



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 CEI/19/0007

Date of decision: 6 December 2019

Appellant: Right to Know CLG

Public Authority: Raidió Teilifís Éireann (RTÉ)

Issue: Whether RTÉ was justified in refusing access to information comprising emails from members of the public to RTÉ commenting on the quality and quantity of its reporting on climate change issues on the basis that the emails are not "environmental information" within the meaning of article 3(1) of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner found that RTÉ was justified in refusing access to the emails on the basis that the information concerned is not environmental information within the meaning of the definition in article 3(1) of the AIE Regulations. Accordingly, he held that RTÉ was not obliged to process the appellant's request for access to the information and that he had no further jurisdiction in relation to the matter.

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:

On 24 November 2018 the appellant requested the following from RTÉ:

- "- copies of any records held relating to how RTÉ should report on climate change issues.
- copies of any records relating to the creation of policies or guidelines on climate change reporting."

On 20 December 2018 RTÉ made a decision refusing access to the information sought. It stated that there were no records relating to the creation of policies or guidelines on climate change reporting. It confirmed that it did hold records relating to how RTÉ should report on climate change issues. It explained that the information it held relating to that part of the request was correspondence and feedback from members of the public. However, it refused access to the information on the basis that it was not environmental information.

On 21 December 2018 the appellant requested an internal review of RTÉ's decision on the basis that RTÉ was interpreting the definition of environmental information too narrowly. It stated that "[i]t is extremely difficult to see how public comment on climate change reporting by a state broadcaster could not be considered as environmental information under the regulations."

RTÉ's internal review decision dated 25 January 2019, which focused solely on the first part of the request, affirmed its initial decision that the information was not environmental information. It clarified that the correspondence it held relating to the request was internal correspondence and feedback from members of the public to RTÉ commenting on the quality and quantity of its reporting on climate change issues and cannot be described as environmental information.

The appellant appealed to my Office on 2 February 2019.

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 RTÉ. I also 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:

The appellant's internal review request only sought a review of RTÉ's decision to refuse access to information relating to the first part of its request, i.e. copies of records relating to how RTÉ should report on climate change issues.

While RTÉ's internal review decision refers to internal correspondence, that information post-dates the AIE request and is therefore outside the scope of my review. The remaining withheld

information in this case is in the form of 20 emails sent from members of the public to RTÉ commenting on the quality and quantity of its reporting on climate change issues.

Accordingly, my review is limited to the question of whether RTÉ's refusal of access to the emails from members of the public to RTÉ commenting on its reporting on climate change issues was justified on the basis that they do not come within the definition of environmental information in the AIE Regulations.

Article 3(1) definition of 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) ".

The AIE Directive was adopted to give effect to the first pillar of the Aarhus Convention in order to increase public access to environmental information so that an informed public can participate more effectively in environmental decision-making. It replaced Council Directive 90/313/EEC, the previous AIE Directive.

RTE's position

In its submissions, RTÉ acknowledges that the definition of environmental information is deliberately broad and that it should interpret the request in that context. However, it argues that under no reasonable construct of article 3(1) of the Regulations can the requested records be considered or described as "environmental information".

RTÉ emphasises that the requested records consist of comments from members of the public about its reportage (or lack thereof) on the topic of climate change. It states that the records relate to RTÉ's output, i.e. its journalism, rather than environmental elements or factors *per se*. It notes that it is not in a position to start a campaign on environmental issues, as such a campaign would result in a breach of section 39 of the Broadcasting Act, various codes set down by the Broadcasting Authority of Ireland as well as its own Journalism Guidelines. Rather, it is required to be independent and thus contacts by individuals or campaigns cannot influence the outcome of its coverage. RTÉ therefore considers that the commentary cannot have an impact, directly or indirectly, on the environment.

In support of its position, RTÉ refers to the Aarhus Guide, which states at page 53:

"The test is whether the activities or measures may have an effect on the environment."

RTÉ maintains that, as "comments from the public to the national broadcaster cannot impact on the environment even given its widest interpretation", the records do not meet the definition of environmental information as set out in article 3(1) of the Regulations.

