



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-93410-L7T3X2  
(Legacy reference: CEI/20/0006)**

**Date of decision:** 2 June 2021

**Applicant:** Ms A

**Public Authority:** Laois and Offaly Education and Training Board (LOETB)

**Issue:** Whether LOETB was justified in refusing access to the most up-to-date risk assessment, and the insurance policy, for School B.

**Summary of Commissioner's Decision:** The Commissioner found that the refusal of access to a copy of School B's most-up-to date risk assessment was justified on the basis that article 7(5) of the AIE Regulations applied to it. He also found that refusal of access to a copy of School B's insurance policy was justified on the basis that it was not environmental information within the meaning of article 3(1)(b) or 3(1)(f) of the AIE Regulations.

**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 11 November 2019, the applicant wrote to School B to request a copy of:
  - i. the school's most up-to-date risk assessment (part 1 of the request), and
  - ii. the school's insurance policy (part 2 of the request).
2. On 13 November 2019, an official at LOETB wrote to the applicant to inform her that School B's risk assessment was in the process of being updated and that she could have a copy when it was completed. It also informed her that School B has insurance as required but that it could not provide a copy, as it was commercially sensitive. On the same day, the applicant replied asking LOETB to confirm if this was its decision on her request. The applicant clarified that she had requested a copy of the current risk assessment. She also noted that LOETB did not provide reasons as to why the insurance policy was legally protected or commercially sensitive, and that it had not carried out a public interest test.
3. On 18 November 2019, LOETB acknowledged the applicant's email of 13 November. The applicant replied on 20 November 2019 to further clarify that her request related to emissions into the environment and cited article 10(1) (emissions into the environment) of the AIE Regulations. The official responded on 28 November 2019 to update the applicant that she was waiting for a reply from Company C who provides the insurance cover for School B in relation to the insurance policy.
4. On 6 December 2019, LOETB provided the applicant with a copy of the current Health and Safety Policy for School B. It noted that there was no mention in the Health and Safety Policy of an environmental hazard relating to emissions into the environment and set out information about the risk assessment process and preparation of a new safety statement for all schools and centres under the aegis of LOETB. Regarding the insurance policy, it confirmed that Company C provides the insurance policy and that it claimed article 9(1)(c) (commercial or industrial confidentiality) of the AIE Regulations over the policy. It stated that disclosure of the insurance policy would adversely affect the commercial confidentiality between the parties and further impact on the competitive position of Company C. It also stated that the public interest would not be better served by the disclosure of the insurance policy. It added that there was no information on emissions into the environment in the policy.
5. On the same day, the applicant responded to note that her request had been refused. She also noted that she had requested a copy of the current risk assessment and the insurance policy. She stated that LOETB had narrowed her request and "guessed at the information within the documents which might be relevant and have then said such information is not there" and sought contact details as to where she should direct her internal review request.

6. On 13 December 2019, LOETB wrote to the applicant providing her with the contact details to which she should direct her internal review request. It appears that not having received anything further from the applicant, on 19 December 2019 LOETB wrote to the applicant to inform her that her request for an internal review (of 6 December 2019) was being forwarded to a more senior member of staff.
7. Throughout January 2020, the applicant sought updates on and provided background information in relation to her request. She stated that the information requested related to emissions into the environment in the form of non-ionising radiation<sup>1</sup> from the wireless technology in the tablets used by students in school and, as a result, the exception for disclosure in the AIE Regulations do not apply. During this correspondence the applicant also set out her view that it would be better for all involved if the administrative effort of appealing to the Commissioner could be avoided and asked if a decision on her internal review request was imminent.
8. On 24 January 2020, LOETB issued its internal review decision affirming the initial decision on her request. On the same day, the applicant sought reasons as to why her request was refused, as the decision letter had not set out any such reasons. The applicant also queried why the background information she provided in relation to her request on 15 January 2020 was not taken into account. The internal reviewer replied on 28 January 2020 and stated that LOETB does not hold a risk assessment relating to emissions into the environment. She also reiterated that the insurance policy was not released as disclosure would adversely affect commercial confidentiality and article 9(1)(c) applied to it.
9. On 31 January 2020, the applicant brought an appeal against LOETB's internal review decision.
10. 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 applicant, LOETB and Company C. I have also examined the contents of the records at issue. 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;

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<sup>1</sup> The World Health Organisation explains that "[n]on-ionizing radiation is the term given to radiation in the part of the electromagnetic spectrum where there is insufficient energy to cause ionization. It includes electric and magnetic fields, radio waves, microwaves, infrared, ultraviolet, and visible radiation." (Available at [https://www.who.int/topics/radiation\\_non\\_ionizing/en/](https://www.who.int/topics/radiation_non_ionizing/en/))

- 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').
11. I have taken into account the judgments of the Court of Appeal in *Minch v Commissioner for Environmental Information* [2017] IECA 223 (*Minch*), *Redmond & Anor v Commissioner for Environmental Information & Anor* IECA [2020] 83 (*Redmond*), *Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna* [2020] IEHC 190 (*ESB*), and *Right to Know CLG v Commissioner for Environmental Information and Raidió Teilifís Éireann* [2021] IEHC 353 (*Right to Know (RTÉ)*), available on our website at [www.ocei.ie](http://www.ocei.ie). I have also taken into account the judgment of the Court of Appeal of England and Wales that is referred to in the latter three Irish judgments, *Department for Business, Energy and Industrial Strategy v Information Commissioner* [2017] EWCA Civ 844 (*Henney*).

