



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-125783-L9M0L0

Date of decision: 27 July 2022

Appellant: Mr. G

Public Authority: Department of Agriculture, Food and the Marine (the Department)

Issue: Whether the Department was justified in withholding environmental information in relation to a webinar, which was held for private sector ecologists working on forestry projects.

Summary of Commissioner's Decision: The Commissioner annulled the Department's decision on the ground that it had not conducted adequate searches in an effort to locate all relevant environmental information. He directed it to undertake a fresh decision-making process in respect of the appellant's 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 11 April 2022, the appellant contacted the Department, referring to a “webinar for private sector Ecologists working on forestry projects held on 8 February [2021]”, and requested “information relating to this seminar including:
 - 1) Agenda
 - 2) List of invitees and list attendees
 - 3) Pre webinar or post webinar material provided to invitees/attendees
 - 4) Any media files relating to the webinar (i.e. a recording of the webinar, slides relevant to the webinar etc.)
 - 5) Information and records relating to any feedback received either from the attendees or non-attendees to the webinar
 - 6) Information on any proposed or contemplated forthcoming webinars for Ecologists working on forestry projects.”
2. On 9 May 2022, the Department emailed the appellant to inform him that the request was refused as the “document [he had] requested does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken.” No further information was provided to the appellant in this decision.
3. On 12 May 2022, the appellant requested a review of the Department’s decision. He queried the Department’s language in the original decision and pointed out that “it was not a single document sought in this case.” He also said that he expected to “receive details of all the steps that have been undertaken”, should the internal review decision maker come to the same conclusion.
4. On 7 June 2022, the appellant received a new decision affirming the previous decision, using the same wording as the original decision maker had used, without any further details or response to the specific matters raised in the internal review request.
5. The appellant appealed to my Office on 30 June 2022, at which stage submissions were requested from the Department. At this stage the Department actually located documents relevant to this request.
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 and to the cases referred to throughout this decision. In addition, I have had regard to:
 - the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister’s Guidance);



- Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
- the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
- The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (the Aarhus Guide).

Scope of Review

7. In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decision and to affirm, annul or vary it. Where appropriate in the circumstances of an appeal, I will require the public authority to make available environmental information to the appellant.
8. The scope of my review in this case is limited to whether the Department was justified in its decision to refuse the appellant's request, on the basis that it does not hold the information sought.

Analysis and Findings

9. Article 7(1) of the AIE Regulations requires public authorities to make available environmental information that is held by or for them on request. Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested environmental information is held by or for the public authority concerned. My approach to dealing with cases where a public authority has effectively refused a request under article 7(5) is that I must be satisfied that adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, I consider that a standard of reasonableness must necessarily apply. It is not normally my function to search for environmental information.
10. In its submission to this Office, the Department explained that when the request for the information was received, it was unable to locate anything about the seminar. The submission highlighted that the seminar happened a “significant amount of time ago and the policy and developments had moved on significantly.”
11. The Department states that it made fresh enquiries regarding the requested information when my Office accepted the appeal and some documents were located. However, the Department felt that these records should first be redacted, citing a number of different



exemptions. The Department also commented that the appellant's "voluminous enquiry appears speculative and not enquiring about a particular environmental issue..."

12. The manner in which the Department has dealt with this request is unacceptable. The absence of any evidence to show that the Department meaningfully engaged with the request at either original decision stage, or at internal review stage is most disappointing. I acknowledge that renewed searches can sometimes reveal some additional information that may not have been found initially. However, I believe that there must have been significant deficiencies in the searches conducted by the Department in circumstances where no information whatsoever was found during searches at original decision and internal review stage, but a considerable amount of information was then found when my Office enquired about the matter. At that stage the appellant had paid a fee. The Department should review its procedures for searching for environmental information, and take account of the requirement under article 5(1)(b) of the AIE Regulations for it to make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible.
13. The Department ought to be aware of the requirements placed on it by the AIE Regulations, and by the requirements of fair procedures, to provide reasons for its decisions. Neither of its decisions contained any justification for its conclusion that the records did not exist or could not be found. The absence of such explanation is magnified by the appellant's specific request that the steps taken to search for documents should be set out in the internal review decision. This disregard for its obligations by the Department is unacceptable.
14. I would also remind the Department that article 6(2) of the AIE Regulations provides that an applicant shall not be required to state his or her interest in making the request. I therefore take the view that the Department should refrain from making commentary about the motivation of the requester or expressing its view that a request may be "speculative" in nature. If the request is a valid request for environmental information, which is held by or for the Department, then that request must be processed under the provisions of the AIE Regulations.
15. The Department's submission to my Office was the first stage at which it indicated that relevant environmental information had been located, at which point it also stated that it would like to redact the documents. It is not the role of my Office to effectively become the communicator of a first instance decision to the appellant.
16. In the circumstances, I am of the view that the most appropriate course of action to take at this stage is to annul the decision of the Department in its entirety, the effect of which is



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that the Department must consider the appellant's request afresh and make a new, first instance decision in accordance with all relevant provisions of the AIE regulations.

Decision

17. Having carried out a review under article 12(5) of the AIE Regulations, I annul the Department's decision that, after all reasonable steps to ascertain its whereabouts were taken, the information requested does not exist or cannot be found. I remit the matter to the Department who should process the appellant's request in accordance with the AIE Regulations.

Appeal to the High Court

18. 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.

Ger Deering
Commissioner for Environmental Information

27 July 2022