



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-93477-D5V8B6 (legacy reference CEI/19/0043)

Date of decision: 15 July 2021

Appellant: Neil Foulkes

Public Authority: University College Dublin (UCD)

Issue: Whether UCD was justified in withholding environmental information in relation to the establishment of Sustainable Forest Management Ireland on the basis that the information was not held by or for UCD

Summary of Commissioner's Decision: The Commissioner found that the information requested was held by and for UCD and annulled its decision to withhold the information on that basis. He remitted the matter to UCD for further consideration in accordance with 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. On 11 June 2019, the appellant contacted UCD to request "[a]ll records relating to the role of UCD staff members in the process of establishing Sustainable Forest Management Ireland (SFMI) [includ[ing] the conversion from FSC Ireland] and the process of establishing a related Irish FSC Standard Development Group (SDG)". Sustainable Forest Management Ireland (SFMI) is a voluntary, not-for-profit, chamber based organisation whose aim is to promote sustainable management of Ireland's forests through information, advocacy and education on independent forest management certification schemes.
2. UCD acknowledged receipt of the appellant's request on 18 June 2019. On 4 July 2019, UCD emailed the appellant to inform him that it would require additional time to process his request as "the record holder is currently on leave and will not be back in the office until later this month". The appellant was advised that he should expect a reply by 24 July 2019. On 23 July 2019, UCD informed the appellant that he would in fact receive a response to his request by 9 August 2019. On 9 August 2019, the appellant received a further email from UCD noting that "the record holder has advised that due to the significant amount of material being considered for release, she is unable to meet today's deadline". The email noted that the appellant would be updated as to the timeframe for a response following consultation with the record holder. It acknowledged that the one-month timeframe for response provided for in the Regulations had been exceeded such that the appellant could seek an internal review on the basis of a deemed refusal, but indicated that if the appellant were in a position to wait, it was hoped that a decision could be finalised the following week. The appellant did agree to wait until 15 August 2019 for a response. However, he ultimately requested an internal review on 19 August 2019 in the absence of such response.
3. On 18 September 2019, the appellant received the outcome of his internal review. UCD's position, as indicated in the internal review outcome, was that the information requested by the appellant was not held by or on behalf of UCD as it was generated "following voluntary work completed by one UCD employee, outside the scope of [their] employment/relationship duties" and the records had not been generated by UCD "in the conduct of its official functions or business activities". The internal review acknowledged that information within the scope of the appellant's request was contained on the employee's UCD email account but noted that "UCD cannot be deemed to have received the records simply on the basis that they appear on the employee's UCD email account". It also noted that SFMI, which it submitted was a registered business name of Irish Forestry Certification Initiative CLG, had no connection with UCD. It noted that UCD was not a member of SFMI or Irish Forestry Certification Initiative CLG nor did it have any interest in that Company. It noted that there were no agreements in place between UCD and SFMI or Irish Forestry Certification Initiative CLG either with regard to the work carried out by UCD's employee (which it submitted was done in a personal capacity) or with regard to the holding of records on behalf of that Company and that UCD had no legal basis to hold any such records.
4. The appellant appealed to my Office on 30 September 2020 and that appeal was received on 2 October 2020.



Scope of Review

5. 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.
6. The scope of my review in this case is limited to whether UCD was justified in its decision to refuse the appellant's request, on the basis that it does not hold the information sought.

Submissions of the Parties

7. As outlined in further detail in my analysis and findings below, one of the key issues in this case is whether there is a sufficient connection between UCD and the information requested to warrant a conclusion that UCD “holds” that information within the meaning of the AIE Regulations.
8. Both the appellant and UCD have made a number of submissions to my Office, the first of which were received in November 2019. I regret that there have been some delays in the processing of this appeal due to resourcing issues in my Office, delays caused to UCD as a result of the Covid-19 pandemic and the need to seek clarifications from both parties in order to ascertain a clear picture of the facts at issue in this case.
9. As outlined above, UCD’s position is that the information requested by the appellant is not held by or for UCD for reasons which can be summarised as follows:
 - (i) The records were generated following voluntary work completed by one UCD employee (an academic member of staff working in the School of Forestry), outside the scope of their employment/relationship duties.
 - (ii) The records generated by the employee, were not done so by UCD in the conduct of its official functions or business activities.
 - (iii) UCD is not a member of Irish Forestry Certification Initiative (the Company Limited by Guarantee operating as SFMI) and has no interest in it.
 - (iv) UCD has not carried out any work in connection with the establishment of the CLG or SFMI generally.
 - (v) There is no agreement in place between SFMI and UCD regarding the work done by the UCD employee in their personal capacity.
 - (vi) UCD is completely independent of Irish Forestry Certification Initiative CLG and SFMI and has no legal basis to hold any of their records.
 - (vii) UCD cannot be deemed to have received the records simply on the basis that they appear on the employee’s UCD email account.
 - (viii) UCD has not been asked to hold the records on SFMI’s behalf, nor does it hold the records for itself and the records are not being held for UCD.
10. The appellant argues that there is no factual basis for the conclusion that UCD has no involvement with SFMI and that such a conclusion is completely at odds with the information relating to SFMI



including information in the public domain and information obtained by the appellant as a result of AIE requests to other public authorities. He argues that UCD was a member of SFMI, that UCD has provided financial support to SFMI (either in cash or in kind), and that UCD is given as SFMI's postal address. He also submits that the employee in question used their official UCD email address for SFMI business and is identified as being a UCD staff member in relation to publicity about SFMI. The appellant accepts that incidental emails related to a genuinely personal activity might be legitimately withheld under the AIE Regulations although he submits that these are not outside the scope of the right of access but would likely fall to be refused under the exception relating to personal information since there would be no real public interest involved in accessing purely personal information. However, he submits that it is significant that the research interest of the employee, who is a member of UCD's academic staff, is exactly in line with SFMI's mission and that the employee's work with SFMI on sustainable forest management cannot be separated from their position as an assistant professor researching in precisely the same area. Finally, the appellant relied on UCD's Consultancy & External Work Policy which, he submitted, requires staff members carrying out external work to use their private address for all correspondence and prohibits use of the university letterhead or other printed stationary. The appellant also noted that the Policy required that use of university facilities must be agreed and full value must be paid. The appellant's position is that it is clear that UCD's and the employee's involvement with SFMI (through the use of UCD's postal and email address and the location of SFMI's office in a UCD building) falls outside of the scope of this Policy and therefore the employee's relationship with SFMI cannot be categorised as consultancy or external work.

