

**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 2014
(the AIE Regulations)**

Case CEI/16/0035

Date of decision: 22 May 2017

Appellant: Gerard Frawley

Public Authority: Meath County Council (the Council)

Third party: Dunbia - a food production company which operates a meat processing plant at Slane, County Meath (the Company)

Issues:

1. Whether the Council was justified in refusing the request on the basis that it did not hold the requested information
2. If the Council was not justified in refusing the request for that reason, whether it would be appropriate for the Commissioner to require the Council to make environmental information available to the appellant

Summary of Commissioner's Decision: The Commissioner found that the Council's decision was not justified, because it did not find that the requested information was not held by another natural or legal person on its behalf. The Commissioner found that the information was not held by or for the Council, and, accordingly, he affirmed refusal of the 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

The AIE Request

On 10 June 2016, the appellant submitted an AIE request to the Council, asking for:

1. The number of animals killed daily at the Dunbia Slane plant.
2. The number of animals killed annually at the Dunbia Slane plant over the last 5 years.

On 5 July 2016, the Council refused the request because it did not hold the requested information.

On 25 July 2016, the appellant requested an internal review of that decision, arguing that the requested information was “within the procurement of” the Council.

On 5 August 2016, the Council affirmed the decision to refuse the request, for the same reason, and without engaging with the appellant’s argument that the information was “within its procurement”.

The appellant appealed to my Office.

Scope of Review

Under article 12(5) of the AIE Regulations, my role is to review the Council’s internal review decision and to affirm, annul or vary it. If I find that refusal was not justified for the reasons given in that decision, my role is to decide whether it would be appropriate for me to require the Council to make environmental information available to the appellant.

My investigator notified the Company of the case but received no response. In conducting my review I took account of the submissions made by the appellant and by the Council. I 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).

Relevant provisions of the AIE Regulations

Article 7(1) provides that a public authority shall, notwithstanding any other statutory provision and subject only to the AIE Regulations, make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority.

Article 3 defines what “held by” or “held for” mean. It provides that:

- “environmental information held by a public authority” means environmental information in the possession of a public authority that has been produced or received by that authority;

- “environmental information held for a public authority” means environmental information that is physically held by a natural or legal person on behalf of that authority.

The appellant’s position on the Council’s decision

In his request to the Council for an internal review of its decision, the appellant argued that Local Authorities are required by the Abattoirs Act to provide ante and post mortem inspections of all animals that are slaughtered for human consumption in abattoirs licensed under the Act and located within the local authority’s functional area. He added that the Dunbia plant is located in the Council’s functional area and the necessary inspections are carried out by 1x part-time and 2 x full-time Council veterinary officers under the supervision of the Council’s full-time veterinary officer. Accordingly, he argued, the information is within the procurement of the Council.

The Council’s position on its decision

In a submission to my Office the Council explained that:

“Meath County Council operates under a Service Level Agreement with the Food Safety Authority of Ireland. Under this agreement the County Veterinary Officer (CVO) provides a veterinary inspection service for the enforcement of food legislation and protection of consumer health and interest. This CVO carries out inspections at 6 specified abattoirs and a large number of other smaller food business operators in the county in line with this Service Level Agreement, but not the larger plants in Meath like Dunbia (the subject of this AIE), which fall under the remit of officials from the DAFM.”

The Council confirmed that:

“Meath County Council’s Veterinary Officer has no role in inspections at the Dunbia Plant and thus Meath County Council would hold no veterinary related records for this plant. Inspections at this plant fall under the remit of the Department of Agriculture, Food and Marine.”

Analysis

Is the requested information environmental information?

Although the Council did not argue that the requested information is not environmental information, I decided that this was something which I should establish before proceeding.

I am satisfied that the operation of an abattoir is an activity which is likely to affect elements of the environment, in that, for example, it produces waste products which must be disposed of in accordance with an Integrated Pollution Prevention and Control licence.

There is also reason to regard the operation of this particular plant as actually affecting (as distinct from merely being “likely” to affect) at least one element of the environment, i.e. water. RTÉ reported on 15 March 2016 that the management of the Company admitted responsibility for discharging “factory process effluent” into a local stream, colouring it

blood-red. That report is available at <https://www.rte.ie/news/2016/0314/774811-red-stream-meath/>. Almost a year later, in February 2017, The Irish Farmers' Journal reported (at <http://www.farmersjournal.ie/dunbia-fined-5-000-for-water-pollution-258333>) that the Environmental Protection Agency prosecuted the Company for that incident at Navan District Court, leading to a conviction and fine for the Company.

