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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-101481-F8W5X3

**Date of decision:** 29 August 2022

**Appellant:** Ms X

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

**Issue:** Whether the Council was justified, under articles 9(2)(a) and 9(2)(b) of the AIE Regulations, in refusing access to information relating to the cutting back and/or removal of roadside trees and hedgerows coming within the scope of the appellant's revised request.

**Summary of Commissioner's Decision:** The Commissioner annulled the Council's decision. He directed the Council to undertake a fresh decision making process in respect of the appellant's revised request.

**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 13 August 2020, the appellant submitted a 32-part request to the Council seeking access to information relating to the cutting back and/or removal of roadside trees and hedgerows for the period 1 January 2018 to the date of the request, including, but not limited to, the information listed (see Appendix 1). On the same day, the Council emailed the appellant in respect of a separate 47-part request, which she had submitted on 24 July 2020, indicating that due to its scale that request might need to be revised. The Council also referred to article 9(2)(a) of the AIE Regulations, outlining that the provision provides that a public authority may refuse to make environmental information available where the request is manifestly unreasonable having regard to the volume or range of information sought.
2. On 14 August 2020, the appellant responded, noting that she had initially taken the Council's email to relate to her 32-part request dated 13 August 2020 and, accordingly, she had revised that request (see Appendix 2). In respect of parts 22, 23, 24, and 29, she outlined that rather than seeking all documentation in respect of those parts, she was only seeking one sample of each and in respect of part 21, the total amount per calendar year for each category sought would be satisfactory. In addition, she provided clarification in respect of minor typographical errors relating to parts 21 and 30. She also stated that she wished to include a reference to parts 21 and 24 within part 25 and a reference to part 30 within part 31, and to add a part 33, seeking access to communications that the Council sent to landowners regarding part 32. The period for the information sought indicated on her revised request was from 1 January 2019. On the same day, the Council emailed the appellant referring again to the request submitted on 24 July 2020 and seeking an extension under article 7(2)(b) of the AIE Regulations.
3. The Council did not issue a decision within the required timeframe, so the appellant sought an internal review of the deemed refusal of her revised request on 16 October 2020. On 2 November 2020, the Council issued its internal review decision, wherein it refused the appellant's revised request under article 9(2)(a) of the AIE Regulations. The appellant and the Council subsequently engaged in further correspondence regarding the outcome of the decision and, in the course of that correspondence, the appellant indicated that she would be satisfied with information from 1 January 2019 to 15 December 2020. It is important to note that a review by my Office does not extend to records created after the date of the appellant's revised request i.e. 14 August 2020.
4. The appellant appealed to my Office on 15 December 2020 and made further submissions on 12 January 2021. She set out her view that article 9(2)(a) of the AIE Regulations does not apply and also indicated that she had made a number of further typographical errors in relation to parts 19, 25, and 31 of her request. In correspondence with my Office, the Council confirmed that those typographical errors had been evident to it when considering the appellant's revised request, and therefore did not make a difference to the Council's consideration of the request.
5. 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 Council and the appellant as outlined above and to correspondence between my 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);



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- 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 but 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 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 confined to whether the Council was justified, under articles 9(2)(a) and 9(2)(b) of the AIE Regulations, in refusing access to information relating to the cutting back and/or removal of roadside trees and hedgerows coming within the scope of the appellant's 33-part revised request.

### **Preliminary Matter**

9. A review by my Office is considered to be de novo, which means that it is based on the circumstances and the law at the time of my decision. Accordingly, I consider it appropriate to examine the applicability of the additional exemption cited by the Council in its submissions to my Office, notwithstanding the fact that the provision was not originally relied upon by the Council in its internal review decision.

### **Analysis and Findings**

10. The Council, in its internal review decision, refused access to the information coming within the scope of the appellant's revised request under article 9(2)(a) of the AIE Regulations. In its submissions to my Office, it indicated that it was also relying on article 9(2)(b) of the AIE Regulations in refusing access. In the circumstances of this case, I consider it appropriate to first consider article 9(2)(b), before going on to consider article 9(2)(a) of the AIE Regulations.

### **Article 9(2)(b) of the AIE Regulations**

11. Article 9(2)(b) of the AIE Regulations provides that a public authority may refuse to make environmental information available where the request remains formulated in too general a manner, taking into account article 7(8). Article 9(2)(b) seeks to transpose Article 4(1)(c) of the AIE Directive, which provides that Member States may provide for a request for environmental information to be refused if the request is formulated in too general a manner, taking into account Article 3(3), and, in turn, is based on part of Article 4(3)(b) of the Aarhus Convention. Article 9(2)(b) must be read alongside article 10 of the AIE



Regulations, which provides for certain limitations on the ability of a public authority to refuse environmental information.

