



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 References: OCE-117836-T2D9W6; OCE-119280-J8H6V8; OCE-124415-
W3B0X1; OCE-124845-J0P7C0; OCE-135514-F7P4M2

Date of decision: 28 October 2025

Appellant: Various Appellants

Public Authority: Bord na Móna PLC (BNM)

Issue: Whether BNM was justified under the AIE Regulations in refusing the information sought.

Summary of Commissioner's Decision: The Commissioner annulled the internal review decision of BNM in each 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. This decision concerns five (5) appeals to this Office against the decisions of Bord na Móna PLC (BNM) on five (5) separate requests submitted by various appellants under the AIE Regulations.

Request 1 (OCEI Appeal Reference: OCE-117836-T2D9W6)

2. On 3 November 2021, the appellant submitted the following request to BNM: “... I would like to request a list of all current bog drainage operations currently underway on BNM properties... For clarity, I’m asking for ALL drainage operations on the BNM landbank... Not just BNM’s owned drainage operations e.g. any underway via joint ventures with PowerGen, Coillte ESB, OPW or others.” On 26 November 2021, BNM invited the appellant to make a more specific request, in line with article 7(8) of the AIE Regulations. In this regard, BNM stated: “It appears that [BNM] and/or its subsidiaries have carried out numerous different types of bog drainage operations over the years within the 80,000 hectares. Most bogs would have drainage operations in some manner or form so I would be obliged if you could clarify what type of drainage operations your request relates to so that I can direct the request for information to the correct entities.” Further to a follow-up telephone call, on 26 November 2021, the appellant responded as follows: “... As discussed, suggest the AIE can be reduced in scope to 'powered' drainage (where a mechanical pump exists, and is connected to electrical supply) If this still results in a voluminous number of sites, we can look again, and further reduce to 'large' pumps, maybe narrow down by flow capacity or similar measure.”
3. On 2 December 2021, BNM issued its decision. It stated that it was refusing the appellant’s request on the basis that BNM does not hold any information in relation to the request. BNM also stated: “The information in relation to your request is held by Bord na Móna Energy Limited. It is the opinion of Bord na Móna Energy Limited that they are not a public authority for the purpose of the AIE Regulations.” It added: “Please see the website www.bnmpcas.ie which has maps of some of the peatlands with pumps identified, which is publicly available information.” On 6 December 2021, the appellant sought an internal review of BNM’s decision, “based on two issues – Related case regarding AIE and BNM Biomass [and] Active pumping stations on BNM lands, operator is immaterial (e.g. contractor, subsidiary, joint venture company or related company).”
4. On 6 January 2022, BNM issued its internal review decision, wherein it stated that it was affirming its original decision. In relation to the case referenced by the appellant (OCE-93469-W3X0R6), BNM stated that this matter was currently under appeal to the High Court. In respect of the appellant’s second point, it stated: “[BNM] is the owner and/or the occupier of the lands and the drainage operations the subject matter of your request are being carried out under its direction and control, inter alia to comply with the requirements of the relevant Integrated Pollution Control (IPC) licences, which licences are not held in the name of [BNM].” On 7 January 2022, the appellant submitted an appeal to this Office.



Request 2 (OCEI Appeal Reference: OCE-119280-J8H6V8)

5. On 1 November 2021, the appellant requested the following information from BNM:
- (1) Breakdown of sale of peat products per year from 2011 to present by type (horticultural peat; briquettes; peat for burning at power stations, etc) and the amount exported per type per year (in kilogram or other measurement normally used by [BNM] in its records)
 - (2) Briefing documents and/or minutes of meetings in relation to high-level meeting between the president of the IFA, Tim Cullinan and CEO of [BNM], Tom Donnellan that was held circa 11 December 2020
 - (3) All internal reports for the board and/or minutes of [BNM] board meetings that mention any decision to divert peat previously allocated for the horticulture industry to retail factories in Ireland or the UK and/or to the Edenderry power station to cover the period 1 January 2021-present
 - (4) All records in relation to Longford County Council Enforcement Case reference number UNA 1344 concerning peat stockpiling close to Clonmore, Kilashee, Co Longford to cover the period 1 June 2021-present
 - (5) A copy of the newly revised version of the Strategic Framework for the Future Use of Peatlands
- The appellant also stated: “This request includes records held by Bord na Mona Powergen or any other subsidiary of [BNM].”
6. On 1 December 2021, BNM issued its decision. In relation to part (1) it stated: “This part of the request is refused under the AIE Regulations as I have conducted searches and the requested information is not held by or for [BNM]. This information is held by Bord na Móna Horticulture Limited, Bord na Móna Fuels Limited and Bord na Móna Energy Limited. It is those companies respective decision that they are not public authorities for the purpose of AIE.” In relation to part (2) it stated: “Herewith attached [BNM] Strategy for IFA meeting powerpoint presentation which was held by [BNM].” In relation to part (3) it stated: “The Board minutes of [BNM] from 1st January 2021 to date have been reviewed and additional searches have been conducted on records within [BNM] and there is no relevant information so this part of the request is refused on this basis.” In relation to part (4) it stated: “This part of the request is also refused as I have conducted searches of records within [BNM] and was unable to locate any information in relation this matter.” On 2 December 2021, the appellant sought an internal review of BNM’ decision. In doing so, he stated “this request includes records held by [BNM] companies that are wholly or partially owner subsidiaries of [BNM]...” On 6 January 2022, the appellant advised BNM that he was limiting the extent of the internal review to part (1) of his original request.
7. On 12 January 2022, BNM issued its internal review decision, wherein it stated that it was affirming its original decision. It stated: “The information the subject of your request for an internal review, inasmuch as it may be held, would be held by Bord na Móna Horticulture Limited, Bord na Móna Fuels Limited and/or Bord na Móna Energy Limited. No such information is held by or for [BNM].” On 8 February 2022, the appellant submitted an appeal to this Office.



