolonged period of time dealing with a single request will cause a significant and unreasonable interference with the day-to-day duties either of the original decision maker or myself, as internal reviewer. The original reviewer set out the impact on her duties in her decision. In my role as a member of the senior leadership team of Bord na Móna plc, I provide comprehensive legal and administrative support and guidance to the Board on matters of strategic importance, regulation and governance. I am also responsible for ensuring Bord na Móna plc. complies with all relevant statutory and regulatory requirements. I play a pivotal role in the governance of Bord na Móna plc. and my diversion from the key duties of my role for a prolonged period to focus exclusively on answering a single AIE request would have a significant adverse effect on Bord na Móna plc, would involve it in disproportionate effort and would obstruct or significantly interfere with the normal course of its activities, particularly in the area of corporate governance.
 - “I am of the view that the administrative burden entailed in dealing with your request is a particularly onerous one, involving the diversion of either me or a senior member of my team solely towards answering a single AIE request, to the exclusion of their other day-to-day duties, for a significant period of time to the ultimate detriment of Bord na Móna plc. I am therefore of the view that your request is manifestly unreasonable having regard to the volume of information sought, pursuant to Article 9(2)(a).”



- “It should be noted that this is not a situation as envisaged by Article 10(5) of the AIE Regulations where environmental information which, although held with information to which Article 8 or 9 relates, may be readily separated from such information. All of the information is contained within three spreadsheet and each purchase order needs to be reviewed individually in order to determine whether it is information “on” the measure in question and whether any of the grounds for exemption under Articles 8 or 9 apply, which as already addressed above is likely to be an extremely laborious and time-consuming exercise.”
 - “Within your request for an internal review dated 29th October 2024, you asked me to consider the decision of the Commissioner for Environmental Information in OCE-130555- Z5P6HO, OCE-129582-B4H2CO & OCE-150125-C4K4K5, Mr. X. v. Coillte. The appeals in that case are not analogous with your request and did not involve an actual decision by the Commissioner on the appeals, but rather the public authority agreed to re-consider two of the appeals and requested remittal of the third to correct an error. Insofar as the Commissioner sets out the relevant principles to be considered when dealing with a request which is manifestly unreasonable, I have followed them in the above analysis. In particular, both the original decision and internal review have set out in specific detail how the time periods for answering your request have been calculated. Further, Bord na Móna plc. engaged with you in an attempt to try to narrow the request, with a view to being in a position to answer same. However, you did not avail of the opportunity to do so.”
28. On 30 November 2024, the appellant submitted an appeal to this Office of BnM’s decision. In doing so it stated “RTK have no detailed submissions on this type of case. All other Public Authorities have no issues publishing POs over Euro20,000. BnM, Coillte and some semi states are reluctant to release even under AIE. Arguably all BnM POs are environmental information as BnM is the state peatland company”.
29. BnM, in its submissions to this Office, essentially reiterated what was set out its correspondence with the appellant and in its original and internal review decisions. It included the following comments:
- “Although not a request for environmental information under the AIE Directive, the case of T-2/03 Verein fur Konsumenteninformation v. Commission of the European Communities, is of assistance in determining what is required when processing a request for information. This case involved a request for access to documents under Regulation No 1049/2001, regarding public access to European Parliament, Council and Commission documents. The CJEU found that it was settled law that the examination required for the purposes of processing a request must be specific in nature. It went on to hold at paragraph 72 that, “an institution is obliged to assess in a concrete and individual manner whether exceptions to the right of access apply to each of the documents referred to in a request.”
 - “The Court recognised that it was possible for an applicant to make a request for a manifestly unreasonable number of documents and therefore recognised the right of an institution to, “retain the right, in particular cases where concrete, individual examination of the documents would entail an unreasonable amount of administrative work, to balance the interest in public access to the documents against the burden of work so caused, in order to safeguard, in those particular cases, the interests of good administration” (paragraph 102).”