RTÉ also cites the following case law in support of its position that the information at issue is not environmental information:

- The Court of Justice of the European Union (CJEU) judgments in Case C-316/01 *Glawischnig v Bundesminister für Sicherheit und Generationen*, Case C-321/96 *Mecklenburg v Kreis Pinneberg* and Case C-279/12 *Fish Legal and Emily Shirley v Information Commissioner and Others (Fish Legal EU)* available at www.curia.europa.eu
- The Court of Appeal judgment in *Minch v Commissioner for Environmental Information* [2017] IECA 223 available at www.courts.ie
- UK Court of Appeal judgment in *Department for Business Energy and Industrial Strategy v Information Commission and Alex Henney* [2017] EWCA Civ 844 available at www.bailii.org
- Decisions of the Commissioner for Environmental Information - Case CEI/11/0001 (Mr. Gavin Sheridan and Central Bank of Ireland) and Case CEI/13/0013 (Gavin Sheridan and An Garda Síochána) available at www.ocei.ie

Appellant's position

The appellant initially declined to make a detailed submission in this case, but it referred to its internal review request and stated that:

"The records are quite clearly environmental information relating as they do to climate change and RTÉ's coverage of the issue."

My investigator subsequently notified the appellant of additional arguments made by RTÉ to my Office and received the following submission:

"Environmental information is "information on" one of the six categories. It is not required that the information has any effect in and off [sic] itself on the environment. In this case the information is on climate change, an environmental factor and on reporting (including

related policies) relating to climate change which is a measure and/or activity affecting or likely to affect the environment. Broadcasting, particularly by a public service broadcaster, shapes public opinion by informing the public about the subject matter. The degree of awareness around climate change is almost certain to affect the way people adapt to and accept climate change issues. The Commissioner doesn't have to be satisfied that there will actually be such effects but the effects must be more than merely hypothetical. In this case the link between RTÉ's reporting of climate change issues and public knowledge and acceptance of climate change issues should be readily understood given the role of media in our society as a way for the public to receive information and to make informed decisions about how they live their lives.

The final point to make is that access to this category of information is entirely in line with the objectives of the Aarhus Convention and the AIE Directive since RTÉ, as a public authority, has a role to play in disseminating environmental information to the fullest extent possible and this includes state-owned media organisations and their reporting on environmental issues including climate change."

Analysis and Findings

While the appellant did not refer to any parts of the definition in its submission, in effect it suggests that the information at issue is environmental information within the meaning of:

- article 3(1)(b), as the information is on climate change which the appellant asserts is an environmental factor and
- article 3(1)(c), as it is information on RTÉ's reporting on climate change issues which it states is a measure and/or activity affecting or likely to affect the environment.

Having regard to the available guidance on the meaning of "environmental information", I agree with RTÉ that the mere connection between the information requested and RTÉ's reporting on climate change issues does not provide a basis for finding that article 3(1) of the Regulations applies. Given that RTÉ has relied on various case law to support its position on the definition, I will take the opportunity provided by this case to set out in some detail my understanding of the relevant legal test for the definition of environmental information. I appreciate that the boundaries of the definition can sometimes be unclear but, as noted by the UK Court of Appeal in *Department for Business Energy and Industrial Strategy v Information Commission and Alex Henney [2017] EWCA Civ 844 (Henney)* at paragraph 36 "an approach which is not focussed on the statutory definition [of environmental information] is liable to introduce uncertainty and error."

A link is not sufficient

As I have observed in previous decisions, there are limits to the scope of the AIE regime. In Case C-316/01 *Glawischnig v Bundesminister für Sicherheit und Generationen* the Court of Justice of the European Union (CJEU) clarified, in relation to the previous AIE Directive, that the right of access under the AIE regime only applies to information that falls within one of the relevant categories. The CJEU held that information which has only a minimal connection is not environmental information. The Court explained that:

"24. The Community legislature's intention was to make the concept of 'information relating to the environment' defined in Article 2(a) of Directive 90/313 a broad one, and it avoided giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities (see Mecklenburg, paragraphs 19 and 20).

25. Directive 90/313 is not intended, however, to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal, with one of the environmental factors mentioned in Article 2(a). To be covered by the right of access it establishes, such information must fall within one or more of the three categories set out in that provision."

In Case C-204/09 *Flachglas Torgau GmbH v Federal Republic of Germany*, the CJEU confirmed that "the right of access guaranteed by Directive 2003/4 only applies to the extent that the information requested satisfies the requirements for public access laid down by that directive, which requires inter alia that the information is 'environmental information' within the meaning of Article 2(1) of the directive".

Thus, while the concept of "environmental information" is broad, it is not unlimited and a mere connection or link to an environmental factor or element is not sufficient to bring information within the scope of the AIE regime. Indeed, in 2016, the CJEU in Case C-673/13 P *Commission v Stichting Greenpeace Nederland and PAN Europe (Stichting Greenpeace)* explicitly rejected a finding by the General Court of the European Union that a document included information which "relates to emissions in the environment" on the basis that there was a sufficiently direct link between the information and emissions into the environment.

