



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-112308-H7Z8Z0

Date of decision: 28 October 2022

Appellant: Mr. Ken Foxe

Public Authority: An Garda Síochána

Issue: Whether An Garda Síochána was justified in refusing access to the requested environmental information on the basis that it is already publicly available and that no further relevant environmental information was held by or for it.

Summary of Commissioner's Decision: The Commissioner annulled the decision of An Garda Síochána and remitted the request to An Garda Síochána for a fresh decision-making process.

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 25 June 2021 the appellant requested “a copy of records held by An Garda Síochána relating to the management/response to a major environmental incident e.g. a pollution incident, an industrial fire where there is a risk to wider public health, a chemical spill etc. Such records to include: regulations, guides, operational procedures, manuals, training manuals, incident plans, or other such overview/response/guidance records.”
2. This request was refused on 23 July 2021 under article Art 7(3)(a)(i) and article 8(a)(iv) of the AIE Regulations. An Garda Síochána informed the appellant in the original decision that “the management/response to a major environmental incident is in the first instance a matter for the relevant local authority. The role of An Garda Síochána in such incidents is guided by the framework for major emergency management and associated documents, which are available at www.mem.ie”. In addition to this, An Garda Síochána informed the appellant that it was “refusing to release records in respect of the operational procedures of An Garda Síochána and do so in accordance with Article 8(a)(iv) of the regulations”. An Garda Síochána expressed concern about disclosing information that might reveal confidential Garda decision-making processes, and suggested that such information could be used to obstruct policing operations. An Garda Síochána also noted that such release of information under AIE would create a precedent in respect of further requests.
3. The appellant requested an internal review on 28 July 2021.
4. On 27 August 2021, An Garda Síochána wrote to the appellant informing him that the decision had been varied, and in the opinion of the internal reviewer “the exemption applied to operational policing matters does not materialise in this instance”. This letter also set out that the request was refused on the basis that “the Internal Reviewer has decided that as the management/response to a major environmental incident is in the first instance a matter for the relevant local authority, the records sought do not exist within An Garda Síochána and that on this basis your request should be refused.”
5. The appellant submitted an appeal of that decision to this Office on 31 August 2021.
6. I am directed by the Commissioner for Environmental Information to carry out a review on this appeal. I have now completed this review under article 12(5) of the Regulations. In so doing, I have had regard to the submissions made by the appellant and An Garda Síochána. 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').

Scope of Review

7. The scope of this review is concerned with whether An Garda Síochána was justified in refusing access to the information as requested under article 7(3)(a)(i) of the AIE Regulations, on the basis that this information is already available to the public and that no further relevant environmental information is held by or for An Garda Síochána.

Analysis and Findings

8. 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(3)(a)(i) provides that an appellant is entitled to receive information in the form or manner requested but where information is already available to the public in another form or manner that is easily accessible, it is permissible to provide access in that alternative form or manner. 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. In cases where a public authority has effectively refused a request under article 7(5), this Office 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, a standard of reasonableness must necessarily apply. It is not normally this Office's function to search for environmental information.
9. In his submission to this Office the appellant stated that while he accepts that some relevant records may be available on the website www.mem.ie, he does not believe it encompasses all records and argues it seems unlikely that no materials of the nature requested exist. He uses the example of a patrol car coming across a major environmental incident and suggests there must be protocols in place aside from consulting an external website. He submits that if this is the procedure, there must at least be an instruction which exists advising Gardaí to consult with this website, and on that basis he believes relevant records must exist.
10. An Garda Síochána submits that as management of and response to a major environmental incident is in the first instance a matter for the local authority, no relevant records exist within the organisation. An Garda Síochána also set out in its submission to this Office that it is impossible to have operational procedures, training manuals etc. for all situations or scenarios which an operational Garda may encounter in the course of their duties, and relevant records do not exist.
11. As set out above, when informing the appellant of the outcome of the internal review, An Garda Síochána wrote that "the Internal Reviewer has decided that as the management/response to a major environmental incident is in the first instance a matter for the relevant local authority, the records sought do not exist within An Garda Síochána and that on this basis your request should be



refused.” There is no indication in the internal review outcome of the basis on which the internal reviewer decided that relevant records did not exist, nor is there any indication that adequate searches were carried out as required under the Regulations.