Request 3 (OCEI Appeal Reference: OCE-124415-W3B0X1)

8. On 28 March 2022, the appellant requested the following information from BNM: "... records to cover the period 1 January 2021- Present for any records in relation to cases of unregulated, unlicensed or illegal extraction of peat on Bord na Mona lands in 2021 as referenced by Ger Breen, Head of Land and Habitats, Bord na Móna during his appearing before the Committee on Agriculture, Food and the Marine on Wednesday, 23 March 2022."
9. On 28 April 2022, BNM issued its decision. It stated that it was refusing the appellant's request on the basis that "no records the subject of [the] request are held by or for [BNM]". BNM also stated: "Insomuch as any records may potentially exist, they would be held by Bord na Móna Energy Limited and/or Bord na Móna Biomass Limited. It is those companies' respective positions that they are not public authorities for the purposes of the AIE Regulations and therefore, the Regulations do not apply to them." On 28 April 2022, the appellant sought an internal review of BNM's decision.
10. On 31 May 2022, BNM issued its internal review decision. It stated that further searches had been conducted, and that one (1) relevant record had been identified. BNM released this record in redacted form on the following grounds: information outside the scope of the request; and the provisions of articles 8(a)(i), 8(a)(iv) and 9(2)(d) of the AIE Regulations. BNM went on to affirm its original decision "in all other respects", stating that "no further information the subject of [the] request is held either by or for [BNM], within the meaning of Article 7(1) of the AIE Regulations". On 1 June 2022, the appellant submitted an appeal to this Office, both regarding the level of redactions in the record released and BNM's position that potential records held by relevant subsidiary companies was not information held by or for BNM.

Request 4 (OCEI Appeal Reference: OCE-124845-J0P7C0)

11. On 25 March 2022, the appellant submitted the following request to BNM: "This AIE request is for the attention of Bord na Mona Energy Limited. A pumping station on peatlands is located in the townland of Derraghan More, Rathcline, County Longford at 53.63549108874079, - 7.914128213534018 contained with Folio LD18778F, attached which is under the ownership of Bord na Mona Energy Limited. The pumping station is located at this point on Google Maps <https://goo.gl/maps/CDaMUHaUPC4XPoZG8> I require access to the following information:
 - (1) Confirm the legal basis upon which this pumping station was constructed;
 - (2) Confirm the legal basis upon which this pumping station is drawing water off the surrounding lands;
 - (3) Provide all environmental reports and assessments associated with [(1)] and [(2)] above."
12. On 29 April 2022, BNM issued its decision. It stated: "Bord na Móna Energy Limited is not a public authority within the meaning of Article 3(1) of the AIE Regulations." It also stated: "Without prejudice however, as no legal permissions or consents were/are required for the



construction or operation of the pumping station in question, to the best of Bord na Móna Energy Limited's knowledge no records the subject of your request exist in any event." On 4 May 2022, the appellant sought an internal review of BNM's decision. In doing so, he stated: "It is clear that Bord na Mona Energy Limited is a public authority for the purposes of same. If the position is to be maintained that Bord na Mona Energy Limited is not a public authority having regard to the AIE Regulations and Directive 2003/4/EC, please outline why that is the case by reference to the applicable caselaw."

13. On 2 June 2022, BNM issued its internal review decision, wherein it affirmed its original decision that Bord na Móna Energy Limited is not a public authority within the meaning of article 3(1) of the AIE Regulations. BNM also reiterated its comment regarding the existence of records, stating "as was made clear in the original decision no records the subject of your request exist in any event". On 13 June 2022, the appellant submitted an appeal to this Office.

