



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-140312-K7S1R5

Date of decision: 27 February 2026

Appellant: Right To Know CLG

Public Authority: Environmental Protection Agency (the EPA)

Issue: Whether the EPA was justified in refusing the requesting information under Article 9(2)(c) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner found that the EPA was not justified in refusing to release the records requested under Article 9(2)(c) 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 6 April 2023, the appellant requested “copies of the National Enforcement Priorities Progress Reports for 2022 as submitted by the Local Authorities to EPA”.
2. On 4 May 2023 the EPA requested that the appellant “clarify & confine” the request.
3. On 4 May 2023 the appellant responded, informing the EPA that; “The AIE is for one annual report for each local authority as per the actual document in the format as submitted to EPA, so in total that's just 31 records. Obviously RTK could AIE each of the 31 authorities, but as the EPA is the competent authority, it seems to make sense to submit one single AIE to EPA rather than involve 31 separate AIE officers. Are the EPA reading this as something more than a request for 31 records ? For example, if the local authorities report back to EPA at a greater frequency than annually?”

4. On 2 June 2023, the EPA issued the following decision;

“Your request is refused as the 2022 records concerns material in the course of completion. I identified 31 Local Authorities that have submitted 50 records on the National Enforcement Priorities Reports for 2022 to the EPA. As this information is not yet completed, I am refusing access to these records in accordance with Article 9(2)(c) of the AIE Regulations. 9. (2) A public authority may refuse to make environmental information available where the request— (c) concerns material in the course of completion, or unfinished documents or data, 10. (6) 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. In accordance with Article 10(6) please note that the EPA produces annual reports covering the information you are requesting. The EPA published ‘The Focus on Local Authority Environmental Enforcement Performance Report 2021’ and the ‘Local Authority Environmental Enforcement Individual Local Authority Performance Results 2021’ for the 2021 information which are available to view on the EPA website. The EPA will be publishing to our website similar reports for the 2022 information towards the end of 2023.

5. On 7 June 2023, the appellant requested an internal review, while also outlining the following opinion to the EPA; “There is no evidence that release of records would be in any way misleading, nor would they provide an inaccurate picture on the environment and the environmental work of local authorities.”



6. The EPA affirmed its decision on 7 July 2023.
7. The appellant appealed to this Office on 7 July 2023.
8. I am directed by the Commissioner for Environmental Information 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 Environmental Protection Agency. 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').

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

Scope of Review

9. In accordance with article 12(5) of the AIE Regulations, the role of this Office is to review the public authority's decision and to affirm, annul or vary it. The EPA identified 31 records as being relevant to the appellant's request for information. The EPA sought to refuse access to all records under article 9(2)(c) of the AIE Regulations. The EPA also sought to withhold access to certain personal information contained within one of the records on the basis that article 8(a)(i) of the AIE Regulations applied. The appellant has confirmed that he is not disputing the refusal of the personal information on this record. Accordingly, I consider the question of whether article 8(a)(i) was correctly applied is out of scope of this appeal.
10. As such, this review is concerned with whether the EPA was justified in its refusal of the information sought under article 9(2)(c) of the AIE Regulations.

Preliminary Matters

11. On 22 September 2025, the EPA contacted this Office to confirm that due to the passage of time the EPA were now in a position to release all records to the appellant, with a redaction from one report, that of Cork County Council, of names of members of the public included



in a warning letter issued by the Council. The EPA were making this minor redaction under article 8(a)(i) of the AIE Regulations. I acknowledge the willingness of the EPA to release the information sought.

12. This Office subsequently contacted the appellant to confirm if they wished to continue with their appeal, given the release of relevant records by the EPA. The appellant confirmed that though they had all of the records, they wished to continue with the appeal, as they did not wish to be in position where the EPA would not publish similar records in subsequent years, and the process of having to request the records each year would continue.
13. The appellant also advised the Investigator during the course of the investigation of their opinion that the EPA should release environmental information submitted by 3rd parties via its EDEN system to the LEAP Online platform. EDEN provides an online gateway to environmental and radiological protection licensing, monitoring, GIS and reporting applications for relevant organisations to communicate with the EPA and share data with each other. LEAP allows members of the public to view details of applications, licences, and permits issued by the EPA. It also includes records related to the regulation of licensed and permitted sites, such as EPA site inspection and monitoring reports, licensee returns, incidents, non-compliances, complaints, and compliance investigations.
14. While proactive dissemination of environmental information through systems such as the LEAP is most welcome and this Office would encourage public authorities to disseminate as much information as possible through all tool available to them in an effort to reduce the need for AIE requests and subsequent appeals to this Office, it should be noted that investigations conducted by this Office are de novo and each appeal is dealt with on a case by case basis. While previous decisions may offer useful guidance, they do not bind this Office to take the same view in future cases, particularly where the facts and circumstances may differ. I acknowledge the appellants concerns regarding the provision of future similar records, however this review is concerned solely with the EPA's decision to refuse the information as requested by the appellant under article 9(2)(c) of the AIE Regulations.

Analysis and Findings

15. 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. 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.



16. 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 exemption, just that the information concerns material in the course of completion, or unfinished documents or data. When relying on Article 9 (2)(c) public authorities must also consider the public interest in release of the records in question.
17. 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.
18. 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).
19. Accordingly, 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).
20. 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.

21. The information at issue in this appeal are National Enforcement Priorities Progress Reports. For context, EPA carries out a supervisory role in relation to the performance by local authorities of their statutory environmental protection duties. There are 15 National Enforcement Priorities (NEPs) which focus on delivering positive environmental outcomes for air quality, water quality and waste management. Each local authority prepares an annual NEP progress report which is submitted to the EPA. These reports detail the work undertaken by the local authorities in relation to Waste Enforcement, Water Pollution and Air & Noise Monitoring. The reports give a full overview of all national enforcement priority activities including various inspections, investigations and enforcement actions that were undertaken by the local authority. I understand that the EPA then reviews the NEP progress reports as submitted by the local authorities and in turn publishes an annual performance report which summarises the information contained in the reports submitted by the local authorities and sets out the results of the EPA’s assessment of local authority environmental enforcement performance which measures performance against the delivery of environmental outcomes under the NEPs.
22. Having reviewed the progress reports as submitted to the EPA by the local authorities which were the subject of the appellants original AIE request in this appeal, it is clear that these reports can be read as final reports when they are submitted to the EPA. Accordingly, 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.
23. 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.
24. Finally, I note that Fingal County Council publishes these reports (the subject of this request) each year on its website as final progress reports. I would encourage all local authorities to follow the lead of Fingal County Council and publish this information where possible in an effort to reduce relevant AIE requests and subsequent appeals to this Office.



Decision

25. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I annul the decision of the EPA to refuse to release the identified records. As the EPA has now released the requested information with minor redactions as outlined above to the appellant, I make no further direction.
26. I acknowledge the EPA's willingness to engage with this Office during the course of this appeal and subsequently release the information to the appellant. I also acknowledge the engagement of the appellant in this case.

Appeal to the High Court

27. 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.

Gemma Farrell
Senior Investigator
On Behalf of the Commissioner for Environmental Information
27 February 2026