



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-108458-R3F5Z4

Date of decision: 28 July 2022

Appellant: Mr. H

Public Authority: National Transport Authority [the NTA]

Issue: Whether the request was valid under the AIE Regulations, whether the NTA were justified in effectively refusing the appellant's request under the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner affirmed the refusal of the request, but varied the reasons, finding that the refusal was justified under Article 7(5) of the AIE Regulations.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision, as set out in article 13 of the AIE Regulations. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.



Background

1. This appeal concerns a request made by the appellant to the National Transport Authority (the NTA) relating to the BusConnects Dublin programme. Central to this programme is the development of sixteen Core Bus Corridors across Dublin. Traffic survey data was collected for the purpose of preparing an Environmental Impact Assessment Report (EIAR) for each of the proposed Core Bus Corridors as part of the planning application process. The surveys were carried out by a panel of traffic survey companies in November 2019 and February 2020.
2. During the public consultation process on BusConnects, the NTA had committed to making the traffic survey information publicly available. The NTA published the “raw” traffic survey information on the BusConnects website in the format received from the companies that conducted the surveys. Due to the use of different companies to carry out the surveys, there are differences in the formatting of the information supplied for different bus corridors.
3. On 8 April 2021 the appellant made a request to the NTA for summary traffic count data for corridors 9, 10, 11 and 12 of the BusConnects project in an easily digestible format. His request noted that there were significant differences between the data available for corridors 10,11 and 12 versus the data available for corridors 1, 2 and 5. He requested that *“summary data be supplied in a similar [similar to corridors 1, 2 and 5] easily digested format at least daily for corridors 9, 10, 11 and 12”*.
4. The NTA responded to the appellant on 16 April 2021. The decision maker stated that the request was invalid. The NTA referred to Article 7(3)(a) of the Regulations, stating that the information which had been referenced by the appellant was already available. The NTA also commented that the appellant was seeking additional processing of available information to create new information records and that the information requested is available in a form and manner in accordance with the processes and procedures of the companies that undertook the respective surveys on each core bus corridor.
5. On 19 April 2021 the appellant sought an internal review of the decision. He referred to the obligations of public authorities under the AIE Regulations to proactively maintain and disseminate environmental information. In an internal review decision dated 18 May 2021, the NTA affirmed the initial decision, again regarding the appellant’s request as invalid on the basis that the request would require additional processing of information that had been released and is publicly available. Article 7(3) of the Regulations was not referenced in the internal review decision. The appellant appealed to my Office on 1 June 2021.



6. I have now completed my review under article 12(5) of the AIE Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the NTA. I have also examined that data in question. In addition, I have had regard to:
 - (a) 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);
 - (b) Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - (c) 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
 - (d) The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide').

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

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. Proceedings before my office are inquisitorial rather than adversarial in nature. Where appropriate in the circumstances of an appeal, I will require the public authority to make available environmental information to the appellant.

9. A review by my Office is considered to be de novo, which means that it is based on the circumstances and the law at the time of my decision.

10. The request was effectively refused by the NTA on the grounds that it was not a valid request under the AIE Regulations. Accordingly, my review in this case is firstly concerned with whether the request was valid under the AIE Regulations. If I find that it is a valid request, I will consider whether the refusal of the request was justified under the AIE Regulations or whether it is appropriate for me to direct release of the information requested.

Analysis and Findings

Was the request valid under the AIE Regulations?

11. Both the initial decision and review decision concluded that the appellant's request was not a valid request under the Regulations. Article 6(1) of the Regulations sets out the components of a valid AIE request. This states:

6. (1) A request for environmental information shall—



- i. *be made in writing or electronic form,*
 - ii. *state that the request is made under these Regulations,*
 - iii. *state the name, address and any other relevant contact details of the applicant,*
 - iv. *state, in terms that are as specific as possible, the environmental information that is the subject of the request, and*
 - v. *if the applicant desires access to environmental information in a particular form or manner, specify the form or manner of access desired.*
12. The appellant's request complied with the above requirements and therefore was a valid request under the Regulations. The AIE Regulations do not otherwise provide for a public authority to deem a request invalid. A public authority must therefore consider any request that satisfies the above requirements, and provide access to the information sought, or refuse the request where grounds exist under the AIE Regulations to do so. Accordingly, the NTA erred in its interpretation of the AIE Regulations when it found the request to be invalid. The NTA should have considered the request in full under the AIE Regulations and provided the appellant with a reasoned response.
13. As the above was the main ground upon which the appellant's request was refused, I find that the refusal of the appellant's request was not justified by the reasons given. It therefore falls to me to consider whether the effective refusal of the request was otherwise justified under the AIE Regulations, or whether it is appropriate for me to direct release of the information sought.

Does the NTA hold the information sought?

14. The appellant's request was for summary data relating to bus corridors 9-12 in an easily digestible format similar to the data provided for bus corridors 1, 2 and 5. My investigator wrote to the NTA to query whether this data was in fact held by or on behalf of the NTA. The NTA stated that checks were carried out with relevant personnel within the BusConnects programme team confirming that summarised information was not available at the time of the request for the relevant corridors.
15. The NTA stated that the information available on the BusConnects website is in the format that it was provided to the NTA by the surveying companies and that the differences between the data available for different bus corridors is due to differences in procedures between the companies collecting the data for each corridor. The information was published in an effort to keep the public informed throughout the process of developing plans for the bus corridors. The NTA states that this information will be used to compile Environmental Impact Assessment Reports (EIARs) for each bus corridor, which will provide comprehensive traffic assessment information. These will be submitted to An Bord Pleanála as part of the planning applications for the bus corridors. I am informed by the NTA that it expects the planning applications for corridors 9-12 before the end of 2022.
16. The NTA's position is that the appellant's request would require it to carry out processing or modification on the existing data that would constitute the creation of "new" information. It



further states that different viewers of the data are likely to have different requirements and there is no one summarised format for this data that would be guaranteed to satisfy all potential users.