### **Scope of Review**

12. 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 applicant.
13. The insurance company (Company C) who provides the insurance cover for School B was, as a third party whose interests may be affected by the disclosure of the insurance policy (part 2 of the request), invited to make a submission in this case in relation to the policy. Company C maintains that the insurance policy is not or does not contain "environmental information" within the meaning of the definition in article 3(1) of the AIE Regulations. My powers as Commissioner for Environmental Information apply only in respect of environmental information held by or for a public authority. Accordingly, I will first consider whether the insurance policy is or contains environmental information. I will only go on to consider whether the insurance policy falls within the exception for disclosure under article 9(1)(c) and whether article 10(1) applies to it in the event that I find that the policy is environmental information.

### **Preliminary matters**

14. Before I address the substantive issues arising in this case, I wish to address some preliminary matters. In her application for appeal, the applicant states that the internal reviewer considered her request under the Freedom of Information Act 2014 (FOI Act) and AIE Regulations but that her request was only made under the AIE Regulations. I note that while the body of the internal review decision referred to the FOI Act, the subject line for the internal review decision is "Re: Access to Information on the Environment (AIE) request" and that LOETB referred to parts of

the AIE Regulations in its original decision. I also note that the internal reviewer replied to the applicant on 28 January 2020 confirming that her request was considered under the AIE Regulations. I am satisfied that LOETB's internal review decision was made under the AIE Regulations.

15. The applicant notes in her application for appeal that the request in this case was made to the School B but that it was subsequently processed by LOETB, who corresponded with the applicant throughout the request. I note from the correspondence between the applicant and LOETB, which the applicant provided my Office with a copy of, that she did not object to LOETB about the fact that it was processing her request. I also note that the applicant sought an internal review of LOETB's initial decision on her request. It was LOETB's internal review decision that she subsequently appealed to me under article 12 of the AIE Regulations. LOETB explains that School B is under the aegis of LOETB. It has an established position of FOI Officer who also effectively operates as its AIE Officer, who handles all FOI and AIE associated with all schools and centres operating under its aegis.
16. As I set out above, the applicant appealed LOETB's internal review decision to me. Taking into account this fact, and LOETB's explanation as to why it handled the request on behalf of School B, I am satisfied that it is appropriate for my review under article 12 to be on LOETB's internal review decision on the request.
17. I note that LOETB notified the applicant of an incorrect timeframe for which an applicant can appeal an internal review decision to my Office. I would like to stress the importance of a public authority providing an applicant with accurate information so that an applicant can effectively exercise their rights under the AIE Regulations. LOETB's internal review decision did not give reasons for refusing her access to the information she requested. Article 7(4)(c) of the AIE Regulations provides that where a public authority refuses access, in whole or in part, it must specify the reasons for the refusal. I would also like to underline that the High Court in *Right to Know v An Taoiseach* [2018] IEHC 372 held that a public authority may refuse access to environmental information only where the requirements of the AIE Regulations have been substantively and procedurally adhered to.

#### **Relevant articles the AIE Regulations**

18. Article 3(1) of the AIE Regulations is the relevant provision to consider where the issue is whether information is "environmental information". In line with Article 2(1) of the Directive, article 3(1) of the AIE Regulations provides that "environmental information" means:

"any information in written, visual, aural, electronic or any other material form on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and

marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,

(d) reports on the implementation of environmental legislation,

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c)".

19. Article 3(1) of the AIE Regulations provides that:

“‘environmental information held by a public authority’ means environmental information in the possession of a public authority that has been produced or received by that authority;

“‘environmental information held for a public authority’ means environmental information that is physically held by a natural or legal person on behalf of that authority”.

20. Article 7(1) of the AIE Regulations provides that:

“A public authority shall, notwithstanding any other statutory provision and subject only to these Regulations, make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority.”

21. Article 7(5) of the AIE Regulations provides that:

“Where a request is made to a public authority and the information 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.”

22. Article 9(1)(c) of the AIE Regulations provides that:

“9. (1) A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect—

...

(c) commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest”.

23. Article 10(1) of the AIE Regulations provides that:

“Notwithstanding articles 8 and 9 (1)(c), a request for environmental information shall not be refused where the request relates to information on emissions into the environment.”