12. As indicated, article 9(2)(b) of the AIE Regulations and Article 4(1)(c) of the AIE Directive respectively require that article 7(8) of the AIE Regulations and Article 3(3) of the AIE Directive be taken into account. Article 7(8) of the AIE Regulations provides that where a request is made by the applicant in too general a manner, the public authority shall, as soon as possible and at the latest within one month of receipt of the request, invite the applicant to make a more specific request and offer assistance to the applicant in the preparation of such a request. Article 3(3) of the AIE Directive provides that if a request is formulated in too general a manner, the public authority shall as soon as possible, and at the latest within one month, ask the applicant to specify the request and shall assist the applicant in doing so e.g. by providing information on the use of public registers.
13. During the course of this review, my Office asked the Council to point to evidence which demonstrated that it had complied with article 7(8) of the AIE Regulations in respect of the appellant's request dated 13 August 2020 (i.e. where it had invited the appellant to make a more specific request and offered to assist / assisted the appellant in the preparation of such a request). In its submissions, the Council indicated that it had asked the appellant to refine her August request, however rather than providing evidence to that effect, it stated that there had been overlapping correspondence with the appellant in respect of both her July and August requests.
14. Having examined the correspondence between the Council and the appellant provided to my Office, I note an email from the Council to the appellant dated 13 August 2020, which refers specifically to the request dated 24 July 2020 and indicates that due to its scale that request may need to be revised. The body of the email in question does not refer to the request dated 13 August 2020, offer assistance / assist in refining that request, or refer to either article 7(8) or article 9(2)(b) of the AIE Regulations. Indeed, no piece of correspondence, prior to the Council's decision, which contains those details was provided to my Office.
15. Accordingly, and notwithstanding that the appellant may have understood the email from the Council dated 13 August 2020 to concern the request dated 13 August 2020, I am satisfied that the Council did not comply with article 7(8) of the AIE Regulations in respect of that request. I find, therefore, that it was not justified in its decision to refuse the appellant's revised request under article 9(2)(b) of the AIE Regulations.

#### **Article 9(2)(a) of the AIE Regulations**

16. Article 9(2)(a) of the AIE Regulations provides that a public authority may refuse to make environmental information available where the request is manifestly unreasonable having regard to the volume or range of information sought. This provision seeks to transpose Article 4(1)(b) of the AIE Directive, which provides that Member States may provide for a request for environmental information to be refused if the request is manifestly unreasonable, and, in turn, is based on part of Article 4(3)(b) of the Aarhus Convention.



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17. The European Commission's [First Proposal for the AIE Directive](#) envisaged that the exception in Article 4(1)(b) would cover requests "variously described in national legal systems as vexatious or amounting to an *abus de droit*." It noted that "compliance with certain requests could involve the public authority in disproportionate cost or effort or would obstruct or significantly interfere with the normal course of its activities. Authorities should be able to refuse access in such cases in order to ensure their proper functioning." The Aarhus Convention Compliance Committee (ACCC) has emphasised that "whether or not a request is manifestly unreasonable relates to the nature of the request itself, for example, its volume, vagueness, complexity or repetitive nature, rather than the reason for the request, which is not required to be stated." (Report adopted on request for advice by Belarus, [ACCC/A/2014/1](#), paragraph 28).
18. In respect of a request which is voluminous or wide-ranging, within the meaning of article 9(2)(a) of the AIE Regulations, it is clear that more than simple volume or complexity is required. Both article 7(2)(b) of the AIE Regulations and Article 3(2)(b) of the AIE Directive specifically envisage that public authorities will deal with voluminous or complex requests, albeit in a longer timeframe. In this respect, I note the findings of the Court of Justice of the European Union in the analogous case of [T-2/03 Verein für Konsumenteninformation v. Commission](#), at paragraphs 108-110. I also acknowledge the guidance at page 84 of the Aarhus Guide. I further note the parallel duty in Article 7(1) of the AIE Directive to ensure that public authorities organise environmental information with a view to its active and systematic dissemination to the public, and article 5 of the AIE Regulations which seeks to implement that provision. In his Opinion in [C-217/97 Commission v Germany](#) at paragraph 30, Advocate General Fennelly stated that the duty in Article 7 of the AIE Directive indicates that individual requests should, in principle, be on matters of detail. As such, the fact that a request is detailed does not mean that it is necessarily unreasonable.
19. When considering whether a request is manifestly unreasonable, it is necessary to examine the impact on the public authority of dealing with the request. In particular, I must examine whether responding to the request would involve the public authority in disproportionate cost or effort or would obstruct or significantly interfere with the normal course of its activities. In light of the findings of the Court of Justice of the European Union in [T-2/03 Verein für Konsumenteninformation v. Commission](#), at paragraphs 101-115, I consider that the exception in article 9(2)(a) is only available where the administrative burden entailed by dealing with the request is particularly heavy. Although that case dealt with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, as indicted above, the findings of the Court are relevant in the context of article 9(2)(a) of the AIE Regulations. I draw particular attention to the following:

"As regards the amount of work entailed in processing a request for access, Regulation No 1049/2001 expressly envisages the possibility that a request for access may relate to a very large number of documents, since Articles 7(3) and 8(2) provide that the time-limits for processing initial requests and confirmatory requests may be extended in exceptional cases such as, for example, in the event of an application relating to a very long document or to a very large number of documents." (paragraph 110)