11. The appellant also provided a number of documents in support of his position which can be summarised as follows:

- (i) **An SFMI Business Proposal (undated)** – the proposal is printed on SFMI headed paper which, in its footer, lists the address of the organisation as “c/o UCD School of Forestry”.
- (ii) **An Agenda and Press Release for an SFMI Conference (held on 1 June 2016)** – the Press Release notes that “SFMI is a non-profit voluntary organisation, whose membership includes organisations such as the IFA, Coillte, Teagasc, UCD, Eco-Tourism Ireland, Society of the Irish Foresters as well as individual members”.
- (iii) **An article from the Autumn/Winter 2016 edition of Forestry & Energy Review** – the article is authored by the UCD employee in question (who is identified both as an employee of UCD and the Chair of SFMI) and discusses the June 2016 conference as well as forest management certification schemes. Each page of the article is headed “UCD Forestry” and the article also notes that “SFMI, whose membership includes organisations such as the IFA, Coillte, Teagasc, UCD, Ecotourism Ireland, Society of Irish Foresters as well as several individual members, is willing to spearhead the process, if sufficient support and input can be amalgamated (further information is available from SFMIreland@gmail.com)”.



- (iv) **Minutes of an SFMI meeting (held on 7 October 2016)** – these minutes are printed on the same headed paper as the document at (i) above which lists SFMI’s address as “c/o UCD School of Forestry”.
- (v) **Emails circulating a document entitled “SFMI SDG business plan final.docx” (dated 6 and 7 March 2017)** – the senders and recipients of these emails have been redacted however the emails appear to be discussing funding mechanisms for SFMI and one email does note that “the financial contribution of participants and UCD in terms of facilities and other resources being provided should be reflected in the costings (the coillte (sic) and FS proportion should not be the only contribution shown”.
- (vi) **Email (dated 4 June 2017)** – the senders and recipients of this email are again redacted. The email does not contain any specific reference to SFMI but it does appear to be an update to members on certain initiatives including input from the Soil Association and inclusion in the Irish Forest Network. The email concludes with following sentence: “the only memberships (sic) forms received back from SG members are from SIF & UCD”.
- (vii) **A letter from the UCD employee (in her capacity as Chair of SFMI) to Coillte (dated 6 July 2017)** – this letter is written on SFMI headed paper but does not contain any reference to the address of the organisation (unlike the documents at (i) and (iv) above). Neither does it contain any visible reference to UCD.
- (viii) **An email (dated 4 April 2018)** – the sender and recipients of the email have been redacted but the email does appear to discuss SFMI business such as the establishment of a Standard Development Group and the Company’s Articles of Association as well as the appointment of officers. UCD’s address is evident from the email signature.
- (ix) **An SFMI Funding Proposal (dated January 2019)** - printed on the same headed paper as the documents at (i) and (iv) above which lists SFMI’s address as “c/o UCD School of Forestry”. The proposal notes that “while the principal co-funders of the SDG are foreseen to be the Forest Service, Department of Agriculture, Food and the Marine and Coillte, financial input will also be sought from other players in the sector”. However, no reference is made to UCD in the proposal and UCD is not listed as having provided any funding to the organisation. The “Approach” section also notes as follows: “Some members of the SDG may require a level of reimbursement for their time in attending meetings but it is envisaged that such costs will be kept to a minimum and will be a matter for agreement within the SDG and will take into account the limited resources available to the process while acknowledging the need to support and encourage the participation of those not directly employed by agencies that can viably support the input of their staff”.
- (x) **A letter seeking funding for SFMI (dated 5 February 2019)** – this letter is printed on the same headed paper as the documents at (i) and (iv) above which lists SFMI’s address as “c/o UCD School of Forestry”. It contains no other visible reference to UCD.



- (xi) **Emails between the UCD employee and a member of staff of the Forests Service in the Department of Agriculture, Food and the Marine (between 20 May and 2 June 2016)** – these emails discuss the SFMI Conference of June 2016 referenced above. The employee’s UCD signature bloc is visible as the emails have been sent from the employee’s UCD email address. There is no other mention of UCD.
12. UCD provided additional submissions on 8 November 2019. These submissions largely re-iterated UCD’s position as set out in its internal review outcome. The submissions also outlined UCD’s position that the question of whether the information was held by or for UCD was a threshold question for the purposes of ascertaining whether the AIE Regulations applied such that UCD, as a public authority was not required to make an assessment as to whether or not the public interest is better served by releasing the records than refusing the records under the exemptions available at articles 8 and 9 of the Regulations, because it does not hold such records.
13. My Investigator wrote to UCD on 24 January 2020 to seek further submissions. She noted the appellant’s position that a relationship existed between UCD and SFMI and provided UCD with a sample of the documents, which the appellant had relied on in support of his position (namely those referred to in paragraph 11(ii) and 11(iv) above). My Investigator also outlined that the appellant had relied on emails received by him under a separate AIE request, which contained a reference to UCD submitting a membership form and a reference to “the financial contribution of participants and UCD in terms of facilities and other resources being provided...”. She noted UCD’s submission to my Office that UCD “is not a member of [SFMI] nor has it entered into any agreement with it and has no interest in the company” and asked UCD to provide comment on these documents and references. She also asked UCD to elaborate on its position in light of relevant case law, such as *Holland v The Information Commissioner & Anor* [\[2016\] UKUT 260 \(AAC\)](#), and *Minister for Health v Information Commissioner* [\[2019\] IESC 40](#).
14. UCD provided submissions in response to that request on 24 February 2020. UCD reiterated its position that the information requested was not produced by UCD and could not be said to have been received by UCD simply on the basis that it appeared on an employee’s professional email account. It also submitted that UCD could not be said to be holding information for a public authority as:
- (i) UCD had not been asked to hold any records on SFMI’s behalf. The environmental information records generated and/or held by an employee of UCD are held in their personal capacity in relation to voluntary work completed by them, disconnected with their employment; and
 - (ii) SFMI is not a public authority within the definitions set out in the Regulations.
15. UCD further submitted that the facts at issue in this case were similar to those in the case of *Holland v The Information Commissioner & Anor* [\[2016\] UKUT 260 \(AAC\)](#) in which the Tribunal found that physical possession of information is not itself sufficient to satisfy the test of whether



information is held by a public authority. As such, the Tribunal concluded that even though information relating to his involvement in an Intergovernmental Panel on Climate Change had been sent to a Professor of Cambridge University through his university email account, that information did not fall within the scope of the Environmental Information Regulations 2004 as “the information was received, held or produced by Professor Wadhams as a private individual on behalf of IPCC” and “the precise location at which Professor Wadhams carried out this role and the specific computer, library, desk and e-mail address he used for the role is immaterial.”

