



**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)**

**Cases:** OCE-105379-F8L2B9 and OCE-106896-D5T5W5

**Date of decision:** 1<sup>st</sup> October 2021

**Appellant:** Mr. X

**Public Authority:** Department of Agriculture, Food and the Marine (the Department)

**Issues:**

- (1) Whether or not the fee charged by the Department in each case was reasonable, in accordance with article 15(1) of the AIE Regulations; and
- (2) Whether or not the Department complied with the duty in article 15(2) of the AIE Regulations to make available a list of the fees charged, information on how they are calculated and the circumstances under which they may be waived.

**Summary of Commissioner's Decision:** The Commissioner found that:

- (1) The fee charged by the Department in each case was not reasonable, within the meaning of article 15(1) of the AIE Regulations; and
- (2) The Department has not complied with the duty in article 15(2) of the AIE Regulations because the published fees are not reasonable.

**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. This is a decision on two appeals in respect of two separate requests for information made by the appellant to the Department of Agriculture, Food and the Marine (the Department). In each case, the Department decided to grant the appellant's request, subject to payment of a fee. The appellant appeals the decisions of the Department on the grounds that (1) the fee charged by the Department in each case is not reasonable in accordance with article 15(1) of the AIE Regulations; and (2) the Department did not comply with the duty in article 15(2) of the AIE Regulations to make available a list of the fees charged, information on how they are calculated and the circumstances under which they may be waived. I have decided to consider the two appeals together in the interest of their timely resolution.

### **OCE-105379-F8L2B9: The "AA determinations appeal"**

2. On 4 January 2021, the appellant requested a copy of all iterations of the Appropriate Assessment Report and all iterations of the Appropriate Assessment determination in respect of felling licences issued to Coillte during 2020, which were subject to Stage 2 Appropriate Assessment, where the Ecological Review was conducted by a specified person.
3. On 18 February 2021, the Department decided to grant the appellant's request, subject to payment of a fee. The Department stated, "The services of 1 staff member for 15 hours was required to efficiently complete the 'search, retrieval and copying' work on your request. The prescribed amount chargeable for each such hour is €20.00 resulting in an overall fee of €300." The Department requested payment before providing the requested information to the appellant.
4. On 22 February 2021, the appellant requested an internal review of the decision to charge the stated fee. The appellant pointed to my decision in [CEI/18/0038](#) and stated that the Department had failed to calculate a 'reasonable' fee or to have regard to the appellant's capacity to pay a fee. The appellant also pointed to the duty of the Department under regulation 42(18) of the European Communities (Birds and Natural Habitats) Regulations 2011 to make available any determination that it reaches in relation to a plan or project, in electronic form including by placing the documents on the Department's website.
5. On 19 March 2021, the Department affirmed its decision on internal review. The Department stated that there are 595 individual records within the scope of the request, each of which must be retrieved, checked to ensure it is the correct record and saved to a cloud facility. The Department stated that it could not speculate as to any requester's capacity to pay. The Department stated that it clearly sets out in its information on making requests under the AIE Regulations that the granting of requests may incur a fee. It is therefore up to the requester to decide their own capacity to pay, should such a fee arise.
6. The appellant brought this appeal to my Office on 22 March 2021.

### **OCE-106896-D5T5W5: The "environmental monitoring appeal"**

7. On 4 January 2021, the appellant requested details of the Forest Service's environmental monitoring for afforestation, forest road approvals and tree felling licences for 2020. The request



specified that records should include the number and percentage of each type of project receiving a post licence / approval follow up environmental field inspection, broken down on a county by county basis; felling licences, broken down on a private / Coillte basis; and forest roads, broken down on a grant-aided / non grant-aided basis.