“...it is only in exceptional cases and only where the administrative burden entailed by a concrete, individual examination of the documents proves to be particularly heavy, thereby exceeding the limits of what may reasonably be required, that a derogation from that obligation to examine the documents may be permissible....” (paragraph 112)

“...in so far as the right of access to documents held by the institutions constitutes an approach to be adopted in principle, it is with the institution relying on an exception related to the unreasonableness of the task entailed by the request that the burden of proof of the scale of that task rests.” (paragraph 113)

20. It is clear that the responsibility is on the public authority to demonstrate that the task entailed by the request is unreasonable. I expect that if a public authority wishes to rely on the manifestly unreasonable nature of a request, that public authority will clearly demonstrate the actual and specific impact that dealing with the request would have on its normal activities.
21. In its submissions to this Office, the Council outlined its view that while the appellant had made amendments to her original request, the work required to process her revised request remained significant. It stated that, given the multi-part nature of the request, information is held electronically (in folders, databases / internal drives, and email inboxes) and physically (in paper files, including notebooks, diaries, and paper-based correspondence) across a number of sections: the Roads and Transportation Department, five Municipal District Offices (Tralee, Killarney, Listowel, Castleisland-Corca Dhuibhne, and Kenmare), the Corporate Services Department, the Finance Department, the Insurance Unit, the Chief Executive’s Office, and the Community Department.
22. The Council outlined that for the vast majority of the parts of the revised request, searches would, at a minimum, need to be carried out in the Roads and Transportation Department and the five Municipal District Offices. It further explained that complaints, queries, and representations are submitted to the Chief Executive’s Office, the Corporate Services Department, and the Community Department, that financial records are held by the Finance Department, the five Municipal District Offices and/or the Roads and Transportation Department, and records regarding insurance claims are held by the Insurance Unit.
23. The Council also provided detail relating to the numbers of staff working in the relevant sections, outlining that the Roads and Transportation Department has 50 administrative staff and 50 outdoor staff (including engineers, foremen, and general operatives), the Municipal District Offices (apart from Kenmare, for which no detail was provided) have at least 20 administrative staff and 20 outdoor staff (including engineers, foremen, and, I understand, excluding general operatives), the Corporate Services Department has 30 staff, the Finance Department has 50 staff, the Chief Executive’s Office has 2 staff, and the Community Department has 30 staff. The Council noted that, given that the administrative staff in most of the offices, particularly in the Municipal District Offices, carry out general administrative duties, and are not confined to one particular area of work, a search of most staff members’ records would be required.



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24. The Council stated that the five Municipal District Offices are responsible for a number of services, including counter-based services. It contended that these offices have a small number of staff and, given the broad nature of the request, it would be a significant disruption to everyday work for staff to carry out the search and retrieval required. The Council explained that for a previous multi-part request submitted by the appellant, concerning a similar topic but limited to a single urban area in the county, three staff members carrying out search and retrieval of electronic and paper records for an estimated combined total of 50 hours were required. It stated that this resulted in disruption to everyday work. It noted that, similarly, in other sections such as the Finance Department, the Insurance Unit, and the Roads and Transportation Department, the volume of records captured by the revised request, would require a number of staff a number of days to retrieve the records sought, giving rise to a significant disruption to everyday work.
25. The Council went on to outline the following in respect of specific parts of the appellant's revised request:
- In respect of part 1, the Council indicated that it understood the appellant to be seeking records covering a three-year period from 2018 and stated that on an annual basis it sends approximately 6,000 hedge cutting notices, followed by approximately 2,800 reminders and further follow-up correspondence. The Council noted that each piece of correspondence retrieved would need to be examined and considered for release.
  - In respect of part 2, the Council noted that it would have to carry out searches regarding the 6,000 landowners to whom hedge cutting notices are sent annually, both in physical and electronic form, held in the five Municipal District Offices (and any sub-offices), as well as the Roads and Transportation Department. The Council noted that each piece of correspondence would need to be examined and considered for release.
  - In respect of parts 3, 4, and 15, the Council stated that it would have to carry out electronic and physical searches of meeting records, communications, and diary entries. It stated that this would include the five Municipal District Offices and records held by outdoor staff, including enforcement officers, engineers, foremen, and general operatives.
  - In respect of parts 5, 6, 22, 23, 24, 25, 26, 27, 30, 31, and 32, the Council stated that it would have to carry out searches in the five Municipal District Offices (and any sub-offices) and the Roads and Transportation Document.
  - In respect of parts 7, 8, 12, and 13, the Council stated that it would have to carry out electronic and physical searches in the Roads and Transportation Department.
  - In respect of parts 9, 10, and 11, the Council stated that it would have to carry out electronic and physical searches for reports of inspections, complaints, and concerns raised by members of the public, landowners, elected representatives, and Council staff in the 5 Municipal District Offices (and any sub-offices) and the Roads and Transportation Office.
  - In respect of part 14, the Council stated that it utilises the services of external specialists with the appropriate qualifications.