16. UCD drew my Investigator’s attention to the reference to the *Holland* case in my decision in [Case CEI/19/0020](#) *Mr X and University College Dublin*. In that decision, I concluded that correspondence relating to a named professor was held in the professor’s personal capacity and not by or for UCD such that article 7(5) of the Regulations applied. Finally, UCD referred to the decision of the Supreme Court in *Minister for Health v Information Commissioner* [\[2019\] IESC 40](#) (affirming O’Neill J in his judgment at [\[2014\] IEHC 231](#)). Although that decision related to the Freedom of Information legislation, UCD argued the Court took a similar approach to that taken by the UK Tribunal in *Holland* and found that lawful, physical possession of a record is not sufficient to find that it is “held” by a public body for the purposes of the FOI Act. Instead, UCD submitted that the record must be lawfully in the possession of the public body in connection with or for the purpose of the business or functions of the public body.
17. UCD also commented on the documents and statements provided by the appellant in support of his position that a relationship existed between UCD and SFMI as follows:
 - (i) UCD denied that it was a member of SFMI and noted that any reference to UCD being a member of SFMI in a press release advertising a national conference in June 2016 was simply an error in SFMI’s marketing materials, marketing materials which UCD had no control over and of which it was unaware until the press release was provided to it by this Office.
 - (ii) It noted that the use of UCD’s address on SFMI’s headed paper was connected to the employee acting in their personal capacity in relation to their voluntary role with SFMI and their use of a UCD email and postal address was disconnected from their employment with UCD. It relied on both the *Holland* case and my decision in [Case CEI/19/0020](#) in support of its position that the mere use of a UCD email address or postal address does not mean that an employee is acting on behalf of UCD.
 - (iii) UCD requested copies of the additional documents containing the statements referred to by my Investigator in her email of 24 January 2020 but substantively reiterated its position that it was not a member of SFMI, had not submitted a membership form to SFMI and provided no financial contributions in terms of facilities or other resources and that any UCD facilities or resources utilised by its employee in respect of SFMI were utilised by the employee in their personal capacity and not as a function of their employment.



18. My Investigator wrote again to UCD on 8 April 2020 and provided further documents (namely those referred to in paragraph 11(v), 11(vi), 11(ix) and 11(x)). She asked UCD, in light of those documents to:
- (i) set out its position in relation to use of UCD facilities and resources by SFMI;
 - (ii) provide UCD's comments on whether or not it was a member of SFMI in 2017 or provide explanation for the reference in the email of 4 June 2017 (at para 11(vi)) to a membership form; and
 - (iii) set out UCD's position on the use of UCD's postal address by SFMI for what appeared to be formal external documents (i.e. funding proposals and requests for funding).
19. On 5 May 2020, the appellant provided additional documents to this Office in support of his position. These documents can be summarised as follows:
- (i) **A letter from the employee, on UCD headed paper, to individuals who the appellant describes as representatives of FSC International (dated 20 January 2015)** – the letter invites those individuals to meet with the Steering Group of FSC Ireland, which the appellant submits is the predecessor of SFMI. The letter is printed on UCD headed paper and contains the employee's UCD email in the signature block.
 - (ii) **A list of members of SFMI (undated)** – this list consists of a table with columns indicating the names of individual members of SFMI, their organisation and their contribution (all of which are between €5 and €50). It lists the employee in question as a member of SFMI and notes that their organisation is UCD. The appellant referred to the statement in the internal review outcome that "UCD is not a member of the Company" and submitted that this document pointed to the employee being a member of the company representing UCD.
20. UCD responded to the queries raised by my Investigator on 3 June 2020. Its position can be summarised as follows:
- (i) It was not aware of the correspondence which noted that: "the financial contribution of participants and UCD in terms of facilities and other resources being provided should be reflected in the costings..." nor did it approve any such correspondence.
 - (ii) It did not have a specific position in relation to the use of facilities and resources by SFMI as it was not a member of SFMI and provided no financial contributions in terms of facilities or other resources to SFMI. As a function of its position as a leading teaching and research university, UCD provides resources to its employees and does not query them in a granular manner as to the use of these resources. Any UCD facilities or resources being utilised by its employee in respect of SFMI were utilised by the employee in their personal capacity and not as a function of their employment.
 - (iii) While the employee was a member of SFMI, their voluntary and unpaid role with SFMI was independent of their role as an employee with UCD. UCD was not a member of SFMI in



2017 and nor has it ever been a member of that organisation. UCD noted that the email referencing receipt of a membership form from UCD was not accompanied by a membership form but that it must be inferred that whoever wrote the email referred to UCD as shorthand for the personal membership application received from a UCD employee. UCD noted that it had been informed that only a personal membership subscription was ever paid by the employee, not a corporate subscription and this fee was never claimed from UCD as an expense.

- (iv) There are no agreements in place between UCD and SFMI regarding the work done by the UCD employee in their personal capacity. UCD itself has not carried out any work in connection with SFMI and is completely independent of SFMI.
- (v) In relation to the use of UCD's address on external documents printed on SFMI headed paper, UCD submitted that it allows its employees to use its email and postal address for matters not associated with their employment. It relied on both the *Holland* decision and my decision in Case CEI/19/0020 in support of its position that the mere use of a UCD email address or postal address does not mean that an employee is acting on behalf of UCD.
- (vi) UCD submitted that use of "c/o UCD Forestry" as the address listed at the footer of SFMI's headed paper demonstrates that UCD Forestry was never intended to be the ultimate addressee and that this address was merely being used as a de facto personal PO Box for the employee in their voluntary role with SFMI.

