



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-93479-G1X3H3

(Legacy reference: Case CEI/19/0047)

Date of decision: 18 December 2020

Appellant: Mr A

Public Authority: Dublin Airport Authority Public Limited Company (daa)

Issue: Whether daa was justified in refusing the appellant's request for all 55dB Lnight contours and other Lnight contours down to 40dB Lnight for Dublin Airport on the basis that it did not hold further information than that which it had granted access to

Summary of Commissioner's Decision: In affirming daa's decision, the Commissioner found that it had, at this point in time, taken adequate steps to search for and provide the appellant with access to the environmental information falling within the scope of parts A and C of the request that is held by or for daa. He went on to find that article 7(5) of the AIE Regulations applied and that no further environmental information falling within the scope of parts A and C the request is held by or for the daa at this time.

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 10 July 2019, the appellant requested information from daa in relation to noise studies that had been carried out regarding Dublin Airport, specifically:
 - A. all 55dB Lnight contours¹ for Dublin Airport, including the latest revisions and any old revisions;
 - B. all material shared with Fingal County Council (the Council) in this regard; and
 - C. other Lnight contours down to 40dB Lnight.

I have numbered the request for ease of reference.

2. On 8 August 2019, daa notified the appellant of its decision on his request. In relation to part A of the request, it stated that the requested information was available on its website at <https://www.dublinairport.com/corporate/sustainability-and-community/noise/contour-maps>. It also stated that it had shared the data with the Council as part of the Noise Action Plan for 2018-2023 and provided him with a link to the Noise Action Plan on the Council's website at https://consult.fingal.ie/ga/system/files/materials/9771/Noise%20Action%20Plan%20for%20Dublin%20Airport_edit_cc.pdf. With regard to the part C of the request, daa stated that it did not have any contours down to 40dB Lnight.
3. The appellant replied on the same day querying whether daa shared Lnight contours with the Council for the new North Runway. In a reply of 12 August 2019 daa stated that development of Lnight contours for the North Runway had "not yet commenced".
4. On the 27 August 2019, the appellant requested an internal review of daa's original decision. His internal review request stated that he was seeking "all 55dB Lnight contours", in particular those relating to the new North Runway. He also appealed daa's decision not to provide him with the contours down to 40dB Lnight. The appellant stated that the World Health Organisation (WHO) had identified adverse health effects for noise at levels of 40dB Lnight, and therefore, he believed that such contours should have been held by daa.
5. On 19 September 2019, daa notified the appellant of its internal review decision. It affirmed its original decision on the basis that all available information had been provided to the appellant. It re-iterated that 55dB Lnight contours are publicly available on Dublin Airport's and the Council's websites and provided links to those websites. It also re-iterated that it did not have any 40dB Lnight contour maps.
6. The appellant appealed to my Office on 7 October 2019 on the basis that daa had not provided him access to all the information he requested.

¹ Contours detail noise levels over geographical areas, measured in decibels (dB). The contours at issue in this appeal relate to night-time noise measurements, or "Lnight" measurements.

7. I have now completed my 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 daa. 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 Environmental 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').

Scope of Review

8. In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decision and to affirm, annul or vary it. Where appropriate in the circumstances of an appeal, I will require the public authority to make available environmental information to the appellant.
9. The appellant's internal review request to daa sought a review of its decision in relation to 55dB Lnight contours (part A of the request), and its statements in relation to the existence of Lnight contours down to 40dB (part C of the request). It did not seek a review of daa's refusal to grant access to material shared with the Council (part B of the request). As set out above, daa's internal review decision directed the appellant to where 55dB Lnight contours (part A) could be accessed on the websites of Dublin Airport and the Council. It refused access to 40dB Lnight contours (part C) on the basis it did not hold them.
10. While the appellant's appeal to my Office states that daa did not make all information available to him, I note his appeal goes on to focus on why it is that he considers daa holds further Lnight contours. My Investigator noted to the appellant, in her email of 11 March 2019, that his appeal related to whether daa had provided him with access to all the environmental information it holds relating to what is in effect parts A and C of his request. In a subsequent email to him on 9 June 2020, my Investigator noted that his internal review request did not seek a review of daa's refusal to grant him access to the material shared with the Council (part B of the request). The appellant did not correct or contradict my Investigator's position on the scope of his appeal to me or his internal review request in his submissions to my Office. Therefore, this appeal is concerned with daa's refusal of access to information falling within the scope of parts A and C of the request.
11. On foot of enquiries from my Investigators during the course of my review, daa carried out additional searches for environmental information relevant to the request. Those additional searches located further environmental information falling within the scope of the appellant's request. daa states that the further environmental information it located were