Under the AIE Directive, certain exceptions to the right of access to information, primarily those relating to confidentiality, may not apply where the "request relates to information on emissions into the environment". On the European level, the exceptions to disclosure are set out in Article 4 of 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. However, Article 6 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies provides an emissions override to the exceptions as there is deemed to be a public interest in disclosure where the "information requested relates to emissions into the environment".

In *Stichting Greenpeace*, the CJEU referred to the AIE Directive's use of the term "information on emissions" in finding that the concept 'information [which] relates to emissions' is not concerned with information with a direct or indirect link to emissions into the environment. Moreover, at paragraph 81 of its judgment, the CJEU cautioned that interpreting the concept of "information [which] relates to emission into the environment" as covering "any kind of link, even direct, to emissions into the environment . . . would to a large extent deprive the concept of 'environmental information' as defined in Article 2(1)(d) of Regulation No 1367/2006 of any meaning". Article 2(1)(d) reproduces the definition of environmental information in the AIE Directive in Regulation No 1367/2006. Other CJEU judgments indicating that a mere link to an

environmental element or factor is not sufficient to bring information within the ambit of paragraphs (a) to (c) of the definition can be found in Case C-524/09 *Ville de Lyon*, Case C-266/09 *Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden* and Case C-442/14 *Bayer CropScience and Stichting De Bijenstichting*.

The case law also reflects the fact that determining whether information falls within one of the six qualifying categories is not necessarily a straightforward matter. The Court of Appeal in *Minch v Commissioner for Environmental Information & Anor* [2017] IECA 223 (*Minch*), found that I erred in Case CEI/13/0006 (Mr. Stephen Minch and the Department of Communications, Energy and Natural Resources available at www.ocei.ie) by taking an overly restrictive approach in applying the minimal connection or remoteness test in relation to the National Broadband Plan (NBP). The case involved a request for a cost-benefit report entitled "Analysis of options for potential State intervention in the roll out of next-generation broadband" (the Report). I did not accept that the Report provided information on environmental elements or factors, nor did I accept that it provided information on a measure or activity affecting or likely to affect environmental elements or factors. I went on to consider the question of whether the NBP may itself be a measure within the meaning of article 3(1)(c) such that the Report could qualify under paragraph (e) of the environmental information definition. However, finding at the time (2014) that the NBP was "merely a high level strategy", I concluded that the link between the NBP and any effect on the environment was simply too remote, unlike the measures and activities that may be adopted to implement the Plan.

In *Minch* the Court of Appeal agreed that the Report, in itself, could have no implications for the environment since it was concerned with financial modelling. The Court found that something more definite was required for the purposes of article 3(1)(c) of the definition:

"39. It is, however, perhaps significant that Article 3(1)(c) of the 2007 Regulations refers to 'plans' or 'policies' 'affecting or likely to affect the environment...' The wording here suggests that the document in question must have graduated from simply being an academic thought experiment into something more definite such as a plan, policy or programme – however tentative, aspirational or conditional such a plan or policy might be – which, either intermediately or mediately, is likely to affect the environment. "

Having regard to *Glawischnig*, the Court also stressed that it was not sufficient for a document to refer, directly or indirectly, to environmental matters in order for it to fall within the scope of article 3(1)(c):

"41. There must, however, be a plan or something in the nature of a plan. This requirement that the document constitute a plan or a policy thus curtails a potentially open-ended or indefinite right of access to documents and in this respect reflects the thinking of the Court of Justice in *Glawischnig*, as otherwise virtually any document generated by a public body which referred either directly or indirectly to environmental matters could come within the scope of Article 3(1)(c)."

The Court found, however, that the NBP itself qualified as a plan, and thus as a measure, for the purposes of article 3(1)(c). In doing so, the Court referred to the French text of the Directive and considered that “the reference to ‘likely to affect’ the environment [in article 3(1)(c)] should really be understood in the sense of being ‘capable’ of affecting the environment”. It is apparent from the context in which the Court made this statement, and from the terms used in the French text itself, that the Court was not using the term “capable” in the sense of remote possibilities. Rather, the Court explained that a judgment is not required “as to whether the plan or policy is ever likely to be put into effect and in that sense is or is not likely to affect the environment”. The example used to illustrate the point was a plan to build four motorways in a weakening economy. Thus, the use of the term “capable” was similar to that of the CJEU in Case C-321/96 *Mecklenburg v Kreis Pinneberg (Mecklenburg)*, where it held that a statement of views submitted by the administrative authority competent in the matter of protecting the countryside (countryside protection authority) in connection with planning approval for the construction of a bypass may qualify as environmental information if it is “capable of influencing the outcome of the development consent proceedings as regards interests pertaining to the protection of the environment”. Given the context (a submission made by the countryside protection authority in the development consent proceedings relating to a road construction project), I consider that the term “capable” is used to clarify that certainty of an environmental impact is not required but nevertheless the expectation of such an impact must be more than hypothetical or tenuous.

