



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-121910-Y3J8P8

**Date of decision:** 17 August 2022

**Appellant:** Dr Fred Logue

**Public Authority:** Dun Laoghaire Rathdown County Council (the Council)

**Issue:** Whether the Council was justified in refusing access to the requested environmental information on the basis that no relevant environmental information was held by or for it.

**Summary of Commissioner's Decision:** The Commissioner found that the Council failed to demonstrate that adequate steps were taken to identify and locate all relevant environmental information held by it. Therefore, the Council was not justified in refusing access to environmental information on the basis that no relevant environmental information was held by or for it.

**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 February 2022 the appellant made the following request to Dun Laoghaire Rathdown County Council (the Council) under the AIE Regulations:  
  
“The most up to date results of the Brent Geese tagging project including the raw data in Excel format (<https://www.dlrcoco.ie/en/biodiversity/identifying-brent-geese-dlr>).”
2. As the Council did not issue a decision within the timescales stipulated within the AIE regulations, the appellant requested an internal review on 28 March 2022.
3. On 8 April 2022, the Council issued its internal review. It said it is unable to provide the information requested on the basis that it currently does not hold any of the relevant information as the tagging project forms part of a research project being conducted by a PhD student which had yet to be completed and published.
4. The appellant sought a review by my Office on 11 April 2022.
5. I have now completed my review under article 12(5) of the AIE Regulations. In carrying out my review, I have considered the submissions made by the appellant and the Department. 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).
6. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

## **Scope of Review**

7. The Council acknowledged in their submission to my Office that it was obliged under article 7(1) of the AIE Regulations to respond to the appellant’s original request for information within one month. It accepted that the request was overlooked due to an oversight and staff changes at the Council.
8. Notwithstanding the above, the scope of this review is concerned solely with whether the Council was justified in refusing access to the information requested on the basis that no such environmental information is held by or for the Council, as per article 7(5) of the AIE regulations.

## **The Parties’ Submissions**



9. The appellant's submission to my Office can be summarised as follows:
  - The Council's website invites the public to send sightings of Brent Geese in inland areas of Dun Laoghaire Rathdown County Council to its Biodiversity Officer. This indicates that the Council has received reports of geese sightings directly from the public and that this information is held by the Council, and being unlawfully withheld from the appellant.
  - It is not credible that the Council has no information or data from the PhD project which started four years ago. It is also not credible that the Council would sponsor a project such as this and allow it to progress with no information provided to it over the space of four years. The Council website states that members of staff of the Council are actually involved in the project.
  - Either the University or Fingal County Council or Dublin City Council hold the information on behalf of Dun Laoghaire Rathdown County Council and the Council can simply ask to be provided with it so that it can forward a copy to him. The appellant asks for this information as soon as possible saying it is important for submissions on planning application in the Dublin area.
10. All of the appellant's assertions as listed above were put to the Council by my Office for comment on 8 July 2022, alongside further questions on what searches were carried out by the Council to locate the relevant information.
11. In its response to my Office's request for further information, the Council responded with the name of the Council's Biodiversity Officer. It restated that currently the tagging project forms part of research being conducted by a PhD student who has not completed the studies yet, and that as soon as the PhD is complete, the results will be in the public domain. It said that the Council's Biodiversity Officer has been linking in with the student and will be updating the Council's AIE Officer also, once the study is complete.

### **Analysis and Findings**

12. 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. My approach to dealing with cases where a public authority has effectively refused a request under article 7(5) is that I 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, I consider that a standard of reasonableness must necessarily apply. It is not normally my function to search for environmental information.
13. I note the Council, in its submissions to my Office, has identified that the person responsible for holding such information or knowing where it is held is the Biodiversity Officer. I also note its confirmation that the Biodiversity Officer has been linking in with the PhD student and will be updating the AIE officer also, once it is complete. This is an indication that the Council has received and therefore may hold information pertaining to the project which the appellant has requested information on.



14. In this case, I cannot find the Council was justified in refusing access to the requested environmental information on the basis that no relevant environmental information was held by or for it. I have come to this conclusion based on the following:
- The Council has merely stated that the project is still ongoing and it holds no relevant environmental information until it is complete.
  - The Council has not responded to the specific questions my Office put to it on 8 July asking for the details of the searches it undertook to arrive at its position that it does not hold the requested information.
  - The Council has not commented on or addressed the appellant's assertions as outlined above, despite my Office asking it to do so.
  - The Council has not explained any further steps taken by it to locate or identify where information pertaining to the project would be stored. For example, the Council has not described the electronic and physical searches carried out.
15. Taking all of the above into account, the Council has not demonstrated that it carried out sufficient searches to justify its stance that the requested environmental information is not held by or for the public authority concerned.
16. I am not satisfied that it has taken adequate steps to identify and locate all relevant environmental information held by it. As such, I cannot find the Council was justified in refusing access to the requested environmental information on the basis that no relevant environmental information was held by or for it.
17. I consider that the most appropriate course of action to take at this stage is to annul the decision of the Council in its entirety, the effect of which is that the Council must consider the appellant's request afresh and make a new, first instance decision in accordance with the provisions of the AIE Regulations. As part of its fresh decision-making process, the Council should also consider whether information held by the PhD student in connection with the project is held for the Council. I appreciate that remitting the case back to the Council causes further delay for the appellant. However, I do not believe that there is an appropriate alternative course of action to take in this instance.

### **Decision**

18. Having carried out a review under article 12(5) of the AIE Regulations, I hereby annul the Council's decision in this case. I also direct the Council in its fresh decision-making process to assess whether or not environmental information gathered and held by third parties is held on its behalf, and to make appropriate enquiries in this regard.

### **Appeal to the High Court**

19. 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

---

**Ger Deering**  
**Commissioner for Environmental Information**

17 August 2022