



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-113791-R0T6G2

**Date of decision:** 10 November 2021

**Appellant:** RZ

**Public Authority:** Donegal County Council (the Council)

**Issue:** Whether Council was justified in refusing the request as invalid under article 6(1)(c) of the AIE Regulations.

**Summary of Commissioner's Decision:** The Commissioner found that the Council was not justified in refusing the request as invalid under article 6(1)(c) 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 20 August 2021, the appellant requested information on the Meenbog bog slide, where tonnes of peat slid down from a windfarm in November 2020, specifically, what environmental damage had occurred and copies of any environmental studies on the damage caused.
2. On 23 August 2021, the Council requested that the appellant confirm that they are making a request under the AIE Regulations and provide their name. The appellant responded on the same date confirming that they are making a request under the AIE Regulations but declining to give their name. The appellant stated that the Council may use their email address as their name if needed.
3. On 25 August 2021, the Council decided to refuse the appellant's request on the basis that it was not a valid request as the applicant did not state the name, address and any other relevant contact details of the applicant, in accordance with article 6(1)(c) of the AIE Regulations.
4. On 25 August 2021, the appellant requested an internal review of the decision. On 27 August 2021, the Council responded that, as the Council did not accept the request the option for an internal review did not apply.
5. On 27 August 2021, the appellant brought this appeal to my Office.
6. On 9 September 2021, my Office wrote to the Council to request that it provide the appellant with a statement of reasons for its position in relation to internal review. On 30 September 2021, the Council provided the appellant with a statement of reasons, which repeated the grounds for its original decision.
7. I have now completed my review under article 12(5) of the AIE Regulations. This case has been taken out of turn ahead of other older appeals in my Office's caseload. This is because the case concerns a threshold issue, where the public authority has not processed the substantive request. In carrying out my review, I have had regard to the submissions made by the appellant and the Council. In addition, I have had regard to:
  - (a) [Directive 2003/4/EC](#), upon which the AIE Regulations are based;
  - (b) 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](#));
  - (c) [The Aarhus Convention: An Implementation Guide](#) (Second edition, June 2014); and
  - (d) the [Guidance](#) provided by the Minister for the Environment, Community and Local Government on implementation of the Regulations.
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. Where appropriate, I may require a public authority to make available environmental information to the appellant.



10. In this appeal, the Council refused the request on the basis that it was not a valid request as the applicant did not state the name, address and any other relevant contact details of the applicant, in accordance with article 6(1)(c) of the AIE Regulations. My review is therefore concerned with whether the Council was justified in refusing the request as invalid under article 6(1)(c) of the AIE Regulations.

### **Analysis and Findings**

11. The right of access to information under the AIE Directive is set out in Article 3(1), which states that “Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.” An applicant is defined in Article 2(5) as “any natural or legal person requesting environmental information”.
12. Article 3(5) of the AIE Directive provides:
- “For the purposes of this Article, Member States shall ensure that:
- (a) officials are required to support the public in seeking access to information;
  - (b) lists of public authorities are publicly accessible; and
  - (c) the practical arrangements are defined for ensuring that the right of access to environmental information can be effectively exercised, such as:
    - the designation of information officers;
    - the establishment and maintenance of facilities for the examination of the information required,
    - registers or lists of the environmental information held by public authorities or information points, with clear indications of where such information can be found.”
13. Article 6 of the AIE Regulations, which seeks to transpose Article 3 of the AIE Directive, defines a request for the purpose of the AIE Regulations. Article 6(1)(c) provides that “a request for environmental information shall ... state the name, address and any other relevant contact details of the applicant”.

### *Analysis and conclusions*

14. I am required to interpret the AIE Regulations in a manner consistent with, and in order to achieve the purpose of, the AIE Directive (*National Assets Management Agency v Commissioner for Environmental Information* [2015] IESC 51, at paragraphs 10-11). The AIE Directive emphasises the need for effective and easy access to environmental information by members of the public (see recital 15). Consistent with this, the practical arrangements put in place by Member States under Article 3(5) must be “defined for ensuring that the right of access to environmental information can be effectively exercised”. In this context, the High Court has recently found that practical steps to ensure easy and efficient access to information, and which assist in the provision of information, are permissible under the AIE Directive, even if not expressly envisaged by the text of the AIE Directive (see *Right to Know CLG v An Taoiseach* [2020] IEHC 228). However, practical



arrangements which do not ensure the effective exercise of the right of access to information, or which inhibit the right of access, would not be permissible under the AIE Directive.

15. In light of the above, I understand article 6(1)(c) of the AIE Regulations as seeking to ensure that public authorities have sufficient contact details for an applicant to enable the public authority to communicate with the applicant to ensure the effective right of access to environmental information. This naturally entails the provision of contact details which enable the public authority to seek clarification of the scope of the request and which enable the public authority to meet its duties under article 7(7) or (8) of the AIE Regulations. It also entails the provision of an address to which the public authority's decision and any environmental information may be sent. In this context, I consider that the reference to a "name" in article 6(1)(c) simply requires the notification of a person who may be contacted by the public authority in relation to the request, whether that person's true identity is disclosed or not.
16. My understanding of article 6(1)(c) is consistent with the duty to ensure that applicants for information are not required to state an interest when making a request (Article 3(1) of the AIE Directive and article 6(2) of the AIE Regulations). In my view, the mere disclosure of an applicant's identity could, in some circumstances, indicate the applicant's interest in the information, for example where the applicant is an organisation with particular environmental objectives. In such cases, requiring the applicant to identify themselves could amount to a requirement to state an interest. My conclusion is also consistent with the understanding of the Minister who enacted the provision, as evidenced by paragraph 8.1 of the Minister's Guidance which states that, "The applicant is not required to state an interest but is required to ... provide their contact details".
17. In this case, the appellant provided sufficient contact details to the Council to enable it to engage with the appellant about the request, with the applicant's email address amounting to both a name and address for the purpose of article 6(1)(c). Accordingly, I consider that the appellant complied with article 6(1)(c) of the AIE Regulations and that the request was valid.

### **Decision**

18. Having carried out a review under article 12(5) of the AIE Regulations, I find that the Council was not justified in refusing the request as invalid under article 6(1)(c) of the AIE Regulations. I therefore annul the Council's decision not to process the AIE request. I expect the Council to issue a fresh decision to the appellant in light of my findings above.

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

19. 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**  
10 November 2021