



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-140629-F3L2J6

Date of decision: 10 July 2025

Appellant: Right To Know CLG

Public Authority: Offaly County Council [the Council]

Issue: Whether the Council was justified in refusing to provide the information sought in this request, under article 9 (1) (b) and 9 (2) (c) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner found that the public authority was not justified in refusing access to 24 records identified and directed release of the information subject to the redaction of certain information falling outside the scope of the appeal.

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 28 March 2023 the appellant requested the following information:

“Under the AIE Regs to request any records in relation to the following works currently underway

Riparian works

Unlicensed tree felling

Native woodland removal

Bank vegetation removal

Hardcore for potential greenway / blueway

on the River Brosna near Huntston, Co. Offaly at the following site

<https://irishriverproject.com/2023/03/28/riparian-works-tree-felling-woodland-removal-bank-vegetation-removal-potential-greenway-blueway-on-river-brosna-near-huntston-co-offaly/>”

2. On 15 June 2023, the Council advised it was not possible to process the AIE request within the allowed timeframe due to “staff resource issues.” The Council advised that it would grant access to the records requested and stated that it had received two complaints in relation to the matter received on 27 March 2023 and 28 March 2023 and that the Council had commenced an investigation into the works which were “ongoing” and no further records were available.
3. The appellant sought an Internal review of the matter on 16 June 2023 stating that it had not received the two records and “we would have expected the records of Internal CoCo correspondence in relation to the site, inspectors reports, maps/photos, correspondence with landowners, IFI referral etc. Internal Review should include all records in relation to the site, following the complaints”
4. The Council delivered its internal review decision on 18 July 2023 and stated as follows;

“This AIE Request relates to an alleged Unauthorised Development and as such no records other than any Warning Letters issued under Section 152 of the Planning and Development Act 2000, as amended, can be released under this request.

Offaly County Council wishes to advise that this is an on-going investigation into an alleged Unauthorised Development. Offaly County Council have reached no decision on the investigation and no warning letters have issued.”

5. The appellant appealed to this Office on 18 July 2023 arguing that the Council “do not appear to have considered the public interest test” and “failure of CoCo to reach a decision



on investigation has no impact on an AIE request, as the request is for all records on the case (regardless of whether they are warning letters).”

6. I am directed by the Commissioner to carry out a review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and Offaly County Council. I have also examined the contents of the records at issue. In addition, I have had regard to:
 - a. 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);
 - b. Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - c. 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
 - d. The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (‘the Aarhus Guide’).

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

Scope of Review

8. In accordance with article 12(5) of the AIE Regulations, the role of this Office is to review the public authority’s internal review decision and to affirm, annul or vary it.

9. The appellant in its internal review request dated 16 June 2023 stated that it had not been provided with two documents previously mentioned by the Council in its original decision correspondence and accepted that this may have been an oversight, however it expected considerably more records including “correspondence in relation to the site, inspectors reports, maps/photos, correspondence with landowners, IFI referral etc. Internal Review should include all records in relation to the site, following the complaints.”

10. The Council initially, in both the original and internal review decision, refused the appellant’s request on the basis that the matter is ongoing. During the course of the review, the Council provided to this Office further submissions/ correspondence (set out below) and provided a schedule of records together with 24 records. Having regard to the submissions and records, I consider the scope of this review is whether the Council was justified in refusing to provide the information sought in this request, under article 9 (1) (b) and 9 (2) (c) of the AIE Regulations.



11. The appellant has confirmed that it is not seeking any personal information be released from the records at issue. Accordingly, I consider names, addresses, email addresses, telephone numbers of the landowner and complainants to fall outside the scope of my review.
12. My review in this case is concerned with whether the Council is entitled to rely on article 9 of the AIE Regulations as justification in refusing to provide the 24 records.