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- In respect of part 16, the Council stated that a copy of the Tralee Municipal District Tree Policy had been supplied to the appellant and that it is proposed to adopt similar policies for each Municipal District.
- In respect of part 17, the Council stated that it is not aware that such a record exists.
- In respect of parts 18 and 19, the Council stated that it would have to carry out searches of all records in the Insurance Unit regarding claims made against the Council in relation to relevant matters. It stated that the Insurance Unit consists of 3 staff members who deal with a significant volume of work and the search would take a considerable period of time. It also noted that, while claims are grouped in general categories, there is no category for tree or hedge-related incidents and a manual search of claims would be required in order to determine were relevant.
- In respect of part 20, the Council stated that it would have to carry out searches for reports of inspections, complaints, concerns, and subsequent actions taken by the Council in the five Municipal District Offices (and any sub-offices) and the Roads and Transportation Department.
- In respect of part 21, the Council stated that the information sought would not necessarily be filed on its financial system in the manner suggested by the appellant. It noted that in many instances such information would be filed under general roads maintenance works and it would be necessary to manually search the records to determine relevant payments.
- In respect of part 28, the Council stated that any such information would be contained in legislation relating to the particular sector.
- In respect of part 29, the Council stated that any such information would be available on its website.

26. I accept that the Council provided my Office with specific detail regarding the volume and range of information sought and the work required to process certain parts of the appellant's request (e.g. parts 1 and 2). However, the detail provided in respect of the vast majority of parts of the request was general and at a high-level. The Council provided no particular detail regarding the nature and/or number of records covered by each part (or parts which may be intrinsically linked), how/where those records are specifically stored, the steps necessary to search for, identify, locate, retrieve and examine those records, and the length of time and the specific number of personnel in each section required carry out searches and examine any records located. I also note that in respect of parts 14, 16, and 17 the Council, in essence, indicated its position that no relevant records / further relevant records exist and in respect of parts 28 and 29, indicated its position that the information sought may be in the public domain. However, it provided no further detail regarding how such information could be identified and accessed.

27. Article 9(2)(a) must also be read alongside article 10 of the AIE Regulations, which, as indicated above, provides for certain limitations on the ability of a public authority to refuse environmental information. Article 10(3) of the AIE Regulations requires a public authority to consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal and article



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10(4) of the AIE Regulations provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest served by disclosure. Article 10(5) of the AIE Regulations provides that nothing in article 8 or 9 shall authorise a public authority not to make available environmental information which, although held with information to which article 8 or 9 relates, may be separated from such information.

28. As the Council ought to be aware, articles 7(4) and 11(4) of the AIE Regulations require public authorities to provide reasons for refusal at both original and internal review decision stage, consistent with Article 4(5) of the AIE Directive. In this regard, the High Court in *Right to Know v An Taoiseach* [2018] IEHC 372 noted, in particular, that “in light of the adjudicatory processes in which a decision-maker is required to engage pursuant to [a]rticles 10(3), (4) and (5) and 11(4) of the AIE Regulations, the mere invoking of the statutory ground upon which disclosure of environmental information may be exempted cannot, to my mind, constitute a sufficient reason for the refusal” (paragraph 106). The Court held that in an absence of any indicator in the review decision that the balancing exercise mandated by articles 10(3) and (4) had been carried out, suggested that no balancing exercise had, in fact, been undertaken and that the same was true in respect of the mandatory obligation set out in article 10(5) of the AIE Regulations (paragraph 87).
29. In this case, the Council did not refer to a weighing of the public interest served by disclosure against the interest served by refusal in either its internal review decision or its submissions to my Office. It also did not deal with the issue of whether partial disclosure was possible in line with article 10(5) of the AIE Regulations. Instead, it submitted to this Office that the appellant had only made minor amendments to the request and had not asked for specific portions to be dealt with. I would remind the Council that it alone is required to implement article 10(5) of the AIE Regulations.
30. Having regard to all of the above and the circumstances of this case, it appears to me that the Council did not properly consider the appellant’s revised request and, in essence, adopted a “blanket approach” to its refusal under article 9(2)(a), without also giving any substantive consideration to article 10. This is not an appropriate application of those provisions.
31. Nevertheless, I do not consider it appropriate to simply annul the Council’s decision and direct the release of all of the information sought by the appellant. In this regard, I note that it appears that in respect of at least some parts of the request (e.g. parts 1 and 2), a substantial number of records do indeed fall to be considered. In addition, while I have made no finding on whether article 9(2)(b) would have applied in this case had I found that the Council complied with article 7(8) it looks to me that the appellant’s request is broad and formulated in a general manner. It also seems likely that a number of the records coming within the scope of the request may contain third party information. Furthermore, I do not wish to prejudice the Council’s right to properly consider relevant records to determine whether a right of access exists.
32. I am satisfied that the most appropriate course of action to take is to annul the decision of the Council and to direct it to undertake a fresh decision-making process on the appellant’s revised request in accordance with the provisions of the AIE Regulations. In doing so, the Council may care to note the following matters.