### **The parties’ positions**

#### **The applicant’s position**

24. The applicant submits that her request relates to emissions into the environment. In relation to the risk assessment, she asserts that it relates to samples of emissions into the environment. Regarding the insurance policy, she contends that it is necessary to cover the risks associated with these sample emissions.

25. The applicant’s submission states that School B requires its students to use iPads which are configured to use wireless technology. She also states that she contacted the body that manages the iPads on behalf of the school and that it was unwilling or unable to provide advice on how to manage the iPads without using wireless technology. In addition, she says that at School B’s iPad induction briefing for parents in late 2019 the Principal advised that, due to problems with it, School B’s Wi-Fi was being adjusted. The applicant presumes that this meant that the intensity of the Wi-Fi was being increased. She explains that Wi-Fi technology uses non-ionising radiation. She asserts that this non-ionising radiation is an emission into the environment, and that everyone in School B is exposed to this emission. She also reiterates that as the information she requested relates to emissions into the environment it does not come within the exceptions for disclosure provided for in the AIE Regulations.

26. The applicant asserts that emissions from wireless technology are a public health risk. Her submission includes a number of links to various reports and commentary, which she contends supports her position. As my Office has already provided LOETB with those links, I do not propose to include them in full here.

27. Regarding the risk assessment (part 2 of the request), the applicant submits that there is a legal requirement to assess and document the health risks related to emissions, particularly non-ionising wireless technology radiation. She states that risk assessments are required in order to protect workers who are to be advised of the risks and trained in the appropriate mitigations. She cites the following in support of her position:

- A Health and Safety Authority report titled ‘[Safety Statement and Risk Assessment](#)’, available [www.hsa.ie](http://www.hsa.ie), which states, among other things, that

Safety, Health and Welfare at Work Act 2005 (the 2005 Act) requires employers to carry out a risk assessment and a safety statement.

- Safety, Health and Welfare at work (Electromagnetic fields) Regulations 2016 S.I. No. 337/2016 (the 2016 Regulations), available at [www.irishstatutebook.ie](http://www.irishstatutebook.ie). She states that regulation 3(4) provides that the Regulations do not cover suggested long-term effects. She also states regulation 5 places an obligation on the employer to carry out a risk assessment and determination of exposure to electromagnetic fields at work and that regulation 5(7) requires that in carrying out the risk assessment, an employer shall give particular attention to the health and safety of employees at particular risk which includes employees who wear active or passive implanted medical devices, such as cardiac pacemakers, employees with medical devices worn on the body, such as insulin pumps, and pregnant employees.

28. In addition, she states that a school's Board of Management responsibility includes providing a safe place of work and safe school environment, free of foreseeable risks (grounded in a safety statement and a risk assessment) and to have appropriate insurance in place. She states that some school's insurance policies specifically exclude direct and indirect harm from all forms of radiation, including non-ionising radiation from wireless technologies such as Wi-Fi. She includes some links to resources which she contends supports her position including the [Governance Manual for Primary School](#), available at [www.education.ie](http://www.education.ie), which my Office provided to LOETB.
29. In relation to the insurance policy (part 2 of the request), the applicant submits that insurance policy is "environmental information" within the meaning of article 3(1)(b). She contends that it is information on factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment, specifically radiation or emissions.
30. The applicant also contends that the information constitutes environmental information within the meaning of article 3(1)(f), the text of which is set out above. She contends that the insurance policy plays a role in identifying the risks from emissions or radiation from the wireless technology and mitigating those risks such as by setting conditions for human life or off-setting the health risks from the emissions or radiation.

#### **LOETB's position**

31. LOETB's position is that there were no risk assessment(s) for School B (part 1 of the request) in place at the time of the request on 11 November 2019. It states that at the date of the request the only record held was a Safety Statement that was ratified

by the Board of Management on 19 September 2019. It submits that there were no risk assessments associated with this Safety Statement.

32. LOETB explains that safety statements and risk assessments are retained in each school, in this case School B. LOETB submits that its FOI officer asked the Principal of School B to search for and identify records relevant to the request. It states that in response the Principal performed a manual search through the contents of the Health & Safety Statement, and a computer-based search for information pertaining to the request (using key words associated with the topic). It submits that no risk assessments were located in this search. LOETB goes on to explain that having established that the risk assessments requested did not exist, the decision-maker obtained a copy of the School B's then safety statement, which was released to the requester on 6 December 2019, for further perusal and examination of same.
33. In response to queries regarding the application of the 2005 Act, LOETB explains that for the purposes of sections 19 (risk assessments) and 20 (safety statements) of the 2005 Act, risk assessments are individual assessments of potential risks for specific, or generic areas of school operations, which are component parts of the overall school Safety Statement. LOETB explains that a new process for introducing health & safety statements was developed with input from a number of stakeholders and in consultation with the Health & Safety Authority in 2019. It states that the introduction of the new safety statement was delayed due to the COVID-19 crisis and was introduced in July 2020. LOETB submits that no risk assessments were undertaken prior to the new safety statement being introduced in July 2020.
34. LOETB explains that the process was specifically designed to meet the requirements of schools operating under the aegis of ETBs, whilst also meeting the necessary legislative requirements of the applicable Government Acts. It states that the new safety statements are supported by 73 individual risk assessments, and that none of the risk assessments refer to any potential risks from electric and magnetic fields (EMF)/radio frequency fields (RF) output of Wi-Fi access points. LOETB also states that School B's most recent safety audit was carried out by an internationally recognised and acclaimed provider of safety consultancy services and that the audit did not identify or flag any potential risks or issues from EMF/RF emissions from Wi-Fi. LOETB also submits that potential risk from EMF/RF emissions in a school context have not been raised as an issue by its insurers.
35. In relation to the insurance policy, LOETB submits that it is agreement with Company C's position on the policy (which I summarise directly below).

