

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/19/0028

Date of decision: 27 February 2020

Appellant: Mr. X

Public Authority: Cork County Council (the Council)

Issue: Whether the Council was justified in refusing access to certain records of communication with Irish Water on the basis that no such communications were held by or for it

Summary of Commissioner's Decision: In accordance with article 12(5) of the AIE Regulations, the Commissioner reviewed the decision of the Council and found that it was justified in refusing the request 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

In a request dated 22 March 2019, the appellant sought access to seven categories of information relating to planning file 18/06073, including communications with Irish Water regarding the design of the proposed pumping station for the development. In a decision dated 25 April 2019, the Council refused the request under article 7(5) of the AIE Regulations, stating that the requested information did not exist on planning file 18/06073, which was on appeal at the time to An Bord Pleanála. On 7 May 2019, the appellant requested an internal review of the Council's decision on the basis of his belief that the Council must have either been in direct contact with Irish Water or alternatively required the planning applicant to contact Irish Water regarding the details of the location etc. of the pumping station. In support of his internal review request, the appellant referred to a drawing submitted by the planning applicant following a Further Information Request from the Council in which a reference was made to "Pumping station to Irish Water requirements". As the Council granted planning permission following receipt of the Further Information requested, the appellant considered that "there must have been [an] information exchange whereby Cork County Council required that [the planning applicant] deal with Irish water on any 'details' to do with the pumping station".

On 7 June 2019, the Council affirmed its original decision. The appellant subsequently appealed to this Office against the Council's decision.

I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the appellant's statement of appeal and to the submissions made by the Council. I have 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); and The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide').

I note that on 12 July 2019, my Office invited the appellant to make submissions in support of his appeal. On 24 October 2019, my Office wrote to the appellant again for the purpose of updating him on the Council's position in relation to his appeal. The appellant was given a further period of two weeks, i.e. until 7 November 2019, in which to make any comments that he considered may be relevant to my review. To date, however, no submissions from the appellant have been received. I now consider it appropriate to bring this matter to conclusion by way of a formal, binding decision.

Scope of the Review

My review in this case is concerned solely with the question of whether the Council was justified in refusing the appellant's request for access to records of communication with Irish Water regarding the pumping station referred to in planning file 18/06073.

Analysis and Findings

The Council's position is that no records of communication with Irish Water regarding the pumping station referred to in planning file 18/6073 are held by or for it. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested information is held by or for the public authority concerned. This Office's approach to dealing with cases where a public authority has effectively refused a request under article 7(5) is set out in previous decisions published on our website at www.ocei.ie, such as [CEI/13/0015](#) (Mr. Lar McKenna and EirGrid plc) and [Case CEI/11/0009](#) (Ms. Rita Canney and Waterford City Council). As these decisions explain, I must be satisfied that adequate steps have been taken to identify and locate relevant records, 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 information.

In its written submission dated 15 October 2019, the Council explained that any relevant records regarding planning file 18/06037, including further information requests and responses, would be contained in the planning file, which is available online at www.corkcoco.ie. I find no basis for disputing the Council's position. The planning file shows that the Council notified Irish Water on 28 August 2018 as a matter of routine of the existence of the planning application. The Council also placed internal reports on the file, such as the "Estates Primary Report" dated 19 September 2018 which refers to arrangements that were then to be made between the planning applicant and Irish Water regarding water and waste water at the proposed development. As the appellant is aware, a further information request was issued on 1 October 2018, which was followed by the submission of drawings by the planning applicant. However, there is nothing to suggest that the Council engaged directly with Irish Water regarding the proposed pumping station or that documents involving an exchange of information between the planning applicant and Irish Water were submitted to the Council.

Rather, an Estates Supplementary Report dated 18 February 2019 recommended certain conditions to prevent flooding and to ensure that satisfactory water and waste water arrangements were in place to serve the development. Accordingly, the planning decision of 19 February 2019 included conditions regarding storm attenuation measures and the need for water and sewage services "in accordance with the connection agreement with Irish Water". The Council has explained that the communications with Irish Water that the appellant seeks may be information that the planning applicant could be expected to submit as part of its compliance with any planning conditions that may be imposed by An Bord Pleanála on appeal. However, no such communications would have been held by or for the Council at the date of the request. In the circumstances, I am satisfied that the Council's decision in this case was justified under article 7(5) of the Regulations.

Decision

In accordance with article 12(5) of the AIE Regulations, I have reviewed the decision of the Council in this case. I find that the Council's decision to refuse the appellant's request for access to records of communication with Irish Water regarding the pumping stations referred to in planning file 18/06073 was justified under article 7(5) of the Regulations. I affirm the Council's decision accordingly.

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.

Peter Tyndall
Commissioner for Environmental Information
27 February 2020