three Local Area Plan reports (LAP reports). It appears to me that those LAP reports fall under parts A, B and C of the request. The appellant was already in possession of those LAP reports as a result of a separate request he made to the Council under the Freedom of Information Act 2014 (FOI Act). Notwithstanding that the appellant was already in possession of the LAP reports from a third party, daa subsequently provided the appellant with copies of the reports. As daa made the LAP reports available to the appellant, in whole, I therefore regard the reports as outside the scope of my review.

12. Accordingly, the scope of my review is limited to whether daa was justified in refusing the appellant access to further environmental information held by or for daa relating to parts A and C of his request on the basis that no such environmental information is held by or for daa, *i.e.*:

- 55dB Lnight contours and
- Lnight contours down to 40dB

which are not available at the links provided to the appellant in the decisions on his request or in the LAP reports disclosed to him during the course of my review.

Legal context

13. Directive 2002/49/EC established common noise indicators to measure the long-term exposure of humans to environmental noise. In order to prevent and reduce noise, the Directive requires Member States to prepare and publish, every 5 years, strategic noise maps (Article 7) and noise management action plans (Article 8) for, among other things, major airports (civil airports with more than 50,000 single take-offs or landings a year).

14. Directive 2002/49/EC is transposed in Ireland through S.I. No. 549/2018 - European Communities (Environmental Noise) Regulations 2018 (the 2018 Regulations), available at www.irishstatutebook.ie (which replaced S.I. No. 140/2006 - Environmental Noise Regulations 2006). The 2018 Regulations provide that daa, as the airport authority, is the designated noise-mapping body for Dublin Airport on behalf of Fingal County Council (the Council) (Regulation 6) who is the designated action planning authority for the purpose of making and approving noise management action plans for Dublin Airport (Regulation 7).

15. A strategic noise map is a graphical representation of the predicted situation with regards to noise in a particular area with different colours representing different noise levels in decibels. Contours detail noise levels over geographical areas, measured in decibels (dB). Two noise indicators are used to assess noise when preparing and revising strategic noise maps (Article 5 of Directive 2002/49/EC and Regulation 8 of the 2018 Regulations):

- Lden is an indicator of the overall noise level during the day, evening and night which is used to describe the annoyance caused by exposure to noise;
- Lnight is an indicator of the sound level during the night used to describe sleep disturbance.

The contours at issue in this appeal relate to Lnight measurements. Contour maps (noise maps) are used to indicate the extent and magnitude of aircraft noise impact around airports (Annex I Paragraph 2.7.1 of Directive 2002/49/EC).

16. As the noise-mapping body for Dublin airport, daa has responsibility for generating contours on a five-year cycle (round) for specified noise bands. The noise bands specified in the 2018 Regulations for this task range from Lnight 50-54dB, 55-59dB, 60-64dB, 65-69dB, >705dB. The next strategic noise map must be made or reviewed by 30 June 2022 for the year 2021.