### **Third party's position**

36. The insurance company (Company C) submits that the insurance policy is not environmental information. In doing so, it addresses of article 3(1)(b) or 3(1)(c). In relation to article 3(1)(b), it states that the insurance policy does not include any information on any of the factors listed in paragraph (b) of the definition of environmental information. It rejects that the details of what is covered, and what is

not covered, by the policy is information on factors, which could affect or are likely to affect the elements of the environment. It states that the insurance policy has no direct relationship with any environmental factors or elements nor is it indicative of any environmental impact relative to the indemnification of LOETB.

37. Regarding article 3(1)(c), it states there is nothing in the insurance policy that could be construed as 'measures' or 'activities' within the meaning of those terms in article 3(1)(c). It contends that the function of the insurance policy is monetary in nature and that it is a measure, which is specifically designed to protect the financial interests of LOETB. It does not believe that there is a relationship between the insurance policy, the activity it relates to – the indemnifying of LOETB - and to any environmental issue in this case. It contends that changes to an insurance policy are not indicative of or reflective of changes in environmental issues.
38. Company C rejects the argument that access to the insurance policy would contribute to a greater public awareness of environmental matters or more effective participation of the public in environmental decision-making, and that it has no bearing on promoting openness and transparency in environmental matters. It states that the requested insurance policy is a commercial agreement that seeks to protect the financial interests of LOETB as the beneficiary of the policy.

### **Analysis and Findings**

39. The issues in this case are:

- whether a risk assessment for School B (part 1 of the request) was held at the date of the request, and
- whether refusal of access to the insurance policy for School B (part 2 of the request) was justified. As I set out above, I will only go on to consider whether articles 9(1)(c) and 10(1) apply to the insurance policy in the event that I find that the policy is environmental information.

### **Risk assessment(s)**

40. 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.

41. Part 1 of the applicant's request was for a copy of School B's most-up-to-date risk assessment. I note that the internal reviewer informed the applicant on 28 January 2020 that LOETB did not hold a risk assessment for emissions into the environment. The applicant's request for the school's risk assessment was not qualified by reference to emissions into the environment. In my view, an objective reading of part 1 of the request is that it requested a copy of the school's risk assessment, regardless of whether or not the risk assessment took account of any risks from emissions into the environment. As a result, my review will consider whether any risk assessment for School B was held at the date of the request, regardless of whether it relates to emissions into the environment.
42. My Investigator noted that the email LOETB sent to the applicant on 13 November 2019 referred to School B's risk assessment being updated. LOETB submits that this was a typographical error whereby its official responded using the same language as the request. It states that it was the school safety statement that was being updated and the term risk assessment was mistakenly used. My Investigator asked LOETB if any risk assessments for School B were held, and if any risk assessments had been created for the purposes of the 2005 Act or the 2016 Regulations, at the date of the request. She noted that the request for the risk assessment was not qualified by reference to emissions, Wi-Fi, EMF/RF or any risks from same.
43. I have already summarised the steps taken by LOETB to search for and identify information relevant to the request including risk assessments. The search criteria and process appear to me to have been reasonable in the circumstances of this case. I also accept LOETB's written assurance that no risk assessments were in place or held at the date of the request, and the explanations provided for this. I have considered the applicant's argument in this regard particularly in relation to the 2005 Act and the 2016 Regulations, but I have seen no evidence to suggest that any risk assessments were held at the date of the request. It is not my role to determine the type of information that should be held by public authorities.
44. I note that there are 73 risk assessments that formed part of the new school safety statement, which was implemented after the request in this case. As these were created after the date of the request in this case, they fall outside the scope of the request and thus my review.
45. Having carefully considered the matter, I accept that the neither LOETB nor School B held a risk assessment at the date of the request. Accordingly, I find that article 7(5) of the AIE Regulations applies to part 1 of the request as no risk assessment within the scope of the request was held by or for LOETB or School B at the date of the request.