8. On 2 February 2021, the Department notified the appellant that, due to the large number of records that his request encompasses, the Department would be unable to make a decision within one month so the time for response would be extended to two months, in accordance with article 7(2)(b) of the AIE Regulations.
9. On 3 March 2021, the Department decided to grant the appellant's request, subject to payment of a fee. The Department stated, "The services of 1 staff member for 32 hours was required to efficiently complete the 'search, retrieval and copying' work on your request. The prescribed amount chargeable for each such hour is €20.00 resulting in an overall fee of €640. However, in consideration of fees calculated, I have decided to cap the fee at €500." The Department requested payment before providing the requested information to the appellant.
10. On 4 March 2021, the appellant requested an internal review of the decision to charge the stated fee. The appellant pointed to my decision in [CEI/18/0038](#) and stated that the Department has failed to calculate a 'reasonable' fee or to have regard to the appellant's capacity to pay a fee. The appellant also pointed the Department to its duties in accordance with Article 7 of the AIE Directive to disseminate information of the kind requested by the appellant.
11. On 1 April 2021, the Department affirmed its decision on internal review. The Department stated that 2,885 records were examined in relation to the request, which involved a review of the entirety of the Department's licensing output for 2020 along with other schemes, first and second instalment payments for afforestation and forest roads, Coillte and private felling licences and reinspection records. The Department considered that the calculation of the fee was conservative, given the work involved, and that capping the fee at €500 was reasonable and would in no way recover the cost in retrieving the records concerned. The Department stated that it could not speculate as to any requester's capacity to pay. The Department stated that it clearly sets out in its information on making requests under these regulations that the granting of requests may incur a fee. It is therefore up to the requester to decide their own capacity to pay, should such a fee arise.
12. The appellant brought this appeal to my Office on 27 April 2021.

#### Review

13. I have now completed my review of each of these appeals 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 Department. In addition, I have had regard to:
  - [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](#)”);
- [The Aarhus Convention—An Implementation Guide](#) (Second edition, June 2014) (the “Aarhus Guide”); and
- 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”).

14. What follows does not comment or make findings on each and every argument advanced but I have considered all materials received in the course of the investigation.

### **Scope of Review**

15. In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decisions and to affirm, annul or vary them. “Refusal” of access to information includes a request that has not been dealt with in accordance with Articles 3, 4 or 5 of the AIE Directive (see article 11(5)(c) of the AIE Regulations).
16. In each of these appeals, the Department has decided to grant the appellant’s request, subject to payment of a fee. The appellant submits that the fee in each case is not reasonable and that details of the fee were not published in advance of the appellant’s request. As such the scope of my review in each case is confined to whether or not the request has been dealt with in accordance with Article 5(2) and (3) of the AIE Directive (implemented by article 15(1) and (2) of the AIE Regulations).

### **Preliminary Matters**

#### **The AA determinations appeal: Article 4 of the AIE Directive**

17. The appellant submits that the Department is required under regulation 42(18) of the European Communities (Birds and Natural Habitats) Regulations 2011 (the “2011 Regulations”) to make any determination that it makes in relation to a plan or project available in electronic form including by placing the documents on the Department’s website.
18. I emphasise that it is not part of my function as Commissioner to review any action taken by public authorities otherwise than under the AIE Regulations. However, the appellant submits that whether information is made available under regulation 42(18) of the 2011 Regulations is relevant to the application of article 4(1) of the AIE Regulations. Article 4(1) provides that the AIE Regulations apply to environmental information other than (subject to specified exceptions) “information that, under any statutory provision apart from [the AIE] Regulations, is required to be made available to the public, whether for inspection or otherwise.” In other words, article 4 provides that where another statutory access regime requires information to be made available, such information falls outside the scope of the access regime under the AIE Regulations.



19. I am required to interpret the AIE Regulations in a manner consistent with the AIE Directive (*National Assets Management Agency v Commissioner for Environmental Information* [2015] IESC 51, at paragraphs 10-11). The provision in article 4(1) of the AIE Regulations is not expressly envisaged by the AIE Directive. The AIE Directive does not permit Member States to exclude the right of access under the AIE regime based on the existence of other access regimes. However, Article 3(4)(a) of the AIE Directive does permit public authorities to make environmental information available in a form or manner other than that requested by the applicant if “it is already publicly available in another form or format, in particular under Article 7, which is easily accessible by applicants”, and this provision is implemented by article 7(3) of the AIE Regulations. As such, I understand article 4(1) of the AIE Regulations as simply reinforcing that public authorities must continue to comply with any other obligations that they may have to provide information under other legislation and that the AIE Regulations do not relieve them of those obligations. Where information is made available under another statutory provision, the public authority may rely on the provision in article 7(3)(a)(i) of the AIE Regulations to decline to provide the information in the form or manner requested, on the basis that the information is already available to the public in another form or manner that is easily accessible.
20. In the AA determinations appeal, the appellant requested a copy of all iterations of the Appropriate Assessment Report and all iterations of the Appropriate Assessment determination in respect of felling licence. While some of the information requested would fall under the requirement in regulation 42(18) of the 2011 Regulations, the Department’s position is that part of the information requested would not be captured by that provision (for example, earlier versions of a final determination). The Department’s position is that, while any information requested which did fall within regulation 42(18) was not published on the Department’s website, the final versions of such documents would have been made available on request, subject to a small administrative charge for production, copying and redaction where appropriate. However, the Department accepts that none of the information requested, whether falling within regulation 42(18) or otherwise, was in fact made available to the appellant under another access regime. In light of this acceptance, it is not necessary for me to consider whether the Department has complied with regulation 42(18), because articles 4 and 7(3)(a)(i) of the AIE Regulations cannot apply on the facts.
21. In this context, I note that the Department launched its Forestry Licence Viewer (FLV) in 2020 and that documents relating to forestry licensing applications made on or after 11 January 2021 are available on the FLV. Submissions are published as they are received and decision material is published at the time the decision is made. While the available documents post-date the appellant’s request in this appeal, the launch of the FLV is a very encouraging development and one which supports and furthers the objectives of the AIE regime.

