



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-93419-X7C3X4

(Legacy reference: CEI/20/0015)

Date of decision: 26 May 2021

Appellant: Mr A

Public Authority: Road Safety Authority (RSA)

Issue: Whether the RSA was justified refusing a request for access to copies of records relating to the motoring expenses of the Chair, Chief Executive and the senior management at the RSA including the communications manager for the last full 12 monthly period for which records were available.

Summary of Commissioner's Decision: The Commissioner found that the RSA was not justified in refusing access to the majority of information contained in the motor expense records held by it, which fell within the scope of the request on the basis it was not environmental information. He found that the majority of information in those records was environmental information within the meaning of article 3(1)(c) of the definition. Accordingly, he annulled the RSA's decision in respect of that part of the records and expressed his expectation that it would make a new decision on that part of the request in accordance with the AIE Regulations. In relation to the remaining information in the motor expense records, the Commissioner affirmed the RSA's refusal of access to that information on the basis that it was not environmental information within the meaning of the definition in article 3(1).

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 5 March 2020, the appellant requested copies of records including notes, notes of telephones conversations and other documents relating to motoring expenses incurred by the Chair, Chief Executive and senior management team, including the communications manager. The request covered the last full 12 month period for which such records were available.
2. The appellant was notified on 25 March 2020 that his request was refused pursuant to section 37(1) of the Freedom of Information Act 2014 (FOI Act) on the basis the information was personal information. The appellant replied the same day to note that his request had been made under the AIE Regulations. He received a response that day informing him of his right to an internal review under article 11 of the AIE Regulations.
3. On 26 March 2020, the appellant requested an internal review of the RSA's initial decision on his request. The RSA made its internal review decision on 27 April 2020 refusing the request on the basis that the information sought was not environmental information within the meaning of article 3(1) of the AIE Regulations.
4. The appellant sought a review by my Office on 26 May 2020, stating that the information requested was environmental information. He made a number of arguments as to why the information was environmental information, which I summarise below at paragraphs 17 to 23.
5. 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 RSA. I have also examined the contents of the records at issue. 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').
6. In addition, I have taken into account the judgments of the Court of Appeal in *Minch v Commissioner for Environmental Information* [2017] IECA 223 (*Minch*), *Redmond & Anor v Commissioner for Environmental Information & Anor* IECA [2020] 83 (*Redmond*), *Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna* [2020] IEHC 190 (*ESB*), and *Right to Know CLG v Commissioner for Environmental Information and Raidio Teilifís Éireann* [2021] IEHC 353 (*Right to Know*

(RTÉ)), available on our website at www.ocei.ie. I have also taken into account the judgment of the Court of Appeal of England and Wales that is referred to in the latter three Irish judgments, *Department for Business, Energy and Industrial Strategy v Information Commissioner* [2017] EWCA Civ 844 (*Henney*).

Scope of Review

7. 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.
8. The RSA submits that the only records it holds relating to the request fall outside the scope of the request. As I set out below, the RSA submits that the records (motor expense records) it holds relating to the request fall outside the scope of the request. The appellant submits that the issue of motoring expenses paid to staff at the RSA is at the centre of his request for information. The appellant's request sought information relating to the motoring expenses incurred by the Chair, Chief Executive and senior management team, including the communications manager for the time period specified in the request. I accept that the issue of motoring expenses paid by the RSA is at the centre of the appellant's request for information.
9. In my view, an objective reading of the request is that it was not confined to notes and/or notes of telephones conversations but was seeking any information held by or for the RSA relating to the motor expenses of the Chair, Chief Executive and senior management team including the communications manager. However, I note that the sample copy of the records that the RSA provided to my Office are expense records for travel and subsistence (T&S) claims submitted by the Chair, Chief Executive, and members of the senior management team, including the communications manager. The T&S claims include claims not only for car journeys undertaken but also subsistence claims and claims for other miscellaneous expenses.
10. Having regard to the wording of the request, as set out above, I consider that only the part of the T&S claims under the heading "mileage" relating to claims for car journeys undertaken by the Chair, Chief Executive and members of the senior management including the communications manager fall within the scope of the appellant's request. To use the language of the RSA, I will refer to this part of the T&S records as the 'motor expense records'.
11. The RSA further submits that the records it holds are not environmental information within the meaning of article 3(1) of the AIE Regulations. My powers as Commissioner for Environmental Information apply only in respect of environmental information held by or for a public authority. In accordance with my Office's Procedures Manual, available at www.ocei.ie, my general practice in cases concerning a threshold jurisdictional question is to limit my review to the preliminary matter of whether the information at issue is "environmental information".