### **Insurance policy**

46. According to national and EU case law on the definition of "environmental information", while the concept of "environmental information" as defined in the AIE Directive is broad (Case C-321/96 *Mecklenburg* at paragraph 19), there must be

more than a minimal connection with the environment (*Glawischnig* at paragraph 25). Information does not have to be intrinsically environmental to fall within the scope of the definition (*Redmond* at paragraph 58; see also *ESB* at paragraph 43). However, a mere connection or link to the environment is not sufficient to bring the information within the definition of environmental information. Otherwise, the scope of the definition would be unlimited in a manner that would be contrary to the judgments of the Court of Appeal and CJEU.

47. The right of access to environmental information that exists includes access to information “on” one or more of the six categories at (a) to (f) of the definition. In this case, the relevant paragraphs are (b), (c) and (f).
48. In relation to article 3(1)(c), measures include administrative measures and the list of examples of measures and activities given in that paragraph are illustrative examples (*Redmond* at paragraph 55). The Aarhus Guide describes the terms "activities or measures", as referring to "decisions on specific activities, such as permits, licences, permissions that have or may have an effect on the environment". The Court of Appeal in *Minch* held that the reference to “plans” and “policies” in article 3(1)(c) is significant, and that there must be a plan or something in the nature of a plan which, either directly or indirectly, affects or is likely to affect the environment (paragraph 39). Hogan J. went on to explain that this requirement for there to be a plan or something in the nature of a plan curtails a potentially open-ended or indefinite right of access to documents (paragraph 41). If this were not the case, then virtually any information held by or for a public authority which referred, either directly or indirectly, to environmental matters would be environmental information. This would run contrary to the CJEU’s judgment in *Glawischnig* (paragraph 41; see also *Glawischnig* at paragraph 25).
49. The Court of Appeal in *Redmond* held that the essential question is whether the measure or activity is one affecting or likely to affect the environment (*Redmond* at paragraph 57). A measure or activity is “likely to affect” the elements and factors of the environment if there is a real and substantial possibility that it will affect the environment, whether directly or indirectly. While it is not necessary to establish the probability of a relevant environmental impact, something more than a remote or theoretical possibility is required (*Redmond* at paragraph 63). As “any information ... on” a measure affecting or likely to affect the environment is prima facie environmental information (*Redmond* at paragraph 57), the information at issue does not, in itself, have to affect or be likely to affect the environment (*Redmond* at paragraphs 57 and 59).
50. In the context of whether information is “on” a measure or activity affecting or likely to affect the elements and factors of the environment (article 3(1)(c) of the AIE Regulations), the High Court judgment in *ESB* indicated that information that is integral to the relevant measure or activity is information “on” it (*ESB* at paragraphs 38, 40 and 41). While information that is too remote from the relevant measure or

activity does not qualify as environmental information (*ESB* at paragraph 43). Again in the context of article 3(1)(c), the Court of Appeal in *Redmond* noted that the Court of Appeal of England and Wales in *Henney* suggests that, in determining whether information is “on” the relevant measure or activity, it may be relevant to consider the purpose of the information such as why it was produced, how important it is to that purpose, how it is to be used, and whether access to it advances the purposes of the Aarhus Convention and AIE Directive (paragraph 99; see also *ESB* at paragraph 42 and *Right to Know (RTÉ)* at paragraph 52). Information that does not advance the purposes of the Aarhus Convention and AIE Directive may not be “on” the relevant measure or activity (*Redmond* at paragraph 99; see also *Right to Know (RTÉ)* at paragraph 52).

51. The High Court in *Right to Know CLG v Commissioner for Environmental Information & RTÉ* held that the approach of the Court of Appeal in *Redmond* applies to article 3(1)(b) of the definition of “environmental information”. The UK Upper Tribunal in *DfT, DVSA and Porsche Cars GB Limited v Information Commissioner and John Cieslik* [2018] UKUT 127 (AAC) (*Cieslik*), available at [www.bailii.org](http://www.bailii.org), stated that while the UK Court of Appeal in *Henney* was concerned with the necessary connection between information and the measure, the approach of the UK Court of Appeal is also applicable to interpreting the definition of environmental information more generally.

#### Article 3(1)(b) of the definition of environmental information

52. Article 3(1)(b) (and Article 2(1)(b) of the AIE Directive) provide an illustrative list factors including “energy”, “radiation” and “emissions” and “other releases” into the environment. I accept that non-ionising radiation from wireless technology which is an emission into the environment is a factor. I also accept that non-ionising radiation from wireless technology is a factor affecting or likely to affect the elements of the environment. In my view, as an emission into the environment there is a real and substantial possibility that non-ionising radiation from wireless technology will affect the elements of environment such as air and atmosphere. One of the resources that the applicant submitted was the European Parliamentary Assembly’s [Resolution 1815 \(2011\)](#) (“The potential dangers of electromagnetic fields and their effect on the environment”). While the resolution states “the potential health effects of the very low frequency of electromagnetic fields surrounding power lines and electrical devices are the subject of ongoing research and a significant amount of public debate”, I note that paragraph 8.1.3 recommends that the member states of the Council of Europe inform the public on the risks of potentially harmful long-term biological effects on the environment and on human health. I also note that it is not disputed by LOETB that non-ionising radiation is an emission into the environment and, therefore, a factor. Accordingly, the issue before me is whether the insurance policy or parts of it is information “on” that factor.