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33. First, this decision should not be taken meaning that the Council cannot rely on article 9(2)(a) of the AIE Regulations as a ground for refusal when considering the revised request afresh. However, if it considers that refusal under article 9(2)(a) of the AIE Regulations (or indeed any other provision under articles 8 or 9) is appropriate, it must set out its reasons for reaching this conclusion, having particular regard to each part (or parts which may be intrinsically linked) of the revised request and the nature and volume / range of information sought, as well as article 10 of the AIE Regulations, including paragraphs (3), (4), and (5).
34. Second, in light of the submissions made by the Council in respect of parts 14, 16, and 17, it appears that no relevant records / further relevant records may exist. It is important to note that, in accordance with article 7(1) of the AIE Regulations, the AIE Regulations only require public authorities to make available environmental information held by or for them. Generally, prior to considering whether article 8 or 9 applies, a public authority should assess whether the environmental information sought is held by or for it. As the Council ought to be aware, article 7(5) is the relevant provision to consider when the question arises as to whether requested environmental information is held by or for the public authority concerned and may be a relevant consideration in this matter. Again, if the Council wishes to rely on article 7(5) of the AIE Regulations, it must set out its reasons for doing so.
35. Third, in light of the submissions made by the Council in respect of parts 28 and 29, it appears that the information sought may be in the public domain. As the appellant sought access to the information a number of formats (Word, Excel, PowerPoint, PDF, JPEG, MP4, and MP3) and for the information to be sent to her by email only, article 7(3)(a)(i) may also be relevant. Article 7(3)(a)(i) provides that where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless the information is already available to the public in another form or manner that is easily accessible. This means that if the Council decides to make environmental information available, other than in the form or manner specified, it must give the reason for doing so in writing (article 7(3)(b) refers).
36. Fourth, before considering the appellant's revised request afresh, the Council may find it useful to engage further with the appellant to clarify the precise timeframe of the records sought.
37. Finally, should the Council wish to continue to rely on article 9(2)(b) of the AIE Regulations, it must have full regard to article 7(8).

### **Decision**

38. Having carried out a review under article 12(5) of the AIE Regulations, I hereby annul the Council's decision in this case. I direct the Council to undertake a fresh decision making process in respect of the appellant's revised request.



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

39. 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**  
29 August 2022



**Appendix 1 – Appellant’s Original Request dated 13 August 2020**

“I am writing to request information under the Access To Information On The Environment regulations. The following is the information requested:

For the time period 1st January 2018 through the present date:

Copies of all notes, documentation, correspondence and communications on file in regards to requests, orders and other communication with landowners regarding the cutting back and/or removal of roadside trees and hedgerows on their property. Please include everything related to this issue in it's broadest sense including but not limited to the following:

1. All letters, emails and other communications sent to landowners.
2. All responses and other communication from landowners.
3. All meetings, discussions and communications at Kerry County Council.
4. All meetings, discussions and communications between Kerry County Council and other parties.
5. All actions taken against landowners regarding failure to carry out the requested action or other related issues and the outcome of those actions including, but not limited to legal action.
6. A list of the arboricultural manuals and publications that Kerry County Council referred to and read to substantiate the Council's claim that subjecting trees to the arboriculturally-banned harmful practices of topping, stub-cuts (cutting branches and limbs part way leaving stub ends) and removing large amounts of tree structure along with other forms of tree-cutting makes trees safer.
7. Copies of the sections of those arboricultural manuals and publications that Kerry County Council used to support their claim that tree-cutting and the other actions listed in no. 6 above makes trees safer.
8. Copies of all arboricultural manuals, articles, publications and guidelines that Kerry County Council has in it's possession. Please include arboricultural publications only, not engineering documents or other documents that are not arboriculturally-based.
9. Copies of all arboricultural inspections, health assessments and reports of trees on private property showing that the trees had levels of disease and decay that created a significant safety risk. Please include only reports carried out by fully-qualified arboriculturists, not chainsaw operators who lack these qualifications. (Note: NPTC certs are basic certs in chainsaw and machinery operation. They're not a qualification in arboriculture.)
10. The names and arboricultural qualifications of the arboriculturists who carried out these inspections. Please include only reports carried out by fully-qualified arboriculturists, not chainsaw operators who lack these qualifications.



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11. Copies of all inspections and reports of trees on private property carried out by people without arboricultural qualifications including but not limited to chainsaw operators with NPTC certs, horticulturists with no arboricultural certifications and others.
12. Evidence that the Council has that disproves the statements by arboricultural organisations, articles and publications that the practices stated in no. 6 and above and no. 22 below cause serious longterm harm to trees.
13. Any additional evidence that Kerry County Council has to support their claim that the practices stated in no. 6 above and no. 22 below makes trees safer.
14. The arboricultural qualifications of Council staff that decided that roadside trees on private property had to be cut or felled.
15. All notes, communication and documentation relating to Kerry County Council's review of the arboricultural information I sent to them since early February 2017 and how the Council has used this information in their actions relating to roadside trees. Please include documentation showing how the Council used this important arboricultural information in regards to the following:
  - a. Creating a tree policy and strategy for roadside trees on private property.
  - b. The carrying out of that tree policy and strategy.
  - c. All subsequent outcomes.
16. A copy of the Council's Tree Policy or similar document relating to roadside trees on private property.
17. A copy of the Council's Policy or similar document relating to roadside hedgerows on private property.
18. A list of all property damage claims and injury claims and lawsuits relating to roadside trees and hedgerows on private property that the Council has on file.
19. For no. 17 include a brief description of each claim and injury, the financial amounts claimed and the amounts at which each case was settled. It's not necessary to include personal information regarding each claim just a brief summary of the claim.
20. All tree-cutting carried out by the Council of roadside trees on private property.
21. The amount of money spent by the council on work related to roadside trees on private property including, but not limited to:
  - d. Arboriculturist tree inspection and health assessment reports.
  - e. Other tree reports.
  - f. Legal action.
  - g. Tree-cutting carried out by the Council or contractors hired by the Council.