Preliminary Matters

13. It should be noted that, while I am required by article 12(5)(b) of the AIE Regulations to specify reasons for my decision, I must also be careful not to disclose withheld information in my decisions. This means that the detail that I can give about the content of the record(s) and the extent to which I can describe certain matters in my analysis is limited.
14. Articles 7(4) and 11(4) of the AIE Regulations make it clear that a public authority is required to provide reasoning for its decisions at original decision and internal review stage. No adequate explanation was provided to the appellant in the case in the decisions advanced by the Council. No schedule of records or description of the information it holds was provided by the Council when notifying the appellant of its decision and no reference was made to the public interest balancing test. The judgment of the High Court in *Right to Know v An Taoiseach* [2018] IEHC 372 makes it clear that “the mere invoking of the statutory ground upon which disclosure of environmental information may be exempted cannot, to my mind, constitute a sufficient reason for the refusal”.
15. The duty to give reasons for the refusal of requests arises not only by virtue of the AIE Regulations and the Directive but is also recognised generally as a core principle of administrative law and a fundamental element of constitutional justice (see, for example, *Meadows v Minister for Justice* [2010] IESC 3 and *Balz & Anor v An Bord Pleanála & Ors* [2019] IESC 90). Both of these judgments, in the same way as the AIE Regulations, make it clear that where a requester has all or part of a request refused, they are entitled to be provided with clear reasons for that refusal. This duty arises so that the requester can take a view as to whether they consider refusal justified, or whether they wish to exercise their entitlement to have the refusal reviewed, whether at internal review stage or through an appeal to this Office.
16. I note that both the Original and Internal Review decisions were not provided to the appellant within the time periods prescribed. The AIE Regulations are quite clear, at article 7(2)(a), that public authorities “shall make a decision on a request...at the latest...not later than one month from the date on which [a] request is received”. Given that article 10(7) of the Regulations provides that “[w]here a decision is not notified to the applicant within the relevant period specified in article 7, a decision refusing the request shall be deemed to



have been made by the public authority concerned on the date of expiry of such period, the appellant was entitled to seek an internal review of that deemed refusal and, in accordance with article 11(3), to receive a response “within one month from receipt of the request for the internal review.” Lack of staff resources are not a sufficient reason for a decision issuing late, as the time for making a decision can only be extended if the conditions specified under article 9(2)(b) are met.

Offaly County Council’s position

17. In submissions to this Office dated 06 September 2023 the Council made the following points:

“Offaly County Council’s position in relation to these AIE requests would be as follows that as they relate to an alleged Unauthorised Development, no records other than any Warning Letters issued under Section 152 of the Planning and Development Act 2000, as amended, can be released under these requests. Offaly County Council wishes to advise that this is an on-going investigation into an alleged Unauthorised Development. Offaly County Council have reached no decision on the investigation and no warning letters have issued. As one of the AIE applicants is a notice party under the UD File 23/023, they will receive a copy of any Warning Notice that may issue as a result of the investigation.”

18. In submissions to this Office dated 29 September 2023, and having provided a schedule of documents, together with a copy of the relevant information set out therein, the Council stated as follows:

“On 29th March 2023, Offaly County Council opened a file on this alleged Unauthorised Development (UD 23/023). Offaly County Council made preliminary enquires with the National Park and Wildlife Service and Fisheries Ireland on 29th March 2023. Their responses are included in the file as “External Referral”.

A number of site inspections have taken place and two reports on this issue have been drafted.

This is still an active and on-going investigation by the Planning Department of Offaly County Council.”

19. The Council stated that records were refused in accordance with article 4 (d) of the AIE regulations as they concern “material in the course of completion, or unfinished documents or data.” The Council also stated that “this is still an active and on-going investigation.”



20. By correspondence dated 14 April 2025, this Office invited the Council to provide submissions on the following points:

- Given the passage of time to confirm if the investigation remained “ongoing” and if concluded, if the Council was in a position to release (or part of) the relevant information sought.
- Confirmation as to whether the schedule of documents provided to this Office had been shared with the appellant.
- Clarification that the Council intended to rely on Article 4 (1) (d) of the Directive rather than the Regulations in its submissions to this Office and that article 9 (2) (c) of the Regulation is the equivalent article in the Regulations.
- The Council was invited to provide all details relevant to the Council’s claim for that exemption in respect of each of the records concerned / the particular information at issue.
- Submissions in respect of article 9 (1) (b) of the AIE regulations.
- Submissions in respect of article 8 (a)(i) of the AIE Regulations.
- Submissions in respect of article 10 of the AIE regulations.

