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 CEI/18/0038

Date of decision: 13 March 2018

Appellant: Lar McKenna

Public Authority: Offaly County Council (the Council)

Issues: Whether the Council's file-retrieval and photocopying fees were justified under article 15 of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner found that while retrieval and photocopying fees are permissible in principle, they were not justified on this occasion because they did not comply with article 15 of the AIE Regulations. Accordingly, the Commissioner annulled that part of the Council's decision which related to fees and required the Council to give the appellant a fresh decision in relation to fees.

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

On 15 August 2018 the appellant submitted an AIE request to the Council seeking copies of the planning files related to five separate planning permissions. The Council notified the appellant that it had decided to grant the request and informed him that he could view the files at one of its offices. It said that because the files were held off site, five days advance notice and payment of a retrieval fee of €20 per file were required. It also said that photocopying charges would apply, as follows:

A4/A3 copy (whether correspondence, maps or drawings)	30c per page
Copy of maps/ documents larger than A3	€10 per copy
Copy of Grant (Decision/Notification) of planning permission	€5
Copy of Commencement Notice	€12

The appellant requested an internal review. He submitted that a file that requires the payment of a fee for access is not publicly available and retrieval charges cannot be imposed for environmental information. He cited three previous decisions of my Office and one judgment of the Court of Justice of the European Union in support of this case. In relation to the photocopying fee charged, he referred the Council to the photocopying fees displayed on my Office's website (www.ocei.ie), which include a charge of €0.04 per sheet of paper. He said that "the fees indicated in [the Council's] decision are unreasonable and cannot be applied".

The Council reviewed its decision and affirmed the earlier decision, saying that the company which stores the Council's archived files charges €20 for the retrieval of each file. It said that the photocopying fees cited "are in line with fees made known to the public" at the Council's planning counter.

The appellant appealed to my Office and expressed the scope of his appeal in the following terms:

> "The decision to refuse the request was made on the basis that the information is publicly available once a retrieval charge is paid. This is not in accordance with the release of environmental information. Also the copying charge suggested—30c per A4 copy— is excessive and not in accordance with the published charges for such copying of environmental information on the OCEI website."

Scope of Review

The appellant said that the Council had refused his request while the Council said it granted it subject to the payment of fees. My jurisdiction arises from article 12 of the AIE Regulations. Article 11(5)(c) of the Regulations provides that a request that has been refused includes a request that has not been dealt with in accordance with article 3, 4 or 5 of the AIE Directive,

> "including the ground that the amount of the fee charged under article 15(1) is excessive".

I took this to mean that I could regard the request as having been refused in order to find that I had jurisdiction to review the Council's decision in relation to fees.

In carrying out my review I had regard to the submissions made by the appellant and the Council. I also 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); *the Aarhus Convention—An Implementation Guide* (Second edition, June 2014) ('the Aarhus Guide'); and the relevant jurisprudence of the courts on the charging of fees for access to environmental information. I also had regard to the guidance published by the United Kingdom's Information Commissioner's Office and the Scottish Information Commissioner.

This case raised a number of preliminary issues relevant to my jurisdiction:

- Do the AIE Regulations apply to the requested information?
- Is the information at issue held on behalf of the Council?

Do the AIE Regulations apply to the requested information?

It is not disputed that the requested information is environmental information. However, the AIE Regulations do not apply to all environmental information. Article 4 of the Regulations provides:

"(1) These Regulations apply to environmental information other than, subject to sub-article (2), information that, under any statutory provision apart from these Regulations, is required to be made available to the public, whether for inspection or otherwise.

(2) Notwithstanding—

(*a*) section 38 of the Planning and Development Act 2000 (No. 30 of 2000) and any regulations made thereunder,

(*b*) sections 10 and 31 of the Air Pollution Act 1987 (No. 6 of 1987) and any regulations made thereunder, and

(*c*) sections 6 and 89 of the Environmental Protection Agency Act 1992 (No. 7 of 1992)(as amended by the Protection of the Environment Act 2003 (No. 27 of 2003)) and any regulations made thereunder,

environmental information held by, or on behalf of, a public authority shall be made available in accordance with these Regulations."

The effect of this provision is that the AIE Regulations do not apply to information that must, by law, be made available to the public *except* where the requested information is covered by article 4(2)(a) to (c).