Definition of “environmental information”

12. Article 3(1) of the AIE Regulations is the relevant provision to consider where the issue is whether information is “environmental information”. In line with Article 2(1) of the Directive, article 3(1) of the AIE Regulations provides that "environmental information" means:

"any information in written, visual, aural, electronic or any other material form on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,

(d) reports on the implementation of environmental legislation,

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c)".

The position of the parties

The RSA’s position

13. The RSA submits that it does not hold any records falling within the scope of the appellant’s request. It states that no records relating to notes, notes of telephones conversations and other documents relating to motor expenses incurred by the Chair, Chief Executive and senior management including the communications manager were created by the RSA within the timeframe specified in the request. It explains that it does not compile information on the emissions of vehicles used by staff in performing their functions, and that it does not hold records within the period requested about measures to reduce the environmental impact of staff travelling and claiming mileage expenses.

14. The RSA also submits that the only records it holds relating to the request are motor expense records. However, it maintains that the motor expense records fall outside the scope of the request. It further submits that the motor expense records are not environmental information. It explains its view that the motor expense records are primarily financial records connected with the payment of travel expenses.
15. In refuting that the motor expense records are environmental information, the RSA states that it does not have any environmental functions, and accordingly, that the definition of environmental information as it applies to it would primarily be confined to article 3(1)(b) and (c). It also states that the motor expense records do not contain information on:
- Factors affecting or likely to affect the elements of the environment (paragraph (b)).
 - Measures and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements (paragraph (c)).
16. The RSA asserts that environmental impact is a function of the vehicle rather than the amount paid. It contends that a figure showing an amount paid does not contain any indicator to environmental impact such as mode of travel, engine size, fuel type. It maintains that the information contained in the motor expense records is not connected with any measures under article 3(1)(c). The RSA also states that the details of the amount of motoring expenses, without any reference to any other influencing factors, does not relate to the environment. It contends that the motoring expense records are tangential to environmental information. In support of its position, it cites paragraph 24 of the European Court of Justice's decision in *Glawischnig*. The RSA also queries how disclosing details of the amounts paid contributes to an understanding of environmental impacts.

The appellant's position

17. The appellant's appeal to my Office states that, as a government body, the RSA should be able to demonstrate compliance with government strategy to reduce carbon emissions. He notes that members of staff of the RSA that are located throughout the country regularly attend media events in Dublin. He states that it is reasonable to enquire about the effect on the environment of the RSA's strategy of staff members attending media events in Dublin through the use of motor vehicles. He contends that this information is not so easily apparent from questions about mileage as the motor vehicles may be pre-owned, may be used by numerous people and may not give an annual audit of usage by the Chair, Chief Executive and senior management including the communications manager. The appellant further states that the use of motor vehicles by RSA staff members, as measured by the expense claims, is relevant to the impact on the environment.
18. In relation to paragraphs (a) and (b) of the definition of environmental information, the appellant states that information about carbon emissions has a direct impact on

each of the elements listed in paragraph (a) and that the level of usage of motor vehicles by the Chair, Chief Executive and the RSA's senior management including the communications manager is illustrative of its influence and practice in relation to the environment. He similarly states that the Chair, Chief Executive and the senior management's including the communications manager use of motor vehicles has a direct impact on the factors listed at paragraph (b). The appellant submits that motor expense records typically contain information about the type of car and engine size and states that from this information it is possible to calculate carbon dioxide emissions in grammes per kilometre.

