



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Dealing with an AIE Request

1 March 2022

This document has been prepared by the OCEI, following a request from public authorities, to provide a broad framework for the handling of requests based on the OCEI's experience of dealing with appeals. It contains general guidelines rather than exhaustive directions and does not purport to contain legal advice or a legally binding interpretation of the AIE Regulations or the AIE Directive. These guidelines need to be applied and adapted having regard to the particular circumstances of the request and/or the practices of each organisation. If a public authority is in doubt as to its obligations under the AIE Regulations, the level of information to be disclosed, whether grounds for refusal exist, or any other matter, it should seek legal advice.

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Review the Request

1. Public authorities should have a system in place to ensure that AIE requests are directed to a designated person in the organisation (referred to here as the AIE Officer).
2. On receipt of the request, the AIE Officer should consider the request, bearing in mind the following:

TIMING

A decision needs to be provided to the requester *within one month from the date of receipt* of the request unless:

It is not possible to reach a decision in one month because of the volume or complexity of the environmental information requested.

AND

A decision is reached no later than 2 months from the date of receipt of the request.

AND

The requester is provided with written notice of the reason it is not possible to respond to the request within one month as well as a timeframe for response.

If the request is considered to be too general, the public authority is obliged to liaise with the requester so that a more specific request can be provided and to offer assistance to the appellant in preparing such a request.

If the request specifies a preferred timescale for response, the public authority is obliged to have regard to that timescale.

FORM & MANNER

The appellant is entitled to be provided with the information in the form and manner requested (e.g. if they have requested electronic copies, electronic copies should be provided) unless:

The information is already available to the public in another form or manner which is easily accessible

OR

Access in another form or manner would be reasonable



Acknowledge the Request

1. Having reviewed the request, the AIE Officer should respond to the requester, acknowledging receipt of the request.
2. Bearing in mind the tight timelines for processing an AIE request, this response should be issued as soon as possible following receipt of the request.
3. The response should include:

The date on which the request was received and the timeframe for response.

- If the public authority is seeking to rely on the extended timeframe at this stage, it should provide the appellant with reasons for this.
- If the requester has specified a desired timescale for response, this should be acknowledged. If it is clear at this stage that compliance with such timescale will not be possible, it is good practice to inform the requester of this and to explain why this is considered to be the case.
- If either of the above become clear at a later stage, after the request has been acknowledged, the requester should be informed without delay.

The AIE Officer's understanding of the request.

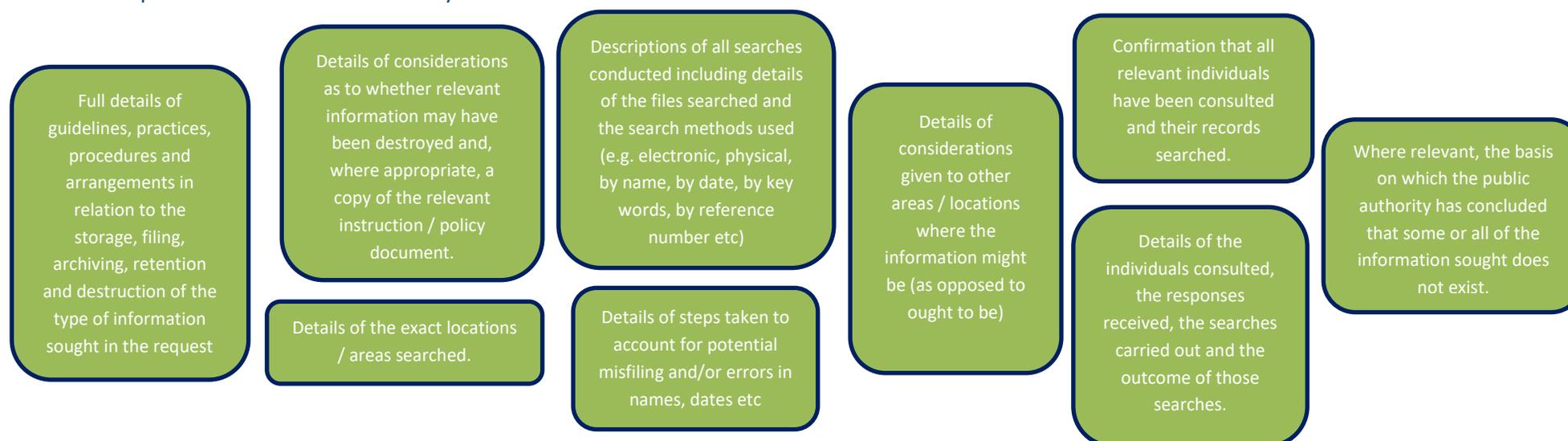
- If the request is considered too general, the requester should be asked to clarify what they are seeking and should be offered assistance in preparing a more specific request.
- If the request is considered unreasonable at this stage, it is good practice to engage with the requester to explain why this preliminary view has been taken and to determine whether the request can be narrowed. If the requester does not wish to narrow the request, the question of whether the request is manifestly unreasonable can be addressed as part of the public authority's decision on the request.