## **Analysis and Findings**

### **Issue 1: Reasonableness of the fee charged**



22. Article 15(1)(a) of the AIE Regulations provides that a public authority may charge a fee when it makes available environmental information, provided that such fee shall be reasonable having regard to the AIE Directive. This provision implements Article 5(2) of the AIE Directive, which provides that public authorities may make a charge for supplying any environmental information but such charge shall not exceed a reasonable amount.
23. The Aarhus Guide notes, at p.94, that the Convention embraces the concept that if information is to be truly accessible it must also be affordable.
24. In his [Opinion in case C-217/97 Commission v Germany](#)<sup>1</sup> in relation to Directive 90/313/EEC, the predecessor to the AIE Directive, Advocate General Fennelly, opined that the notion of what is “reasonable” must be interpreted in light of the general scheme and purpose of the Directive. In light of this, “the question of whether the charges for the supply of the information are ‘reasonable’ must be judged from the perspective of the member of the public requesting the information, rather than from that of the public authority” (paragraph 23). His view was that, unlike most other categories of publicly held information, the likely cost will inevitably have a direct bearing on the extent to which the public will use the right of access. He considered that “requiring the individual seeker of information to bear what is effectively the entire cost of processing his request would amount to restricting the enjoyment of the right of access, in practice if not in law, to those who have a direct interest in the information, contrary to the clear exclusion of the need for such an interest” (paragraph 25). In relation to requests for detailed information, Advocate General Fennelly noted that, in many circumstances, it may be that only the provision of detail will contribute to the achievement of environmental protection. He pointed to Article 7 of that Directive, which “appears to indicate that individual requests should, in principle, be on questions of detail” (paragraph 30).
25. In case [C-71/14 East Sussex County Council v Information Commissioner](#) (see, in particular, paragraphs 27-45), the Court of Justice of the European Union found that all of the factors on the basis of which the amount of the charge is calculated must relate to the actual costs of supplying the requested information. This may include the costs attributable to the time spent by the staff of the public authority concerned on answering an individual request for information, including the time spent on searching for the information and putting it in the form required. In addition, the Court found that the expression “reasonable amount” in the AIE Directive does not include any amount that may have a deterrent effect on persons wishing to obtain information or that may restrict their right of access to information. The Court stated: *“In order to assess whether a charge ... has a deterrent effect, account must be taken both of the economic situation of the person requesting the information and of the public interest in protection of the environment. That assessment cannot therefore relate solely to the person’s economic situation, but must also be based on an objective analysis of the amount of the charge. To that extent, the charge must not exceed the financial capacity of the person concerned, nor in any event appear objectively unreasonable.”*

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<sup>1</sup> In case [C-71/14 East Sussex County Council v Information Commissioner](#), the Court confirmed at paragraph 42 that the Court’s case law on Article 5 of Directive 90/313/EEC remains of relevance for the application of Article 5(2) of the AIE Directive. The Court also referred to the judgment of the Court in [C-217/97 Commission v Germany](#).



