



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-107642-Y3F7P3

**Date of decision:** 18 August 2022

**Appellant:** Ms. W

**Public Authority:** Dún Laoghaire Rathdown County Council [the Council]

**Issue:** Whether the Council was justified in refusing the appellant's request under article 7(5) and in redacting certain information from the records provided.

**Summary of Commissioner's Decision:** The Commissioner found that the Council was justified in refusing the request for an engineer's report relating to the commercial units and for refusing the request for further information on the report relating to the shop under Article 7(5) of the AIE Regulations. The Council was not justified in redacting certain information from the records provided.

**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 arose from a noise complaint relating to commercial units adjoining the appellant's property. The appellant originally requested an engineer's report relating to the commercial units from the Council on 26 February 2021. The appellant sought this particular report on the basis of an email sent to her from an Environmental Health Officer (EHO), who had been dealing with the case. The EHO's email stated that her office was awaiting engineer's reports. The appellant had initially requested this report from the HSE under the AIE Regulations, but had been informed that the information requested was not held by the HSE. The decision-maker dealing with the HSE request recommended that the appellant contact the Council.
2. The Council purported to "part grant" the request by providing the appellant with a partially redacted copy of a report pertaining to a local shop. The Council also provided the appellant with a letter from an Environmental Health Officer. The decision from the Council was extremely brief and did not explain to the appellant why she was not being provided with the information actually sought, but being given a report relating to a different location instead. The decision did not make any reference to the provisions of the AIE Regulations.
3. The appellant's solicitors sought an internal review on 19 of March 2021. The internal review decision stated that the Environmental Health Office did not hold a report regarding the commercial units but did provide the appellant at this stage with an email received from the property manager of the local commercial units, and two reports relating to a local café. The Council affirmed the decision to redact information from the records previously provided, and it also redacted personal information from the documents provided to the appellant at this stage. The internal review decision did not make any reference to the provisions of the AIE Regulations.
4. I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the Council.
5. In addition, I have had regard to:
  - the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister's Guidance);
  - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
  - the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
  - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide').



6. What follows does not comment or make findings on each and every argument advanced by all relevant points have been considered.

### **Scope of Review**

7. In accordance with article 12(5) of the AIE Regulations, my role is to review the Council'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 appellant contends that the Council should hold further information in relation to her request, in particular the report in relation to the commercial units, as well as further details regarding the report from the shop. The Council states that it does not hold any such report. While not referred to by either party, the relevant provision of the AIE Regulations in this situation is article 7(5), as detailed below. The first part of my review is whether the Council was justified in refusing this part of the request under article 7(5) of the AIE Regulations.
9. The second part of my review concerns whether the Council is justified in redacting certain information from the documents provided to the appellant under the provisions of the AIE Regulations.

### **Analysis and Findings**

#### **Whether the Council holds further information relevant to the request**

10. Article 7(5) of the AIE Regulations is the relevant provision of the Regulations when a request is refused on the grounds that a public authority does not hold the information sought. It is unfortunate that the Council did not reference this provision in either of its decisions, as it would have made the reasons for the decision clearer for the appellant. This provision states:

*"7(5) Where a request is made to a public authority and the information requested is not held by or for the authority concerned, that authority shall inform the applicant as soon as possible that the information is not held by or for it."*

11. 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 records, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply.
12. My investigator wrote to the Council seeking further information on its records management practise, the steps it took to search for the information relevant to the request and information on the manner in which noise complaints are investigated. In response, the Council set out as follows:



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- a. Noise complaints are investigated by the Environmental Health Service which is not part of the Council. The Environmental Health Officers are not employees of the Council.
  - b. The Council states that the investigation of noise complaints is “completely outsourced” and it has no oversight over how EHOs carry out their investigations, and is only concerned with the final report, which is provided to it by the Environmental Health Service. The Council also has no access to any supporting material gathered by an EHO as part of their investigation or any internal correspondence between an EHO and a party involved, unless that is specifically shared with the Council. Based on this, the Council states it cannot comment on the email provided by the appellant from an EHO stating that engineers’ reports were awaited.
  - c. Searches were carried out in the Council’s email archiving system for the period 1 January 2020 to 31 March 2022. The searches were based on relevant keywords with a separate search conducted for each term. No unreleased information was identified. The Council states that it is not possible for emails to be deleted from this system and the retention period is nine years.
  - d. The Council uses a CRM system to log customer engagements and related documents. Similar searches were carried out on this system and no unreleased information was identified.
  - e. The Council’s document and record management system was also searched, and no report or other unreleased information was located.
13. Having viewed the records released to the appellant, I note in particular the letter from the EHO dated 23 July 2020. This letter refers to reports received from the local shop, café and to *written confirmation* received from the management company of the commercial units. This written confirmation was in the form of an email, which was also released to the appellant. Having referred to those three documents, the letter states that the investigation has been concluded and the complaint closed. I find that it is reasonable to infer from this letter that the EHO did not have sight of any engineer’s report relating to the commercial units during her investigation, or it would have been referenced in this letter.
14. I also note that the email to the appellant dated 8 July 2020 which is referenced in her request and again in her appeal states that the Environmental Health Office was “awaiting engineer’s reports”. It is from this email that the appellant appears to surmise that a report relating to the commercial units should be held by or on behalf of the Council. However, I note that this email does not specify the type of engineer’s report that was being awaited, and is from an employee who had left the office that was carrying out the investigation. It is possible that the EHO was mistaken, or that the approach to the investigation changed after she left the office. It is possible that a report was requested, but that the email received from the management company of the commercial units was then deemed sufficient. I therefore do not find that the email dated 8 July 2020 is conclusive evidence that a report regarding the commercial units is held by or on behalf of the Council.
15. The appeal also seeks further information in relation to the report which was released to her relating to the local shop, namely the details of the noise source that was measured, the locations of the person holding the phone at the material times and the date on which the assessment took place. The copy of the record provided to the appellant is a scanned copy of the report in which the date is partially



obscured. The Council states that it cannot provide these details as the record it holds does not contain the information requested, and that the only information the Council hold is the unredacted copy of the report which has been provided to the appellant. The Council states that this is the form in which the report was received by them. The Council has set out that the manner in which an EHO carries out an investigation is not under its remit or control. The engineers report was carried out by a third party. Considering the information provided by the Council above, I am satisfied that this is a reasonable explanation as to why the Council cannot provide the information sought by the appellant. Should the appellant have further queries regarding this report, those would appear to be a matter for the Environmental Health Office that dealt with the noise complaint at investigation stage.

16. Based on the above, I find that the Council took reasonable steps to identify documents relevant to the requests and were justified in refusing the request under article 7(5) of the AIE Regulations. It would, however, have been preferable if the Council had provided some or all of the information above to the appellant at the decision stage or internal review stage in order to provide clarity as to why the Council did not hold that report or further information sought by the appellant. Many cases that my Office deals with are the result of a lack of communication on the part of a public authority when it makes a decision that affects an individual, and I would encourage public authorities to make every effort to communicate the reasons for their decisions to individuals in a clear and comprehensible manner.

**Whether the Council were justified in withholding certain information from the documents provided to the appellant**

17. Article 8 (a)(i) is the relevant article of the AIE Regulations providing for the non-disclosure of personal information in certain circumstances. This provision states:

*“8. A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information— (a) would adversely affect— (i) the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law”.*

18. It is the practise of this Office that in appropriate circumstances, third parties who may potentially be affected by disclosure of information be contacted in advance of any release of information and be given an opportunity to make submissions regarding the disclosure of information. I have examined the records provided to the appellant from which the Council chose to redact certain names. The first is the engineers report relating to the local shop. The Council redacted the name of the person who provided the engineer with the details relating to the shop, and also the signature of the engineer. The second is an email from an employee of the management company of the commercial units, confirming certain details relating to fans on the roof of the commercial unit. The Council redacted the name of the employee, while leaving the job title and name of the company visible to the appellant.



19. The records at issue here are of a technical nature and were submitted to the Council in the context of this noise complaint. The individuals named were acting in a professional capacity or in the course of business when providing these records and the information contained therein to the Council. The appellant has already been provided with the substance of the records, which appear to be favourable to the businesses involved, as the contents were considered sufficient for the EHO to close the noise complaint. I do not consider there to be any potentially adverse impact for the named individuals that justifies the redaction of their names from these records. Further, the Council has not identified any such adverse effect in its submissions to this Office. On this basis, I find that the appellant is entitled to unredacted copies of the records in question.

### **Decision**

20. Having carried out a review under article 12(5) of the AIE Regulations, I vary the decision of the Council as follows: that the Council was justified in refusing the request for a report regarding the commercial units and for further details relating to the report regarding the shop under article 7(5) of the AIE Regulations. The Council was not justified in redacting names from the records provided to the appellant under the AIE Regulations. I direct release of the relevant unredacted records.

### **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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**Ger Deering**

**Commissioner for Environmental Information**

**18 August 2022**