12. I also note that the internal reviewer in this case was not identified. This is contrary to best practice when carrying out an internal review. Article 11(2) of the Regulations provides that a requester is entitled to have an internal review conducted by “a person unconnected with the original decision whose rank is the same as, or higher than, that of the original decision-maker”. Although it does appear in this case that the internal review was conducted by a senior Garda member, it is difficult for a requester to determine whether this requirement, or any related requirement of fair procedures, has been complied with if no indication is given as to the identity of the internal reviewer.
13. During the course of the review the investigator requested An Garda Síochána provide details of the steps taken to search for relevant information relating to the request. In particular, the investigator sought details of the steps taken to search for relevant information relating to the training of Gardaí, which might reveal further information associated with the request.
14. An Garda Síochána subsequently submitted that “the request was forwarded to the Major Emergency Management Office of An Garda Síochána. This Office has responsibility for An Garda Síochána’s approach to major emergencies. The Major Emergency Management Office, having conducted both manual and electronic searches and utilising the expertise and knowledge of the skilled Gardaí within that Office, advised that the only records available are those contained within the Department of Housing, Local Government and Heritage’s Framework for Major Emergency Management which is publicly available at www.mem.ie. Given that the Major Emergency Management Office is responsible for An Garda Síochána’s approach to major emergencies, it is reasonable to conclude that records do not exist elsewhere within the organisation”
15. An Garda Síochána further submitted that “The request was also subject to Internal Review. The Internal Reviewer sought further searches from the Major Emergency Management Office. The internal Reviewer was a senior Garda Officer with considerable operational experience, who was able to confirm that records of the type sought do not exist at a local District or Divisional level within An Garda Síochána.”
16. No further details of relevant searches being carried out at a local or divisional level were included in the submissions. I cannot come to a view on whether the searches carried out were reasonable in circumstances where I have not been provided with further detail as to the manner in which those searches were carried out, the locations that were searched, and the steps which were taken to account for potential misfiling or misplacement.
17. I accept that An Garda Síochána may not have regulations, guides, operational procedures, manuals, training manuals, incident plans etc. for every one of the vast array of situations or scenarios an operational Garda could potentially encounter. I also agree with the statement of An Garda Síochána that a requester’s belief that information ought to exist does not mean that such



records do indeed exist. It may be the case that no further records exist in addition to those which are publicly available within the Framework for Major Emergency Management. However, it remains the case that An Garda Síochána has not demonstrated that it has carried out reasonable searches to satisfy this Office that all relevant records have been located.

18. In the circumstances, I am not in a position to find that An Garda Síochána has taken adequate steps to identify and locate all relevant environmental information held by or for it. It is not possible, in my view, for An Garda Síochána to argue that all information within the scope of the appellant's request is publicly available such that article 7(3)(a) of the Regulations applies, in circumstances where it has not established that it has conducted sufficient searches to retrieve and identify all information held by or for it within the scope of the request.
19. As such, I cannot find that article 7(3)(a)(i) or article 7(5) of the AIE Regulations apply in this case. I consider that the most appropriate course of action to take at this stage is to annul the decision of An Garda Síochána in its entirety, the effect of which is that An Garda Síochána must consider the appellant's request afresh and make a new, first instance decision in accordance with the provisions of the AIE regulations.

Decision

20. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I annul the decision of An Garda Síochána. I remit the matter to An Garda Síochána who should process the appellant's request in accordance with the AIE Regulations.

Appeal to the High Court

21. 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.

Deirdre McGoldrick
on behalf of the Commissioner for Environmental Information

28 October 2022