53. As detailed above, the definition of environmental information is broad. Information does not have to be intrinsically environmental in order to qualify as environmental information. However, a mere connection or link to the environment is not sufficient to bring the information within the definition of environmental information.
54. It should be noted that, while I am required by article 12(5)(b) of the AIE Regulations to specify reasons for my decision, I must also be careful not to disclose withheld information in my decisions. This means that the detail that I can give about the content of the record and the extent to which I can describe certain matters in my analysis is limited. The insurance policy is comprised of two parts: the policy document; and the schedule, which are read together as one contract. I consider the insurance policy to be a standard or general type policy; as distinct to a specialist insurance policy such as an environmental insurance policy. Without disclosing its content, I can confirm that it contains the type of information that one would typically expect to see in an insurance policy. The policy document contains details relating to coverage provided by the insurance policy such as the definitions for, conditions of and extensions and exclusions to the policy. The policy document details the extent of coverage available in respect of specified events. The schedule contains details such as the limit of indemnity including excess figures, premiums, adjustments, etc. In other words, it details the financial cover available to the insured in the event that a claim is made on the policy.
55. The insurance policy does not contain, provide or discuss factors of the environment or otherwise provide any information that would inform one about factors relating to the environment, affecting or likely to affect the elements of the environment. It does not contain any information about, relating to or concerning School B's use of iPads, which use wireless technology, nor does it contain any information about or relating to wireless technology more generally. I can also confirm that the policy does not contain any information about, relating or concerning to emissions from non-ionising radiation, including any emissions from non-ionising radiation from wireless technology. There is nothing before me in my review including within the contents of the insurance policy to support the applicant's contention that the insurance policy plays a role in identifying, mitigating or off-setting any potential risks either to the environment or human health and safety or conditions of life from emissions or radiation generally or emissions or radiation from the wireless technology and mitigating. I would like to be clear that my description of the information at issue in this case in the negative is not a test for when information is on a factor into the environment, affecting or likely to affect the elements of the environment.
56. Having considered the context and content of the insurance policy, and all of its constituent parts, I am satisfied that it does not concern, nor does it relate to emissions from non-ionising radiation either generally or from wireless technology or to any other factors. In my view, the insurance policy has no connection to, and is too remote from, emissions from non-ionising radiation either generally or from

wireless technology or to any other factors to be information “on” factors affecting or likely to affect the elements of the environment.

57. For the reasons above, I find that the insurance policy or any part thereof is not “on” factors affecting or likely to affect the elements of the environment.

Article 3(1)(f) of the definition of environmental information

58. Article 3(1)(f) provides that information on:

- the state of human health and safety, including the contamination of the food chain, where relevant to the state of human health and safety,
- conditions of human life, and
- cultural sites and built structures

is environmental information to the extent that the above are, or may be, affected by:

- the state of the elements of the environment referred to in article 3(1)(a) or, through those elements, or
- by any factors or measures or activities referred to in article 3(1)(b) and 3(1)(c).

59. I am not aware of any case law directly on the issue of whether information is environmental information within the meaning of article 3(1)(f). While it is not binding, the Aarhus Guide offers some guidance on the article 3(1)(f), it is useful to look at this guidance particularly in the absence of any case law on the matter. The Aarhus Guide outlines that “human health” may comprise a broad range of diseases and health conditions that are directly or indirectly attributable or affected by changes in environmental conditions (page 55). It also outlines that “human safety” may comprise safety from harmful substances (e.g. chemicals), factors (e.g. radiation), or other natural or man-made conditions that affect human safety through manipulation of environmental elements. The Aarhus Guide indicates that the conditions of human life are connected to a person’s right to a healthy environment and may include air quality, access to water and food, housing, workplace conditions, relative wealth and various social conditions (page 55).

60. The Aarhus Guide states that the definition in the Aarhus Convention, which mirrors article 3(1)(f), requires a link between information on human health and safety, conditions of human life, *etc.*, and the elements of the environment and the factors, activities or measures affecting or likely to affect the environment (page 54). It explains that this is required in order to impose a reasonable limit on the vast kinds of human health and safety information potentially covered and that the negotiators of the Aarhus Convention were faced with a situation in which looser language would have brought a whole range of human health and safety information

unrelated to the environment under the definition, such as information relating to specific medical procedures or safety rules for the operation of specific tools.