Contact details for an appropriate individual within the organisation should the requester have any further queries.



Search for the Information

1. Given the size of most public authorities, it is likely that an AIE Officer will need to liaise with their colleagues across the public authority in order to retrieve all of the environmental information held by or for it, which is within the scope of the request.
2. A search for the information should be commenced as soon as possible following receipt of the request, bearing in mind the tight timelines provided for in the Regulations.
3. It is also important to bear in mind that the requester is entitled to information held by or for the public authority at the date of their request. It may therefore be necessary to take steps to ensure that a copy of that information as it is on the day the request is received is maintained (e.g. if the information is of a type that might change daily, or is in draft form and subject to ongoing amendment).
4. Each organisation will have its own record retention and document management practices and it is not for the OCEI to recommend a particular practice or policy. However, public authorities should bear in mind that if the adequacy of their searches is raised as part of an appeal, they will be expected to provide the following details at a minimum so that the Commissioner can be satisfied that adequate steps have been taken to identify and locate relevant environmental information:



5. With the above in mind, it is recommended that public authorities do the following:

Document the search process

This will make it easier to identify any issues in the search process and to comply more easily with a request from the OCEI if the adequacy of the searches conducted is raised as an issue at appeal stage.

Prepare a list of the relevant records

This can then be used by the decision-maker to prepare a Schedule of Records.

6. Finally, if, having conducted a search, the public authority is satisfied that it does not hold any environmental information within the scope of the request and that no such information is held for it, it should consider whether it is aware of another public body which does hold such information. If it is, it should inform the appellant of this in its decision and, where possible, transfer the request to the other public body.



Review the Information / Make a Decision

1. The public authority should appoint a decision maker to review the information held by or for it within the scope of the appellant's request and make a decision on release. When appointing a decision-maker, it is important to bear in mind that if the requester seeks an internal review, that internal review must be conducted by a person unconnected with the original decision whose rank is the same as, or higher than, that of the original decision-maker.
2. The decision-maker should bear in mind the following when making a decision on the request:

The decision should be made having regard to the individual circumstances of the request and on the basis of the information.

- It is not generally possible to invoke the grounds for refusal contained in the Regulations in a blanket manner, they must be applied to each item of information within the scope of the appellant's request.
 - ❖ There may be certain exceptions to this general rule e.g. where the authority is seeking to argue that the request is manifestly unreasonable
- While it is important to have regard to the individual circumstances of the request, the decision maker should bear in mind that it is generally not appropriate to take into account the motives or identity of the requester.
 - ❖ Again, there may be some exceptions to this general rule e.g. if a public authority is seeking to refuse the request on the grounds that it is manifestly unreasonable or that release would prejudice an investigation.