22. Since arboricultural organisations and publications nationally and worldwide all state that topping and stub-cuts are severely harmful and detrimental to trees in the following ways:
- Leaving multiple open would cuts leading to fungal and insect infestation
  - Loss of vital nutrients supplied by leaves which have been removed
  - Disruption of the leaf-root ratio which disrupts the food supply and equilibrium of the tree.
  - Weakening of overall tree stability and health
  - Dense epicormic re-growth which remains weakly attached at the base and a higher risk of falling and injuring people or property in later years.
  - An overall increased the risk of falling branches or the risk of a tree falling over in later years.

In light of this, please provide all information that the Council has on file showing the following:

- a. The Council's understanding of these arboriculturally-stated facts.
  - b. The Council's inclusion of these important facts in creating a Tree Policy that recommends the preservation of roadside trees and their foliage on private property to keep them healthy and stable.
  - c. The steps the Council has taken to communicate this important information to landowners encouraging them to preserve roadside trees and foliage to maintain the health, strength and stability of trees.
  - d. The steps the Council has taken to inform landowners of the harm caused by the removal of healthy tree structure in excess of what is recommended by arboricultural standards such as ISA and ANSI stating that no more than 30% should be removed from a tree to be adjusted downward to 20%, 15% and less based on the age, species, health and location of the tree with no more than 10% to be removed in any one year from mature trees which are less tolerant of pruning.
23. All documentation showing the Council's understanding of the importance of preserving trees in:
- a. Storing carbon and reducing atmospheric reduce carbon levels,
  - b. Combating climate change and
  - c. Reducing the €500 million a year fines that the EU has threatened Ireland with for it's failure to reduce carbon levels.
24. All documentation showing the Council's understanding of the importance of preserving trees in regards to the following:
- a. Air-purification.
  - b. Proven health benefits especially their ability to improve respiratory health and reduce respiratory illness.
  - c. Proven benefits for reducing stress and mental illness and improving overall well-being
  - d. Studies showing that people drive more carefully and more slowly on tree-lined roads compared to roads without trees.
  - e. Stormwater absorption and reducing flooding.
  - f. Enhancing the visual beauty of the countryside and attracting tourism.
  - g. Providing vital habitat for biodiversity and Ireland's declining bird and wildlife population.



25. The steps the Council has taken communicating the information in nos. 21, 22 and 23 above to landowners encouraging them to preserve roadside trees and foliage for these reasons.
26. The steps the Council has taken advising landowners of the importance of the following:
  - a. Obtaining tree health inspections and written tree health reports by qualified arboriculturists on all roadside trees that indicate significant disease or damage.
  - b. The importance of hiring a fully-qualified arboriculturist (not chainsaw operators/tree-cutters) to carry out the assessment.
  - c. To avoid a conflict of interest, the importance of hiring a fully-qualified arboriculturist that is independent of the chainsaw operators carrying out the work.
  - d. The importance of hiring contractors who have at least basic arboricultural qualifications such as ISA-certification and who adhere to arboricultural standards such as BS 3998: 2010, the Dublin Tree Strategy 2016-2020 and the standards listed on the Tree Preservation Ireland website.
  - e. The care and protection of trees and tree roots near road construction work.
  - f. All other forms of tree care and preservation.
27. All efforts taken by the Council to protect roadside trees on private property near road construction as stated in the arboricultural manual BS 5837: 2012 including, but not limited to, the following:
  - a. Ensuring that as few tree roots as possible are exposed.
  - b. Ensuring that exposed tree roots are immediately covered with wet burlap for the duration of the work to prevent them from dying.
  - c. Installing protective barriers around trees to protect them from damage from construction vehicles and equipment.
  - d. Instructions that the Council has given to construction workers educating them on these important issues.
  - e. Fines and other penalties the Council has imposed on construction workers and contractors who fail to comply with protective guidelines.
28. All future plans that the Council has in regards to the following:
  - a. The care and preservation of roadside trees on private property.
  - b. The felling, cutting and partial removal of roadside trees on private property.
  - c. The cutting back of roadside hedgerows on private property.
29. All documentation showing the Council's understanding of the importance of hedgerows:
  - a. In providing vital habitat for biodiversity and Ireland's declining bird and wildlife population.
  - b. Enhancing the visual beauty of the countryside and attracting tourism.
  - c. The importance of preserving as much hedgerow height as possible to provide habitat for bird and wildlife species that require hedgerows higher than 2 to 3 metres.