*Does the amount of the charge calculated reflect the actual costs of supplying the information?*

26. In each case, the Department decided to grant the appellant's request subject to the payment of a fee, namely €300 in the AA determinations appeal and €500 in the environmental monitoring appeal.
27. In the AA determinations appeal, the Department explains that the felling licence system for Coillte CAG is managed through file folders on a shared network and, for data security reasons, is only accessible to users directly involved in Coillte licensing, such as administrative and inspectorate personnel. File folders are used for specific batches, down to an individual file for a referenced licence. All material is held electronically. The staff member who prepared the material collated a list of 865 Coillte CAG licences issued in 2020, including licence applications received from Coillte in 2020 and previous years. Taking a licence reference from the list, the application year and application batch was first determined. Then the staff member navigated through file folders, to that year, the batch and then to the specific licence. The documentation was examined firstly to check if the application was assessed for stage 2 Appropriate Assessment, if that assessment was carried out by the person specified in the request. Then all iterations of the assessment documents were gathered. These documents were copied to another folder and relabelled (for example, licence reference document v1 or as appropriate) to enable onward transmission to the decision maker. When the searches were completed, the material comprised of 595 individual documents. As a result, the Department concluded that the best method by which the material was to be communicated to the applicant was using a cloud service. In light of this explanation and the amount of records concerned (595), I accept that the task of retrieving the information requested might reasonably have taken 15 hours (equivalent to 2 working days) to complete.
28. In the environmental monitoring appeal, the Department explains that it manages its forestry licensing and schemes through its claims/payment system, IFORIS. The system holds all data in relation to forestry licence applications, approvals, applications for forestry schemes, payments, etc. IFORIS can be interrogated by means of a reporting system, or by constructing ad hoc reports for specific requirements. The Department explains that in this case, the query was raised between the business area and IT colleagues. There followed exchanges with system developers to refine the results of the query in order to produce data to satisfy the AIE request. The extracted reports were examined and a further extract of information was carried out to produce data related to another scheme. The data had then to be cleaned and ordered and the figures put together in respect of the inspections. The reports had to be broken down into the different scheme or licence types, payment stages, etc. The data was then examined to verify if an inspection was carried out and if it was a desk or field inspection. Individual inspectors were then contacted and an itemised list of post-licence / application inspections they or their staff had carried out, as this information was not available within the system. The data was then collated by county and licensee (that is Coillte CAG vs. private applicant). The Department explains that its estimate covered the following work by the relevant staff member: analysis of the extracted data; engagement in email exchanges with developers; cleaning up the data; requesting from / liaising with inspectors in relation to non-system data; collating non-system data; and formatting the data into to a suitable report. The estimate did not include the time spent by developers and other IMT personnel, inspection and other administrative personnel. The Department provided my Office with a short schedule of



records, together with the detailed records compiled for the appellant, which I have reviewed. In light of the Department's explanation and the amount of records concerned (11,263), I accept that the task of retrieving the information requested might reasonably have taken 32 hours (equivalent to 4.3 working days) to complete.

29. I also accept that the figure of €20 per hour in each case is a very broad-brush attempt to impose a standard fee aimed at recovering the labour cost to the public authority of searching for, retrieving and copying the relevant information. In each case, the Department submits that the fee of €20 per hour in no way recovers the economic cost to it of preparing the material in this case. To that extent, I am satisfied that the basis on which the amount of charge was calculated in each appeal relates to the actual costs of supplying the requested information.

*Is the fee objectively reasonable?*

30. In respect of both appeals, the Department submits that public authorities must have some possibility of offsetting the cost of preparing the material, particularly where the request is specific and goes far beyond any material that the Department would usually make available. It submits that it is not possible for the Department to speak to the deterrent effect of any such fee on a requester without knowing their personal circumstances. It states that it is not possible for the Department, or indeed any public body subject to AIE, to assess the economic situation of a requester. In respect of each appeal:
- a. In the AA determinations appeal, the Department submits, in respect of the part of the request relating to earlier versions of determinations, that the public is not best served by releasing earlier versions of documents or material in the course of completion, which could lead to material being released that is incomplete or incorrect.
  - b. In the environmental monitoring appeal, the Department submits that the actual cost of retrieval of the information in this case was higher than the fee charged to the appellant, both because estimate did not include the time spent by developers and other personnel, inspection and other administrative personnel and because the Department disregarded €140 of the cost by capping the fee at €500. The Department submits that contracts for maintenance of forestry schemes are private between the Department and the applicant and that the AIE request sought specific information which, given the scale of the work involved, would not reasonably or routinely be made available to the public.
31. In respect of both appeals, the appellant submits that the Department should waive or reduce any fee charged to take account of the financial capacity of individual requesters, which would apply to him as a medical card holder. The appellant states that the Department did not explore the issue of his financial capacity with him, instead dismissing financial capacity as irrelevant to the Department's capacity to charge a fee. Specifically in respect of the AA determinations appeal, the appellant submits that the Department should not be permitted to charge a fee under the AIE Regulations for information which it is required to provide under another statutory provision, in this case regulation 42(18) of the 2011 Regulations. The appellant submits that the cost of provision of access to any such information should have been excluded from the calculation of the ultimate fee for provision.