19. Regarding (c), he states that the RSA's processes and behaviour go to the heart of its consideration of measures and activities affecting or likely to affect the environment or measures designed to affect environment.
20. The appellant accepts that paragraph (d) is less relevant but states that the RSA should show how it is reducing its emissions.
21. Concerning (e) and (f), he states that the level of car usage by the Chair, Chief Executive and the senior management including the communications manager directly relates to these paragraphs, and that, due to the possibility of shared or used cars, the impact of each executive's motor travel is best illustrated by the expenses relating to the Chair, Chief Executive and the senior management's including the communications manager travel. He also states in the context of (f) that the impact of motoring on the environment is important as it impacts on human health.
22. In relation to (d) and (e) he contends that these paragraphs cover any analysis of the impact of its motoring in reports, and that details of the type of car, the mileage rate paid, and engine size from which the emissions and impact of the vehicle on the environment may be determined would fall within these paragraphs.
23. The appellant states that this request relates to the impact on the environment from the RSA's actions on the environment. He also states that is relevant to the RSA's observance with Government strategies and policies for Departments and agencies to identify and reduce its climate impact.

Analysis and Findings

Information that the RSA holds

24. 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.

25. In describing the steps taken to identify and locate the information requested, the RSA explains that directions to staff in respect of motoring expenses are issued by either the Human Resources Division or the Finance Division, and that records of the issuing of such directions are retained within the respective ICT file folders for each division. It submits that those two divisions were searched. It states that the managers of those two divisions confirmed that no directions in respect of motoring expenses issued within the timeframe specified in the request.
26. The RSA states that it does not hold any records containing details of how its senior management including the Chair, Chief Executive and communications manager influence its environmental footprint through the use of vehicles. It also states that it does not compile information on the emissions of vehicles used by staff in performing their functions, and that it does not hold records within the period requested about measures to reduce the environmental impact of staff travelling and claiming mileage expenses. In addition, it states that the information in the motoring expense records is not collected by it to fulfil any environmental functions. Rather, it explains that the information in the motoring expense records is required by the RSA to fulfil its obligations to staff to pay mileage expenses in accordance with rules set out by the Department of Public Expenditure and Reform.
27. I am of the view that the RSA's account as to why it does not hold information beyond the motor expense records, a sample copy of which it has provided to my Office, is reasonable. The appellant's request sought information relating to the motor expenses incurred by members of the RSA's management team. I accept the RSA explanation as to why it does not compile information relating to motor travel by its staff members other than information relating to its obligations to pay mileage. The RSA explains motor expenses are handled by the Human Resources Division and/or the Finance Division. I accept the RSA explanation as to why it focussed on the divisions it did during its processing of the request. I have not seen anything during the course of my review to indicate that further information, including notes, notes of telephone conversations and other documentation, beyond the motor expense records, relating to the request is held by or for the RSA.
28. Having carefully considered the matter, I accept that the RSA does not hold further information, beyond the motor expense records, relating to the request. Accordingly, I find that article 7(5) of the AIE Regulations applies and that no further environmental information within the scope of the request is held by the RSA.

Whether the motor expense records are environmental information

29. According to national and EU case law on the definition of "environmental information", while the concept of "environmental information" as defined in the AIE Directive is broad (Case C-321/96 *Mecklenburg* at paragraph 19), there must be

more than a minimal connection with the environment (*Glawischnig* at paragraph 25). Information does not have to be intrinsically environmental to fall within the scope of the definition (*Redmond* at paragraph 58; see also *ESB* at paragraph 43). However, a mere connection or link to the environment is not sufficient to bring the information within the definition of environmental information. Otherwise, the scope of the definition would be unlimited in a manner that would be contrary to the judgments of the Court of Appeal and CJEU.