- “It is submitted therefore in order to fulfil its duties under the AIE Regulations a public authority when processing a request is required to carry out a “concrete and individual examination” of the contents of each record. The Commissioner determined in *Right to Know CLG v. Bord na Móna plc.* (OCE-128538-M9C1X7), in respect of a previous similar request to the subject of this appeal, regarding whether or not this information constituted “environmental information”, that the relevant aspect of the definition was paragraph (c), namely, “measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements”. The Commissioner identified the relevant measure/activity involved as the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment.”
- “Contrary to what the Appellant has asserted in its Notice of Appeal in this appeal that arguably all Bord na Móna plc. purchase orders are environmental information, the Commissioner accepted at paragraph 56 of the decision that not all of the purchase orders contained within the spreadsheet in that case constituted environmental information. The request in this appeal is for the same information but just over a different time period.”
- “Accordingly, in the first instance in processing this request, a preliminary review was required to determine whether the information involved the operations of Bord na Móna plc. and its subsidiary/associated companies likely to affect the environment, which was carried out by both the original decision maker and the internal reviewer. Thereafter, as identified by both the original decision maker and the internal reviewer, a number of steps are required in order to process the request as follows: (1) In accordance with the case law on Article 3(c) of the definition of environmental information (*Department for Business, Energy and Industrial Strategy v. Information Commissioner* [2017] EWCA (Civ) 844 (“Henney”), adopted in this jurisdiction by *Redmond v. Commissioner for Environmental Information* [2020] IECA 83 and applied in *ESB v. Commissioner for Environmental Information* [2024] IEHC 17), an assessment as to whether or not the information in respect of each purchase order is “on the measure”. (2) Consideration of and application of any relevant exemptions under Articles 8 and 9 of the AIE Regulations. (3) In respect of any exemptions relied on, the application of the public interest test in accordance with Articles 10(3) and (4).”
- “It is submitted that in order for Bord na Móna plc. to fulfil its requirements to carry out a concrete and individual examination of each purchase order, as envisaged by *Verein*, this process must be followed in respect of each individual purchase order. In this regard it should be noted that the information in respect of the purchase orders is specific to the individual purchase order and contains a considerable amount of detailed information, rather than generic descriptions.”
- “Both the original reviewer and the internal reviewer set out in detail how they calculated the time it will take to respond to the request, which varies between 142 and 144 working hours. On any objective assessment, spending a period of between 142 and 144 hours to answer a single AIE request is in Bord na Móna plc.’s submission unreasonable and places an unduly heavy administrative burden on Bord na Móna plc. Further, both reviewers have indicated that dedicating such a prolonged period of time to processing the request negatively interferes with their ability to perform the other duties of their employment to a significant degree, to the detriment of their



employer, Bord na Móna plc. Focusing resources exclusively towards processing the Appellant's request for such a significant period of time inherently has a detrimental effect, particularly having regard to the criticality of both the original decision maker and the internal reviewer to Bord na Móna plc's operations. It further involves a disproportionate effort and is beyond what could be considered a reasonable period of time to dedicate to processing a single request."