21. The appellant made further submissions on 13 July 2020 which contained a number of observations on the points raised by UCD in its submissions. The main points raised by the appellant can be summarised as follows:

- (i) The appellant again submitted that the assertion that UCD has no interest in or other relationship with SFMI is not supported by the evidence. He noted that the employee's role in SFMI was within the remit of UCD's Forestry Department in which they were employed. He also noted that other public authorities to whom he made requests for similar information did not contest that they were members of SFMI in circumstances where their employees were mentioned in the List of Members in the same manner as the UCD employee in question. He reiterated his position that the documents provided pointed to UCD's involvement in SFMI through its employee and noted that the employee's involvement had been carried out publicly and openly with no indication that UCD, as their employer, queried, sought clarification or disapproved of their activities. He also pointed to additional documents which he said provided further support for this position, most notably, an article from the Irish Independent which quoted the employee in question as saying that "SFMI aims to promote sustainable management of Ireland's forests through information, advocacy and education on independent forest management certification schemes. It is a non-profit voluntary organisation, whose membership includes organisations such as the IFA, Coillte, Teagasc, UCD, Ecotourism Ireland, Society of Irish



- Foresters as well as individual members". The appellant argued that this indicated that the employee considered UCD to be a member of SFMI.
- (ii) The appellant argued that the List of Members of SFMI (referred to at paragraph 19(ii) above) pointed to the employee being a member representing an organisation (UCD) and not a member in a private capacity. He queried why UCD would be included as the employee's organisation were this not the case. He also submitted that as the membership fee was relatively insignificant, amounting only to €5, it could have been paid by the employee without recourse to requiring payment to be drawn directly from UCD or including it in an expenses claim. He provided a further document, Minutes of the 2016 SFMI AGM, which listed attendees by their name and organisation, such that the employee was listed as "Employee Name (UCD)". He submitted that this indicated that the employee was representing UCD in their engagement with SFMI.
 - (iii) The appellant submitted that records of a staff member of a public authority produced and received through the medium of the authority should be considered to be public records unless it can be proved otherwise. He submitted that UCD had not provided any evidence to substantiate its claim that the information was held by the employee operating in a private, voluntary capacity. He again referred to UCD's Consulting & External Work Policy which, he submitted, indicated that the employee would have had to make UCD aware of their involvement with SFMI (if such involvement was external to their role in UCD) and seek approval from UCD with respect to that involvement. He noted that in the absence of the employee making UCD aware of their involvement and/or the approval of UCD with regard to such involvement, it should be presumed that the employee's involvement with SFMI was carried out on behalf of UCD as their employer.
 - (iv) The appellant again asserted that the use of their UCD email and UCD headed paper by the employee in respect of their role with SFMI indicated that they acted on behalf of UCD when carrying out that role.
 - (v) The appellant argued that the *Holland* case was distinguishable from the facts of the present case for the following reasons:
 - a. Professor Wadhams was acting in an unpaid honorary role that was clear and transparent. There is no evidence to indicate that the employee in this case was acting in an honorary role with SFMI.
 - b. Professor Wadhams obtained his role by means of an application process. He was nominated for his role by the UK Government. He was not nominated by his University. The appellant noted in this regard that he was not aware of any evidence which indicates how the employee came to be acting as the chair of SFMI but that there was no evidence that it was through an application or formal appointment process.
 - c. It was clear in Professor Wadhams' case that he was acting independently of his University role. The same could not be said with regard to the UCD employee's work with SFMI.
 - (iv) The appellant challenged UCD's assertion that any reference to UCD being a member of SFMI in a press release advertising a national conference in June 2016 was simply an error



in SFMI's marketing materials, which UCD had no control over and of which it was unaware until the press release was provided to it by this Office. He argued that UCD would have had control over the content of those materials through its employee, who was Chair of SFMI at that time. He noted that UCD was aware of and promoted the SFMI Conference of June 2016 and provided a link to the Twitter page of UCD's School of Agriculture & Food Science which contained a tweet dated 26 June 2016 noting that "Forest Management Conf chaired by @ucdagfood's [employee name] taking place this Thursday". Finally, the appellant provided a Registration Form for the SFMI Conference that included the UCD logo. He noted that Minutes of an SFMI Steering Group Meeting of 1 June 2016 (attended by the UCD employee) stated that it was agreed that only organisations that sponsored the conference would be included on the Registration Form. The appellant argued that this would imply that UCD provided some form of sponsorship of the Conference, whether it be through a direct financial payment or a contribution in kind. A copy of the minutes was provided by the appellant to this Office at a later date. Those minutes include the following statement: "It was agreed that only organisations that sponsored the conference would be included: Forest Service, Coillte and Teagasc". UCD is not referred to in the organisations proceeding the statement in relation to sponsorship nor is it referenced in the minutes at all. The appellant submits however that the UCD logo does actually appear on the conference flyer which would suggest that UCD did sponsor the conference in some form.

- (vi) The appellant challenged UCD's assertion that its staff members are permitted to utilise its email and postal addresses for matters not associated with their employment, noting that this appeared to be inconsistent with UCD's Consultancy & External Work Policy. He also submitted that the use of 'c/o UCD Forestry' in the SFMI address could indicate that it was intended for the attention of someone within the UCD Forestry Department rather than it being a PO Box for the personal correspondence of a staff member and argued that this was a more likely explanation than the one put forward by UCD.
- (vii) Finally, with regard to UCD's assertion that it did not query the use of UCD resources by staff members in a granular manner, the appellant submitted that the use by the employee of UCD resources for the purposes of their involvement in SFMI could not be described as granular and that such involvement in fact consisted of a lengthy, detailed and prolonged sequence of actions, meetings and correspondence over a number of years with a number of key forest industry players such that it was inconceivable that none of the employee's colleagues, including senior management of the UCD Forestry Department would have been aware of that involvement.

22. On 9 February 2021, my Investigator wrote to UCD to seek further clarification on the facts at issue in this case. She set out her preliminary view that the principal issue to be resolved was whether, on the facts of the case, there is a sufficient connection between UCD and the information to warrant a conclusion that the information in question was produced or received by means which were connected with UCD. She attached a sample of the documents provided by the appellant which she noted suggest a potential connection between UCD and SFMI, namely:



- (i) the use of a UCD address on SFMI stationary (as outlined in the documents referred to at paragraph 11(i) and 11(iv));
 - (ii) the use of the UCD logo on SFMI conference material (as outlined in the document referred to at paragraph 21(iv));
 - (iii) the reference to UCD being a member of SFMI in SFMI press releases (as outlined in the document referred to at paragraph 11(ii)); and
 - (iv) the use by the Chair of SFMI of UCD stationary in her communications with the FSC (as outlined in the document referred to at paragraph 19(i)).
23. She also put a number of queries to UCD with regard to the treatment of the employee's involvement with SFMI under the Consulting & External Work Policy and asked whether UCD had requested that SFMI remove the press release which referenced UCD as a member from circulation and/or to refrain from referring to UCD as a member in the future, as UCD had indicated it would in its submissions to my Office on 23 February 2020.
24. The appellant made a further brief submission to this Office on 10 February 2021 in which he submitted that UCD should not be permitted to redefine its relationship with SFMI after the fact and that regard should be had to the ample evidence that the employee's participation in SFMI using the UCD name was open knowledge at the time and that UCD had ample opportunity to correct the record if it considered there to be any misrepresentation. He also submitted that much of the correspondence issued from the employee's UCD email address was during standard working hours.
25. In an email sent to this Office on 22 March 2021, seeking an extension of time to provide responses, UCD noted that it had "reviewed the records and previous submissions on this case" and was "very reluctant to consider releasing any information contained therein" on the basis that "the other individuals mentioned in the records have no relationship with UCD and the subject matter does not relate in any way to university business, apart from the staff member inadvertently using their UCD email and address as a de facto personal PO Box in their voluntary role with the SFMI".
26. UCD responded to my Investigator's substantive queries on 26 March 2021 as follows:
- (i) UCD stated that it was not on notice of the staff member's involvement with SFMI until it was brought to its attention following the receipt of the appellant's original request by the appellant and the making of enquiries with the staff member.
 - (ii) UCD submitted that the staff member's involvement with SFMI was not disclosed under the Consultancy and External Work Policy. UCD noted that "work and activity that is covered by this policy is that which is done during the academics normal working week" and stated that the staff member had confirmed that their involvement with SFMI occurred outside of UCD's working hours. UCD's position therefore was that the Policy did not apply in this



instance and the staff member was not required to disclose their involvement with SFMI. UCD reiterated that the staff member was acting in their capacity as a private citizen when carrying out this voluntary work involving matters that had nothing to do with the University and separate to their role as a staff member.

- (iii) UCD stated that it allows its employees to use its email and postal address for matters not associated with their employment. It relied on *Holland* and on my decision in CEI/19/0020 (also cited in UCD's Submissions of 28 February 2020) in support of its position that the mere use of a UCD email address or postal address does not mean that an employee is acting on behalf of UCD.
- (iv) UCD submitted that it was unaware that its headed stationary had been used by the staff member in connection with this matter. It outlined that the use of UCD stationary in this manner is not permitted by UCD and should not have occurred but maintained that the unauthorised use of UCD stationary is an internal matter for UCD. In this regard, UCD noted that it had been informed that the staff member had ceased their involvement with SFMI prior to the University becoming aware of the issue.
- (v) UCD noted that it had requested that the staff member would have SFMI remove the press release and refrain from referring to UCD as a member. As the company, Irish Forestry Certification Initiative CLG (of which SFMI was the registered business name) is no longer in existence, the staff member could not action this request. UCD noted that it had been informed that the work of SFMI was ceased in 2019 and the company was dissolved in July 2020. As such, SFMI is no longer in existence.

27. On 12 May 2021 my Investigator emailed UCD with further queries. In particular, she sought comment from UCD as to:

- (i) The appellant's assertion that the tweet posted by the School of Agriculture & Food Science on 26 June 2016 indicated that UCD was aware of the staff member's participation in the June 2016 SFMI Conference.
- (ii) The appellant's assertion that the staff member's involvement with SFMI was heavily publicised in national newspapers and academic journals such that it was inconceivable UCD would not have been aware of it.
- (iii) The appellant's submissions that the Irish Independent and Forestry & Energy Review articles made representations as to UCD's involvement with SFMI. Each page of the Forestry & Energy Review article is headed "UCD Forestry" and the Irish Independent article includes a quote from the staff member in question which reads as follows and indicates that UCD is a member of SFMI: "SFMI aims to promote sustainable management of Ireland's forests through information, advocacy and education on independent forest management certification schemes. It is a non-profit voluntary organisation, whose membership includes organisations such as the IFA, Coillte, Teagasc, UCD, Ecotourism Ireland, Society of Irish Foresters as well as individual members".



28. My Investigator included in her correspondence all documents provided by the appellant in support of his contention that the information he requested should be considered to be held by or for UCD and invited UCD to make any additional submissions it wished in respect of that documentation. She also asked UCD to outline the circumstances in which it became aware of the staff member's involvement in SFMI.
29. The appellant made further submissions to my Office on 19 April 2021 in which he relied on a decision issued by me in Case [OCE-93404-W1P1L7](#) *Mr X and Teagasc*. Case OCE-93404-W1P1L7 concerned information held by Teagasc with respect to SFMI and the appellant referred to paragraph 17 of that decision which noted Teagasc's statement to this Office of its understanding that "logos included on the flyer [for the June 2016 SFMI Conference] referred to the parties who had co-organised the conference". The appellant relied on this in support of his contention that the Teagasc representative involved with SFMI was clearly of the view that the staff member was representing UCD in terms of their participation in SFMI and that UCD and not the staff member as an individual, was a co-organiser of the conference.
30. My Investigator put the appellant's additional contentions to UCD for its comment.
31. UCD provided further submissions to my Office on 28 April 2021 in which it made the following points:
- (i) It reiterated its position that the staff member in question was acting in their personal capacity, and independently of UCD in a manner disconnected from their employment, regarding their involvement with SFMI. It also reiterated that any UCD facilities or resources being utilised by its employee in respect of SFMI were being utilised in the employee's personal capacity and not as a function of their employment. It again noted its view that records were not produced for/by UCD and could not be said to have been received by UCD simply on the basis that they appear on an employee's professional email account.
 - (ii) It also reiterated its position that UCD was not, at any stage, a member of the SFMI and that any marketing materials, press releases or articles stating otherwise were incorrect and were not approved by UCD. It submitted, in response to the appellant's arguments as to the import of the submissions of Teagasc in Case OCE-93404-W1P1L7, that it could not comment on the reasoning behind the inclusion of the UCD logos on the flyers as, unlike Teagasc, UCD had no involvement with the preparation of these flyers as it had no relationship with SFMI. It also stated that Teagasc's beliefs regarding the appearance of logos on the conference flyer were incorrect with regard to UCD as UCD had no involvement, organisational or otherwise, with SFMI.
 - (iii) It outlined that it became aware of the staff member's involvement following receipt of the appellant's request after inquiries were made by UCD's Information Compliance Office to the School of Agriculture and Food Science on the basis that this was the School considered to be most closely connected with the subject matter of the appellant's request. It noted



that although the Head of School did not hold any information in connection with the request, he passed the query to the academic staff at the School and when it reached the staff member in question, they contacted UCD to confirm, what UCD again categorised as their “personal and independent involvement with the SFMI”.

