



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-123925-X2D2B1

Date of decision: 30 November 2022

Appellant: Ms. T

Public Authority: Galway County Council (the Council)

Issue: Whether the Council's search for relevant environmental information was adequate.

Summary of Commissioner's Decision: The Commissioner found that the Council's search for information was adequate. He found that the Council provided the appellant with the requested information within the scope of the request. Accordingly, the Commissioner affirmed the Council's decision.

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 appeal arises from a request for environmental information held by the Council regarding applications submitted by Udaras na Gaeltachta for licences to discharge trade or sewage effluent to waters.
2. On 1 February 2022, the appellant made a request to the Council under the AIE Regulations for a complete copy of i) all completed Applications, as well as all renewal applications, and ii) all Licenses approved or refused in respect of a list of named sites.
3. The Council responded by email on 4 March 2022 and granted access to a number of records. The records, along with a schedule were provided to the appellant via a link through which she could download the records.
4. On 3 April 2022, the appellant wrote to the Council requesting a complete review of the original decision.
5. The appellant appealed to this Office on 24 May 2022 as she had not received the internal review decision. This Office wrote to the Council asking for a copy of the decision making records.
6. On 7 June 2022, the Council issued a new decision to the appellant, where it varied the original decision and released additional records.
7. On 16 June 2022, this Office wrote to the appellant and asked whether she was satisfied with the Council's new decision. The appellant responded on 23 June 2022 and requested that my Office continue with the review.
8. I am directed by the Commissioner for Environmental Information to carry out a review of this appeal. I have now completed this review under article 12(5) of the Regulations. In so doing, I have had regard to the submissions made by the appellant. 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').

Scope of Review

9. In accordance with article 12(5) of the AIE Regulations, the Commissioner's role is to review the public authority's internal review decision and to affirm, annul or vary it.
10. The appellant contends that the Council should hold further information in relation to her request, which has not been released to her; in particular, the appellant believes that maps containing relevant



location information should have been provided to her. The scope of this review is confined to whether the Council's search for information was reasonable.

Analysis and Findings

11. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned. In cases where a public authority has effectively refused a request under article 7(5), this Office must be satisfied that adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply. It is not normally this Office's function to search for environmental information.
12. The appellant's submission to this Office can be summarised as follows:
 - Applications or renewal forms for the applications relating to discharge/leaking licences were not provided for a number of estates.
 - Some licences were unsigned and were received without any explanation about this.
 - The information provided was incomplete and excluded maps, diagrams or appendices.
13. This Office's investigator communicated the appellant's assertions to the Council for comment on 10 August 2022, alongside further questions on the searches that the Council had carried out in order to locate the relevant information.
14. In its response, the Council provided an explanation on the unsigned licences. It issued the appellant with copies of the original signed licences. It also provided this Office with a copy of their retention policy and went into detail about the searches it carried out for further information as per the appellant's request.
15. This Office's investigator provided the appellant with details of the Council's response, which I do not propose to repeat in full here. The first matter was that it appeared there might have been an issue downloading the information from the shared link. The Council agreed to resend this information and confirmed that it would print and post these to the appellant. The Council also provided an explanation for the three licences which were missing information, and provided the appellant with the signed versions of these.
16. This Office contacted the appellant shortly after she received the additional information from the Council, at which point the appellant confirmed that she was not satisfied with the Council's position. While the Council had provided the information she had requested, the appellant stated that the Council had failed to provide maps for the applications. The appellant required access to the maps to pinpoint locations where spills will occur.



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17. In this regard, the Council's AIE officer confirmed that the scope of the request was confined to applications and licences only. The Council also said that the appellant never specified that she was seeking access to maps, which would involve considerable further work to be carried out.
18. It appears to me that the appellant's original request was sufficiently clear and detailed in scope. The Council provided the appellant with applications and licences, as per that request. From my review of the records that were released to the appellant, I understand that maps and location information sometimes forms part of the wider application or licence file held by the Council. However, maps are not necessarily a constituent part of either process.
19. While it would have been preferable for all information and clarifications to have been provided prior to the appeal process before this Office, I am satisfied that, overall, the Council took reasonable steps to locate relevant information. I am also of the view that it was reasonable for the Council to confine its response to the categories of information specified in the request, which did not include maps. It is open to the appellant to submit a new request for further environmental information, in addition to the records she has received on foot of the request at issue here.
20. Taking all of the above into account, including the clarifications provided during the review process, it is my view that the Council has demonstrated that it carried out sufficient searches for the requested environmental information and, on behalf of the Commissioner for Environmental Information, I affirm the Council's decision.

Decision

21. Having carried out a review under article 12(5) of the AIE Regulations, on behalf of the Commissioner for Environmental Information, I find that the Council carried out adequate searches on the appellant's request. I therefore affirm the Council's decision.

Appeal to the High Court

22. 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.

Deirdre McGoldrick
on behalf of the Commissioner for Environmental Information
30 November 2022