21. Follow up correspondence issued to the Council from this Office on 07 May 2025, however no response was forthcoming.

Appellant’s position

22. In its appeal to this Office dated 18 July 2023, the appellant stated that it was “unclear” why the Council sought to rely on Section 152 of the Planning and Development Act 2000, as amended that “records on an unauthorised development cannot be released under AIE Regs” and that the Council had failed to consider the public interest test.

23. The appellant also argued that the failure by the Council to reach a decision on the investigation “has no impact on an AIE request, as the request is for all records on the case (regardless of whether they are warning letters.)”

Analysis and Findings

24. The Council provided a schedule of documents together with copies of the relevant records to this Office during the course of the review. The appellant has not been provided with a schedule of the documents.

Records at issue



25. Firstly, I must be cognisant that it is not the function of this Office to disclose information, meaning that the detail that I can give about the content of the documents and the extent to which I can describe certain matters in my analysis is limited.

26. The 24 records at issue may be summarised as follows:

Correspondence between the Council and two complainants (6 records)
Two site reports (2 records)
Internal correspondence
Correspondence with other public bodies, eg: Inland Fishers and NPWS

27. In circumstances where the Public Authority have not responded to the Investigators request for submissions/ clarifications, these are the following matters which I consider relevant to this appeal:

Article 9

Article 9 (2) (c)

28. In correspondence to this Office dated 29 September 2023, the Council explained that it was refusing access to all 24 records identified on the schedule provided to this Office “in accordance with Article 4 (d) of the Regulations as they concern ‘material in the course of completion, or unfinished documents or data’.” I believe the Council were relying on Article 4(1) (d) of the *Directive* rather than the Regulations. Article 9 (2) (c) of the regulations is the equivalent article in the AIE Regulations.

29. Article 9(2)(c) of the AIE Regulations provides that a public authority may refuse to make environmental information available where the request concerns material in the course of completion, or unfinished documents or data. This provision transposes Article 4(1)(d) of the AIE Directive, which in turn is based on part of Article 4(3)(c) of the Aarhus Convention. This exemption is not harm-based. It is not necessary for the public authority to show that there is any adverse effect in respect of the release of the information at issue to engage the exception, simply that the information concerns material in the course of completion, or unfinished documents or data, although, as noted below, there is still a requirement to then consider the public interest.

30. Article 9(2)(c) 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 articles 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. Article 10(6) of the AIE Regulations states that where a request is refused pursuant to article 9(2)(c) because it concerns material in the course of completion, the public authority shall inform the applicant of the name of the authority preparing the material and the estimated time needed for completion.

31. In this matter, the Council did not explain why the information at issue falls within the scope of the exception nor did it outline which limb(s) of the exception is being relied upon. No information was provided in respect of weighing the public interest served by disclosure against the interest served by the refusal as is required by articles 10(3) and 10(4).
32. Although the concepts of ‘material in the course of completion’ and ‘unfinished documents or data’ are not defined [by the AIE Directive], it is apparent from the explanations relating to Article 4 of the Proposal for a Directive of the European Parliament and of the Council on public access to environmental information presented by the Commission on 29 June 2000 (COM(2000) 402 final) (OJ 2000 C 337 E, p. 156) that the purpose of that exception is to meet the need of the public authorities to have a protected space in which to pursue internal considerations and debates (see, to that effect, judgment of 20 January 2021, Land Baden-Württemberg (Internal communications), C-619/19, EU:C:2021:35, paragraph 44). The Court has also held, that provided for in point (d) of the first subparagraph of Article 4(1) of the directive relates to the preparation or drafting of documents and is therefore of a temporary nature (see, to that effect, judgment of 20 January 2021, Land Baden-Württemberg (Internal communications), C-619/19, EU:C:2021:35, paragraph 56).
33. As indicated above, the first question to be addressed is whether or not article 9(2)(c) of the AIE Regulations is engaged on the basis that the information at issue “concerns material in the course of completion, or unfinished documents or data” (i.e. which limb(s) of the exemption is being relied upon).
34. It is this Office’s view that “material in the course of completion” relates to the process of preparing information/documents. The Aarhus Guide states that “the expression ‘in the course of completion’ relates to the process of preparation of the information or the document and not to any decision-making process for the purpose of which the given information or document has been prepared.” However, this Office considers that the factual circumstance of each case is relevant to assess and considers that this exemption may apply in two ways, firstly to information that is itself in the course of completion or unfinished, but secondly to information that while not itself material in the course of completion or unfinished, sufficiently concerns the material in the course of completion or unfinished information.