Clearly, every meat processing plant has a finite capacity for dealing with animal-waste. Information which would show if that capacity was exceeded or not would be information on an activity affecting or likely to affect the environment and it would therefore constitute environmental information within the meaning of the AIE Regulations.

Conclusion: I am satisfied that the requested information is environmental information.

Was the Council justified in finding that it did not hold the requested information?

The appellant had argued that the Council is legally obliged to have its veterinary staff inspect the plant in question. My investigator put it to him that the Council said that this is not the case and its veterinary officers are not involved at this plant. The appellant did not offer any reason why I should not accept the Council's assurance.

My investigator found, on the internet, a statement given to the Dáil on 2 February 2017 in response to a parliamentary question. In the statement the Minister for Agriculture, Food and the Marine said:

“The slaughter of livestock in this country for human consumption is carried out at facilities which are approved by either the Department of Agriculture, Food and the Marine or by the relevant local authorities. There are currently 49 meat plants approved and supervised by my Department to slaughter animals for human consumption. These plants are required to meet prescribed structural and operational standards set under EU and national food safety regulations. They are supervised by the Department's Veterinary Public Health Inspection Service, which has a permanent presence in slaughter plants and uses the services of approximately 600 Temporary Veterinary Inspectors (TVIs), on a contract basis, for meat inspection.... Smaller abattoirs are supervised by local authorities”.

Conclusion: In light of the above, I accept the Council's assurance that it did not hold the requested information.

Was the Council justified in refusing the request on finding that the requested information was not held by it?

It is not enough for a public authority to find that requested information is not held by it: the AIE Regulations require it, in such circumstances, to establish whether the requested information is held elsewhere on its behalf. In his internal review request, the appellant argued that the requested information was within the procurement of the Council. Notwithstanding this, the decision-maker once again refused the request because the Council “does not hold the records requested”.

Conclusion: Since the Council's decision showed no consideration of whether the requested information was held elsewhere on its behalf, I must find that refusal was not justified for the reason given.

Whether it would be appropriate for me to require the Council to make environmental information available to the appellant

In a submission to my Office the appellant presented a new argument as to why the requested information was within the procurement of the Council: he said that it was within the procurement of the Council for the purpose of checking compliance with the Enva plant's planning conditions.

My investigator put this to the Council. While the Council emphasised that it is the responsibility of the Company to ensure that it is planning-compliant, it accepted that the Council would be entitled to ask for the requested information in the course of planning compliance/enforcement investigations. I am therefore satisfied that, if the requested information was held by the Company, the information would be "within the procurement" of the Council in certain circumstances. The next question is whether this is sufficient to mean that such information could properly be described as being held by the Company *on behalf of* the Council.

I have difficulty in accepting the proposition that information is held on behalf of another entity simply because that other entity has a legal power to compel the holder of the information to hand it over in particular circumstances. [Such a finding could mean, for example, that all sorts of information would be held by a wide array of public authorities on behalf of An Garda Síochána, simply because An Garda Síochána would have the power to compel its production in certain circumstances.] Even if one of a company's reasons for retaining business data was to be prepared to use it to meet a challenge to its planning-compliance, I am not satisfied that this would mean that such data was therefore held on behalf of the planning authority which might make such a challenge. In my view, such data would be held for the company's own purposes and not on behalf of the planning authority.

Conclusion: I conclude that the requested information, even if it was held by the Company (which may be presumed but has not been proven), was not held by the Company for the Council. As that is the case, and as there is no reason to suspect that the information might be held elsewhere on behalf of the Council, there is no question of me requiring the Council to make information available to the appellant.

Decision

Having reviewed the Company's internal review decision, I find that it was not justified because it failed to consider whether the requested information was held elsewhere on behalf the Council. However, I am satisfied that it was not held elsewhere on the Council's behalf and I therefore affirm refusal of the AIE request.

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.

Peter Tyndall
Commissioner for Environmental Information
22 May 2017