



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)**

**Cases:** OCE-118418-T4Y4L5 and OCE-118417-H6X6J4

**Date of decision:** 9 June 2022

**Appellant:** Organisation X

**Public Authority:** Department of Defence [the Department]

**Issue:** Whether the Department were justified in effectively refusing the appellant's request under Article 7(5) of the AIE Regulations

**Summary of Commissioner's Decision:** The Commissioner affirmed the decision of the Department.

**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 12 July 2021, a representative of the appellant organisation made two requests to the Department under the AIE Regulations:

**OCE-118418-T4Y4L5:** “copies, of :- all correspondence/documentation/pieces of paper generated, and all information known by you, that in any and all ways relate to Contracts you have with/for your procurement of the services of Hogarth Consultants including but not limited to for any and all for the “Curragh Plains Consultancy Study...” and “ ... conservation study on the Curragh Plains ...” (and/or studies,- as the case maybe-) to the above address.”

**OCE-118417-H6X6J4:** “a list, of :- all correspondence/documentation/pieces of paper generated, and all information known by you, that in any and all ways relate to Contracts you have with/for your procurement of the services of Hogarth Consultants including but not limited to for any and all for the “Curragh Plains Consultancy Study...” and “ ... conservation study on the Curragh Plains ...” (and/or studies,- as the case maybe-) to the above address.”
2. Given that these requests relate to the same information and concern the same parties, I have dealt with the appeals together in the interests of expediency. The requests also travelled together when being dealt with by the public authority.
3. The Department refused the requests by letter dated 17 September 2021 under Article 7(5) of the Regulations. The Department informed the appellant that “Kildare County Council is the applicable public authority for documents relating to the contract with Hogarth consultants for the procurement of the Curragh Study”.
4. The appellant sought an internal review of each refusal on 23 September 2021. The Department responded to these requests, but the response did not constitute internal review decisions under the provisions of the AIE Regulations. The letter was signed by the original decision maker, and did not make a decision on the review. As the appellant did not receive a decision on its requests for an internal review, it appealed the deemed refusals of the requests to my Office on the 26 November 2021. These appeals were accepted on 3 December 2021.
5. Following contact from my Office, the Department wrote to the appellant by letters dated 15 December 2021, stating that the information sought was held by another public authority, Kildare County Council and affirming the refusal of each of the appellant’s requests. The appellant then appealed these decisions to my Office under the above reference numbers on 20 January 2022.
6. I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the Department of Defence. In addition, I have had regard to:
  - the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister’s Guidance);
  - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;



- the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
  - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide').
7. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

### **Scope of Review**

8. The scope of my review is confined to whether the Department was justified in refusing the appellant's requests under Article 7(5) of the Regulations, namely on the basis that it did not hold the information sought.

### **Analysis and Findings**

9. As an initial point, it is not satisfactory that the Department did not comply with the timelines under the Regulations when issuing the appellant with decisions on internal review, and that intervention by my Office was required at that stage. It is unacceptable that my Office was required to remind the Department of its basic obligations under the AIE Regulations. I expect the Department to engage appropriately with appellants throughout the processing of a request under the AIE Regulations.

10. Articles 7(5) and 7(6) of the AIE Regulations state:

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

*7(6) Where sub-article (5) applies and the public authority concerned is aware that the information requested is held by another public authority, it shall as soon as possible— (a) transfer the request to the other public authority and inform the applicant accordingly, or (b) inform the applicant of the public authority to whom it believes the request should be directed."*

11. My usual approach to a review where a request has been refused under Article 7(5) of the AIE Regulations is to examine the steps taken by the public authority to search for information that may be held by or for it, which is relevant to the request. This case is somewhat different in that it is the Department's position that the information sought does not exist, as the contract for the Curragh Plains study is between Kildare County Council and the consulting company. It is therefore for the Department to satisfy me that this is the case, and that its response to the appellant was therefore justified under the AIE Regulations.
12. My investigator wrote to the Department seeking further information on the arrangements between the Department and Kildare County Council in relation to the Curragh Plains Study. The



Department provided my Office with a copy of a Memorandum of Understanding between the Department and the Council, as well as copies of procurement documentation relating to the study. These documents show that Kildare Council initiated and carried out the procurement process and is responsible for the payment of the consultants. The Department is closely involved with the process through a steering committee and ongoing communication with Kildare County Council. The Department is providing funding for the study to Kildare County Council, and is not paying the consultants directly.

13. Having considered this documentation, I am satisfied that Kildare County Council was the contracting authority for the Curragh Plains Study and that there is no reason to believe that there is a contract between the Department of Defence and Hogarth Consultants in respect of the study.
14. In its appeal, the appellant's representative submitted that it was reasonable to believe that the Department would hold a copy of a contract it was paying for or part paying for. While this may or may not be the case, the requests specifically refer to contracts between the Department and Hogarth Consultants regarding the Curragh Plains Study. The Department informed the appellant at an early stage that the contract sought is between Kildare County Council and the consultants. The appellant did not choose to rephrase or reframe the request when provided with this information.
15. The appellant's requests specifically seek contracts between the Department and Hogarth Consultants. The Department has satisfied me that no such contract exists. On this basis, the Department was justified in refusing the appellant's requests under Article 7(5) of the Regulations. The Department correctly informed the appellant in its letter dated 17 September 2021 that the request should be made to Kildare County Council. This fulfilled its obligations under Article 7(6) of the Regulations. It is open to the appellant to make a request under the AIE Regulations to Kildare County Council for the contract relating to the Curragh Plains study, or to make a different request to the Department for any other information the appellant may require.

### **Decision**

16. Having carried out a review under article 12(5) of the AIE Regulations, I affirm the decision of the Department of Defence.

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

17. 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**

9 June 2022