

**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/17/0026

Date of decision: 29 May 2018

Appellant: New Morning Intellectual Property Ltd

Public Authority: Transport Infrastructure Ireland (TII)

Issues:

1. Whether refusal to provide access to some of the requested information was justified on the ground that TII did not hold it
2. Whether refusal to provide access to other information in the requested format was justified on the ground of TII's inability to provide the information in that format
3. Whether refusal to provide access to metadata for no stated reason was justified

Summary of Commissioner's Decision: The Commissioner found that refusal to provide access to some of the requested information was justified because TII did not hold it. He found that refusal to provide access to other information in the requested format on the grounds of inability was reasonable and therefore justified. He found that refusal to provide access to metadata, for no stated reason, was not justified. However, he accepted TII's later assurance that it did not hold such information and found that refusal would have been justified on that ground. The Commissioner varied TII's decision to reflect his findings.

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 4 April 2017, the appellant submitted a three part AIE request to TII, asking for the following:

1. The raw data for all traffic counters installed on the M1 motorway for all years available.
2. A description of the format in which the data is stored.
3. The metadata in each case.

The appellant specified that it wished to receive the information relating to part 1 of the request “in a machine readable format that can easily be imported into Microsoft Excel (i.e. CSV, XLS etc.)”. It also said that, since the format in which the information is held would be unknown to it, “it would be of some assistance if there is a format issue to be provided with a sample of the data and the information requested in part 2 of the request. Please note that part 2 is specifically made pursuant to article 7(9) of the AIE Regulations”.

TII’s original decision

TII issued a decision on 3 May 2017. It dealt separately with the Public-Private Partnership (PPP) section of the M1 and the non-PPP section of the M1 motorway. In relation to the non-PPP section, it provided a sample as requested but said the data requested could not be imported into Microsoft Excel and that “meaningful interpretation would require the use of proprietary software”. It added that “if you require all raw data in relation to the non-PPP section of the M1, please contact [TII] and we will arrange to make the data available”. This amounted to a decision to grant access to the non-PPP data albeit in the form held rather than the form requested. In relation to the PPP section, TII said that it did not hold that information, but added that if the appellant, after reviewing the sample of data which TII mentioned above, wanted it TII would “endeavour to facilitate” that request by seeking the PPP Company’s agreement.

Request for internal review

On 4 May 2017, the appellant requested an internal review. It rejected TII’s response and maintained that the request could, and should, be granted in full.

Internal review decision

TII issued its review decision on 2 June 2017. This affirmed the original decision.

Part 1 of the request

In relation to the non-PPP section of motorway, TII maintained that “publicly available software applications such as Excel cannot interpret the data”. TII added that the 330 GB data set that TII publishes on the Government’s Open Data Portal is the “processed” raw data before it has been compiled into reports and analyses that are provided on the traffic counter website.

In relation to the PPP section of motorway, TII maintained that the PPP Company owns such information and by agreement with the PPP Company, “binned data files are downloaded and processed to create the data provided on the TII traffic counter websites”.

Parts 2 and 3 of the request

TII referred to the request for “raw/meta data” and said that “the format of the data is proprietary and its internal structure is unknown to TII”.

Appeal

The appellant appealed to my Office on 10 June 2017.

Scope of Review

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

I understand that the information to which access was refused was the following:

- The raw data from traffic counters on non-PPP sections of the M1 motorway in a format that can be easily exported into Microsoft Excel, to which access was refused on the ground of impossibility.
- The raw data from traffic counters on PPP sections of the M1 motorway in a format that can be easily exported into Microsoft Excel, to which access was refused because it was not held by or for TII.

- A description of the format of such raw data as was held by TII, to which access was refused because TII did not hold such a description.
- Any metadata relating to all raw data held by TII, to which access was refused for no clear reason.

In conducting my review I took account of the submissions made by the appellant and TII. 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).

The appellant’s position

In a supporting submission, the appellant said that:

It is unbelievable that TII has a network of traffic counters installed where the data cannot be exported into Excel. Similarly it is not believable that the data for the PPP part of the M1 is inaccessible to TII given that some of this data is already published on its website.

It said that the request concerned emissions into the environment and added that “despite asking, a full set of metadata has not been provided”.

The appellant asked me to take account of submissions which it made in appeal case CEI/16/0014. In that case the appellant argued that information similar to that sought in the current request “is readily available to TII as it appears to use an IT system to manage its traffic counters”. It also complained about TII’s handling of the matter, as it did in the current case.

TII’s position

On part 1 of the request

TII’s position is that the only information which it holds in relation to this part of the request is raw data on non-PPP motorways and that, while it offered to make this available to the appellant in its original decision, this offer was not taken up.