Section 38 of the Planning and Development Act 2000 requires planning authorities to make certain documents relating to planning decisions available for inspection or purchase by members of the public within three days of the making of a planning decision. The information specified in that section is the kind of information that one would expect to be contained in each of the planning files requested in this case: i.e. the planning application, environmental impact statement or other study, further information, submissions, observations, reports prepared by or for the authority and the planning decision. Section 38 obliges planning authorities to keep such information available for inspection for a period of not less than seven years after the planning decision date. At the end of the period of availability for inspection, section 38 provides that planning authorities shall retain at least one original copy of each document "in a local archive in accordance with section 65 of the Local Government Act 1994".

I was thus satisfied that, although the requested information is required by the 2000 Act to be made available to the public, the AIE Regulations nonetheless apply to that information on account of article 4(2)(a).

Is the information held on behalf of the Council?

Article 3 of the AIE Regulations provides that:

> "environmental information held by a public authority" means environmental information in the possession of a public authority that has been produced or received by that authority.
>
> "environmental information held for a public authority" means environmental information that is physically held by a natural or legal person on behalf of that authority.

I accept that the requested information is not physically held by the Council at this time. The Council says that it is held by a commercial storage company "off-site". In this case I was satisfied that the storage company has no interest in the information other than through its contractual agreement with the Council to store the information on its behalf. However, it appears that while the Council is entitled to obtain its own information from the storage company on demand, any such demand will incur a retrieval fee, by mutual agreement. I took the view that this is not very different from the situation which would exist if the Council itself stored the requested information: It could require its own staff to retrieve files 'on demand' but would also be obliged to pay those staff in accordance with their contracts of employment. Accordingly, notwithstanding the agreed retrieval fee, I was satisfied that the storage company holds the requested information on behalf of the Council, within the meaning of the AIE Regulations.

The law in relation to AIE fees

Article 5 of the AIE Regulations provides that:

> (1) (a) A public authority may charge a fee when it makes available environmental information in accordance with these Regulations (including when it makes such information available following an appeal to the Commissioner under article 12), provided that such fee shall be reasonable having regard to the Directive.

(b) Notwithstanding sub-article (a), a public authority shall not charge a fee for access to any public registers or lists of environmental information pursuant to Article 5(1)(d).

(c) Notwithstanding sub-article (a), a public authority shall not charge a fee for the examination in situ of information requested.

(d) Where an applicant examines information in situ and wishes to obtain copies of that information, a public authority may charge a fee, consistent with the list of fees specified under article 15(2), for the provision of such copies.

(2) Where a public authority charges a fee pursuant to sub-article (1), it shall make available to the public a list of fees charged, information on how they are calculated and the circumstances under which they may be waived.

The AIE Regulations must be understood in the light of the AIE Directive. Article 5 of that Directive provides that:

1. Access to any public registers or lists established and maintained as mentioned in article 3(5) and examination in situ of the information requested shall be free of charge.

2. Public authorities may make a charge for supplying any environmental information but such charge shall not exceed a reasonable amount.

3. Where charges are made, public authorities shall publish and make available to applicants a schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.

Preambles to EU Directives are not legislative parts (i.e. not binding parts) of those Directives, but they can provide an insight into the legislative intent behind Directives. Recital 18 of the preamble to the AIE Directive states:

"Public authorities should be able to make a charge for supplying environmental information but such a charge should be reasonable. This implies that, as a general rule, charges may not exceed actual costs of producing the material in question. Instances where advance payment will be required should be limited. In particular cases, where public authorities make available environmental information on a commercial basis, and

where this is necessary in order to guarantee the continuation of collecting and publishing such information, a market based charge is considered to be reasonable; an advance payment may be required. A schedule of charges should be published and made available to applicants together with information on the circumstances in which a charge may be levied or waived."

Was the Council's retrieval fee justified?

The Council's position

The Council's position is that all of its pre 2003 planning files are stored off site by a company that retrieves them for it, on request. By agreement, the storage company charges the Council €20 for each file retrieved. The Council said that the "retrieval fee of €20 was levied by County Manager's Order in 2003 and has not been reviewed since". It submitted that this fee is not excessive, does not exceed a reasonable amount and does not take account of any administrative time involved. I took the latter to mean that it does not include any charge for time spent by the Council's own staff.