17. Based on the information provided, I find that the NTA does not hold summary information for the relevant corridors that is in a similar format to that available for bus corridors 1, 2 and 5. I am satisfied that the information available on the website is the only information held by the NTA that is relevant to this request.

Can the NTA be obliged to summarise information for the purposes of the appellant's request?

18. The appellant's case is that his request is for information in a particular form or manner as contemplated by article 7(3) and that the AIE Regulations require the NTA to go beyond the information already published and to provide information that is easily accessible and consistent for all bus corridors.

19. Article 7(3) provides that a requestor may specify the form or manner they wish to receive the information they have sought, and allows for the granting of a request in an alternative form or manner to that requested in certain circumstances. This article states:

*7(3) (a) Where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless— (i) the information is already available to the public in another form or manner that is easily accessible, or
(ii) access in another form or manner would be reasonable.
(b) Where a public authority decides to make available environmental information other than in the form or manner specified in the request, the reason therefore shall be given by the public authority in writing."*

20. Given that I have found that the NTA does not hold summary information for the relevant bus corridors as sought, I must consider whether the obligation to provide the appellant with information in the form or manner requested can extend to obliging the NTA to create or produce a summary of information to fulfil the appellant's request.
21. The AIE Regulations allow for requests for information held by or on behalf of the relevant public authority. Article 3 of the AIE Regulations provides that the regulations extend to environmental information which is "*in the possession of a public authority that has been produced or received by that authority*" or "*information that is physically held by a natural or legal person on behalf of that authority*".
22. The Aarhus Convention Implementation Guide notes that allowing a requester to request a specific form of information can have benefits for both the public authority and the applicant. It suggests



that this can allow for the accommodation of members of the public with special needs, such as disabilities, different languages or lack of certain equipment. While this guide is not a binding interpretation of the AIE Regulations, it does appear to contemplate that some processing might be required to provide information in the form or manner requested.

23. I have examined the information relevant to this request. The information available for corridors 1, 2 and 5 contains maps and hourly totals for each vehicle type and direction. These are contained in a single file. The information available for corridors 9-12 is in the form of an excel sheet which lists the number of vehicles observed in each 15-minute period during the survey and records average speed and other details. The maps showing the survey location are in a different file. As the appellant notes, it is difficult to navigate.
24. Given the differences between the information available for corridors 1, 2 and 5 and the “raw” information available for corridors 9-12, I find that summarised information as requested by the appellant is not the equivalent of the information already available for corridors 9-12 in a different form or manner. While such a summary as sought by the appellant would be *based* on information that is held by the NTA, it would require more than a change in the form or manner to create information to satisfy the appellant’s request.
25. Based on this, I am satisfied that to produce a summary equivalent to that available for bus corridors 1, 2 and 5, as requested by the appellant, would go beyond changing the form or manner of the information already held by the NTA.
26. While the Directive sets out various obligations for public bodies to collect and maintain environmental information, Article 12 of the AIE Regulations only provides my Office with the jurisdiction to review the internal review decision of a public authority in relation to an individual request under the AIE Regulations. I do not have a role in reviewing the manner in which public authorities comply with their duties to disseminate and maintain information more generally. I find that to direct the NTA to produce the information sought by the appellant would go beyond my jurisdiction under the AIE Regulations.
27. For the avoidance of doubt, the appellant made certain arguments to me in relation to a previous decision of my Office pursuant to my powers under the Reuse of Public Sector Information (RPSI) Regulations. The scheme and purpose of the RPSI Regulations is very different to the AIE Regulations. Any decision under those regulations has no application to my jurisdiction as Commissioner for Environmental Information.
28. The appellant also suggested that an oral hearing might be beneficial to my review in this appeal, or that I consider using my powers to require the chief officer of the NTA to attend before me. I am satisfied that fair procedures have been discharged by allowing the appellant and the NTA to make written submissions. I believe those submissions were sufficient to allow me arrive at my decision. I



do not believe requiring any party to attend before me would be of assistance in arriving at my decision.

29. I would however remind the NTA that the AIE Directive requires public authorities to seek to ensure that environmental information compiled by it, or on its behalf, is comprehensible, accurate and comparable. This cannot be said of the excel spreadsheets relating to the relevant bus corridors that are available to the public on the BusConnects website. I believe it is not helpful that there is such a difference between the information provided by two different companies for the same project. I can understand why the appellant is frustrated by this. In future projects, I would ask the NTA to take its obligations under the AIE Regulations into account when preparing project briefs, tenders, requests for information etc.

Decision

30. Having carried out my review, I find that the request was a valid request for environmental information under the AIE Regulations. I also find that the information requested by the appellant is not held by the NTA and that the NTA is not obligated under the AIE Regulations to produce summary information as sought by the appellant. Accordingly, the correct approach by the NTA should have been to accept the request as valid but refuse the request under Article 7(5) of the AIE Regulations.
31. I therefore affirm the refusal of the request, but vary the reasons to refuse the request under article 7(5) of the AIE Regulations.

Appeal to the High Court

32. 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.

Ger Deering

Commissioner for Environmental Information

28 July 2022