32. I have concluded that the fee charged by the Department was not reasonable, within the meaning of article 15(1) of the AIE Regulations and Article 5(2) of the AIE Directive, for the following reasons.
33. First, at least some of the information requested in each case is of a kind that one would expect to be published or organised by the Department in a manner that enables its easy dissemination on request, in accordance with the Department's duties under article 5 of the AIE Regulations, which seeks to transpose Article 7 of the AIE Directive. It is not reasonable to charge for the retrieval of information which should have been readily reproducible and accessible in accordance with those provisions.
- a. In the AA determinations appeal, the appellant requested information in relation to the Department's determinations about Appropriate Assessments carried out pursuant to national and EU law. Given the general public interest in monitoring the impact and implementation of environmental provisions under national and EU law, I would expect that final versions of any documents relating to such matters would be either published by the Department or organised and maintained by the Department in a manner that enables their easy dissemination on request. Any time expended by staff in the Department responding to a more specific AIE request could then focus on that which would not usually be disseminated to the public.
  - b. In the environmental monitoring appeal, the appellant requested details of the Forest Service's environmental monitoring for afforestation, forest road approvals and tree felling licences for 2020, to include specified information. Given the general public interest in ensuring that environmental monitoring in the context of forestry is carried out effectively, it is my view that information relating to the general part of the request is of a kind that one would expect to be either published by the Department or organised and maintained by the Department in a manner that enables its easy dissemination on request. Any time expended by staff in the Department responding to a more specific AIE request could then focus on matters of detail which are not so published or maintained.
34. Second, in the AA determinations appeal, it is clear that some of the information requested by the appellant is otherwise required to be made available to the public under regulation 42(18) of the 2011 Regulations. It is not reasonable for the Department to impose a fee under the AIE Regulations for the provision of access to information that ought to have been, but was not, made available to the public under another statutory provision. For that reason, the cost of retrieving any information falling within regulation 42(18) of the 2011 Regulations should have been excluded from the calculation of any fee.
35. Third, I consider that an overall fee of €300 in the AA determinations appeal and €500 in the environmental monitoring appeal would generally, and did in these cases, have a deterrent effect on persons wishing to obtain the information. I have taken into account the following factors in reaching this conclusion.
- a. Advocate General Fennelly's [Opinion in case C-217/97](#) made it clear that overall reasonableness of a fee must be judged from the perspective of members of the public, not public authorities. Drawing on my experience of dealing with members of the public when exercising my statutory functions as Commissioner for Environmental Information,



Information Commissioner and Ombudsman, I consider that the average member of the public would consider both €300 and €500 to be substantial sums of money in the context of the other necessary expenses that members of the public incur on a daily basis. I also note that the fees in dispute in [C-71/14 \*East Sussex County Council v Information Commissioner\*](#) for the supply of information relating to property charges (a total charge of approximately €23) and in the analogous case of [C-216/05 \*Commission v Ireland\*](#), concerning fees for participation in the environmental impact assessment procedure (€20 in procedures before local authorities and €45 in procedures before An Bord Pleanála), were substantially lower than the fees in these cases.

- b. In each of these appeals, the Department failed to give any consideration to the economic situation of the requester. The requester drew the issue of his capacity to pay to the Department's attention when seeking an internal review in each case, but the Department treated this matter as irrelevant in its internal review decision. I do not accept the Department's submission that it is not possible for the Department to take account of a requester's economic situation. Administrative fee structures commonly take the economic situation of members of the public into account in a relatively simple way, without enquiring into the detailed personal circumstances of members of the public. For example, article 15(4) of the AIE Regulations provides that the fee for an appeal to my Office is reduced from €50 to €15 in respect of an appeal by a holder of a medical card or their dependent.
  - c. As set out above, case [C-71/14](#) made it clear that in assessing whether a charge has a deterrent effect, account must be taken of the public interest in protecting the environment. The AIE Regulations, the AIE Directive and the Aarhus Convention are all premised on the principle that access to environmental information is inherently of significant public interest. Recital 1 to the AIE Directive states that "Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment." I consider that provision of access to the information requested in the AA determinations appeal contributes to the broader protection of the environment by facilitating informed public engagement with the Department's implementation of national and EU law requirements relating to Appropriate Assessments. I also consider provision of access to the information requested in the environmental monitoring appeal contributes to the broader protection of the environment by facilitating informed public engagement with the Department's environmental monitoring of afforestation, forest road approvals and tree felling licences.
36. Taking all of the above matters into account, I have concluded that the fees imposed in each of these appeals were not reasonable, within the meaning of the AIE Regulations and the AIE Directive.
37. I have not reached any conclusion as to what the appropriate fee would have been in either case. It is not my function to devise a reasonable fee structure for public authorities. However, I would