In response to queries put to it by my investigator, the Council confirmed the following:

- The retrieval fee is clearly displayed at the public counter in its Planning Office.
- It is also published on its website here: https://www.offaly.ie/eng/Services/Planning/FAQs-Links/FAQ-s/.
- The fee covers the retrieval of a file, its delivery to the Council and its later return to storage.
- The Council does not get a discount for bulk file requests.

The appellant's position

The appellant submitted that the principles decided in three previous OCEI decisions (CEI/07/0006, CEI/16/0024 and CEI/17/0014— all available at www.ocei.ie) and in the judgment of the Fifth Chamber of the Court of Justice of the European Union in case C-71/14 *East Sussex County Council v. Information Commissioner's Office* (*East Sussex*) (available at curia.europa.eu/) should apply to this case.

Analysis

A public authority may make environmental information available to a requester in at least three ways:

- It may notify the requester of when and where the information will be available to be inspected, i.e. read and examined.
- It may send internet links to the requester to enable them to access the information online without having to search for it.
- It may *supply* the information to the appellant directly, either electronically or as printed or photocopied hard-copies.

It is clear that when a public authority has decided, on foot of an AIE request, to grant access to environmental information held by or for it, it may not charge for facilitating inspection of that information by the requester at an appropriate place. It is also clear that a public authority may adopt a policy of imposing charges to meet the costs of *supplying* environmental information to those who make AIE requests. If it adopts such a policy, a public authority must, before imposing any charge:

1. Publish and make available to applicants the schedule of such charges as well as information on the circumstances in which they might be waived, as per article 5(3) of the AIE Directive.
2. Ensure that any fee charged does not exceed "a reasonable amount" in light of the AIE Directive.

In relation to 1. above, I took the words "and make available to applicants" which follow the word "publish" to mean that a public authority which adopts a policy of imposing charges must both *publish* that policy (to make it available to the general public) and *bring it directly to the attention* of those who actually apply for information. Clearly, any charge then imposed in the course of dealing with an AIE request that does not comply with the published policy would not be compatible with the Directive and Regulations. That would be the case even if the charge imposed was consistent with some other published charging policy, such as a policy dealing with access to planning files.

The judgment in *East Sussex* shed light on what a public authority may and may not charge for. The Court noted that it would be contradictory if *storage* costs were passed on to those who

request [to be supplied with] copies of information but not to those who examined it in situ. In my view, it would, be equally contradictory if *retrieval* costs were passed on to those who ask to be supplied with information but not to those who ask to examine the same information in situ. As I presume that the law does not contradict itself, I took it that the passing on of retrieval costs to requesters must therefore either be permissible or not permissible, regardless of whether a requester asked to inspect the information or to be supplied with copies of it. I suggest that this is consistent with what happens in practice: it must often be the case that a requester asks for an opportunity to inspect information with a view to proceeding to ask for photocopies of some or all of the information, depending on its perceived usefulness following inspection.

The Court in *East Sussex* found that the costs of maintaining a database used by the public authority for answering requests for environmental information may not be taken into consideration when calculating a charge for 'supplying' environmental information. It held that such costs are associated with establishing and maintaining registers, lists and facilities for examination and they are not recoverable from those who request information. I take this to mean that a public authority which has decided to make environmental information available to a requester for inspection in situ may not charge the requester for the cost of the prior storage of that information, even when, as in this case, it is stored off-site, for a price, by a commercial company.

The *East Sussex* judgment made it clear (at paragraph 39) that, when a requester asks to be *supplied* with environmental information (as distinct from merely inspecting it) and when the public authority involved decides to accede to that request, the public authority may charge a reasonable fee for supplying the information and this may include:

> "not only postal and photocopying costs but also costs attributable to the time spent by the staff of the public authority concerned on answering an individual request for information, including the time spent on searching for the information. Any fee charged should not exceed the 'actual costs' of producing the material in question".

I regard the acts of *searching for* and *retrieving* as being, in these circumstances, essentially the same actions: one searches for information in this context in order to retrieve it. I concluded that since the imposition of a search/retrieval fee is permitted in cases where a requester asks to be

supplied with information, it must also be permissible in cases where the requester asks to *inspect* the information in situ.