- (iv) It reiterated that UCD was not on notice of the staff member’s involvement with SFMI and as the staff member had confirmed that their involvement with SFMI was outside of UCD’s working hours they did not have to disclose their involvement to UCD. It also submitted that a tweet by the UCD School of Agriculture and Food noting that a member of its department was chairing a conference does not impute knowledge, awareness, or approval by UCD.
- (v) Finally, it noted its belief that queries related to UCD’s awareness of the staff member’s involvement with SFMI strayed away from the actual point at issue, which is the basis for the rejection of the appellant’s original request.

Analysis and Findings

32. 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 UCD and to the cases referred to throughout this decision. 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).
33. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.
34. Article 4(1)(a) of the AIE Directive provides that Member States may provide for a request for environmental information to be refused if the information requested is not held by or for the public authority to which the request is addressed. Article 7(1) of the AIE Regulations provides that “a public authority shall, notwithstanding any other statutory provision and subject only to these Regulations, make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority”.
35. Article 3(1) of the AIE Regulations defines “environmental information held by a public authority” as “environmental information in the possession of a public authority that has been produced or received by that authority”. “Environmental information held for a public authority” is defined as “environmental information that is physically held by a natural or legal person on behalf of that authority”. These definitions echo those contained in articles 2(3) and 2(4) of the Directive which



define “information held by a public authority” as “environmental information in its possession which has been produced or received by that authority” and “information held for a public authority” as “environmental information which is physically held by a natural or legal person on behalf of a public authority”.

36. Unlike the definitions of “environmental information” and “public authority”, there has been no consideration by the Superior Courts in Ireland as to the interpretation of the definitions of “environmental information held by a public authority” or “environmental information held for a public authority”. The circumstances in which environmental information can be considered to be held by a public authority have been considered by the UK Courts (in *Holland v. The Information Commissioner* [2016] UKUT 260 (AAC)) with regard to the Environmental Information Regulations 2004, through which the UK transposed the AIE Directive. The issue has also been considered to some extent by the Irish Courts with regard to Freedom of Information legislation (see *Minister for Health v The Information Commissioner* [2019] IESC 40). However I must bear in mind that differing principles apply to the interpretation of the AIE Regulations such that it is not sufficient to approach the question of interpretation solely through the prism of national law, as emphasised by the Supreme Court in *NAMA v Commissioner for Environmental Information* [2015] IESC 51 (see paragraph 10).
37. The above cases suggest that in order for information to be held by a public authority, that authority must be in possession of that information in connection with or for the purposes of its business or functions. There must therefore be a sufficient connection between the information and the authority to warrant a conclusion that it “holds” the information, although it is not necessary that the information is held by the public authority solely or predominately for its purposes. While these cases are not binding on me, they set out what I consider to be useful guidance as to the basis on which I should approach my analysis in this case, particularly the decision in *Holland*, given that the definition of “held by or for” in the Environmental Information Regulations is similar to those contained in article 3(1) of the AIE Regulations and is also derived from articles 2(3) and 2(4) of the AIE Directive.
38. In *Holland* the Upper Tribunal noted that the inclusion of the specific and important word “by” in the phrase “produced or received by” showed “that the authority must itself be the producer or recipient of the information”. It said that this must mean more than “came into possession of” (see paragraph 46). The Tribunal set out the following test:

“A factual determination is required as to how the information has come to be in the possession of the authority. The question is whether the information was produced or received by means which were unconnected with the authority, for example by an individual in their personal or other independent capacity; or whether it was produced or received by means which were connected with the authority, for example by someone acting in their professional capacity in relation to the authority (such as an employee of the authority). The connection must be such that it can be said that the production or receipt of the information is attributable to (“by”) the authority” (see paragraph 48).



39. It is accepted that a member of UCD's academic staff working in the School of Forestry also acted as Chair of SFMI. It is accepted by UCD that the information requested by the appellant is held by that staff member. However, UCD's position is that the information was generated following voluntary work completed by that staff member outside the scope of their employment and not by UCD in the conduct of its official functions or business activities.
40. The question to be resolved therefore is whether it can be said, as a matter of fact, in the circumstances of this case, that:
- (i) the information held by UCD's employee is information that has been produced or received by UCD, such that it is environmental information held by UCD; and/or
 - (ii) the information held by UCD's employee is information held on behalf of UCD, such that it is information held for UCD.
41. I consider that both questions require me to determine, as a matter of fact, the capacity in which the UCD staff member held the information produced and received with regard to SFMI. If I determine that they did so in their capacity as an employee of UCD, then it may be said that the production and receipt of the information was connected with UCD such that it can be said that the information is held "by" UCD. It may also be said that if the staff member produced and received such information in their capacity as an employee of UCD, then they hold that information "for" or on behalf of UCD. A key issue in this case therefore, is whether the staff member was acting in their capacity as an employee of UCD with respect to their dealings with SFMI. This is a matter of fact in respect of which my Investigator has made a number of enquiries both with the appellant and with UCD. I should emphasise that a determination as to whether information is held by or for a public authority will always involve a fact specific assessment of the particular case and there is no rule of thumb which can serve as a substitute for such fact specific analysis.

Was the staff member acting in a personal or professional capacity when dealing with the information requested (i.e. with regard to their involvement with SFMI)?

42. The submissions of both the appellant and UCD are set out at length above. Having reviewed those submissions, I consider that the following factors might be said to lend support to the conclusion that the staff member was acting in their professional capacity when dealing with the information requested:
- (i) The existence of numerous public representations as to UCD's involvement with SFMI including the use of the UCD logo on materials for the SFMI Conference held in June 2016 (as evidenced by the documents referred to at paragraph 21(iv)), and statements that UCD was a member of SFMI in (a) the press release for the June 2016 Conference (as evidenced by the document referred to at paragraph 11(ii)); (b) an article in Forestry & Energy Review (see paragraph 11(iii)); and (c) a national newspaper (see paragraph 21(i)).
 - (ii) The reference in emails relating to SFMI, to a membership form having been received from UCD (see paragraph 11(vi) above).