- "The information in this case is not such as would come within a public authority's obligations under Article 5(1)(b) of the AIE Regulations to make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means. Rather, it is information derived from Bord na Móna plc.'s financial database management system, the purpose of which is to record purchase orders raised and paid to suppliers. It is not possible to readily separate out the environmental information from the non-environmental information and even the preliminary review carried out by the original reviewer and the internal reviewer took a number of hours. However, it is not necessarily the case that the data remaining after this review is environmental information as this data needs to be reviewed to determine whether or not it is "on" the relevant measure/activity. If not, it is not environmental information. Accordingly, the only way in which the request can be processed is to individually review each purchase order, which will take a considerable amount of time as already outlined."
- "With a view to attempting to answer the request, rather than simply refusing it, Bord na Móna plc. engaged with the Appellant, setting out in detail the volume of information involved and asking them to consider narrowing the request. In order to assist the Appellant in this regard Bord na Móna plc. broke down the information into 10 categories, in order that the Appellant could understand the type of information held and making a more focused request. However, the Appellant refused to consider narrowing the request in any manner or to acknowledge the immense burden processing the request would place on Bord na Móna plc."
- "Insofar as the Appellant asserts in its Notice of Appeal that all other public bodies have no issue publishing purchase orders over €20,000 (except Bord na Móna, Coillte and some other semi-state entities), it is submitted that this is irrelevant. The Appellant has made a request under the AIE Regulations and that request falls to be considered in accordance with those Regulations, which only require public authorities in accordance with Article 7(1), to make available to an applicant environmental information held by or for them. There is no requirement by public authorities to disclose non-environmental information. The fact that other public bodies (which may or may not be subject to the AIE Regulations) disclose information of this type whether voluntarily or because required to do so under the Public Service Reform Plan 2011, has no bearing on this appeal."
- "It is submitted that this is a situation which comes within that envisaged in Verein, where processing the request would require an unreasonable amount of administrative work. Verein recognised that the interest in public access to information needs to be balanced by the burden entailed in processing a request. Ordinarily, the administrative burden placed on a public authority in answering a request under the AIE regulations is outweighed by the public interest in disclosing the environmental information. However, this is not always so and in this case it is submitted that the sheer extent of the administrative burden that would be placed on Bord na Móna plc. by processing the request is such as to outweigh the public interest in disclosing the environmental information the subject of the request."



30. As set out above, BnM provided the appellant with significant detail regarding the timeframe and resources required, and the steps to be taken in processing the request. The appellant declined to reduce the scope of the request and other than commenting that other public authorities publish the information sought and noting its view that all BnM purchase orders are environmental information, provided no substantive submissions in response to the amount of time estimated to process the request or the work involved either to BnM or to this Office.
31. While the appellant is seeking specific information in relation to purchase orders, it is seeking that information in respect of all purchase orders over €20,000. Having regard to the nature of the request, I am satisfied that the information sought is both voluminous and wide-ranging. The time frame of the request is also for 2023 and 2024 (to the date of the request). Although I cannot say for certain that had the appellant engaged in refining the request, it would have been made more manageable, the appellant made no effort to reduce the timeframe or limit it to particular categories. In my view, another approach might have been to limit it in respect of particular activity(ies)/operation(s) e.g. a particular windfarm development.
32. BnM has identified 1,180 purchase orders, which it considers require in the first instance further work to determine if they are environmental information, relevant to this appeal and are contained on spreadsheets, providing the details sought, namely: the PO date, the name of the supplier(s), a description of the goods/services, and the PO amount. I have set out BnM's position in detail above. BnM estimated that to process this request would involve 142 hours of work and provided a breakdown of those hours of work across various tasks. It indicated that this would be required to be undertaken primarily by the Legal Services Manager or the Company Secretary & General Counsel, both senior members of staff. BnM explained the role and duties of the Legal Services Manager and the Company Secretary & General Counsel. I consider that the amount of time required of the Legal Services Manager or the Company Secretary & General Counsel to process the request would result in substantial and unreasonable disruption of their duties and, given their senior positions, BnM's activities generally. I am also satisfied that the work involved in processing this request would need to be carried out by one individual and could not be appropriately delegated to any other staff, in the way that carrying out searches or scheduling documents could be delegated in appropriate cases. In this case, the decision-maker would require to be satisfied that the decision taken was correct in respect of each individual purchase order.
33. Article 9(2)(a) of the AIE Regulations is an acknowledgement of the fact that public authorities should not be required to undertake the processing of AIE Requests where to do so would place an unreasonable burden on what are often limited resources. In the circumstances of this case and having regard to BnM's explanation of the timeframe and resources required, and the steps to be taken, I accept BnM's contention that the processing of the request would place an unreasonable burden on BnM, involving disproportionate effort that would result in a significant interference with the other work of either the Legal Services Manager or the Company Secretary & General Counsel and, as a result, BnM. The result would be a particularly heavy administrative burden on BnM.
34. As noted above, the exception in article 9(2)(a) is not intended to endorse any failure by public bodies to comply with their duties of dissemination of environmental information under article 5 of the AIE Regulations and Article 7 of the AIE Directive. Accordingly, it is relevant to consider whether the information requested is the kind of environmental information that one would expect to be organised by the public authority in a manner that enables its easy dissemination. The appellant in this case