SCHEDULE OF RECORDS

In order to ensure the decision-maker is considering each item of information, it is useful to prepare a schedule of the relevant information which sets out:

- 1) The record number.
- 2) A description of the records (date, title, brief description of contents).
- 3) The no of pages contained in the record.
- 4) The decision taken on the record (i.e. whether to grant, part-grant or refuse).
- 5) In the case of part-granting or refusal, the article of the Regulations on which refusal is based.
- 6) The reason for the decision.

THIRD PARTY INFORMATION

If the information at issue includes information relating to third parties, it is best practice to contact those third parties, where appropriate, to establish whether they believe their interests would be affected by disclosure (and, if so, how seriously), rather than assuming that disclosure would have such affect.

A public authority is required to take all reasonable steps to contact a third party who has voluntarily supplied information which is the subject of a request, if it considers that release of such information might adversely affect that third party.

Review the Information / Make a Decision

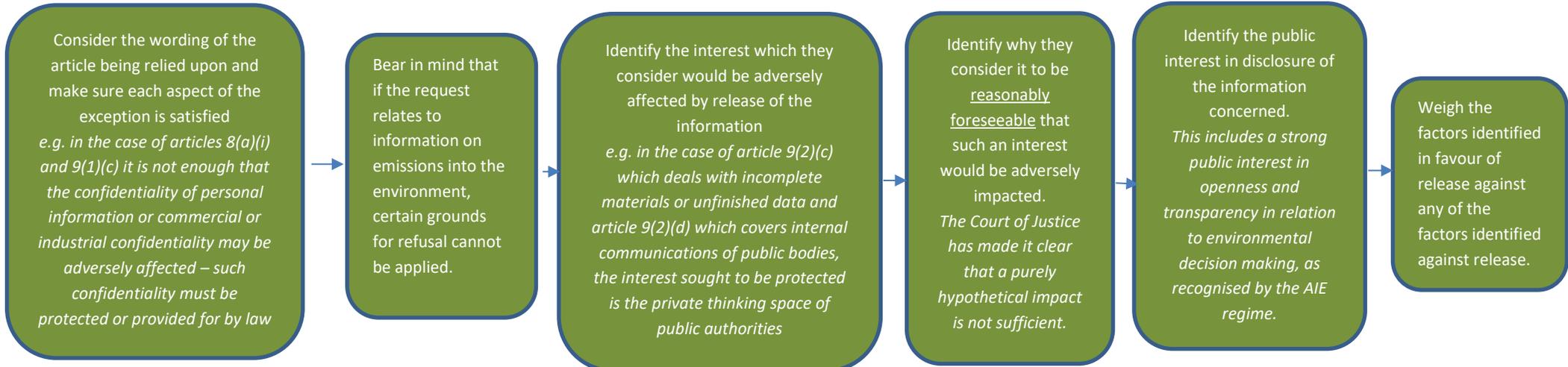
The decision maker should approach the decision with a presumption in favour of disclosure.

- The Supreme Court has made it clear that when interpreting obligations under the AIE Regulations a purposive approach should be adopted.
- The underlying purpose of the AIE regime is set out in Recital 1 of the AIE Directive which outlines that “increased public access to environmental information” contributes to “a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision making and, eventually, to a better environment”.
- Recital 16 outlines that “the right to information means that disclosure of information should be the general rule” such that and public authorities are permitted to refuse a request for information only in “specific and clearly defined circumstances”.

If environmental information within the scope of a request is held by or for a public authority, it is not possible to refuse access to that information unless one of more of the grounds for refusal set out at articles 8 and 9 of the Regulations apply.

The Regulations also make it clear that those grounds for refusal must be interpreted on a restrictive basis having regard to the public interest served by the disclosure of the information.

3. In cases where a decision-maker considers that one or more grounds for refusal may apply, they should:



4. If the outcome of the above balancing exercise is that the decision-maker considers information should be refused, they should consider whether it is possible to separate that information from other information within the scope of the request, so that the request may be part-granted.