35. The Aarhus Guide also includes the following commentary:

A request for access to raw environmental data cannot be refused on the grounds that it is “material in the course of completion” to be made publicly available only after processing or correction factors have been applied. In its findings on ACCC/C/2010/53 (United Kingdom), the Committee considered whether raw air pollution data collected from a monitoring station and not yet subject to data correction could be exempted from disclosure as “material in the course of completion”. The Committee considered that the raw data was itself environmental information within the meaning of article 2, paragraph 3 (a), of the Convention. [...]

Similarly, the mere status of something as a draft alone does not automatically bring it under the exception. The words “in the course of completion” suggest that the term refers to individual documents that are actively being worked on by the public authority. Once those documents are no longer in the “course of completion” they may be released, even if they are still unfinished and even if the decision to which they pertain has not yet been resolved. “In the course of completion” suggests that the document will have more work done on it within some reasonable time frame. Other articles of the Convention also give some guidance as to how Parties might interpret “in the course of completion”. Articles 6, 7 and 8 concerning public participation require certain draft documents to be accessible for public review. Thus, drafts of documents such as permits, EIAs, policies, programmes, plans and executive regulations that are open for comment under the Convention would not be “materials in the course of completion” under this exception.

36. I consider that the purpose of this exemption is to give public authorities time and private space to draft and amend documents that they are preparing before they are finalised. The European Commission acknowledged this interest in its First Proposal for the AIE Directive, as did the Court of Justice of the European Union in Case C 619/19 Land Baden-Württemberg v. D.R. at paragraph 44. I emphasise that this interest is in maintaining the confidentiality of draft documents while they are still being actively worked on, rather than in maintaining the confidentiality of completed documents pending the conclusion of decision-making process.

37. Having reviewed the documents provided by the Council (which predominantly comprise of inter organisational correspondence, correspondence with other public bodies such as Inland Fishers, the National Parks and Wildlife Services (NPWS) the two complainants and two site reports) in respect of this matter, it is evident that the information sought is not “material in the course of completion” pursuant to the AIE Regulations. There is nothing in the records provided that indicate to me that any of the data contained therein is subject to any further checks or that any part is considered to be “draft documents” or documents in the process of being finalised or actively worked on. The records provided are inherently



concluded documents and not at a “temporary” stage. In this context, I conclude that the records which have been provided to this Office are not being actively worked on and cannot be characterised as being in and of themselves “material in the course of completion”, “unfinished documents”, or “unfinished data”; it is clear they are complete. I am also satisfied that the relevant records do not “concern” material in the course of completion or unfinished documents or data such that they would attract the protection of article 9(2)(c). It is important to note that this exemption applies to actual documents or data, and not to unfinished processes.

38. I find, therefore, that article 9(2)(c) of the AIE Regulations is not engaged. In the circumstances, I am not required to go on and consider article 10 of the AIE Regulations.

39. I wish to reiterate that the particular factual scenario in each individual case must be considered and, in addition to the specific information at issue, is a key factor in assessing the application of article 9(2)(c) of the AIE Regulations. Cases are often distinguished on their facts.

40. Despite the fact the Council did not rely on any further exemption articles of the AIE regulations, it would be remiss of me to proceed to annul and direct release of the information without considering other exemption articles which appear to me to be relevant to matter. I will consider these articles below.

