



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-107698-Q5M5S6

Date of decision: 14 June 2021

Appellant: Right To Know CLG

Public Authority: Data Protection Commissioner (the DPC)

Issue: Whether the DPC dealt with the appellant's request in accordance with articles 3, 4 and 5 of the AIE Directive.

Summary of Commissioner's Decision: The Commissioner found that the request was not dealt with in accordance with articles 3(2) and 4(5) of the AIE Directive and articles 7(2) and 11(3) of the AIE Regulations and that this failure was not justified.

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 19 January 2021, the appellant requested pdf copies of all enforcement decisions of the DPC relating to the use of CCTV for the enforcement of waste management legislation (e.g. littering). No response was received from the DPC.
2. On 19 February 2021, the appellant requested an internal review of the DPC's deemed refusal. No response was received from the DPC.
3. On 31 March 2021, the appellant brought this appeal to my Office.
4. On 9 April 2021, my Office wrote to the DPC requesting that it provide the appellant with a letter specifying the reasons for the DPC's effective position in relation to the appellant's internal review request, as soon as possible but no later than 30 April 2021. No response was received from the DPC.
5. On 7 May 2021, my Office wrote to the DPC, reminding the DPC of its obligations under the AIE Regulations and requesting that the DPC issue a statement of its position to the appellant no later than 13 May 2021. On 11 May 2021, my Office followed up this correspondence with a telephone call and was assured by the DPC that a response would issue.
6. On 13 May 2021, the DPC wrote to the appellant, copied to my Office. The DPC acknowledged and apologised for its failure to respond to the appellant's request in a timely manner. It stated that the failure was due to an administrative issue that arose in the DPC, compounded by the difficulties imposed by the current Covid-19 restrictions. It stated that the DPC is working to rectify this situation and to ensure that it meets its obligations as a public authority under the AIE Regulations. With regard to the request, the DPC notified the appellant that the information requested is available in full on the DPC's website, with links to that information provided separately.
7. I have now completed my review under article 12(5) of the AIE Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the DPC. In addition, I have had regard to:
 - (a) the [Guidance](#) provided by the Minister for the Environment, Community and Local Government on implementation of the Regulations;
 - (b) [Directive 2003/4/EC](#), upon which the AIE Regulations are based;
 - (c) United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the [Aarhus Convention](#)); and
 - (d) [The Aarhus Convention: An Implementation Guide](#) (Second edition, June 2014).
8. What follows does not comment or make findings on each and every argument advanced but I have considered all materials submitted in the course of the investigation.



Scope of Review

9. 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. In this case, the information requested has been provided to the appellant. As such, the scope of my review is confined to whether or not the request has been adequately answered, or has otherwise been dealt with in accordance with Article 3, 4 or 5 of the AIE Directive (see article 11(5) of the AIE Regulations).

Analysis and Findings

10. Article 3(2) and 4(5) of the AIE Directive, read together, require public authorities to respond substantively to a request for information:
 - (a) as soon as possible or, at the latest, within one month after receipt of the request; or
 - (b) within two months after the receipt of the request if the volume and the complexity of the information is such that the one-month period cannot be complied with (although in such cases the requester must be informed as soon as possible, and in any case before the end of the one-month period, of any such extension and of the reasons for it).
11. Article 6(1) of the AIE Directive provides for consideration of the matter on review by the public authority concerned to be expeditious.
12. Those provisions have been implemented in Ireland by articles 7(2) and 11(3) of the AIE Regulations. Article 11(3) provides that an internal review must be notified to the requester within one month of receipt of the request for the internal review.
13. I accept the appellant's submission that timely access is an important feature of access to environmental information. In *C-186/04 Housieaux v Délégés du conseil de la Région de Bruxelles-Capitale*, a case under the predecessor to the AIE Directive, [Advocate General Kokott](#) stated at paragraph 24:

“... the aim of Directive 90/313 is to grant individuals a subjective right of access to information on the environment. However, that right could be devalued if a public authority were able to take as long as it pleased to decide on a request for such access. The value of information on the environment is dependent not least on the individual's being able to obtain it as quickly as possible. Thus, timely access to current information on the environment makes it in particular easier for the person requesting the information to use it, for example in ongoing construction or planning proceedings in which he may be involved as a neighbour and in which he would like to protect his interests.”
14. The [Court](#) noted this paragraph with approval at paragraphs 24 and 28 of its judgment.
15. In this case, the DPC failed to respond either to the appellant's request for information or for an internal review. It was only after repeated correspondence from my Office that the DPC responded to the appellant's request, directing the appellant to its website in accordance with article 7(3)(a)(i). The DPC pointed to an administrative issue, which gave rise to its failure to respond. While I accept this as an explanation, it does not amount to a justification.



16. I also note that the usual one-month timeframe for responding to requests is an outer limit. Requests must be responded to “as soon as possible” and having regard to any timescale specified by the requester. In this case, the DPC could have responded to the appellant’s request very quickly, and far in advance of the statutory outer limit, by directing the appellant to the relevant part of its website.
17. On this point, I should state that it is positive to see that the DPC proactively published the reports on its website, in keeping with article 5(1) of the AIE Regulations and in the spirit of article 7 of the AIE Directive. Dissemination of environmental information is a cornerstone of the AIE regime, which must be encouraged in order for the objectives of the AIE Directive to be met.
18. I note the DPC’s statement that it is working to rectify the administrative issue that gave rise to its failure to respond and to ensure that it meets its obligations as a public authority under the AIE Regulations. Accordingly, I expect that this situation is not one that will regularly recur.

Decision

19. Having carried out a review under article 12(5) of the AIE Regulations, I hereby formally annul the internal review decision of the DPC, which effectively refused the environmental information sought. The information at issue has since been made available to the appellant; therefore, I see no reason to make any further directions.
20. I find that the appellant’s request was not dealt with in accordance with articles 3(2) and 4(5) of the AIE Directive and articles 7(2) and 11(3) of the AIE Regulations and that this failure was not justified.

Appeal to the High Court

21. A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

Peter Tyndall
Commissioner for Environmental Information