Position of the parties

daa's position

17. daa maintains that the appellant was provided with the relevant environmental information, and that it does not hold additional environmental information falling within the scope of the request. It explains that as the request in this case relates to Lnight contours, it interpreted the request as seeking environmental information relating to the Lnight output maps (referred to as a 'noise maps' or 'contours'). It states that under the 2018 Regulations it is required to produce night-time contours that are in the noise band ranges from 50dB to 70dB, and that it has not produced contours below this range including 40dB Lnight contours for this purpose. daa states that its interpretation of the request (as being for noise maps) is supported by the European Civil Aviation Conference (ECAC) "[Report on Standard Method of Computing Noise Contours around Civil Airports](#)" Volume 1 (4th edition) (ECAC Report), available at www.ecac-ceac.org. It also states that the International Civil Aviation Organization (ICAO) Environmental Report "[Aircraft Noise Models For Assessment of Noise Around Airports – Improvements And Limitations](#)" (pages 50-55) (ICAO Report), available at www.ICAO.int, supports its interpretation.
18. daa states that when it produces contours as the noise-mapping body for the purposes of the 2018 Regulations, they are published on the Dublin Airport website. It describes how following completion of a population assessment, the contours are submitted to the Council, as the designated action planning authority. It states that the Council publishes the draft Noise Management Action Plan, and the finalised Noise Management Action Plan, on its website. It states that the most recent one is for the years 2019 to 2023.
19. In relation to the presentation concerning the Council's development plan, and the contours contained within, to which the appellant drew my attention in his appeal, daa maintains that it does not hold those contours. It states that the Council has developed land-use noise zones as part of its Local Area Plan (LAP) for Dublin Airport. It states that, on request, daa's consultants produced a set of noise data in the form of 'grid files'. It explains that these grid files were provided to the Council who produced its own contours, including 55dB Lnight and 48dB Lnight contours by combining it with other data. It maintains that it does not have these contours on record.

20. daa explains that contours are produced by compiling raw data with other information such as geographic, demographic and social data. It emphasises that raw data does not constitute contours. It states that as the request relates to Lnight contours, it interpreted the request as being for noise maps. As such, other data sets such as the grid files were not considered during its processing of the request. It also explains that contours are generated using modelling software to which it has no proprietary rights nor is the software held or owned by daa. Therefore, the raw data is not generally in a format that can be viewed or interpreted by daa. As a result, it only holds the final contours and population assessments, which it provides to the Council for use in the Noise Action Plan and which is published on the Council's website.
21. My Investigator asked daa for an account of the steps taken to search for the requested environmental information when it was processing the request. In response, daa explained that the main location where the North Runway noise data, contour information and reports are stored is on its North Runway SharePoint site (a document management and storage system). Its North Runway SharePoint contains a folder for all elements of the North Runway project itself. It also includes additional folders for North Runway inputs such as noise management action plans and Local Area Plans (LAP) prepared by the Council. It also explains that when sharing information with external agencies such as the Council this is done through a file sharing location on the SharePoint site, and that a record of the transmittal is made when the information is shared with an external party.
22. When processing the request, daa explains that it focused on the North Runway project and relevant locations on its SharePoint site *e.g.* North Runway project SharePoint folder. It states that it carried out searches by reviewing the individual files on the relevant parts of the SharePoint site, in particular it searched the part of the site where data was shared with the Council. It further explains that contours are specialised, technical documents. As a result, preparing the contours requires external consultancy support and the number of contours that it has developed is limited. It states that contours are prepared with external consultancy support and only a limited number have been produced. Discussions with team members in relation to the contours revealed a strong awareness about the availability and completeness of the contour records. As such, daa states that it has a high degree of confidence that the information available on the North Runway project SharePoint folder is comprehensive and complete.