sought access to information relating to all purchase orders over a specified period. While I note the appellant's comments that other public authorities publish this type of information routinely, I also accept BNM's statement that it is not subject to the requirement in the Public Service Reform Plan at 9.4 "Every Purchase Order by a Government Department or Agency for €20,000 or over should be published online." I do not consider this to be the kind of environmental information that one would expect to be organised by BnM in a manner that enables its easy dissemination under article 5 of the AIE Regulations, in particular, having regard to the type of information indicated at article 5(2) of the AIE Regulations.

35. I am satisfied that BnM's estimates are reasonable. I have had regard in this case to the volume and range of information at issue, the time estimated and resources required, the steps to be taken in processing the appellant's request, and the impact of dealing with the request on the other work of the senior staff member involved and, given their senior position, BnM generally. I am mindful that the exception in article 9(2)(a) is only available where the administrative burden entailed by dealing with the request is particularly heavy. On the facts of this appeal, I find that the manifestly unreasonable threshold has been met and article 9(2)(a) of the AIE Regulations is engaged. This finding is not simply due to volume alone, due to the range of factors that I have set out above.
36. I emphasise that my conclusion in this case should not be taken to mean that public authorities may rely on the exception in article 9(2)(a) in respect of every request for voluminous or wide-ranging information. Each request to a public authority must be considered on its own particular facts. Public authorities have obligations under the AIE Directive and AIE Regulations and must put in place adequate resources to comply with those obligations.

Article 10 of the AIE Regulations

37. Although I have found article 9(2)(a) of the AIE Regulations is engaged, that is not the end of the matter. It is necessary to weigh the public interest served by disclosure against the interest served by refusal as is required by articles 10(3) and (4) of the AIE Regulations.
38. In considering the public interest served by disclosure, it is important to be mindful of the purpose of the AIE regime, as reflected in Recital 1 of the Preamble to the AIE Directive, which provides that "increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental decision-making and, eventually, to a better environment." The AIE regime thereby recognises a very strong public interest in openness and transparency in relation to environmental decision-making.
39. The AIE regime also acknowledges that there may be exceptions to the general rule of disclosure of information, as noted in Recital 16 of the AIE Directive, which provides that "public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases". One such case is where the request is manifestly unreasonable having regard to the volume or range of information sought. The public interest in maintaining the exception lies in ensuring that the processing of AIE requests does not cause an unreasonable interference and/or disruption of the work of a public authority.
40. The appellant was invited on 10 December 2024 to make submissions on this matter generally, including the application of the public interest test to this appeal. The appellant did not respond. I note the appellant's comments to BnM that other public authorities publish this type of information



routinely. I also recall that BnM has stated that it is not subject to the requirement in the Public Service Reform Plan at 9.4 “Every Purchase Order by a Government Department or Agency for €20,000 or over should be published online.” I do not consider the information sought to be the kind of environmental information that one would expect to be organised by BnM in a manner that enables its easy dissemination under article 5 of the AIE Regulations. Furthermore, the fact that other public bodies are required to generally publish purchase orders over €20,000, does not automatically mean that BnM is required to have made a determination on each and every purchase order over €20,000 as to whether it is environmental information or that BnM is required to publish details relating to purchase orders over €20,000 under the AIE Regulations, where they comprise environmental information.

41. BnM in its original decision set out its consideration of the public interest served by disclosure, and this was expanded in its internal review decision:

- “In favour of disclosure is the public interest in members of the public being able to exercise their rights of access to environmental information under the AIE Regulations, making environmental information publicly available and of members of the public being informed as to spending by public authorities over a certain level on matters arising out of their operations which have an environmental impact.”