61. The applicant submits that the insurance policy is information on human health and safety and conditions of human life as they are or maybe affected by the elements of air or atmosphere and factors specifically emissions or radiation affecting those elements. I have accepted above that non-ionising radiation from wireless technology is a factor affecting or likely to affect the elements of the environment. The applicant has submitted a variety of resources which she contends demonstrates the links between human health and safety, known risks from emissions or EMF radiation and the role that insurance policies play in identifying these risks and likely mitigations (e.g. setting conditions for human life) or offsetting health risks. I am not a public health expert and it is not clear that any of the studies being commented on in the resources have been the subject of replication studies. However, I am prepared to accept that the potential for effects on human health and safety or the conditions of human life from emissions from non-ionising radiation from wireless technology. Paragraph 8.1.3 of the European Parliamentary Assembly's [Resolution 1815 \(2011\)](#) recommends that the member states of the Council of Europe inform the public on the risks of potentially harmful long-term biological effects on the environment and human health.
62. I will now consider whether the insurance policy or a part thereof is information "on" the state of human health and safety or the conditions of human life inasmuch as they are or may be affected by the elements or factors of the environment. The definition of environmental information should not be construed narrowly and information does not have to be intrinsically environmental in order to qualify as environmental information. However, as I have outlined in detail above, a mere connection or link to the environment is not sufficient to bring the information within the definition of environmental information. Having examined the content of the insurance policy, the insurance policy does not contain, provide or discuss any information on the state of human health and safety or conditions of human life.
63. I have described the type of information within the insurance policy. In my view, the insurance policy is a commercial contract between School B and Company C and contains the type of information one would expect such a record to contain. The insurance policy does not contain, provide or discuss in any way effects or potential effects from wireless technology generally or emissions or non-ionising radiation from such technology on the state of human health and safety or the conditions of human life or on the factors or elements of the environment. Moreover, the insurance policy does not link any resultant effects or potential effects from wireless technology generally or emissions or non-ionising radiation from such technology on the state of human health and safety or conditions of life back to the state of an element of the environment such as air or atmosphere or a factor such as emissions or radiation affecting the state of the elements of the environment. I have already set out that there is no evidence before me to support the assertion that the

insurance policy plays a role in identifying, mitigating or off-setting any potential risks either to the environment or human health and safety or conditions of life from emissions from non-ionising radiation generally or emissions from non-ionising radiation from the wireless technology and mitigating. I would like to be clear that my description of the information at issue in this case in the negative is not a test for when information is on a factor into the environment, affecting or likely to affect the elements of the environment.

64. Having considered the context and content of the insurance policy, I consider that insurance policy any part thereof is not about, does not concern or does not relate to the state of human health and safety or conditions of human life inasmuch as they are or may be affected by the elements or factors of the environment. In my view, the insurance policy or any part thereof has no connection to, and is too remote from, human health and safety and conditions of human life inasmuch as they are or maybe affected by the elements of the environment including air or atmosphere and factors including emissions or radiation to be information “on” such human health and safety and conditions of human life.
65. For the reasons above, I find that the insurance policy or any part thereof is not “on” human health and safety and conditions of human life inasmuch as they are or maybe affected by the elements of the environment including air or atmosphere and factors including emissions or radiation.

Article 3(1)(c) of the definition of environmental information

66. The appellant does not contest that the insurance policy is environmental information under article 3(1)(c). However, as Company C addresses paragraph (c) of the definition of environmental information in its submission, I will consider this provision in the interest of completeness.
67. My starting point is to identify the relevant measure of activity to which the information at is “on”. In identifying the measure or activity regard may be had to the wider context and the purpose of the information. While the examples of measures and activities in article 3(1)(c), the case law on the definition and the Aarhus Guide may be useful to help identify a measure or activity, they are merely examples. The fact that a potential measure or activity does not fall within one or more of those examples does not mean that does not mean that it is not a measure or activity contemplated by article 3(1)(c) (*Right to Know (RTÉ)* at paragraph 20).
68. Measures and activities includes all forms of administrative activity by public authorities (Mecklenburg at paragraph 20). The word “activity” itself is defined in the Oxford English Dictionary as the “state of being actively occupied” (*Right to Know (RTÉ)* at paragraph 19). In my view, the taking out of insurance is an activity that LOETB engaged in. I also consider that the insurance policy is “on” that activity. The insurance policy sets out the terms and conditions for the insurance cover and in that sense is integral to the activity of taking out the insurance. There would be no insurance without the policy and vice versa. However, the essential question as to

whether a measure or activity is one for the purpose of article 3(1)(c) is whether the measure or activity is one affecting or likely to affect the environment.