The appellant's position

23. The appellant submits that daa holds additional Lnight contours or noise maps which he has not been granted access to. In support of his position he provided my Office with a presentation that was presented to councillors on 8 July 2019 at a Council meeting concerning the variation of the Council's development plan for 2017 to 2023 including amendments to the noise zone for Dublin Airport. He notes that the presentation contains "contours/maps" which he was not provided access to in daa's decisions on his request. He states that despite daa saying that that no such contours/maps exist this is evidence that

this material does exist. In addition to the presentation he included with his appeal, his submissions to my Office included copies of three LAP reports for Dublin Airport for the Council's LAP in support of his position that daa holds further contours. He notes that the LAP reports state that noise contours and noise level grids have been prepared as part of the North Runway Project, and that the Council requested specific noise parameters and minimum values of them, including 50 dB Lden and 40 dB Lnight. He also provides a link to a meeting of the Council on 9 December 2019, available at www.fingalcoco.publici.tv/core/portal/webcast_interactive/455063, concerning a variation to the Council's development plan 2017 to 2023. He contends that these show that noise contours have been produced by daa, and that the Council requested 50dB Lden and 40dB Lnight contours from daa. He notes that the LAP reports also contain noise maps that are not available at the links provided to the appellant in daa's decisions on his request, including 40dB Lnight contours.

24. In addition, the appellant states that the World Health Organisation (WHO) 'Environmental Noise Guidelines for the European Region' (2018) (WHO Guidelines) provide that there is a public health risk associated with aircraft noise greater than 40dB Lnight. He contends that this means that daa should be in possession of more contours than those provided in response to the request.
25. Furthermore, the appellant challenges daa's definition of a contour. He states that visible drawings are only one form of a contour output. He contends that grid lines themselves are also contours. Therefore, daa should have made him aware of the existence of grid lines.

Analysis and Findings

Interpretation of the environmental information requested at parts A and C of the request

26. As set out at paragraph 25, the appellant disputes daa's definition of a contour. He submits that the grid lines themselves are also contours. daa submits the request was for Lnight contours, which are usually presented as a noise map. It states that raw data does not constitute contours, and that as a result the grid files were not considered during its processing of the request. As set out at paragraph 20 above, it asserts that it only holds the final contours and population assessments.
27. Modelling aircraft noise is a technical and complex task which has been allocated to daa. As the designated noise-mapping body for Dublin Airport, daa has particular expertise in the area of contours. While I note that the ECAC Report does not state that noise maps (referred to as 'noise contour maps' in the ECAC Report) are the only way to depict noise, it does state that noise maps are a common way of depicting the magnitude of the noise from aircraft. Similarly, I note that the ICAO Report states that final results are typically presented as noise maps (referred to as 'noise contour diagrams' in the ECAC Report). I also note that daa's publication entitled "[Measuring, Managing and Mitigating Aircraft Related Noise](#)", available at www.dublinairport.ie, says that noise around airports is measured by calculating longer-term average noise levels and modelling them in sound contours which show a set of

closed curves on a map. This is in line with noise maps being used to indicate aircraft noise impact around airports under Directive 2002/49/EC. Accordingly, I accept daa's interpretation that parts A and C of the request was for contours in the form of noise maps, which in my view, is in line with European and international standard industry practice.

28. I also accept daa's interpretation as to why the request did not include the grid files or other underlying raw data. In the circumstances of this case, I consider that daa's interpretation of the request was objective, and that it is consistent with its own use of the term "contour". Furthermore, this interpretation is supported by the appellant's application for appeal to my Office, which I note, refers to the accompanying presentation as providing evidence that daa holds "contour/maps", which he was not provided access to. I wish to add that this finding is without prejudice to the appellant's right to make a new, more specific request for particular items of environmental information, which may include grid files.

Is further environmental information held by or for daa?

29. The appellant received publicly available information in response to the AIE request, on the basis that no further information was held by or for daa. However, the appellant maintains that daa holds further relevant environmental information.

30. 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.