30. The right of access to environmental information that exists includes access to information “on” one or more of the six categories at (a) to (f) of the definition. In relation to article 3(1)(c), measures include administrative measures and the list of examples of measures and activities given in that paragraph are illustrative examples (*Redmond* at paragraph 55). The Aarhus Guide describes the terms “activities or measures”, as referring to “decisions on specific activities, such as permits, licences, permissions that have or may have an effect on the environment”. The Court of Appeal in *Minch* held that the reference to “plans” and “policies” in article 3(1)(c) is significant, and that there must be a plan or something in the nature of a plan which, either directly or indirectly, affects or is likely to affect the environment (paragraph 39). Hogan J. went on to explain that this requirement for there to be a plan or something in the nature of a plan curtails a potentially open-ended or indefinite right of access to documents (paragraph 41). If this were not the case, then virtually any information held by or for a public authority which referred, either directly or indirectly, to environmental matters would be environmental information. This would run contrary to the CJEU’s judgment in *Glawischnig* (paragraph 41; see also *Glawischnig* at paragraph 25).
31. The essential question is whether the measure or activity is one affecting or likely to affect the environment (*Redmond* at paragraph 57). A measure or activity is “likely to affect” the elements and factors of the environment if there is a real and substantial possibility that it will affect the environment, whether directly or indirectly. While it is not necessary to establish the probability of a relevant environmental impact, something more than a remote or theoretical possibility is required (*Redmond* at paragraph 63). As “any information ... on” a measure affecting or likely to affect the environment is prima facie environmental information (*Redmond* at paragraph 57), the information at issue does not, in itself, have to affect or be likely to affect the environment (*Redmond* at paragraphs 57 and 59).
32. Where the measure or activity which the information is about has the requisite environmental effect, one must consider whether the information is “on” that measure or activity within the meaning of that word as it is used in article 3(1) of the definition. Information that is integral to the relevant measure or activity is information “on” it (*ESB* at paragraphs 38, 40 and 41). While information that is too remote from the relevant measure or activity does not qualify as environmental information (*ESB* at paragraph 43). The Court of Appeal in *Redmond* noted that the Court of Appeal of England and Wales in *Henney* suggests that, in determining

whether information is “on” the relevant measure or activity, it may be relevant to consider the purpose of the information such as why it was produced, how important it is to that purpose, how it is to be used, and whether access to it advances the purposes of the Aarhus Convention and AIE Directive (paragraph 99; see also *ESB* at paragraph 42 and *Right to Know (RTÉ)* at paragraph 52). Information that does not advance the purposes of the Aarhus Convention and AIE Directive may not be “on” the relevant measure or activity (*Redmond* at paragraph 99; see also *Right to Know (RTÉ)* at paragraph 52).

33. The High Court in *Right to Know (RTÉ)* held that the approach of the Court of Appeal in *Redmond* applies to article 3(1)(b) of the definition of “environmental information”. The UK Upper Tribunal in *DfT, DVSA and Porsche Cars GB Limited v Information Commissioner and John Cieslik [2018] UKUT 127 (AAC) (Cieslik)*, available at www.bailii.org, stated that while the UK Court of Appeal in *Henney* was concerned with the necessary connection between information and the measure, the approach of the UK Court of Appeal is also applicable to interpreting the definition of environmental information more generally.
34. In my view article 3(1)(c) is the most relevant provision in this review. Accordingly, I will first consider whether the information at issue is environmental information within the meaning of article 3(1)(c).

Article 3(1)(c)

Measures and activities

35. My starting point is to identify the relevant measure or activity to which the information at issue is “on”. In identifying the measure or activity regard may be had to the wider context and the purpose of the information. While the examples of measures and activities in article 3(1)(c), the case law on the definition and the Aarhus Guide may be useful to help identify a measure or activity, they are merely examples. The fact that a potential measure or activity does not fall within one or more of those examples does not mean that it is not a measure or activity contemplated by article 3(1)(c) (*Right to Know (RTÉ)* at paragraph 20).
36. Measures and activities includes all forms of administrative activity by public authorities (*Mecklenburg* at paragraph 20). Barrett, J. observed that the word “activity” itself is defined in the Oxford English Dictionary as the “state of being actively occupied” (*Right to Know (RTÉ)* at paragraph 19). In my view, driving a motor vehicle to undertake a car journey is an activity. Such activities were carried out by members of the Chair, Chief Executive and senior management including the communications manager at the RSA in their professional capacity. I note that the RSA’s Travelling and Subsistence Policy (T&S Policy), which the RSA included with its submission to my Office, provides that it is its policy to reimburse employees and authorised contractors for properly authorised and reasonable travel and subsistence expenses incurred in the performance of their RSA duties, while temporarily away from their normal place of work, in accordance with the T&S

policy. Accordingly, I am satisfied that the driving of motor vehicles by the Chair, Chief Executive and senior management including the communications manager to undertake car journeys are official activities that have been engaged in by the RSA.