- (iii) The staff member's use of UCD stationary in a letter to representatives of FSC International, inviting those individuals to meet with a predecessor of SFMI (as outlined in the document referred to at paragraph 19(i)).
 - (iv) The staff member's use of their UCD email address for the purpose of correspondence relating to their involvement with SFMI as evidenced by the documents referred to in paragraphs 11(viii) and (xi).
 - (v) SFMI use of UCD's School of Forestry as its postal address as evidenced by the documents referred to in paragraphs 11(i), (iv), (ix) and (x).
 - (vi) The absence of any disclosure made by the staff member characterising her involvement with SFMI as external work under UCD's Consultancy & External Work Policy which provides that "approval to engage in external work covered by this policy must be sought in advance" and includes "Pro Bono activity" which is defined as "work which the staff member undertakes on an unpaid basis and which relates to the staff member's discipline" in the activities which are required to be disclosed. The Consultancy & External Work Policy also provides that any approval for pro bono work is contingent on the staff member's private address being used for all correspondence and notes that "use of university letterheads or other printed stationery is not permitted".
 - (vii) The fact that the employee provided the information requested by the appellant to UCD, as evidenced by UCD's email to this Office of 22 March 2021 (see paragraph 25 above).
43. However, the following factors might be said to mitigate against the conclusion that the staff member was acting in their professional capacity with regard to their dealings with SFMI:
- (i) UCD's repeated assertions in its submissions to this Office that the staff member in question was acting in their personal capacity.
 - (ii) The statements by the Upper Tribunal in *Holland* and my previous decision in CEI/19/0020 that the mere fact that information is held on the staff member's University email account is not sufficient to warrant a conclusion that the information is held by the University.
 - (iii) UCD's assertion that it had no knowledge of SFMI and was not at any time a member of SFMI such that any representations made to that effect were incorrect and were not made with UCD's approval.
 - (iv) The fact that the list of members of SFMI provided by the appellant (see paragraph 19(ii)) lists the UCD staff member as a member of SFMI, rather than UCD itself. Although the staff member's organisation is listed as UCD it does not explicitly state that UCD itself is a member.
 - (v) The fact that the Consultancy & External Work Policy provides that "work and activity that is covered by this policy is that which is done during the academics normal working week". UCD's position is that since the staff member has confirmed that their involvement with SFMI occurred outside of UCD's working hours, the Policy did not apply in this instance and the staff member was not required to disclose their involvement with SFMI.
44. UCD is correct in its submission that it cannot be said that the information is held by it, simply on the basis that it appeared on its employee's professional email account. The guidance in the case law I have referred to above suggests that more than mere presence of information on UCD's



server is required to warrant a conclusion that there is a sufficient connection between the information requested and UCD, such that the information is held by UCD within the meaning of the Regulations. Indeed, the definition in article 3(1)(a) of the Regulations provides that “environmental information held by a public authority” means environmental information “in the possession of the public authority **that has been produced or received by that authority**”. As noted by the Tribunal in *Holland* the second element of the definition suggests that something more than physical possession is required (see *Holland* at paragraph 45). In that regard, UCD argues that “the staff member was acting in [their] capacity as a private citizen when carrying out this voluntary work involving matters that had nothing to do with the University and separate to [their role] as a staff member”.

45. Having considered the factors outlined above, I cannot agree with UCD’s position in this respect. In my view, it is reasonable to conclude as a matter of fact from the information which is before me, that the staff member was chairing a forestry management body, not in their capacity as a private citizen, but in their capacity as an academic and employee of UCD with considerable expertise in that field. Whether or not this occurred with UCD’s knowledge, I cannot conclude that the staff member’s role with SFMI “had nothing to do with the University” and was “separate to [their] role as staff member”. Indeed, its connection with the work of the University is acknowledged by the School of Agriculture and Food Science itself through its re-tweeting of the staff member’s involvement in the SFMI Conference in June 2016.
46. This distinguishes the facts of this case, in my view, from those in CEI/19/0020. In that case it was clear to me that the correspondence at issue was conducted by the professor in his personal capacity and independently of the university. However, there remain some similarities between the facts at issue in this case and those which arose in *Holland*. The role of the Professor in the *Holland* case as a member of an Intergovernmental Panel on Climate Change, while found by the Upper Tribunal not to have been undertaken in his professional capacity, was one which related to his academic expertise as a Professor of Ocean Physics and Head of the Polar Ocean Physics Group at Cambridge University. However, in the *Holland* case, publicly available material related to the workings of the IPCC noted that “thousands of scientists from all over the world contribute to the work of the IPCC on a voluntary basis” and did not suggest that those contributions were made by or on behalf of the employing organisations of those scientists. In this case, UCD was publicly represented as being connected to SFMI on a number of occasions, including through publications in a national newspaper and a forestry periodical which referred to UCD as being a member of SFMI, through the use by the staff member of UCD stationary in communications concerning SFMI’s predecessor FSC Ireland and through the use of a UCD address on SFMI stationary. I note UCD’s position is that it was not aware that it was being so represented, which I consider further below.
47. The principle allowing public authorities to refuse a request for environmental information in circumstances where the information is not held by or for that authority, is contained in Article 4, paragraph 1(a) of the AIE Directive. This is the provision of the Directive dealing with exceptions. Article 4 also provides that “the grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by the refusal”. I accept that article 7(1) of the Regulations provides that a public authority



is required to make available “any information, the subject of [an AIE] request, held by, or for, the public authority”. The AIE Regulations do not refer to circumstances where information is not held by or for a public authority in the exceptions provided for in articles 8 and 9. However, I consider that I must have regard to the requirement in the Directive to restrictively interpret the circumstances in which a public authority can refuse to make information available on the basis that the information is not held by or for it. I must therefore apply such a restrictive interpretation in the particular circumstances of this case, bearing in mind the test set out in the case law referred to above. I must also adopt a teleological approach, having regard to the general purposes of the Regulations, the AIE Directive and the Aarhus Convention.