31. I understand the appellant's position in relation to noise studies below 55dB and that he believes that daa should have consideration for WHO Guidelines. While the 2018 Regulations provide an option for further noise studies at lower levels to be carried out, I note that there is no positive obligation on the responsible authority to produce Lnight contours below the 50-54dB noise band range for the purposes of the strategic noise maps and noise management action plans under the 2018 Regulations. daa states that it has not produced any contours other than those contained in the Noise Action Plans for this purpose, which are available on the Dublin Airport website. I have not seen anything during the course of my review to indicate that daa has produced contours below the 50-54dB range including 40dB Lnight contours for this purpose. Thus, I accept daa's written assurance that it has not produced contours below that range for the purpose of the 2018 Regulations.

32. daa states that the contours to which the appellant drew my attention were not prepared for daa's purposes. As set out at paragraph 19, it explains that its consultants prepared the contours in response to a specific request from the Council for the purposes of the Council's LAP. I accept daa's explanation on the reasons for the preparation of those contours, and the extent of daa's contribution to their production. However, I note that the three LAP reports which are dated November 2018, December 2018 and April 2019 pre-date the request. I also note that the three LAP reports are addressed as having been reported to the Environmental Manager Dublin Airport and North Runway at daa. Therefore, if the LAP reports were held by daa or held for daa by another natural or legal person at the time of the request I consider that it is likely that the noise maps contained within those reports would have fallen within the scope of the request. However, as I have set out above in paragraph 11 the LAP reports are outside the scope of my review, as these have since been made available to the appellant.
33. daa explains that when it processed the request, its initial search focussed on the North Runway Project and locations on its SharePoint site relevant to that. By way of explanation as to the focus of its initial search, including for the reasons set out at paragraph 22 daa states that it understood that there was full visibility of the relevant information. It also states that information is exchanged between it and its consultants through an external SharePoint site. It describes how its consultants upload information to this external site which is then copied into its internal North Runway SharePoint site by daa officials. Once the information is uploaded to the internal site it is deleted from the external site. daa explains that as it understood that all relevant material was held on its own internal SharePoint site it did not ask its consultants if it held any such environmental information when it initially processed the request.
34. My Investigator informed daa that the fact the cover page of the LAP reports state that they were reported to the Environmental Manager Dublin Airport and North Runway indicates that the reports were in daa's possession. daa explains that as its initial search focussed on the North Runway project material held on file for the LAP was not specifically searched. On foot of my Investigator's request to detail its search process, daa states that it carried out a further search at the end of January 2020. It clarifies that the additional search was broadened to include the LAP folder of the North Runway SharePoint site. It states that this additional search located the related noise modelling data files (grid files). However, it submits that the LAP reports were not located either as part of the initial or the subsequent broader search in January-February 2020. It describes how, as a result of my Investigator's additional queries in August 2020 relating to the LAP reports, it carried out a further search of the material on the North Runway SharePoint site. It states that in this further search it examined the record of the transmittals for information it has shared with the Council through its file sharing location to establish whether or not the LAP reports were/are in fact held anywhere on the North Runway SharePoint site. daa asserts that none of its three searches identified the LAP reports on its North Runway SharePoint site. It also states that it

has not found anything to indicate that the LAP reports were transmitted from it to the Council through its file sharing location.