Affecting or likely to affect the elements and factors of the environment

37. I will now consider whether the driving of motor vehicles by the Chair, Chief Executive and senior management of the RSA including the communications manager in their professional capacity to undertake car journeys are activities affecting or likely to affect the environment.
38. I accept that the driving of motor vehicles to undertake car journeys by the Chair, Chief Executive and senior management including the communications manager has a direct impact on the factors listed at paragraph (b). The sample motor expenses for the Chair, Chief Executive and senior management including the communications manager provided to my Office show that each of the motor vehicles have a “cc” (cubic centimetres) classification. This means that each of the motor vehicles used to undertake the car journey that expenses were claimed for had an internal combustion engine. The mileage claims in the motor expense records are retrospective claims for car journeys that were undertaken by the Chair, Chief Executive and members of senior management including the communications manager. These were activities, which employed combustion engines that emitted greenhouse gas emissions and other pollutants into the atmosphere. Since the driving of motor vehicles to undertake car journeys were activities that were undertaken in the past, the resultant greenhouse gas emissions and other pollutants from those activities have in fact already been emitted into the air and atmosphere. Consequently, the environmental impact on the elements and factors of the environment from those activities cannot be dismissed as being too remote or a theoretical possibility. Accordingly, I am satisfied that the driving of motor vehicles to undertake car journeys by the Chair, Chief Executive and members of senior management including the communications manager are official activities affecting the elements and factors referred to in paragraphs (a) and (b) of article 3(1).

Information “on” measures and activities affecting or likely to affect the elements and factors of the environment

39. Having identified the relevant activities affecting the elements and factors of the environment *i.e.* the driving of motor vehicles to undertake car journeys by the Chair, Chief Executive and members of senior management at the RSA including the communications manager in their professional capacity, I will now consider whether the motor expense records or part thereof are “on” those activities. It should be noted that, while I am required by article 12(5)(b) of the AIE Regulations to specify reasons for my decision, I must also be careful not to disclose withheld information in my decisions. I am also mindful that my decision in this review relates only to a threshold jurisdictional issue and that a finding that the information in question is “environmental information” will not result in automatic disclosure of the

information. Rather, the matter will need to be remitted to the RSA for further consideration. This means that the detail that I can give about the content of the record(s) and the extent to which I can describe certain matters in my analysis is limited.

40. As I have described at paragraphs 9 and 10, the information at issue comprises motor expense records for T&S claims, specifically mileage claims submitted by the Chair, Chief Executive and members of senior management at the RSA including the communications manager for car journeys they have undertaken in their professional capacity. The information in the motor expense records appears under the following headings: Claim Number; Name (of the claimant); Cost Centre; Mileage YTD; Car Registration; Car CC; Currency; Grade (personnel grade of claimant); Country; Authoriser; Date; Cost Centre; Location; Mode; Journey From; Journey To; RTN; Distance; Rate; Amount; Sub Total; and Claim Total.
41. As I set out at paragraphs 29 to 32, information that is “on” a measure or activity affecting or likely to affect the environment is environmental information. The information itself does not have to be intrinsically environmental. While I accept that information contained within the motor expense records is primarily financial information connected with the payment of travel expense, I consider that the destinations of the car journeys (Journey From and Journey To), the distance of the car journeys (Distance), the Car Registrations, the Cars CC and the date of the activities (Date) are about, relates to or concerns the activities at the centre of this review. In my view, there is more than a minimal connection between this information and those activities and the environment. This information describes the integral parts of the official activities engaged in by the RSA which affected the elements and factors of the environment. I also consider that the date of the activities (Date) is an integral contextual part of journey information, which should not be separated from that information. I accept that this information can be used to calculate the approximate carbon dioxide emissions of those car journeys on the dates they were undertaken. It follows, in my view, that there is a sufficient connection between this information and the official activities engaged in by the RSA and the environmental effects from those activities.
42. In addition, I consider that the Name, Mileage YTD, Currency, Grade, Country, Authoriser, Rate, Amount, Sub Total and Claim Total are about, relates to or concerns the activities at the centre of this review. In my view, there is more than a minimal connection between this information and those activities and the environment. I accept that the use of motor vehicles by the Chair, Chief Executive and senior management at the RSA including the communications manager in their professional capacity, as measured by the expense claims through the rate of mileage (Rate) and amount of expenses claimed (Currency, Amount, Sub Total and Claim Total), are relevant to effects on the environment from those activities. I note that the RSA T&S Policy provides that the travel rates reflect the cc of the vehicle. I consider that the Currency, Amount, Sub Total and Claim Total are integral to the