Thus, the Court’s disagreement with my finding in the *Minch* case was not in relation to the remoteness test itself but rather its application in relation to the NBP. It did not agree that the NBP was “merely a high level strategy document” because of the actions proposed in the plan that were likely to affect the environment. The Court observed:

"49. On any view, therefore, the plan discussed a variety of options each of which would have significant environmental impacts, whether it be the road openings for fibre or the installation of 2,000 new installations to facilitate the delivery of wireless technology. The plan further envisioned specific measures with regard to the planning process and the development of telecommunications infrastructure. None of these proposed actions can, with respect, be dismissed as remote or incidental. "

It is also noteworthy that the Aarhus Convention Compliance Committee (ACCC) in a case referred to as Communication ACCC/C/2007/21 (European Union) indicated that even a financing agreement for the construction of a thermo-power plant may not necessarily qualify as environmental information. The Committee stated in relation to the communicant’s request for a copy of the finance contract:

"It has to be noted in the context that the documents requested are in general not environmental information and only some parts of the documents . . . relate to the environment."

The Committee stated that whether the provisions of a financing agreement are to be regarded as environmental information cannot be decided in a general manner, but rather advised that the matter must be "determined on a case-by-case basis". As an example of when financing agreements "may sometimes" amount to environmental information, the Committee referred

to a financing agreement dealing with "specific measures concerning the environment, such as the protection of a natural site". Again, then, the mere link between a document such as a financing agreement and environmental matters (such as the environmental impact of constructing a thermo-power plant) is not itself the determining factor in relation to the environmental information definition. I believe that the ACCC's position aligns with the jurisprudence in this area and supports my approach that it is not sufficient for information to refer directly or indirectly to environmental matters for it to fall within the scope of article 3(1).

The purpose of the AIE Directive

I further note that I am required to take a teleological approach in interpreting the AIE Regulations in order, insofar as possible, to achieve the purpose of the Directive (see *National Asset Management Agency v Commissioner for Environmental Information* [2015] IESC 51, at paragraph 10). Recital (1) of the Preamble to the AIE Directive reflects that the purpose of AIE is to provide public access to environmental information so that an informed public can participate more effectively in environmental decision-making. Public access to environmental information is thus expected to contribute "eventually" to a better environment. Thus, as I have indicated in previous decisions, I consider that AIE is about promoting openness and transparency in relation to environmental matters; it is not about holding public authorities accountable in relation to their general business functions.

Moreover, Recital (4) to the AIE Directive reflects the position that the decision was taken to replace Directive 90/313/EEC in order to address the problems identified in the report produced by the Commission under Article 8 of that Directive. The Commission's report, entitled "Report from the Commission to the Council and the European Parliament on the experience gained in the application of Directive 90/313/EEC of 7 June 1990, on freedom of access to information on the environment", highlighted the problem that in some Member States a strict interpretation of the definition of "information relating to the environment" had resulted in the refusal of requests for information on such matters as the public health effects of the state of the environment, radiation or nuclear energy, and on financial or needs analyses underpinning environmental projects.

Therefore, as specified in Recital (10) to AIE Directive, the definition was "clarified so as to encompass information in any form on the state of the environment, on factors, measures or activities affecting or likely to affect the environment or designed to protect it, on cost-benefit and economic analyses used within the framework of such measures or activities and also information on the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are, or may be, affected by any of those matters". A similar explanation for the expanded definition of environmental information is found in the Explanatory Memorandum for the Proposal for a Directive of the European Parliament and of the Council on public access to environmental information (COM/2000/0402 final - COD 2000/0169).

It is thus apparent that the purpose of the new Directive in relation to the definition of environmental information was to clarify the concept by extending the categories of information concerned in order to ensure that it encompassed information on such matters as the health and safety effects of the state of the environment, factors such as radiation or

emissions, and on financial or needs analyses underpinning environmental projects. I find nothing to suggest that the purpose was to collapse the distinction between information and environmental information by allowing documents with only a tenuous link to environmental matters to be brought within the scope of AIE access rights. On the contrary, as the European Commission recognised in its "Report from the Commission to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on public access to environmental information":

"Correct classification [of information] is important, as 'environmental information' comes under the specific provisions of the [AIE] Directive, which tend to provide broader access rights than exist for access to general administrative information. "

The emails at issue

In light of the above, I find no basis for concluding that the emails at issue in this case qualify as environmental information for the purposes of the AIE Regulations. The emails are not about climate change or any other environmental matters *per se*; they are about the quality and quantity of RTÉ's reporting on climate change issues.