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30. Copies of all correspondence from the Council to landowners informing them of the information stated in 28 a, b and c above requesting that that hedgerows be maintained to their full height and size as much as possible and removing only the minimum required for road safety.
31. Copies of all responses from landowners and copies of all subsequent correspondence, communication, notes, documentation, etc. between the Council, landowners and other parties in regards to no. 29 above.
32. The Council's understanding of the harm caused by flail machines leaving ripped broken ends that prevent would closure subjecting hedgerows to fungal and insect infestation and early demise.

Please Note:

Each of the above requests for notes, documentation, etc. includes but is not limited to the following: All meeting notes, agendas and minutes, all written reports, all written, digital, computer, electronic and online documentation, correspondence, communication and all other notes, emails, faxes, audio and video recordings and phone texts.

To avoid unnecessary duplication, in responding to the above I ask that you not send me copies of emails or anything that I have sent to the Council as I already have these on file. You may reference these in your response but there is no need to send them.

I also ask that you not send me copies of emails and reports that the Council has previously sent me. You can reference these however there is no need to send duplicates. What I am basically looking for is information that has not previously been sent.

Please also note that the "Council" when noted above refers to Kerry County Council.

If you would send the requested information in the following formats that apply most closely to the item referenced that would be appreciated: Microsoft Word, Excel, Powerpoint, Pdf, Jpg, MP4 and MP3. If any of the information requested cannot be sent in any these formats please let me know and we can discuss alternative formats.

Please also send all requested information and other correspondence via email only..."



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## **Appendix 2: Appellant's Revised Request dated 14 August 2020**

"I am writing to request information under the Access To Information On The Environment regulations. The following is the information requested:

For the time period 1st January 2019 through the present date:

Copies of all notes, documentation, correspondence and communications on file in regards to requests, orders and other communication with landowners regarding the cutting back and/or removal of roadside trees and hedgerows on their property. Please include everything related to this issue in it's broadest sense including but not limited to the following:

1. All letters, emails and other communications sent to landowners.
2. All responses and other communication from landowners.
3. All meetings, discussions and communications at Kerry County Council.
4. All meetings, discussions and communications between Kerry County Council and other parties.
5. All actions taken against landowners regarding failure to carry out the requested action or other related issues and the outcome of those actions including, but not limited to legal action.
6. A list of the arboricultural manuals and publications that Kerry County Council referred to and read to substantiate the Council's claim that subjecting trees to the arboriculturally-banned harmful practices of topping, stub-cuts (cutting branches and limbs part way leaving stub ends) and removing large amounts of tree structure along with other forms of tree-cutting makes trees safer.
7. Copies of the sections of those arboricultural manuals and publications that Kerry County Council used to support their claim that tree-cutting and the other actions listed in no. 6 above makes trees safer.
8. Copies of all arboricultural manuals, articles, publications and guidelines that Kerry County Council has in it's possession. Please include arboricultural publications only, not engineering documents or other documents that are not arboriculturally-based.
9. Copies of all arboricultural inspections, health assessments and reports of trees on private property showing that the trees had levels of disease and decay that created a significant safety risk. Please include only reports carried out by fully-qualified arboriculturists, not chainsaw operators who lack these qualifications. (Note: NPTC certs are basic certs in chainsaw and machinery operation. They're not a qualification in arboriculture.)
10. The names and arboricultural qualifications of the arboriculturists who carried out these inspections. Please include only reports carried out by fully-qualified arboriculturists, not chainsaw operators who lack these qualifications.



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11. Copies of all inspections and reports of trees on private property carried out by people without arboricultural qualifications including but not limited to chainsaw operators with NPTC certs, horticulturists with no arboricultural certifications and others.
12. Evidence that the Council has that disproves the statements by arboricultural organisations, articles and publications that the practices stated in no. 6 and above and no. 22 below cause serious longterm harm to trees.
13. Any additional evidence that Kerry County Council has to support their claim that the practices stated in no. 6 above and no. 22 below makes trees safer.
14. The arboricultural qualifications of Council staff that decided that roadside trees on private property had to be cut or felled.
15. All notes, communication and documentation relating to Kerry County Council's review of the arboricultural information I sent to them since early February 2017 and how the Council has used this information in their actions relating to roadside trees. Please include documentation showing how the Council used this important arboricultural information in regards to the following:
  - a. Creating a tree policy and strategy for roadside trees on private property.
  - b. The carrying out of that tree policy and strategy.
  - c. All subsequent outcomes.
16. A copy of the Council's Tree Policy or similar document relating to roadside trees on private property.
17. A copy of the Council's Policy or similar document relating to roadside hedgerows on private property.
18. A list of all property damage claims and injury claims and lawsuits relating to roadside trees and hedgerows on private property that the Council has on file.
19. For no. 17 include a brief description of each claim and injury, the financial amounts claimed and the amounts at which each case was settled. It's not necessary to include personal information regarding each claim just a brief summary of the claim.
20. All tree-cutting carried out by the Council of roadside trees on private property.
21. The amount of money spent by the council on work related to roadside trees on private property including but not limited to:
  - a. Arboriculturist tree inspection and health assessment reports.
  - b. Other tree reports.
  - c. Legal action.
  - d. Tree-cutting carried out by the Council or contractors hired by the Council.The total for each category per calendar year would be fine.