35. In addition, daa states that on foot of my Investigator's queries, its Planning Department reviewed its own SharePoint files and confirmed that it does not have the LAP reports on file and that it did not send the reports to the Council. It also states that its consultants who prepared the LAP report confirmed that they did not send the reports to the Council. It further states that the Environmental Manager (to whom the LAP reports were reported) does not have a record of emails that she/he sent to the Council on this subject.
36. Article 3(1) of the AIE Regulations provide that the AIE Regulations apply not only to environmental information that is "held by" a public authority but also to environmental information "held for" a public authority. As such, my Investigator asked daa if its consultants hold any 55dB Lnight contours (part A of the request) and other Lnight contours down to 40dB (part C of the request) on behalf of daa, other than those that are publicly available. As set out at paragraph 33, daa initially considered that all relevant environmental information was held on its own internal SharePoint site. As a result, it did not ask its consultants if it held any such environmental information when it initially processed the request. However, it states that on foot of my Investigator's queries it asked its consultants to confirm whether or not it had any 55dB Lnight contours and other Lnight contours down to 40dB prepared on behalf of daa. It asserts that with the exception of the three LAP reports which it has granted the appellant with access to during the course of my review, its consultants confirmed that it holds no further Lnight contours down to 40dB levels which would have existed at the time when the request was made.
37. As set out above, daa's additional searches carried out during the course of my Office's investigation located further environmental information relevant to the request, which it subsequently made available to the requester. This indicates to me that reasonable steps had not been taken to identify and locate environmental information falling within the scope of the request during its processing of the request. In particular, I note, that its initial search which focussed on the North Runway Project was too narrow and that it did not check with its consultants whether they held relevant environmental information.
38. Notwithstanding that daa did not take reasonable steps to identify and locate environmental information falling within the scope of the request during its processing of the request, I consider that adequate searches have now been carried out by daa to identify and locate relevant environmental information it holds within the scope of the request. On the basis of daa's detailed explanations of its file storage system, locations where relevant files are located and its searches for relevant environmental information including its additional searches during the course of my review, I accept that at this stage daa has searched all relevant locations where environmental information relevant to the request is likely to be held by or for it. I accept daa's written assurance that its consultants have confirmed for it that they hold no further environmental information relevant to the request. I have not seen anything during the course of my review to suggest otherwise.

Given the additional searches that have been carried out by daa, I am satisfied that, at this point in time, daa has taken adequate steps to identify and locate the existing environmental information relevant to request in this case.

39. In addition, I accept that the production of contours by daa is the culmination of an involved process, carried out under primarily under a statutory obligation in the 2018 Regulations with considerable interaction with third parties. I also accept, for the reasons set out at paragraph 22, that for the most part there is a strong awareness within daa in relation to the contours held by it. Furthermore, I consider that there would be a similarly strong awareness within daa's consultancy team, which has confirmed it does not hold further relevant environmental information, in relation to contours it has produced for daa, whether for daa's or other purposes such as the Council's. This leads me to conclude that, at this point time in this case, it is unlikely that additional contours would exist and be filed in a location unknown to the officials at daa and at its consultants.
40. In the circumstances of this case, I consider that daa does not hold further environmental information falling within the scope of parts A and C of the request beyond that which it has now made available to the appellant. Therefore, I am satisfied that, at this point in time, the appellant has been granted access to the environmental information requested at parts A and C of his request that is held by or for daa. Accordingly, I find that Article 7(5) of the AIE Regulations applies and that no further environmental information falling within the scope of parts A and C the request is held by or for the daa at this time.
41. While the appellant is of the view that further environmental information should exist, this does not necessarily mean that such environmental information is actually held by or for daa. I do not consider it feasible or appropriate for me to continue to pursue the possibility that additional environmental information might exist or to physically search daa's offices. It is necessary for me to have regard to the reasonable use of my Office's resources and to bring this case to conclusion.
42. I wish to emphasise that it is outside my remit as Commissioner to adjudicate on how public authorities carry out their functions generally, including with respect to their environmental information management practices. I have no role in assessing how public authorities collect, maintain and disseminate environmental information. My role concerns access to environmental information which is held by or for the relevant public authority and no more than that.

Decision

43. Having carried out a review under article 12(5) of the AIE Regulations, I find that, apart from the environmental information that it located during the course of my review, daa has taken adequate steps to identify and locate the existing environmental information relevant to appellant's request in this case. As daa provided the appellant with access to the additional environmental information that it located during the course of my review, I am not making any direction requiring further release. I also find that article 7(5) applies and that no further

environmental information falling within the scope of parts A and C the request is held by or for the daa at this time.

Appeal to the High Court

44. 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.

Peter Tyndall
Commissioner for Environmental information
18 December 2020