42. BnM in its original decision set out its consideration of the interest served by refusal, and this was expanded in its internal review decision:

- “Answering a request under the AIE Regulations of necessity places an administrative burden on public authorities, which administrative burden is generally outweighed by the public interest in disclosing the environmental information. However, the Regulations through Article 9(2)(a) recognise that there is a limit as to the administrative burden that ought to be placed on public authorities in answering a request and allow a public authority to refuse a request where it is manifestly unreasonable having regard to the volume or range of information sought.”
- “Clearly, there is a public interest in ensuring the proper administration of public authorities and ensuring that the administrative burden placed on them by virtue of the AIE Regulations is not unduly onerous or is such as could negatively affect their day-to-day administration or operations. This is even more so when the public authority is a commercial semi-state, such as Bord na Móna plc. which has a mandate to operate on a commercial basis and generate profit, which results in dividends being paid to the Exchequer. Additionally, there is a public interest in ensuring good corporate governance of public authorities and imposing a burden on a public authority in answering an AIE request of significant volume, which has the effect of diverting a senior member of staff from key duties on matters of strategic importance, regulation and governance, is not ultimately in the interests of the public.”
- “A further factor to be taken into account in assessing the public interest, is that efforts were made by Bord na Móna plc. to try to reduce the administrative burden entailed in answering your request by seeking for it to be narrowed either temporally or by reference to the categories of information held, which you chose not to avail of.”

43. In both its original and its internal review decisions, BnM indicated that having weighed the factors, it considered the interest in refusal to outweigh the interest in disclosure.



44. As noted above, in its submissions to this Office, BnM essentially reiterated its position.
45. In the circumstances of this case, while I accept that there is a public interest in transparency relating to BnM's purchase orders over €20,000, that comprise environmental information (i.e. those integral to the undertaking of operations of BnM likely to affect the environment) (see OCE-128538-M9C1X7), I also acknowledge that there is an interest in ensuring that the processing of an AIE Request does not cause an unreasonable interference and/or disruption of the work of a public authority. In the absence of any submissions regarding the public interest test from the appellant, and considering the broad nature of the request, it is not possible for me to consider in any specific way how the release of this information might advance the objectives of the Aarhus Convention, assist in participation in any decision-making process on environmental matters or otherwise lead to a better environment. Having weighed the factors, in the circumstances of this particular case, I am satisfied that the public interest in disclosure does not outweigh the interest served by refusal. Accordingly, I find, that BnM's decision under article 9(2)(a) of the AIE Regulations was justified.
46. In accordance with article 10(5), I have considered whether BnM could have separated information out information held with information to which article 9(2)(a) applies. I note BnM's comments in its internal review decision that "It should be noted that this is not a situation as envisaged by Article 10(5) of the AIE Regulations where environmental information which, although held with information to which Article 8 or 9 relates, may be readily separated from such information. All of the information is contained within three spreadsheet[s] and each purchase order needs to be reviewed individually in order to determine whether it is information "on" the measure in question and whether any of the grounds for exemption under Articles 8 or 9 apply, which as already addressed above is likely to be an extremely laborious and time-consuming exercise."
47. Given the nature of the information sought in this case, I am satisfied that BnM was unable to consider article 10(5) of the AIE Regulations without the engagement requested from the appellant. The appellant did not avail of the opportunity to seek assistance in narrowing the request and identifying particular environmental information of interest, despite receiving explanations regarding the type and amount of information involved. While BnM could have limited the matter, for example to a reduced time-period, specific categories, or specific activity(ies)/operation(s), in light of the explanations given by BnM in its internal review decision and appellant's failure to engage, I am satisfied that it was reasonable for BnM not to have considered the separation of information in this case.

Decision

48. Having carried out a review under article 12(5) of the AIE Regulations, I hereby affirm BnM's decision under article 9(2)(a) of the AIE Regulations.

Appeal to the High Court

49. 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.



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Julie O'Leary
On behalf of the Commissioner for Environmental Information
20 June 2025