Article 9 (1) (b)

41. The Council, in its internal review decision, together with correspondence with this Office referred to an “ongoing investigation into an alleged unauthorised development” and provided some brief detail in that regard. In the circumstances and upon my examination of the case file, it appears to me that article 9(1)(b) may be relevant to this appeal.

42. Article 9(1)(b) of the AIE Regulations provides that a public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect the “course of justice (including criminal inquiries and disciplinary inquiries).”

43. This provision seeks to transpose Article 4(2)(c) of the AIE Directive, which in turn is based on Article 4(4)(c) of the Aarhus Convention. Article 4(2)(c) of the AIE Directive provides that Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.



44. Article 9(1)(b) must be read alongside article 10 of the AIE Regulations, which provides for certain limitations on the ability of a public authority to refuse environmental information. Article 10(3) of the AIE Regulations requires a public authority to consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal and article 10(4) of the AIE Regulations provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest served by disclosure.
45. The wording of article 9(1)(b) of the AIE Regulations makes it clear that there must be some adverse effect on the course of justice in order for the exception to apply. Accordingly, when relying on article 9(1)(b) the public authority must set out the reasons why it considers that disclosure of the information at issue could specifically and actually undermine the course of justice (see C-619/19 Land Baden-Württemberg v DR). The risk of the course of justice being undermined must be reasonably foreseeable and not purely hypothetical.
46. I am not satisfied that the Council has explained how the release of the records at issue could adversely affect the “ongoing investigation” and in turn, “the course of justice.” The Council have not addressed the specifics of the information requested or explained in any meaningful way how the release of the records would adversely affect the course of justice “with regards Section 152 of the Planning and Development Act 2000, as amended.”
47. I must remind the Council that the fact that information may relate to ongoing legal or statutory proceedings does not, in and of itself, establish that its disclosure would adversely affect the course of justice; otherwise the AIE Regulations would provide for a class-based exemption for such information, which they do not.
48. Without this information it is not possible for me to find that the information sought is relevant to the proceedings, or to find that the course of justice would be adversely affected by the release of the requested information. When considering whether there would be an adverse effect if the records at issue were to be released, I would expect it to consider the specifics of the information contained within.
49. Finally, article 10(5) stipulates that nothing in articles 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. The Council does not seem to have given any consideration as to whether there contains within the records information which may be separated from information which article 9(1)(b) relates (in the event its application is justified).
50. Having reviewed the information sought, I am not satisfied that the Council has demonstrated that the release of the records would cause a reasonably foreseeable risk on the ability to conduct enquiries regarding unauthorised developments. The information



contained in the withheld records is primarily investigative/administrative. The refused information is of such a factual nature that I cannot see how it could give any advantage to person accused of or who has carried out unauthorised development, or otherwise adversely affect the course of justice. Accordingly, I find that article 9(1)(b) does not apply to the information sought. Therefore, I am not required to consider article 10 of the AIE Regulations.

Article 8

Article 8 (a) (i)

51. In the circumstances of this case, the name and contact information of the landowner together with the details of two separate complainants are contained in the records. Following on from an enquiry from the Investigator to the appellant, on 22 May 2025 the appellant confirmed that personal information was not within the scope of this request. As such, I consider the personal data may be separated from the other environmental information at issue, for example by means of redaction (see Article 4(4) of the AIE Directive and article 10(5) of the AIE Regulations).
52. I have also considered the question of the “land” in issue being an identifier of personal information, namely the landowner, however I note the complaints to the Council have used the land as the relevant identifier of the unauthorised development. This indicates to me that the “land” cannot be construed as requiring any redactions.

Decision

53. Having carried out a review under article 12(5) of the AIE Regulations, I annul the Council’s decision and direct it to release the information sought subject to redactions of personal details as follows:

Landowner name, address, email, phone number
Complainants name, address, email and phone number

Appeal to the High Court

54. 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 Commissioner for Environmental Information
10 July 2025