Request 5 (OCEI Appeal Reference: OCE-135514-F7P4M2)

14. On 12 December 2022, the appellant submitted the following request to BNM for the attention of the company secretary of Bord na Móna Biomass Limited: "It is understood that your company is no longer engaged in the sourcing and supply of biomass and that its current principal activity is the supply of milled peat as feedstock to Edenderry Power Limited which is also a subsidiary of [BNM]. In light of that [the appellant] requests the following:
(1) Monthly quantity of milled peat supplied in each of the previous 12 months
(2) Identification of the bogs from which the milled peat is sourced
(3) Information on the carbon emissions from this peat."
15. On 17 January 2023, BNM issued its decision (dated 12 January 2023). It refused the request on the basis that Bord na Móna Biomass Limited "is not a public authority within the meaning of Article 3(1) of the AIE Regulations and accordingly, the AIE Regulations do not apply to it." The appellant had already sought an internal review of BNM's decision on 13 January 2023, based on a deemed refusal. Following receipt of BNM's decision, it affirmed its request for an internal review based on the reasons provided by BNM to explain refusal.
16. On 13 February 2023, BNM issued its internal review decision, wherein it affirmed its original decision that Bord na Móna Biomass Limited is not a public authority within the meaning of article 3(1) of the AIE Regulations. On 15 February 2023, the appellant submitted an appeal to this Office.
17. Each of the above appeals raised similar questions, i.e. whether environmental information held by subsidiaries of BNM was held for BNM and/or whether relevant BNM subsidiaries were "public authorities" separate to BNM under the AIE Regulations. As such, the appeals were placed on hold by this Office pending the outcome of the following cases before the Superior Courts – *Bord na Móna PLC v Commissioner for Environmental Information and Right to Know CLG* and *Right to Know CLG v Commissioner for Environmental Information and Raheenleagh*



Power DAC, which considered related matters. The High Court issued a judgment in the first case in February 2023 ([\[2023\] IEHC 57](#)) and the Supreme Court delivered its judgment in the second case in March 2024 ([\[2024\] IESC 7](#)). The above appeals were subsequently re-activated.

18. 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 internal review decisions of BNM dated 6 January 2022, 12 January 2022, 31 May 2022, 2 June 2022 and 13 February 2023, in respect each of the above AIE requests. I have also had regard to recent court judgments as referenced above, and to recent correspondence between this Office and BNM, as outlined below.

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)

Preliminary Matter

19. In the circumstances of these appeals, I have decided that a composite decision dealing with the appeals together is appropriate. I do so because the five (5) requests, although dealt with separately by BNM and involving different subject matter, all involved consideration of jurisdictional threshold and correct processing under 7(1) of the AIE Regulations.

20. A review by this Office is considered to be *de novo*, which means that it is based on the circumstances and the law as they pertain at the time of this decision.

Scope of Review

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

22. It should be noted that I have not carried out an assessment of whether any of the exemptions in the AIE Regulations (e.g. those applied in respect of the record released in [Request 3](#)) in fact apply to any redacted information. Such an analysis falls outside the scope of this decision.



Analysis and Findings

23. 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 particular 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.
24. Article 7(5) of the AIE Regulations refers to information "held by or for" a public authority. The general thrust of BNM's decision-making on the above requests was that having conducted searches, the requested information was not held by or for BNM. However, it was also indicated that where relevant information "may potentially exist", i.e. may be held by subsidiaries of BNM, such subsidiaries are not subject to the AIE Regulations. In general, BNM considered that to be the end of the matter. On the other hand, based on the appellant requests for internal review and appeal statements to this Office, each considered that relevant information held by BNM subsidiaries is held for BNM (and/or that these subsidiaries could be considered "public authorities" for the purpose of the AIE Regulations).
25. The judgment of the High Court in *Bord na Móna PLC v Commissioner for Environmental Information and Right to Know CLG* [2023] IEHC 57 concerned the question of whether environmental information held by a subsidiary of BNM (in that case, Bord na Móna Biomass Limited) was held for BNM. On 12 September 2025, the Investigator assigned to these appeals wrote to BNM, advising it of this Office's view, that the findings of the High Court are not limited to the relationship between BNM and Bord na Móna Biomass Limited, but apply equally to each of the BNM fully owned subsidiaries set up under the Turf Development Acts 1946 to 1998 (the "Turf Acts"). In this regard, Hyland J stated (at para. 55): "What is striking about the statutory regime is the extent of integration of [BNM] and its subsidiaries. The subsidiaries are carrying out the functions of [BNM] under the Turf Acts and must do so in accordance with the direction of [BNM] if it chooses to so direct them. In my view, the statutory provisions disclose an unusually close relationship between the two companies, with features additional to those that might normally exist between a parent and a subsidiary." In relation to Bord na Móna Biomass Limited, the judgment upheld the Commissioner's finding that Bord na Móna Biomass Limited held the information on behalf of BNM. On a number of other occasions, the judgment refers to this close relationship. For example, at para. 62 the court stated that the Turf Acts "establish that the two companies did indeed have a connection closer than that usually existing between a parent and wholly owned subsidiary." That paragraph also states that: "Pursuant to s.36, the principal activities of [BNM] are carried on by the subsidiaries. Biomass as a subsidiary is therefore carrying on the principal activities of [BNM]. Pursuant to s.37(5), Biomass as a subsidiary shall perform its functions in compliance