activity of driving motor vehicles to undertake car journeys by the Chair, Chief Executive and senior management including the communications manager in their professional capacity. This information forms part of the administrative act by the RSA to reimburse the relevant staff members for the official activities engaged in by the RSA, which affected the elements and factors of the environment. In my opinion, the act of reimbursing the staff members for those activities enables the activities to be carried out in the first instance, and in some circumstances may render use of a motor vehicle to be favourable to the claimant over the use of a more environmentally friendly option. For example, this may be the case until such time as revisions to the mileage formula are implemented in order to develop a cost effective policy for reducing carbon emissions and increasing efficiency within the transport sector.¹ As such, I consider that this information is inexorably connected with the driving of motor vehicles by the Chair, Chief Executive and senior management including the communications manager to undertake car journeys in their professional capacity. I also consider that the Name (identities of the persons at the RSA claiming the expenses), Grade (the personnel grade of the claimant), Country, Authoriser and Mileage YTD is integral contextual information, which should not be separated from that information. It follows, in my view, that there is a sufficient connection between this information and the official activities engaged in by the RSA and the environmental effects from those activities.

43. As I have set out at paragraph 32, in determining whether information is “on” the relevant measure or activity, it is relevant to consider whether access to it advances the purposes of the Aarhus Convention and AIE Directive. The purpose of the AIE Directive is to promote increased public access to environmental information, more effective participation by the public in environmental decision-making and access to justice in environmental matters with the aim of making better decisions and applying them more effectively and, ultimately, promoting a better environment (Recital 1 of the AIE Directive and Article 1 of the Aarhus Convention). I note that the 9th preambular paragraph to the Aarhus Convention includes the following expressions of purpose “[r]ecognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns”. I also note that the 10th preambular paragraph includes the following expressions of purpose “[a]iming thereby to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment”.
44. While the decision to authorise members of staff to drive motor vehicles that emit greenhouse gas emissions and other pollutants for official purposes is not on the face of it a decision on the environment, it is a decision by a public authority that

¹ Circular 05/2017: Motor Travel Rates, available at www.pssc.gov.ie/ts-circulars-and-guidelines/

results in an official activity affecting the elements and factors of the environment. Taking into account the purposes of the Aarhus Convention and AIE Directive, I consider that disclosure of the information in the motor expense records that appears under the following headings: Journey From; Journey To; Distance; Car Registration; Car CC; Date; Rate; Currency, Amount, Sub Total and Claim Total; Name; Grade; Country; Authoriser; and Mileage YTD, would facilitate accountability of, and the transparency and proper scrutiny of, the activities engaged in by the RSA in this case which affected the environment. For instance, access to this information would inform members of the public about the extent to which the RSA engaged in those activities. It would also enable members of the public to calculate certain emissions that resulted from the RSA's use of motor vehicles which emit greenhouse gases and other pollutants such as the carbon footprint of the journeys undertaken. It would further give the public the opportunity to express any concerns about the extent of the RSA's use of motor vehicles which emit greenhouse gases and other pollutants.

45. Having regard to the content and context of the information in the motor expense records under the following headings: Journey From; Journey To; Distance; Car Registration; Car CC; Date; Rate; Currency, Amount, Sub Total and Claim Total; Name; Grade; Country; Authoriser; and Mileage YTD, I find that this information is “on” activities affecting the elements and factors referred to in paragraphs (a) and (b) of article 3(1). Accordingly, I find that this information is environmental information within the meaning of article 3(1)(c).
46. Turning to the remaining information in the motor expense records under the following headings: Claim Number; Cost Centre; Location; Mode; and RTN, I consider that this information is incidental to the activities at the centre of this review. As I have set out at paragraph 29, while the definition of “environmental information” is broad it is not unlimited. There must be more than a minimal connection with the environment. The information under these headings of the motor expense records does not contain or provide any information on the activities at the centre of this review. For example, it does not tell one anything about those activities and provide information that could be used to learn more about them. The information appears to relate to the RSA's internal processes for approving or paying the claims which have been submitted. The purpose of the information is administrative and appears to be solely connected with the payment of motor travel expense. This information cannot be described as relating to the environment either directly or indirectly. I also do not see how access to this information would lead to more effective public participation in environmental decision-making or more effective access to justice in environmental related matters or to a better environment. I therefore find that this information is not environmental information within the meaning of article 3(1)(c). Accordingly, I will proceed to consider whether this information is environmental information under article 3(1)(b), (d), (e), and (f). I will refer to this information as ‘the remaining information at issue’. Please note that any description of the