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22. Since arboricultural organisations and publications nationally and worldwide all state that topping and stub-cuts are severely harmful and detrimental to trees in the following ways:
- Leaving multiple open would cuts leading to fungal and insect infestation
  - Loss of vital nutrients supplied by leaves which have been removed
  - Disruption of the leaf-root ratio which disrupts the food supply and equilibrium of the tree.
  - Weakening of overall tree stability and health
  - Dense epicormic re-growth which remains weakly attached at the base and a higher risk of falling and injuring people or property in later years.
  - An overall increased the risk of falling branches or the risk of a tree falling over in later years.

In light of this, please provide all information that the Council has on file showing the following:

- a. The Council's understanding of these arboriculturally-stated facts.
  - b. The Council's inclusion of these important facts in creating a Tree Policy that recommends the preservation of roadside trees and their foliage on private property to keep them healthy and stable.
  - c. The steps the Council has taken to communicate this important information to landowners encouraging them to preserve roadside trees and foliage to maintain the health, strength and stability of trees.
  - d. The steps the Council has taken to inform landowners of the harm caused by the removal of healthy tree structure in excess of what is recommended by arboricultural standards such as ISA and ANSI stating that no more than 30% should be removed from a tree to be adjusted downward to 20%, 15% and less based on the age, species, health and location of the tree with no more than 10% to be removed in any one year from mature trees which are less tolerant of pruning.
23. Documentation showing the Council's understanding of the importance of preserving trees in:
- a. Storing carbon and reducing atmospheric reduce carbon levels,
  - b. Combating climate change and
  - c. Reducing the €500 million a year fines that the EU has threatened Ireland with for it's failure to reduce carbon levels.

There is no need to send all documentation for this request, just one sample for each would be fine.

24. Documentation showing the Council's understanding of the importance of preserving trees in regards to the following:
- a. Air-purification.
  - b. Proven health benefits especially their ability to improve respiratory health and reduce respiratory illness.
  - c. Proven benefits for reducing stress and mental illness and improving overall well-being.
  - d. Studies showing that people drive more carefully and more slowly on tree-lined roads compared to roads without trees.
  - e. Stormwater absorption and reducing flooding.
  - f. Enhancing the visual beauty of the countryside and attracting tourism.
  - g. Providing vital habitat for biodiversity and Ireland's declining bird and wildlife population.



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There is no need to send all documentation for this request, just one sample for each would be fine.

25. The steps the Council has taken communicating the information in nos. 21, 22, 23 and 24 above to landowners encouraging them to preserve roadside trees and foliage for these reasons.
26. The steps the Council has taken advising landowners of the importance of the following:
  - a. Obtaining tree health inspections and written tree health reports by qualified arboriculturists on all roadside trees that indicate significant disease or damage.
  - b. The importance of hiring a fully-qualified arboriculturist (not chainsaw operators/tree-cutters) to carry out the assessment.
  - c. To avoid a conflict of interest, the importance of hiring a fully-qualified arboriculturist that is independent of the chainsaw operators carrying out the work.
  - d. The importance of hiring contractors who have at least basic arboricultural qualifications such as ISA-certification and who adhere to arboricultural standards such as BS 3998: 2010, the Dublin Tree Strategy 2016-2020 and the standards listed on the Tree Preservation Ireland website.
  - e. The care and protection of trees and tree roots near road construction work.
  - f. All other forms of tree care and preservation.
27. All efforts taken by the Council to protect roadside trees on private property near road construction as stated in the arboricultural manual BS 5837: 2012 including, but not limited to, the following:
  - a. Ensuring that as few tree roots as possible are exposed.
  - b. Ensuring that exposed tree roots are immediately covered with wet burlap for the duration of the work to prevent them from dying.
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  - d. Instructions that the Council has given to construction workers educating them on these important issues.
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28. All future plans that the Council has in regards to the following:
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  - c. The importance of preserving as much hedgerow height as possible to provide habitat for bird and wildlife species that require hedgerows higher than 2 to 3 metres.



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There is no need to send all documentation on file for this request, just one sample for each would be fine.

30. Copies of all correspondence from the Council to landowners informing them of the information stated in 29 a, b and c above requesting that that hedgerows be maintained to their full height and size as much as possible and removing only the minimum required for road safety.
31. Copies of all responses from landowners and copies of all subsequent correspondence, communication, notes, documentation, etc. between the Council, landowners and other parties in regards to no. 29 and 30 above.
32. The Council's understanding of the harm caused by flail machines leaving ripped broken ends that prevent would closure subjecting hedgerows to fungal and insect infestation and early demise.
33. Communications that the Council has sent to landowners in regards to no. 32. above.

Please Note:

Each of the above requests for notes, documentation, etc. includes but is not limited to the following:

All meeting notes, agendas and minutes, all written reports, all written, digital, computer, electronic and online documentation, correspondence, communication and all other notes, emails, faxes, audio and video recordings and phone texts.

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Please also send all requested information and other correspondence via email only..."