with such directions as [BNM] may give in writing. Those statutory provisions confirm in my view the accuracy of the conclusion of the Commissioner that the two companies enjoy an unusually close relationship, while acknowledging they have separate legal personalities.”

26. On the above basis, the Investigator proffered her view that BNM could respond to the above AIE requests directly, on the basis that all environmental information held by BNM fully owned subsidiaries set up under the Turf Acts is both held by that company and for BNM. On 6 October 2025, BNM confirmed that it was agreeable to this Office’s suggestion that the above referenced appeals be remitted for the purpose of a new internal review process in accordance with Article 11 of the AIE Regulations. In follow-up correspondence, the Investigator sought clarification on the nature of any fresh decision-making process by BNM. In response dated 17 October 2025, BNM confirmed that: “... the fresh internal reviews in respect of these appeals will be confined to a review of the substance of each individual request i.e. a consideration of whether the information in question is environmental information and if so, the application of any relevant exemptions (subject to the public interests balancing test mandated by Article 10). [BNM] will not seek to rely on any arguments that the information the subject of these specific 5 appeals is not held “for” it in the context of the fresh internal reviews.”
27. Following careful consideration, I have decided that the most appropriate course of action in these appeals is to annul BNM’s internal review decisions and direct it to carry out a fresh internal review process in respect of each request. It is important in these appeals that neither BNM nor its subsidiaries appear to have carried out searches of what environmental information they hold that is covered by the requests. These searches, and the development of a schedule of records, are essential for the efficient handling of appeals by this Office. It is not practical for this Office to ask for submissions from BNM on release of an unknown number of records. It may be that on foot of the searches that all or most of the environmental information held by or on behalf of BNM will be released to the appellants. As such, remittal in these cases appears to be the quickest way for the appellants to receive the information sought. Given this, I consider that the AIE regime is best served by remittal at this stage, on the above basis. I note also that BNM has committed to this Office to conduct the required internal reviews “as expeditiously as possible” following the issuing of this decision. At the same time, I acknowledge that BNM will require sufficient time to make these fresh decisions, and to provide adequate reasons in respect of each, including to provide the appellants with information on the steps it took to identify the relevant information. Each appellant will have the opportunity to bring a fresh appeal to this Office if they are not satisfied with the fresh internal review outcome.
28. As BNM ought to be aware, the duty to give reasons, for the refusal of requests, arises not only by virtue of the AIE Regulations and Directive, but is 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). Similarly, 11(4) of the AIE Regulations require public authorities to provide reasons



for refusal at internal review decision stage, consistent with Article 4(5) of the AIE Directive. 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.

29. Should BNM wish to rely on any of the grounds in articles 8 or 9 of the AIE Regulations in processing the new internal review decisions, I would remind it that both articles must be read alongside article 10 of the AIE Regulations. Article 10(1) provides that notwithstanding articles 8 and 9(1)(c) of the AIE Regulations, a request for environmental information shall not be refused where the request relates to information on emissions into the environment. Article 10(3) 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) 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) 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. In addition, when relying on articles 8 or 9 of the AIE Regulations a public authority must demonstrate a clear link between disclosure of the specific information that it has withheld and any adverse effect. It must set out the reasons, to the requestor, why it considers that the disclosure of the information at issue could specifically and actually undermine the interest protected by the exceptions relied upon, as set out by the CJEU at paragraph 69 of *Land Baden-Wurtemberg v DR*, Case C-619/19. This sets a high threshold as the risk must be reasonably foreseeable and not purely hypothetical. A mere assertion of an expectation of harm is not sufficient.
30. If it is the case that grounds for refusal are not found to apply to the requested information, the information should be released.

Decision

31. Having carried out a review under article 12(5) of the AIE Regulations, I hereby annul the internal review decisions by BNM in each case and I direct it to provide the appellants with a new internal review decision in respect of each request.

Appeal to the High Court

32. 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

28 October 2025