I noted that, in the current case, the Council did not purport to impose any charge for the *prior* storage of the record. However, its "retrieval" charge included an unspecified charge that was intended to recoup the cost of *returning* each file to storage after access had been provided. The *East Sussex* judgment did not expressly address the permissibility of such charges. It seemed to me that there were two ways of looking at this issue:

- The Council would incur "file-returning costs" solely as a consequence of meeting this particular AIE request. Accordingly, it may pass such costs on to the applicant.

  OR

- The Council would incur "file-returning costs" solely as a consequence of its own document-storage policy decision and not in order to make the information available to the applicant. Accordingly, it may not pass such costs on to the applicant.

After considering these alternate views in the light of the case law and spirit of the AIE Directive, I was not satisfied that the recoupment of costs incurred in relation to returning information to storage is permissible under AIE law.

In relation to the requirement that a charge must not exceed a reasonable amount, I took the following principles from the law and case-law:

- The fee charged must not exceed the amount specified in the public authority's published schedule of AIE-related fees.
- The fee must not exceed the actual cost of producing the material in question.
- The cost of producing the material includes the cost of retrieving and making copies of records.
- "Any interpretation of the expression 'reasonable amount' that may have a deterrent effect on persons wishing to obtain information or that may restrict their right of access to information must be rejected": source *East Sussex* judgment at paragraph 42.
- "In order to assess whether a charge has a deterrent effect, account must be taken both of the economic situation of the person requesting the information and of the public interest in protection of the environment. That assessment cannot therefore relate solely to the

> person's economic situation, but must also be based on an objective analysis of the amount of the charge. To that extent, the charge must not exceed the financial capacity of the person concerned, nor in any event appear objectively unreasonable": Source: *East Sussex* judgment at paragraph 43.

It follows from the above that a public authority which has published AIE-related charges which it believes to be objectively reasonable should nonetheless be prepared to reduce or waive those fees to take account of the financial capacity of individual requesters. It also follows, I concluded, that the authority's willingness to do this should itself be published for the information of would-be requesters and made directly available to actual requesters.

I considered the appellant's view that the principles decided in three previous OCEI decisions (CEI/07/0006, CEI/16/0024 and CEI/17/0014) should apply in this case. While they do not have precedent value in law and I am not bound to follow them, they formed part of the appellant's submission and I had regard to them for that reason. I did not discern any principles in those decisions that altered my understanding of the relevant law.

I considered the Minister's Guidance. Following the delivery of the *East Sussex* judgment the Minister issued circular letter AIE/2/2017 to update guidance in relation to fees. This letter effectively replaced point 16.4 of the Minister's published guidance with the following:

> "A public authority may charge for information supplied under the Regulations. This charge may include not only postal and photocopying costs, but also to costs attributable to the time spent by staff on answering an individual request for information, which includes the time spent on searching for the information and putting it in the form required. It does not however include costs attributable to the establishment and maintenance of any registers of environmental information as provided for in article 15(1)(b) of the AIE Regulations. This is however subject to the overriding provision contained in article 5 of the Directive that any such charge shall not exceed a reasonable amount. I wish to advise you that it is essential that each public authority, in line with Regulation 15(2), must make available to a member of the public the schedule of fees that may apply to them on application of an Access to Information Request. Furthermore, it is advisable to publish such information on the AIE section of each public authority's website."

Although that guidance states that "it is advisable" to publish such information *on the AIE section of each public authority's website*, it is clear from the Directive that it *must* be published somewhere. The best place for it to be published is on the AIE section of each public authority's website, as the Minister recommends. However, that is a 'best practice' recommendation rather than a statutory obligation. Clearly, however, when a public authority publishes an AIE-related charging policy, it should then apply that policy and no other charging policy when processing AIE requests.

In the current case, the Council published two different schedules of fees: one on its AIE webpage concerning fees arising from AIE requests and another on a planning webpage concerning fees relating to access to planning files. In responding to the current AIE request, the Council should have applied its published AIE-related fees. Instead, it applied its planning-related fees. Since its published AIE-related fees did not include retrieval fees, the imposition of a retrieval fee was not justified under AIE law. The fact that the retrieval fee was imposed on foot of a Manager's Order does not alter that position.