remaining information at issue in the negative is not a test for when information is “on” any of the matters in the paragraphs of the definition.

Article 3(1)(b)

47. Turning to whether or not the remaining information at issue is on factors affecting or likely to affect the state of the elements of the environment, Article 3(1)(b) (and Article 2(1)(b) of the AIE Directive) provides an illustrative list of factors including “energy”, “radiation” and “emissions” and “other releases” into the environment. For the reasons I have given above in relation to paragraph (c) of the definition, I am satisfied that the greenhouse gas emissions and other pollutants emitted into the environment from the driving of motor vehicles to undertake car journeys are factors affecting the elements of the environment . I also accept that the driving of motor vehicles to undertake car journeys by the Chair, Chief Executive and senior management of the RSA including the communications manager has a direct impact on the factors listed at paragraph (b) namely air and atmosphere.
48. I will now consider whether the remaining information at issue is “on” those factors affecting the elements of the environment. Having regard to the content and context of the remaining information at issue, I consider that this information is not about, does not concern or does not relate to greenhouse gas emissions and other pollutants. I have explained at paragraph 39 how I am limited about what I can say about the information at issue in this review. The remaining information at issue does not contain any information about, relating to or concerning the relevant activities or factors affecting the elements of the environment including those emitted as a result of those activities. It does not contain, provide or discuss the greenhouse gas emissions or other pollutants emitted or otherwise provide any information that would inform one about factors affecting or likely to affect the elements of the environment. In my view, the information has no connection to, and is too remote from, greenhouse gas emissions and other pollutants or to any other factors to be information “on” factors affecting or likely to affect the elements of the environment to be information “on” those factors. Accordingly, I find that the information in the motor expense records under the following headings: Claim Number; Cost Centre; Location; Mode; and RTN is not environmental information within the meaning of article 3(1)(b).

Article 3(1)(a)

49. I will now consider the issue of whether the remaining information at issue is on the state of the elements of the environment and the interaction among the elements. Article 3(1)(a) (and Article 2(1)(a) of the AIE Directive) provides an illustrative list of the elements of the environment. I consider that the most relevant elements to this review are air and atmosphere as the car journeys undertaken emitted greenhouses gases and other pollutants into the air and atmosphere.
50. Having regard to the content and context of the remaining information at issue, I consider that this information is not about, does not concern or does not relate to

the state of the elements of the environment including air and atmosphere and the interaction between the elements. The information tells the reader nothing about the state of air and atmosphere or any other elements of the environment or the interaction between the elements of the environment. The information does not in any way refer, relate to, discuss or consider any of the elements of the environment or the state of those elements or the interaction between them. In my view, the information has no connection to, and is too remote from, the state of the elements of the environment and the interaction between the elements. Accordingly, I find that the information in the motor expense records under the following headings: Claim Number; Cost Centre; Location; Mode; and RTN is not environmental information within the meaning of article 3(1)(a).