The contents of the emails do not contain or provide information on or about the state of the elements of the environment such as on the quality or quantity of air or atmosphere or the interaction between the elements. Neither are the contents of the emails on or about factors such as climate change or greenhouse gases or other emissions or releases into the environment which are affecting or likely to affect the state of the elements of the environment or the interaction between them.

Accordingly, I do not agree with the appellant's suggestion that the information requested is environmental information within the meaning of article 3(1)(b) of the AIE Regulations.

The appellant also suggests that RTÉ's broadcasting or reporting may itself be a measure or activity within the meaning of article 3(1)(c) and that the emails may therefore qualify as "information on" the measure or activity. However, in describing "activities or measures" as those terms are used in the Aarhus Convention, the Aarhus Guide refers to "decisions on specific activities, such as permits, licences, permissions that have or may have an effect on the environment". It explains that the activities or measures do not need to be part of some category of decision-making labelled 'environmental'; rather, " [t]he test is whether the activities or measures may have an effect on the environment".

Broadcasting or reporting is not a plan, policy or programme with proposed actions that are likely to affect the environment, as in *Minch*, nor is it an activity akin to the submission of a statement of views by a public authority in planning permission proceedings, as in *Mecklenburg*. Rather, it is a function carried out by RTÉ in the exercise of press freedom, which is regarded as an important right guaranteed under the Irish Constitution and the European Convention on Human Rights (see, e.g., *Cornec v. Morris & Ors* [2012] IEHC 376). The "freedom and pluralism of the media" is also expressly protected under Article 11 of the Charter of Fundamental Rights of the European Union. I recognise, of course, that the press plays a crucial role in informing the public on matters of public interest such as climate change. Indeed, it is through its broadcasts and reports on climate change issues that RTÉ disseminates

environmental information and raises awareness of such issues. However, the central role played by the press in relation to the free flow of information is the reason why the courts have generally accorded very strong protection to journalistic material or, as it was described by O'Neill J. in *Walsh v. News Group Newspapers Ltd* [2012] IEHC 353, the "proper functioning of journalism". Thus, I consider it very doubtful that the international, European or national legislature intended for information on a State broadcaster's journalistic functions to be captured by the environmental information definition.

In any event, as I have explained above, a mere connection or link to an environmental factor is not sufficient to bring information within the scope of the AIE regime. In this case, I consider that the environmental effects from the reporting on climate change issues are too indirect and too uncertain for the reporting to qualify as a measure or activity for the purposes of article 3(1)(c) of the AIE Regulations. In my view, the connection between RTÉ's reporting on climate change issues and any effect on factors relevant to climate change such as emissions and the elements of the environment is at best minimal or remote, if not purely hypothetical. The connection between the emails themselves and any environmental impact is even more tenuous.

I consider that a purposive reading of the AIE Regulations reinforces my findings that the information at issue is not environmental information within the meaning of article 3(1). I do not see that access to the emails would enable members of the public to participate in environmental decision-making or facilitate access to justice in environmental matters. Moreover, a finding that the emails are environmental information would largely deprive the concept of environmental information of any meaning in an impermissible manner as it would be contrary to the purpose of the AIE Directive and the guidance of the courts, in particular the CJEU in *Glawischnig, Stichting Greenpeace* and the Court of Appeal in *Minch*. This would also have the effect of effectively collapsing the distinction between access to environmental information under the AIE Regulations and access to information more generally.

Accordingly, I also do not accept that the information requested is environmental information within the meaning of meaning of article 3(1)(c).

Decision:

Having completed my review, I find that the information at issue is not environmental information within the meaning of article 3(1) of the AIE Regulations. Accordingly, RTÉ was not obliged to process the appellant's request for access to information and I have no further jurisdiction in relation to this matter.

Appeal to the High Court:

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.

Commentary:

I note that during its processing of the request, RTÉ recommended to the appellant that the FOI Act may be a more appropriate avenue to seek the information it sought. I further note that my decision is without prejudice to the appellant's right to request access to records containing the information pursuant to the FOI Act.

Peter Tyndall

Commissioner for Environmental Information

6 December 2019