48. With that in mind, I am satisfied that the question of whether the information at issue in this case is held by UCD cannot be resolved solely by reference to the question of whether UCD was aware of the staff member’s involvement with SFMI and/or their use of UCD resources in connection with that involvement. The AIE Regulations and the AIE Directive provide that environmental information “held by” a public authority is information “in the possession [of the public authority]” and “that has been produced or received by that authority”. The information does need to be produced or received by the public authority. However, in reality, information can only be produced or received by a public authority through its staff members and neither the Regulations nor the Directive indicate that explicit permission or knowledge on the part of the public authority, with regard to the actions of its staff members, is required in order to render such information susceptible to the AIE regime. What is required, according to the case law on the definition of “held for”, is a “sufficient connection” between the information requested and the authority concerned.
49. When assessing whether a “sufficient connection” exists on the facts of a particular case, awareness on the part of the public authority of the staff member’s involvement may be a factor for consideration. In that regard, I note that the appellant has pointed to a tweet from a UCD account referencing the staff member’s participation in the SFMI conference of June 2016 and to statements in a national newspaper and in an edition of the Forestry & Energy Review publication, listing UCD as a member of SFMI. The appellant has argued, on that basis, that it is inconceivable to suggest that UCD was not aware that it was being publicly represented as a member of SFMI. However, I do not consider this enough to determine, on the balance of probabilities, that UCD was aware of such public representations as to its involvement with SFMI or the extent of its staff member’s involvement in that organisation.
50. I note in this regard that UCD does have a policy in place with regard to external work undertaken by academic staff. UCD’s Consultancy & External Work Policy provides that “approval to engage in external work covered by this policy must be sought in advance” and includes “Pro Bono activity”, which is defined as “work which the staff member undertakes on an unpaid basis and which relates to the staff member’s discipline”, in the activities which are required to be disclosed. As the appellant has pointed out, this Policy requires staff members carrying out external work to use their private address for all correspondence and prohibits use of the university letterhead or other printed stationary. However, as UCD notes, the Policy also provides that “work and activity that is covered by this policy is that which is done during the academic’s normal working week”. UCD’s position is that since the staff member has confirmed that their involvement with SFMI occurred



outside of their working hours, the Policy did not apply in this instance and the staff member was not required to disclose their involvement with SFMI. It is not my function to adjudicate on how public authorities carry out their functions generally and the workings of this Policy are ultimately a matter for UCD. However, it is perhaps unfortunate that disclosure was not made or required by this Policy as it may have made the matters which I am now required to consider more straightforward.

51. That being said, I do not think it is necessary for me to make a determination as to the extent of UCD's awareness in this case. A University will not be aware of every communication or item of information produced or received by its academics, nor can any public authority be aware of every piece of information produced or received by its staff members. This was alluded to by the Tribunal in *Holland*, when it noted that an essay placed in a pigeon hole by a student for the attention of a tutor would be received by the tutor on behalf of the University such that the University could be said to have "received" that document whereas the same could not be said for a bank statement delivered to that tutor's pigeon hole which would be received by that tutor in their personal capacity. However, the determinative factor, according to the Tribunal, was not whether the University in that case was aware that the tutor had received the essay or bank statement or whether it had provided explicit permission for receipt of the bank statement via the tutor's work address, but whether the information "was produced or received by means which were connected with the [University]". The Tribunal considered that this approach was consistent with the Convention and the Directive, both of which "clearly limit the scope of the right of access to information to that which is held by public authorities as defined" and "do not provide for a general right to all environmental information regardless of the circumstances in which it arose or exists". (*Holland*, paras 47 to 49).
52. Having regard to the importance placed on well-informed and effective public participation in debates on environmental matters in both the Directive and the Convention, I consider the fact that SFMI was publicly represented as being an organisation whose membership included UCD (a prominent University) as well as other reputable bodies in the area of forest management such as Teagasc, Coillte and the Department of Agriculture, Food and the Marine, to be significant, regardless of UCD's awareness of those representations. In my view, such representations would lend greater standing to SFMI and greater weight to any views expressed by it. This could reasonably be expected to result in the public being more inclined to accept the statements and proposals of SFMI with less scrutiny or debate than might be applied were less well known organisations involved in that body, and such that other bodies would be more likely to engage with SFMI's initiatives and proposals. Those proposals included the development of an internationally recognised forest management standard for Ireland as well as initiatives to promote sustainable management of Irish forests through information, advocacy and education on independent forest management certification schemes. There is a real likelihood that SFMI's activities would have a significant impact on environmental affairs in Ireland. It is therefore consistent with the purposes of the Regulations and the Directive, in my view, that the information requested by the appellant should be considered to be "held by" UCD in circumstances where:



- (i) The staff member's role in SFMI was related to their discipline and it is reasonable to infer, on the basis of the information before me as outlined above, that the staff member's role as Chair of SFMI was closely connected with their professional role as an academic staff member of UCD's School of Forestry.
- (ii) The staff member used her UCD email address for the purpose of correspondence relating to her involvement with SFMI as evidenced by the documents referred to in paragraphs 11(viii) and (xi).
- (iii) The staff member used UCD stationary in a letter to representatives of FSC International, a predecessor of SFMI (as outlined in the document referred to at paragraph 19(i)).
- (iii) There were numerous public representations as to UCD's involvement with SFMI including the use of the UCD logo on materials for the SFMI Conference held in June 2016 (as evidenced by the documents referred to at paragraph 21(iv)), and statements that UCD was a member of SFMI in the press release for the June 2016 Conference (as evidenced by the document referred to at paragraph 11(ii)), in an article in Forestry & Energy Review (see paragraph 11(iii) and in a national newspaper (see paragraph 21(i)).

It is my view that any lack of awareness on UCD's part regarding public representations suggesting its involvement with SFMI, its staff member's involvement in SFMI and/ or the use of UCD resources in connection with that staff member's involvement, is insufficient to overturn the above conclusion.

Conclusion

- 53. I am satisfied that the staff member cannot be said to have been acting in a purely personal capacity with regard to her involvement with SFMI and that there is a sufficient connection between UCD and SFMI to warrant a conclusion that the information requested by the appellant is environmental information in the possession of UCD that has been produced or received by it. I conclude on that basis that the information is "held by" UCD.
- 54. In light of the above, it is not necessary for me to reach a conclusion as to whether the information was held "for" UCD. For completeness, I will say that in circumstances where the staff member was not acting in a purely personal capacity and where public representations were made alluding to their involvement with SFMI on behalf of UCD, I consider that it can also be said that they hold information in respect of such involvement "for" UCD. I also note in this regard, that the staff member in question did in fact provide the information requested to UCD when requested to do so, as evidenced by the content of UCD's email to this Office of 22 March 2021, which noted that UCD had reviewed the relevant information.
- 55. As I am satisfied, on the facts of this case, that the information is "held by" UCD and "held for" UCD by the staff member in question, UCD cannot rely on the fact that it does not hold the information to relieve it of the requirement to disclose it. It may be the case that other exceptions might apply, but, at this time, it is not necessary for me to consider the question of whether a public interest balancing exercise is required.



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Decision

56. Having carried out a review under article 12(5) of the AIE Regulations, I annul UCD's decision that the information requested in this case was not held by or for it and remit the matter to UCD who should process the appellant's request in accordance with the AIE Regulations.

Appeal to the High Court

57. 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

15 July 2021