Provide a Decision

1. The decision should set out whether the public authority holds information within the scope of the request (including any information held on its behalf).

If no information is held but the public authority is aware that relevant information may be held by another public authority, it should inform the appellant of the identity of that authority and, where possible, transfer the request.

If information is held, the decision-maker should make it clear whether the information is being released or refused.

2. In cases where access to some or all of the information requested is being refused, the decision must specify reasons for the refusal.
3. If the public authority is relying on one or more of the grounds for refusal contained at articles 8 and 9 of the Regulations, the decision should set out:

The basis on which the ground for refusal applies (having regard to the restrictive test mandated by the Regulations).

The basis on which it is considered that the interest served by refusal outweighs the public interest in disclosure.

Whether it is considered that there is any information contained in the information requested which could be separated from the information refused, in respect of which partial disclosure could be made. If this is not considered possible, the decision should set out why.

Bear in mind that the High Court has made it clear that merely invoking a statutory ground for refusal is not a sufficient reason.

Ideally a Schedule of Records should be provided to the requester

- This allows a requester to better understand the reasons for any refusal and to make a more informed decision about whether to challenge the refusal.
- While there may be a fine line between description and disclosure, the Schedule need only contain a description which outlines the nature of the document rather than disclosing its content or subject matter.

4. In cases where the information is being provided in a form or manner other than that requested, the public authority should set out the basis on which it considers this to be appropriate, i.e.:

The basis on which it considers the information to be available in another form or manner that is easily accessible.

OR

The basis on which it considers it reasonable to provide access in another form or manner.

5. In cases where a public authority is refusing access to information because it contains material in the course of completion, the decision should inform the requester of:

The name of the authority preparing the material.

AND

The estimated time needed for completion.

6. The decision should also inform the requester of:

Their entitlement to seek an internal review.

How they can seek an internal review.

The timeframe in which to seek an internal review.



Internal Review

1. If a request for internal review is received, it should be acknowledged as soon as possible and a timeframe for response should be provided to the requester.

An internal review decision must be provided within one month of receipt of the request.

2. If the requester has sought an internal review in respect of part of the decision only, then only that part need be the subject of the internal review.

If in doubt as to the scope or extent of the internal review request, seek clarification from the requester

3. The internal reviewer assigned to the request must be unconnected with the original decision and occupy a rank which is the same as, or higher than, that of the original decision-maker.
4. The internal reviewer should review the information and make a fresh decision on the request (having regard to the guidelines set out above). Having done so, the internal reviewer may affirm, vary or annul the original decision and require the public authority to provide the relevant information to the requester where appropriate.
5. The internal review outcome should:

Set out the reasons for the decision reached by the internal reviewer.

Inform the requester of their entitlement to appeal to the Commissioner, how that entitlement can be exercised and the timeframe in which to do so.

