



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-107723-Z8B0J8

**Date of decision:** 13 December 2021

**Appellant:** Ms T

**Public Authority:** Wicklow County Council (the Council)

**Issue:** Whether the Council was justified in refusing access to environmental information relating to 5G, or Wi-Fi or Wireless RF/EMF on the basis that no such environmental information is held by or for it.

**Summary of Commissioner's Decision:** The Commissioner found that it was reasonable to conclude that no relevant environmental information was held by or for the Council following adequate searches and thus, article 7(5) of the AIE regulations applied.

**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 24 March 2021, the appellant, through her representatives, requested the following from the Council:
  1. All documentation relating to any environmental impact assessments carried out by Wicklow County Council in the County of Wicklow relating to the effect of 5G, Wi-Fi, wireless radio frequency/electromagnetic frequencies including its impact on bees, birds and all wildlife, flora and fauna.
  2. All documentation relating to any human biological impact assessment/studies carried out by Wicklow County Council or on their behalf concerning the County of Wicklow relating to the effect of 5G, Wi-Fi, wireless RS/EMF radiation including its impact on children, the elderly and hypersensitive persons.
  3. All documentation relating to any EU grant applications made by or sought by Wicklow County Council relating to 5G, or Wi-Fi or Wireless RS/EMF.
  4. All documentation relating to all or any health complaints made to Wicklow County Council relating to 5G, or Wi-Fi or wireless RF/EMF.
2. On 14 April 2021, the Council refused the request. It stated that the request was the exact same as a previous AIE request (AIE 2020.14) and that its position had not changed since it refused the previous request. It stated that it did not hold any of the information sought.
3. On 16 April 2021, the appellant sought an internal review of the Council's decision.
4. On 10 May 2021, the Council issued its internal review decision, wherein it affirmed its original decision.
5. The appellant brought this appeal to my Office on 17 May 2021. During the course of this review, my Investigator sought details from the Council as to the searches conducted for information falling within the scope of the appellant's request. A summary of those submissions was provided to the appellant and she was provided an opportunity to comment. The appellant in response made no comment, other than to say she wished for the appeal to proceed to a decision.
6. I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the correspondence between the appellant and the Council as set out above and to the communications between this Office and both the Council and the appellant on the matter. 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**

7. In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decision and to affirm, annul or vary it. Where appropriate in the circumstances of an appeal, I will require the public authority to make available environmental information to the appellant.
8. The scope of this review is concerned solely with whether the Council was justified in refusing access to environmental information relating to 5G, or Wi-Fi or Wireless RF/EMF on the basis that no such environmental information is held by or for it.

### **Analysis and Findings**

9. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned. My approach to dealing with cases where a public authority has effectively refused a request under article 7(5) is that I must be satisfied that adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, I consider that a standard of reasonableness must necessarily apply. It is not normally my function to search for environmental information.
10. In its submissions to this Office, the Council provided details of its procedures in commissioning the types of studies and assessments about which the appellant sought information, its procedures in filing health complaints and applying for EU grants. The Council also provided details of the searches conducted in response to the appellant's request. As my



Office has already provided the appellant with those details, I do not propose to repeat them in full here.

11. In short, the Council stated that although the request was identical to the previous AIE request (AIE 2020.14), it conducted searches in response to this request to ensure any records created after the date of the earlier request and up to the date of the current request would be captured.
12. The Council explained that the type of information sought by the appellant would be easily identifiable, should it exist. It stated that applying for EU grants and commissioning environmental impact assessments or studies on the effects of 5G, Wi-Fi, wireless RS/EMF radiation would generate a wealth of documentation in the process of applying for or commissioning such grants or studies.
13. The Council stated that its activities are set out in statute, and that therefore its actions in applying for grants or commissioning studies would be triggered by an Act or the resultant Regulation of such an Act or a Circular from a government department. It explained that such activities would be addressed through its budget process and would be an item in its annual budget. The Council further stated that such activities would likely attract public and political interest and would be discussed at either Council or Strategic Policy Committee (SPC) level before and after such studies or applications, which would generate further documentation.
14. The Council stated that, in response to request AIE 2020.14, it conducted searches in the following areas: Five Municipal Districts; Climate Adaptation; Corporate Affairs; Laboratory; and Planning and Environment. In response to the current request, it stated that these areas were searched again for documents created up to the date of the request. The Council stated that it also searched the following additional areas: Roads; Community, Cultural and Social Development; and the IT/Broadband Officer.
15. The Council explained that it searched electronic folders and files using specific key words. It also stated that it interrogated the minutes of Council meetings and the Planning & Environment SPC and Climate Action SPC. It stated that it verbally canvassed relevant staff to see if they were aware of any relevant records. None of these steps revealed the existence of any such records.
16. In relation to EU grant applications, the Council explained that it searched its financial management system and nothing was found. It stated that any funding would be included in the previous year's budget and would appear in that year's Annual Financial Statement as a statement of account. The Council further explained that records relating to EU grant applications would not exist in circumstances where the Council had not carried out work to



justify the application for such a grant. It said that no EU grant applications would exist in circumstances where, for example, the Council commissioned no reports on the effects of 5G on the health of humans or wildlife and carried out no investigations where it might have its expenses met by means of EU grant.

17. In relation to health complaints, the Council explained that the Environment Section holds files created by the environmental complaints system which was once called e-direct and is now called the CRM. The Council stated that it searched its complaints system using the same key words used in response to the rest of the request. It explained that it limited its search of complaints to the prior five years as the earliest recorded mention of 5G in the Council's records dates to October 2019. The Council stated that no records were recovered in these searches. The Council explained that this was not unexpected as it stated that it was not the body with remit over such complaints.
18. By way of explanation as to why it does not hold records falling under the scope of the request, the Council referred to the minutes of a Council meeting on 7 October 2019, where a notice of motion was put forward regarding the harmful effects of 5G and EMFs and the Draft Digital Strategy 2019 -2024 was presented. The Council suggested that from this meeting, it was clear that the question of the harmful effects of 5G, Wi-Fi and electromagnetic fields did not form part of the Council's Digital Strategy. The Council stated that it was clear that it had no statutory powers and no role in creating policy in this area, nor did it have a regulatory or enforcement role. The Council stated that this position makes the possibility of the Council commissioning studies or tackling complaints in this area very unlikely.
19. The general thrust of the Council's position is that it holds no relevant environmental information. Having considered the details of the searches and the explanations given by the Council, as set out above, I am satisfied that the Council has taken adequate steps to identify and locate all relevant environmental information held by it. As such, I find that article 7(5) of the AIE Regulations applies.

### **Decision**

20. Having carried out a review under article 12(5) of the AIE Regulations, I hereby affirm the Council's decision to refuse access to relevant environmental information relating to 5G, or Wi-Fi or Wireless RF/EMF under article 7(5) of the AIE Regulations.



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

21. 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**  
13 December 2021