Even if the Council had included a retrieval fee in its published AIE-related scheme of fees, along with information on when that fee might be waived, the actual fee charged would not have been reasonable because it exceeded the actual cost of producing the material in question. In addition, the Council did not consider the requester's capacity to pay the fee. I was satisfied that, when considering the matter of fees, the Council could explore the issue of financial capacity with the appellant.

For completeness, I noted that the appellant, in his request for internal review, challenged the Council's imposition of a fee for €100 for the retrieval of the five files he had requested. Although he did not raise that issue in his appeal to my Office, I wish to say that, in my view, it is the reasonableness of the retrieval fee charged for each individual file that should be considered. The combined charge for retrieving whatever number of files which a requester might specify should not, to my mind, be a determining factor. It could be different if the Council's agreement with the storage company included a discount for the retrieval of multiple files of a similar nature, but I am assured that it does not.

Findings

I am satisfied that a public authority is entitled, in principle, to impose a fee for the retrieval of archived hard-copy records stored off site, in order to make them available to an AIE requester for inspection, free of charge, at one of its offices. However, I find that the retrieval fee charged by the Council in this case was not justified because:

- It was not published as required by article 15 of the AIE Regulations, i.e. it was not included in the Council's published AIE-related scheme of charges.
- It exceeded the actual cost of retrieval.
- The Council did not publish or inform the appellant of the circumstances in which it might waive the fee.
- The Council imposed the fee without considering the appellant's capacity to pay it.

Was the Council's photocopying fee justified?

I was satisfied, and it was not disputed by the parties, that a public authority is entitled to charge for photocopying information sought in an AIE request for the purpose of supplying copies of that information to a requester. The issue for me to determine with respect to photocopying was whether the Council was entitled to charge 30 cents per page for photocopying A4 pages in the circumstances. Since neither of the parties mentioned the different costs that might arise depending on whether copies were to be made in colour or in black and white, I took it that the case involved black and white copies only. Also, since the appellant had only cited the charge quoted for copying A4 sized pages in his appeal, I confined this part of my review to considering the photocopying fee charged for A4 sized pages only.

The Council's position

The Council submitted that its copying charges for planning files "are governed by the County Manager's Order". It submitted that they are not excessive, do not exceed a reasonable amount and do not take account of any administrative time involved. In response to queries put by my investigator, the Council confirmed the following:

- Its charge for photocopying one page from a planning file is 30 cents.
- That charge is clearly displayed at the public counter in its Planning office.

- It is also published on its website here: https://www.offaly.ie/eng/Services/Planning/FAQs-Links/FAQ-s/.

The appellant's position

The appellant complained that "the copying charge suggested—30c per A4 copy—is excessive and not in accordance with the published charges for such copying of environmental information on the OCEI website". He argued that "the principles decided" in three previous OCEI decisions (CEI/07/0006, CEI/16/0024 and CEI/17/0014) and in the judgment in *East Sussex* should apply.

Analysis

When the appellant complained that the copying charge quoted by the Council was "not in accordance with the published charges for such copying of environmental information on the OCEI website", he was referring to the rate of photocopying charges published on my Office's website www.ocei.ie, which is 4 cents per page. That information was published solely as information on fees charged by my Office. Other public authorities are not obliged to match the rates charged by my Office.

When accessed in February 2019, the Council's webpage on Access to Information on the Environment stated (here) that:

> "There is no initial fee for making a request under the AIE Regulations. However, a public authority may charge reasonable fees for supplying the information requested. These fees may include the cost of compiling, copying, printing or posting of information. Public authorities may not charge for access to registers or lists of environmental information or for the examination of such information in situ. Offaly County Council's fees include:
>
> - A charge of €0.04 per sheet for photocopying records,
> - A charge of €10.00 for the provision of information on CD-ROM."

Although the word "includes" might suggest that there could be other, unstated charges, no charges not published as AIE-related charges could be lawfully imposed. Therefore the details published must be regarded as complete.

I took it that the charge cited for photocopying a sheet applies to A4 sized pages, at least. Despite this published rate, in its original decision (which was later affirmed following an internal

review) the Council quoted a charge for photocopying that was 7.5 times higher than €0.04. When invited to explain why this charge was so far in excess of the photocopying charge published on the AIE webpage the Council simply referred to the Manager's Order. It is clear to me that when a public authority publishes its charges for photocopying information in response to AIE requests, the charges that it actually imposes from case to case must not exceed those published charges. The published charge should represent the maximum amount that might be charged. It must not exceed the actual cost of copying and it must not be so high as to deter would-be requesters for information. Moreover, the amount charged in any particular case should be reduced (or waived entirely), if appropriate, in the light of an individual requester's capacity to pay.

