



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-158150-D7M5R7

Date of decision: 26 August 2025

Appellant: Mr Neil Foulkes

Public Authority: Department of Agriculture, Food and the Marine ('the Department')

Issue: Whether the Department has established that it did not hold information in accordance with article 7(5) of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner annulled the Department's decision and directed it to provide the appellant with a new internal review decision

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



Background

1. On 1 February 2023, the appellant requested:

- “1) Correspondence between Niall Phelan & Ken Bucke (Forest Service) c. 19-1-21 related to Judicial Review 740/2018*
- 2) A copy of an email from Ken Bucke (Forest Service) to colleagues 19-1-21 containing a link to an article in the Irish Times; including related correspondence.*
- 3) Any correspondence between DAFM and the FAC on the matter of Judicial Review 740/2018*
- 4) Correspondence between FS and the EPA on the matter of Judicial Review 740/2018*
- 5) Correspondence between FS and the EPA on the issue of waterbody status in 2021*
- 6) All correspondence between Jean Hamilton (jean.hamilton@ftco.ie) and Kevin Collins (FS) during January 2021*
- 7) All email correspondence with the subject including the topic “Q Values”*
- 8) Correspondence between Ken Bucke and either Tanya Slattery, Alan Booth or Orla Fahy related to WFD issues during the period January –March 2021*
- 9) All legal advice sought by DAFM relating to Judicial Review 740/2018”*

2. On 2 May 2023 and 5 May 2023, the Department issued its original decision part-granting the appellant with six (6) records for parts four and five of his request and refusing the remainder, as they were unable to locate any further related records. The Department confirmed that it had undertaken searches on its office computers, and it had also contacted the relevant parties, in relation to the appellant’s request.

3. On 4 May 2023, the appellant requested an internal review, as he was not satisfied that the Department had provided all information falling within the scope his request.

4. On 9 May 2023, the Department issued its internal review decision affirming its original decision.

5. The appellant submitted an appeal to this Office on 11 May 2023.

6. On 4 April 2025, this Office annulled the decision of the Department, and it directed it to carry out a new internal review decision.

7. On 9 April 2025, the Department issued its new internal review decision, wherein it varied its original decision to a part-refusal, and it re-affirmed the searches, which it had undertaken.

8. The appellant submitted an appeal to this Office on 9 April 2025.

9. I am directed by the Commissioner to carry out a review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the Department of Agriculture, Food and the Marine.



In addition, I have had regard to:

- 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').
10. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

11. 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.
12. The scope of this review is to determine whether the Department was justified in refusing access to the requested information under article 7(5) of the AIE regulations as reasonable steps had not been taken to identify all information relevant to the request.

Preliminary Matters

13. This is the second time that this case has been appealed to this Office. Originally, the reference number *OCE-138197-X1S6K2* was assigned to this case. Having reviewed the first appeal, this Office issued a decision to annul and remit it back to the Department and directed it to carry out a new internal review. Following this, the Department issued a new internal review decision. The appellant was not satisfied with this decision, and he submitted a new appeal to this Office and the reference number *OCE-158150-D7M5R7* was assigned to the new case. This appeal is reviewed below.

Analysis and Findings

14. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned. In cases where a public authority has effectively refused a request under article 7(5), this Office must be satisfied



that adequate steps have been taken to identify and locate relevant environmental information, having regard to the circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply. It is not normally this Office's function to search for environmental information.

15. What will be considered reasonable will vary from case to case, but as a general guide, I set out below the type of information that my Office would generally expect to be set out in a decision where a public authority is relying on article 7(5) of the AIE Regulations;
- (i) an outline of exactly which areas/units etc. of the organisation were searched for the information;
 - (ii) an explanation of how searches were carried out (i.e. manually, by computer, by name, by key words). Keywords should be recorded and provided in the decision as appropriate;
 - (iii) details of the individuals consulted in connection with the search;
 - (iv) a description of the searches carried out to cover the possibility of misfiled/misplaced records;
 - (v) details of guidelines, practices, procedures and arrangements in relation to the storage, filing, archiving, retention and destruction of the type of information requested in this case;
 - (vi) the basis on which the public authority has concluded that it does not hold any information within the scope of the appellant's request and that no such information is held by any other person or body on its behalf.
16. Article 7(5) of the AIE regulations allows a public authority to refuse a request if it does not hold the requested information. For a public authority to successfully rely on this provision, it must, among other things, provide evidence that it carried out adequate searches for the environmental information requested.
17. This Office's approach to dealing with this type of case is to assess whether adequate steps have been taken to identify and locate relevant environmental information, having regard to the circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness is applied. What will be considered reasonable will vary from case to case.
18. The appellant submitted that the Department has failed to provide him with adequate details of the searches undertaken, in relation to his request. He highlighted that there was no evidence before him, that any searches were conducted by the Department. He contended that the Department should not be permitted to delete emails, containing environmental information after a period of two years. He requested that the Department provide him with details of their retention and archiving policies and explain to him how environmental information is maintained by them.



19. The Department was given an opportunity to provide a submission to this Office outlining specific searches, in respect of information sought in this case and to provide further detail regarding their retention and archiving policies. However, the Department did not respond to this request. The Department provided this Office with a list of searches that the decision maker requested be carried out by a number of areas and individuals within the Department. However, no information was provided as to whether these searches were in fact carried out, the keywords used, areas searched, or the results of these searches. The appellant also contends that one of the individuals listed no longer works in the Department. Due to this, I cannot be satisfied that all reasonable steps were taken to identify information relevant to this request and I will annul the decision of the Department.
20. The Department should issue a new internal review decision in relation to this request. While I note the appellant's comments in relation to the Department's retention policies, there is nothing in the AIE Regulations that prevents a public authority from having such a policy or requires a public authority to retain all environmental information for an indefinite period. Data retention policies are a normal and necessary part of office and business management. The requirement under the AIE Regulations is that a public authority takes adequate steps to identify and locate relevant environmental information. As per my paragraph 15(v) above, it may be relevant in a particular case for a public authority to provide a requestor with "details of guidelines, practices, procedures and arrangements in relation to the storage, filing, archiving, retention and destruction of the type of information requested". If information is archived after a certain period, it may be the case that it is reasonable that searches to be carried out in respect of archived information, however that may not always be the case. Should the Department consider that some of the information requested may now have been deleted, it should set this out in the new internal review decision and provide the appellant with relevant information regarding its archiving and retention policies.

Decision

21. Having carried out a review under article 12(5) of the AIE Regulations, I annul the Department's decision and direct it to provide the appellant with a new internal review decision.

Appeal to the High Court

22. 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

26 August 2025