remind the Department that any fee it proposes to levy must carefully follow the guidance provided by the courts as to the reasonableness of fees, as summarised above.

#### Issue 2: Publication of the fees charged

38. Article 15(2) of the AIE Regulations provides that where a public authority charges a fee pursuant to sub-article (1), it shall make available to the public a list of fees charged, information on how they are calculated and the circumstances under which they may be waived.
39. The appellant submits that there is a lack of clarity about whether the Department met its duty under article 15(2). While the appellant notes that [the Department's old AIE webpage](#) set out the Department's position on fees, the Department's website has since moved to the gov.ie portal. The appellant could not locate any information about AIE fees or the terms upon which fees may be waived on the Department's gov.ie website.
40. My investigator requested confirmation of what information was available to the public at the time of each of the appellant's request. The Department did not specify in its response which website was live at the relevant time, but the Department submits that the old website clearly sets out the possibility of fees and this information has carried through all updates to these pages on the [Department's current AIE webpage](#).

#### *Conclusions in respect of these appeals*

41. As the information provided in relation to charges is identical on the Department's old and new AIE webpages, I do not consider that it is necessary for me to reach a conclusion as to which webpage was live at the time of the appellant's request. On each AIE webpage, the Department lists its charges as €20 per hour for search, retrieval and copying of records, €0.04 per sheet for photocopying and €10 for provision of a CD Rom. In relation to waiver, the AIE webpage states: "Please note that the fee may be waived where the cost is estimated at less than €100.00. We may also disregard charges if the record contains only personal information."
42. Strictly speaking, this information complies with the obligation under article 15(2) of the AIE Regulations, in that it provides a list of fees charged by way of providing information on how the fees are calculated and it sets out, in brief, the circumstances under which those fees may be waived.
43. However, article 15(2) of the AIE Regulations imposes a duty to publish fees charged "pursuant to sub-article (1)", meaning that the published fees must be reasonable having regard to the AIE Directive. As set out above, I have found that the fees charged in these appeals, which were consistent with those published by the Department, were not reasonable taking into account:
  - a. the nature of the requested information;
  - b. the duties to make some of the requested information available under another statutory provision; and
  - c. the deterrent effect of the fees on persons wishing to obtain the information, taking into account the economic situation of the requester and the public interest in protecting the environment.



44. Accordingly, I find that the Department has not complied with the duty in article 15(2) of the AIE Regulations because the published fees are not reasonable.
45. In relation to the appellant's submission about accessibility of the Department's current AIE webpage, I note that the Department's [homepage on its new website](#) has links on the Corporate section to its webpages on data protection and freedom of information, but not to its webpage on access to environmental information. While the information does exist on the [Department's current AIE webpage](#), one has to conduct a search on the Department's website in order to find that page. I find this to be surprising for a Department which holds a large amount of information relating to the environment. I recommend that the Department provides a clear link to its AIE webpage on its homepage.

### **Decision**

46. Having carried out a review under article 12(5) of the AIE Regulations, I find that:
- a. The fee charged by the Department in each case was not reasonable, within the meaning of article 15(1) of the AIE Regulations; and
  - b. The Department has not complied with the duty in article 15(2) of the AIE Regulations because the published fees are not reasonable.
47. I therefore annul the Department's decision to charge a fee of €300 in the AA determinations appeal and of €500 in the environmental monitoring appeal. I expect the Department to issue a new decision on what fees, if any, it will apply when making the requested information available to the appellant. Any fees charged must comply with the requirements of the AIE Regulations and the AIE Directive.

### **Appeal to the High Court**

48. 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.

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**Peter Tyndall**  
**Commissioner for Environmental Information**  
1st October 2021