My investigator asked a leading commercial print and design company about its charges for creating black and white photocopies of A4 sized pages. It said it charges 5 cents per page, regardless of whether a customer opts for "staff-copying" or "self-copying". One must presume that this company provides this service for a profit and that the rate which it charges exceeds the actual costs of producing photocopies. As AIE law does not permit the charging of a fee that exceeds the actual costs of copying, this is important benchmarking information. Of course, just as public authorities do not have to have regard to the fees published on my Office's website when setting their own fees, neither do they have to have regard to the rates set by commercial providers. However, when a question of fees comes before me on appeal, it makes sense for me to have regard to commercial fees when considering the reasonableness of fees set by public authorities. At the very least, when the fee charged by a public authority matches or exceeds that charged by a commercial provider, it raises an obvious question as to whether the fee charged might exceed the real costs of making copies. All of the indications in this case were that the photocopying fee charged far exceeded the actual cost incurred. As the Council presented no argument to the contrary, I concluded that the charge imposed exceeded the actual costs incurred.

I considered the appellant's view that the principles decided in three previous OCEI decisions (CEI/07/0006, CEI/16/0024 and CEI/17/0014) and in the judgment in *East Sussex* should apply in this case. I considered those cases and did not discern any principles that would alter my conclusions.

Findings

I find that the Council failed to comply with the requirements of the AIE Regulations which govern the charging of copying fees, in that:

- The fee charged did not comply with the Council's published scheme of AIE- related photocopying fees.
- The fee charged was objectively unreasonable, in that it would be very likely to deter applicants from seeking to be supplied with information.
- The Council had not provided the public or the appellant with information on how the 30 cents per page charge was calculated, even though it far exceeded both the rate charged by a commercial provider and the rate listed on the Council's own website in relation to AIE requests.
- The Council had not provided the public or the appellant with information on the circumstances in which its AIE-related photocopying fee might be waived.
- The Council did not enquire about the appellant's capacity to pay the fee.

Decision

Having carried out a review under article 12(5) of the AIE Regulations of that part of the Council's decision that concerned fees, I find that it was not justified.

While a retrieval fee is permissible in principle, in this case the retrieval fee did not comply with article 15 of the AIE Regulations, as interpreted in the light of the AIE Directive and its associated case law. This was because: it did not comply with the Council's published schedule of AIE-related charges; it went beyond seeking recoupment of the actual costs of producing the information for inspection; the Council did not publish or inform the appellant of the circumstances in which the fee might be waived; and the Council did not enquire about the appellant's capacity to pay or consider whether the fee should be reduced or waived on that account.

While a photocopying fee is also permissible in principle, the fee imposed in this case did not comply with article 15 of the AIE Regulations, as interpreted in the light of the AIE Directive and its associated case law. This is because: it did not comply with the Council's published schedule of AIE-related charges; it went beyond seeking recoupment of the actual costs of

producing the information; the Council did not publish or inform the appellant of the circumstances in which the fee might be waived; and the Council did not enquire about the appellant's capacity to pay or consider whether the fee should be reduced or waived on that account.

The Council should act on this decision and issue a new decision on what fees, if any, it will apply when making the requested information available to the appellant. Any fees charged must comply with the mandatory requirements that apply to AIE-related fees.

Appeal to the High Court

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. If the Council decides to appeal this decision it should immediately notify the appellant. If it decides not to appeal this decision, it should immediately notify the appellant and inform him that he may expect to receive a new decision on fees within one month of that notification, after which he would acquire the right to request an internal review if dissatisfied.

Note

This case concerned the fees which a public authority may charge for the purpose of making environmental information available to a requester. It did not require me to address the charging of fees by a public authority for the purpose of recouping costs incurred in deciding whether to make requested information available to a requester. The public authority in this case first decided to provide full access to the requested information. The issue of fees arose solely in relation to costs incurred in actually producing the information so that it could be made available to the requester for inspection and copying.

Peter Tyndall
Commissioner for Environmental Information
13 March 2019