



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 CEI/19/0048

Date of decision: 26 February 2020

Appellant: Mr X

Public Authority: daa public limited company (daa)

Issue: Whether the daa was justified in providing the appellant with access to the flight data requested in the form and manner it did, *i.e.* in an Excel file with read-only access

Summary of Commissioner's Decision: The Commissioner found that the daa granted access to the information requested in the form and manner specified in the request in accordance with article 7(3)(a). Accordingly, he affirmed the daa's decision on the request.

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 5 August 2019, the appellant requested the following:

"a list of all flight details for the month of July 2019 at Dublin Airport. Please provide them in electronic format and preferably in Excel format."

The daa notified the appellant, on 30 August 2019, that it was releasing the information requested. It provided the appellant with an Excel file containing a list of the flight data for July 2019 that included the airport, whether the flight was an arrival or departure flight, the date of the flight, the time and the flight number. The Excel file was restricted to read-only access. The appellant responded to the daa's decision asking for an explanation as to why special permissions were applied to the Excel file, and seeking full access to the file and its content. The daa emailed the appellant, on 2 September 2019, explaining that it routinely protects documents, as a matter of good security practice, so that the data cannot be manipulated.

On 2 September 2019, the appellant requested an internal review of the daa's decision on the basis that it had not provided access to the data in the Excel file. The daa's internal review decision of 19 September 2019 affirmed its original decision.

The appellant appealed the daa's internal review to my Office on 7 October 2019.

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 the daa. 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).

Scope of Review

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. My remit as Commissioner does not include adjudicating on how public authorities carry out their functions generally, including with respect to how public authorities carry out their functions under article 5.

Analysis and Findings

The appellant contends that the daa should have provided him with electronic access in a re-usable form, and that, in failing to do so, the daa did not provide him with access to the data in the Excel file. He asserts that read-only access is equivalent to providing a paper copy of the information. However, I consider the question to be considered in this case is not whether the daa refused access but whether it provided access to the information in the form or manner specified in the request.

The AIE Regulations apply to environmental information in any in any material form, such as paper or electronic form including maps, photographs, computer files, databases, video or audio files. A public authority can provide access to environmental information in a number of ways, such as by giving the requester paper copies, electronic copies, audio copies, or allowing the requester to inspect the information in person.

The appellant is correct that public authorities have an obligation to make environmental information available in the form or manner requested. Under article 6(1)(e) of the AIE Regulations, if a person wants access to environmental information in a particular form or manner the request must specify the form or manner of access required. Article 7(3)(a) of the AIE Regulations provides that where a request specifies the form or manner of access required the public authority must give access in that form or manner. This is subject to two exceptions (i) where the information is already publicly available in a different form or manner that is easily accessible or (ii) access in a different form or manner would be reasonable.

Article 7(3) of the AIE Regulations mirrors Article 3(4) of the AIE Directive, with the exception, that article 7(3) refers to "form or manner" instead of "form or format". Article 4(1) of the Aarhus Convention provides that each Party must ensure that public authorities make information available in the form requested including copies of the actual documentation containing or comprising such information.

The AIE Regulations do not define the terms "form or manner" nor does the AIE Directive define the terms "form or format" or the Aarhus Convention the term "form". In my view, article 7(3) of the AIE Regulations is about how a public authority provides access to the information that it is releasing. For instance, whether it is in paper or electronic form, how the information is arranged or put together in that form such as a particular file format like Excel, PDF or CSV etc., and the way the information is made available whether by providing a copy or by inspection.

I consider that the daa provided the appellant with access to the information in the form and manner specified in his request. The request in this case specified that access to the information should be given in electronic format, preferably in Excel format. The daa granted access to the information by providing the appellant with an Excel file, as specified in his request. This, according to the daa, is a departure from its normal practice of providing information in PDF.

Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (as amended), and the European Communities (Re-use of Public Sector Information) Regulations 2005 to 2015 transposing that Directive, contain provisions requiring a public authority to make information available in a form which is capable of re-use. However, the Aarhus Convention, the AIE Directive and the AIE Regulations make no such provision. I am not aware of any legal authority that supports the appellant's position that the purpose of access to information is to allow the requester to re-use or manipulate the data. Rather, the Explanatory Memorandum for the Proposal for a Directive of the European Parliament and of the Council on public access to environmental information (COM/2000/0402 final), available at www.eur-lex.europa.eu, explains that the purpose of the provision concerning form or format is to enable requesters to obtain information in the most convenient form or format, such as the provision of actual copies of the information.

Decision

Having carried out a review under article 12(5) of the AIE Regulations, I affirm the daa's decision granting the appellant access to the information requested in the form and manner specified in the AIE request in accordance with article 7(3)(a).

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

26 February 2020