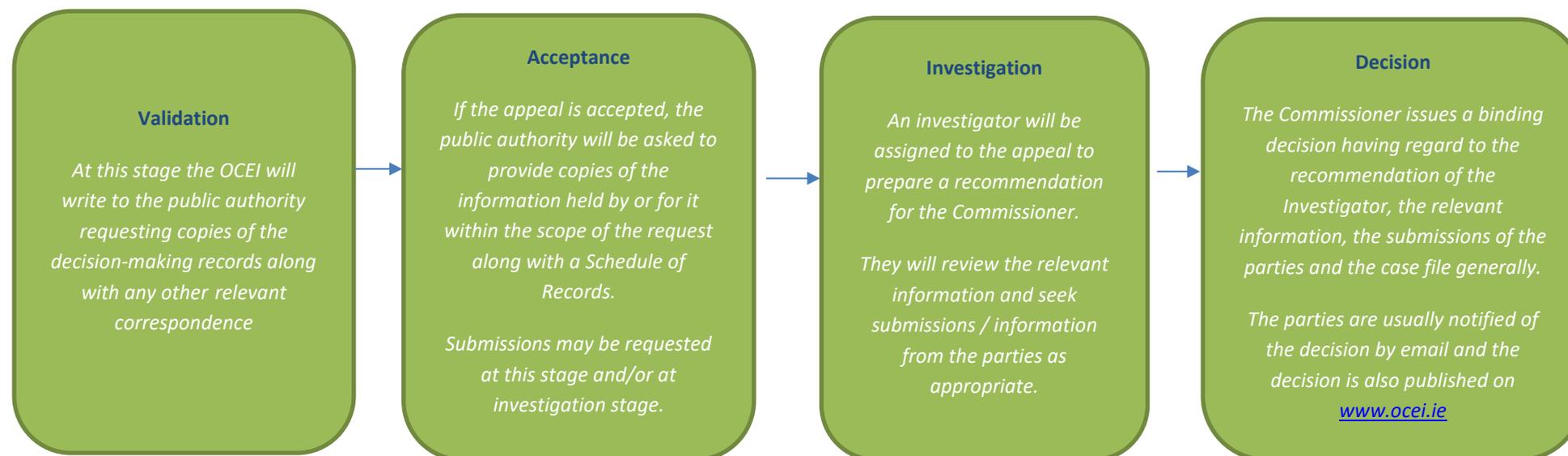
It is important to bear in mind that it is generally the internal review decision that is the subject of an appeal to the Commissioner for Environmental Information.

As such, the reasons for the decision should be set out clearly and the steps outlined in the sections above should be followed as appropriate.



Appeal to the OCEI

1. If the requester appeals the decision of a public authority to the OCEI, the appeal will generally proceed through the following stages:



A decision of the Commissioner may be appealed to the High Court on a point of law within two months of notification of that decision. Otherwise the decision is binding and if a public authority fails to comply with a decision, the Commissioner may apply to the High Court for an order directing compliance.

Appeal to the OCEI

2. When preparing submissions for the OCEI, the public authority should bear the following in mind:

If detailed reasoning is provided in the decision/internal review outcome provided to the appellant, the request for submissions may not be overly detailed and may simply be sent to provide the public authority with an opportunity to make any further submissions it wishes, bearing in mind that the Commissioner's review is conducted on a *de novo* basis (i.e. it is based on the circumstances at the time he carries out his review).

If insufficient reasoning has been provided in the original decision/internal review outcome, the request for submissions is likely to contain detailed requests for information.

A request for submissions will contain a deadline for receipt of those submissions.

- The deadline is chosen at the discretion of the Investigator bearing in mind the individual circumstances of the case, including matters such as the level of detail sought, the delay experienced to date in the resolution of the appeal etc.
- Requests for extension are considered on a case by case basis. It is good practice when seeking an extension to engage with the Investigator at an early stage so that the appellant can be kept adequately informed of the progress of the appeal and so that an appropriate balance can be struck between the need to ensure fair procedures and the efficient resolution of appeals.
- In cases where submissions are not received by the deadline provided, the Investigator may proceed with their recommendation to the Commissioner and the Commissioner may reach a binding decision on the appeal, without further reference to the public authority.

There is no required format for submissions but when responding to requests for submissions, it is important to have regard to the questions being asked by the Investigator.

If a public authority is in doubt as to what is being sought, it can contact the Investigator, whose contact details are usually included in the request for submissions.

It is important to remember that OCEI Investigators will not have detailed knowledge of the practices and procedures of public authorities unless these are set out clearly and comprehensively in submissions (or in the original decision/internal review outcome).

Failure to provide comprehensive submissions may result in more enquiries, which are time consuming for the OCEI and the public authority and increase delays for the appellant.

There is no requirement to provide submissions however it will be more difficult for the Commissioner to be satisfied that grounds for refusal of information apply in the absence of an explanation from the relevant public authority as to why it considers the application of the relevant ground to be justified.