69. An activity is “likely to affect” the elements and factors of the environment if there is a real and substantial possibility that it will affect the environment, whether directly or indirectly. I do not see how the taking out of the insurance policy affects or is likely to affect the elements and factors of the environment. I accept that the function of the insurance policy is monetary in nature and that the aim of it is to protect the financial interests of LOETB. As I explain above, the insurance policy is a standard or general type policy. It is not a specialist insurance policy such as an environmental insurance policy. It does not contain any clauses that in my view would have a real and substantial possibility that the insurance cover will affect the environment or has already affected the environment, either directly or indirectly. In the circumstances of this case, I consider that the environmental affect (if any) on the elements and factors of the environment from the activity of taking out insurance is too remote and the connection to the elements and factors of the environment is too minimal. In my view, any effects on the elements and factors of the environment from the activity of taking out insurance are nothing more than a theoretical possibility. Accordingly, I am not satisfied that the act of taking out insurance is an activity affecting or likely to affect the elements and factors of the environment.

70. Turning to the question of whether the taking out of the insurance policy is an activity designed to protect the elements of the environment. I accept that the insurance policy was specifically designed to protect the financial interests of LOETB. In the circumstances of this case, I consider that the purpose behind the taking out of the insurance policy by LOETB was the protection of its financial interests. As discussed, it is a general insurance policy and not one specifically related to the environment. Accordingly, I am not satisfied that the act of taking out insurance is an activity designed to protect the elements of the environment.

71. For the reasons above, I find that the activity of taking out insurance is not one affecting or likely to affect elements and factors of the environment, nor is it an activity designed to protect those elements. Therefore, I find that the activity of taking out insurance is not an activity for the purposes of article 3(1)(c).

#### The purpose of the AIE Directive

72. The purpose of the AIE Directive is to promote increased public access to environmental information, more effective participation by the public in environmental decision-making and access to justice in environmental matters with the aim of making better decisions and applying them more effectively and, ultimately, promoting a better environment (Recital 1 of the AIE Directive and Article 1 of the Aarhus Convention).

73. The insurance policy was produced for the purpose of School B obtaining insurance coverage. Neither LOETB nor School B has an environmental remit. The insurance

policy constitutes School B's contract of insurance with Company C. It was prepared for the purpose of indemnifying LOETB and School B in the manner and to the extent described within the policy. It was not produced for or intended to be used for environmental purposes, or for any purpose connected with factors affecting elements of the environment, including emissions from non-ionising radiation from wireless technology nor for any purpose connected with human health and safety and conditions of human life inasmuch as they are or maybe affected by the elements of the environment including air or atmosphere and factors including emissions from non-ionising radiation.

74. I see nothing before me that indicates that the insurance policy was produced or is in any way connected with environmental decision-making. I do not see how access to the insurance policy or any part thereof would contribute to a greater awareness of environmental matters including awareness of the potential risks or effects on the elements of the environment and/or human health and safety or the conditions of human life from emissions from non-ionising radiation from wireless technology. Access to the insurance policy, or any part thereof, would not contribute to awareness of School B's decision on the use of iPads, or the potential for effects on the environment and human health and safety or the conditions of human life from emissions from non-ionising radiation from wireless technology.
75. I also do not see how access to the insurance policy or any part thereof would lead to more effective public participating in environmental decision-making or more effective access to justice in environmental related matters or to a better environment. The decision to obtain insurance by School B is a commercial decision. In my view, it cannot be described as relating to the environment either directly or indirectly.
76. I consider that a purposive reading of the definition of environmental information reinforces my findings above that the insurance policy or any part thereof is not information "on" a factor affecting or likely to affect the elements of the environment within article 3(1)(b) or "on" human health and safety and conditions of life inasmuch as they are or maybe affected by the elements of the environment within article 3(1)(f).

### **Conclusions**

77. I find that the insurance policy, or any part thereof, is not information "on" a factor affecting or likely to affect the elements of the environment including emissions from non-ionising radiation affecting or likely to affect air and atmosphere. I, therefore, find that the insurance policy or any part thereof is not environmental information within the meaning of article 3(1)(b) of the AIE Regulations.
78. I find that the insurance policy or any part thereof is not "on" human health and safety and conditions of human life as they are or maybe affected by the elements of the environment including air or atmosphere and factors including emissions from non-ionising radiation. I, therefore, find that the insurance policy is not

environmental information within the meaning of article 3(1)(f) of the AIE Regulations.

79. As I have found that the insurance or any part thereof is not “environmental information” within the meaning of the AIE Regulations it is not necessary for me to consider whether the insurance policy falls within the exception for disclosure under article 9(1)(c) and whether article 10(1) applies to it or any part thereof.

### **Decision**

80. Having carried out a review under article 12(5) of the AIE Regulations, I affirm LOETB’s refusal of a copy of School B’s most-up-to date risk assessment on the basis that article 7(5) of the AIE Regulations applies to part 1 of the request. I affirm LOETB’s refusal of access to a copy of School B’s insurance policy on the basis that it is not “environmental information” within the meaning of article 3(1) of the AIE Regulations. Accordingly, LOETB is not obliged to process part 2 of the applicant’s request for access to the insurance policy and I have no further jurisdiction in relation to this matter.

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

81. 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**  
2 June 2021