Article 3(1)(d), (e) and (f)

51. I now turn to whether the remaining information at issue is information envisaged by article 3(1)(d), (e) or (f). First, while the appellant's submissions refer to Government strategies and policies for Departments and agencies to identify and reduce its climate impact, he does not refer to any environmental legislation that the information in this review including the remaining information at issue is or could be on.
52. Having regard to the content and context of the remaining information at issue, I consider that this information is not about, does not concern or does not relate to reports on the implementation of environmental legislation. The information is not about, does not concern or does not relate to any legislation including environmental legislation. I am therefore satisfied that there is no environmental legislation to which the remaining information at issue could be on. Furthermore, more it does not discuss, review, monitor, examine, consider or otherwise comment on environmental legislation. Accordingly, I find that the information in the motor expense records under the following headings: Claim Number; Cost Centre; Location; Mode; and RTN is not environmental information within the meaning of article 3(1)(d).
53. Having regard to the wording of article 3(1)(e) and the content and context of the remaining information at issue, I consider that this information is not about, does not concern or does not relate to cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c). The information is not a cost-benefit analysis or any other kind of economic analysis or assumption. As the information is not a cost-benefit analysis or any other kind of economic analysis or assumption, it is not necessary for me to consider whether it was within the framework of the measures and activities referred to in paragraph (c). However, for the sake of completeness I will add that there is no evidence before me that suggests that the information was used in the preparation of measures and activities referred to in paragraph (c), including the activities at the centre of this review. Accordingly, I find that the information in the motor expense records under the following headings: Claim Number; Cost Centre;

Location; Mode; and RTN is not environmental information within the meaning of article 3(1)(e).

54. Finally, I will turn to whether the remaining information at issue on:

- the state of human health and safety, including the contamination of the food chain, where relevant to the state of human health and safety,
- conditions of human life, and
- cultural sites and built structures

is environmental information to the extent that the above are, or may be, affected by:

- the state of the elements of the environment referred to in article 3(1)(a) or, through those elements, or
- by any factors or measures or activities referred to in article 3(1)(b) and 3(1)(c)

under article 3(1)(f).

55. I am not aware of any case law directly on the issue of whether information is environmental information within the meaning of article 3(1)(f). While it is not binding, the Aarhus Guide offers some guidance on the article 3(1)(f), it is useful to look at this guidance particularly in the absence of any case law on the matter.

56. The Aarhus Guide states that the definition in the Aarhus Convention, which mirrors article 3(1)(f), requires a link between information on human health and safety, conditions of human life, etc., and the elements of the environment and the factors, activities or measures affecting or likely to affect the environment (page 54). It explains that this is required in order to impose a reasonable limit on the vast kinds of human health and safety information potentially covered and that the negotiators of the Aarhus Convention were faced with a situation in which looser language would have brought a whole range of human health and safety information unrelated to the environment under the definition, such as information relating to specific medical procedures or safety rules for the operation of specific tools.

57. As I have set out at paragraph 21, the appellant submits that impact of motoring on the environment is important as this impacts on human health. While I accept that emissions from vehicles with combustion engines impact human health, the remaining information at issue is not about, does not concern or does not relate to the state of human health, conditions of human life or cultural sites and built structures. In my view, it has no connection to, and is too remote from, the state of human health, conditions of human life or cultural sites and built structures inasmuch as they are or maybe affected by the elements of the environment including air or atmosphere and factors including greenhouse gas emissions or other pollutants. Accordingly, I find that the information in the motor expense records

under the following headings: Claim Number; Cost Centre; Location; Mode; and RTN is not environmental information within the meaning of article 3(1)(f).

Decision

58. Having carried out a review under article 12(5) of the AIE Regulations, I vary the RSA's decision that the motor expense records are not environmental information. I annul the RSA's decision that the information in the "mileage" section under the headings: Journey From; Journey To; Distance; Car Registration; Car CC; Date; Rate; Currency, Amount, Sub Total and Claim Total; Name; Grade; Country; Authoriser; and Mileage YTD is environmental information within the meaning of article 3(1)(c). In light of my decision I expect the RSA to process this information in accordance with the AIE Regulations.
59. I affirm the RSA's decision that the information under the following headings: Claim Number; Cost Centre; Location; Mode; and RTN in the "Mileage" section is not environmental information within the meaning of the definition of article 3(1). Accordingly, the RSA is not obliged to process this information under the AIE Regulations and I have no further jurisdiction in relation to this matter.
60. I also affirm the RSA's decision that the information in the "Subsistence", "Expenses" of the T&S records do not fall within the scope of the appellant's request. Accordingly, the RSA is not obliged to process this information for the purposes of this request under the AIE Regulations.

Appeal to the High Court

61. 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 May 2021