TII maintains that it is not possible for it to convert the raw data which it holds into the format requested and it explained as follows:

This is, quite simply, a technical reality and the position in this regard has been explained to [the appellant's representative] on numerous occasions. It is impossible to interpret the data through publicly available software applications such as Excel. It is the case that the raw data can only be interpreted through the application of a proprietary commercial software tool. It is only after this interpretation process has taken place that it becomes possible to download/interpret the data using publicly available software applications such as Excel. It is TII's view that, by providing [the appellant] with a sample file containing the raw data, [the] request has been fully acceded to. The fact that the data requested cannot be (easily or otherwise) imported into Excel is entirely outside of TII's control; it is a technical reality.

TII maintains that it does not hold raw data in relation to PPP sections of the motorway and indicated that it only has access to such information with the consent of the PPP Company.

On part 2 of the request

In relation to the request for "a description of the format in which the data is stored", TII said that "the format of the [raw non-PPP] data is proprietary and its internal structure is unknown to TII".

On part 3 of the request

TII's internal review decision said that the request sought metadata in a format that can easily be imported into Microsoft Excel. In the remainder of its internal review decision TII made no reference to metadata.

In a later submission to my Office, TII stated that the metadata for the raw data generated by traffic counters is "unknown to TII".

Analysis

Part 1 of the request

I accept TII's assurance that it did not hold raw data in relation to the PPP section of motorway. I have no remit to comment on whether this should be the case or not.

TII refused to provide access to raw data on the non-PPP section in a machine readable format that can easily be imported into Microsoft Excel because it said that it was unable to convert the information into that format. While the appellant finds this unbelievable, I accept TII's assurance on this point.

Article 7(3) provides that where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless (i) the information is already available to the public in another form or manner that is easily accessible or (ii) access in another form or manner would be reasonable.

While TII makes traffic counter information available on its website, this is processed rather than raw data. The requested information is not, therefore, "already available to the public in another form or manner that is easily accessible".

This leaves the question as to whether the provision of access to the raw data as it is held "would be reasonable". In the current case, raw data in a completely unprocessed form might be difficult or even impossible for an applicant to interpret. But that would not necessarily render the provision of information in that form "unreasonable". It is well established that a public authority may not refuse to provide access to environmental information on the basis that the applicant might be unable to make sense of it or might misinterpret it. The flip-side of this is that an applicant who asks for raw data has no complaint if they obtain it only to find that they cannot interpret it. In light of the traffic counter information already made publicly available by TII on its website and in light of TII being unable to provide the raw data in the form requested in this instance, I regard the offer to provide the raw data in the form in which it was held to be reasonable in the circumstances.

I note that the AIE scheme does not require public authorities to take unreasonable steps.

Part 2 of the request

The appellant said that this part of the request was "specifically made pursuant to article 7(9) of the AIE Regulations". Article 7(9) provides that:

where, in a request for information on factors affecting or likely to affect the environment, the applicant specifies that he or she requires information on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling that information, the public authority shall, as article

8(2) of the Directive requires, either make the information available to the applicant or refer the applicant to the standardised procedures.

The current request sought information on road traffic and I am therefore satisfied that it was a request for information on factors affecting or likely to affect the environment. However, I do not see that, in asking for a description of the format in which raw traffic data is stored, the appellant asked for information on “measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling that information”. I do not see that article 7(9) applies at all. Neither am I entirely convinced that this part was a request for ‘environmental information’. I see it more as a request for *information about* environmental information. In any event, assuming that it was a request for environmental information, I note that TII’s position is that the “internal structure and description” of the raw data are “unknown to TII”. This amounts to a statement that the information requested in this part was not held by TII and I accept that assurance.

Part 3 of the request

TII was incorrect when it said (in its internal review decision) that the request sought metadata in a format that can easily be imported into Microsoft Excel. The appellant only sought information related to part 1 of the request in that particular format.

In the remainder of its internal review decision TII made no reference to metadata. It affirmed its original decision, which did not specifically address this part of the request. In effect, TII refused this part for no clear reason. Refusal of an AIE request or part of an AIE request without giving a reason is never justified.

Findings

I find that TII’s refusal to provide access to the information requested in part 1 of the request which related to non-PPP sections of the motorway, in the form requested, was reasonable and justified. I find that TII’s refusal to provide access to the information requested in part 1 of the request which related to PPP section of the motorway was justified on the ground that it was not held. I find that TII’s refusal to provide access to the information requested in part 2 of the request was justified on the ground that it was not held. Finally, I find that TII’s refusal to provide access to the information requested in part 3 of the request, for no stated reason, was not justified.

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

TII has already offered to provide the appellant with access to all raw data which it holds and I note that offer has not been taken up. As for metadata, TII has given an assurance to my Office that the metadata on its raw data from traffic counters is “unknown to TII”. I take this to amount to an assurance that such information is not held and I accept that assurance. In the circumstances I am satisfied that it would not be appropriate for me to require TII to provide the appellant with access to information related to this part of the request.

Decision

Having reviewed TII’s internal review decision, I find that its refusal was part justified by the reasons given. I find that TII’s refusal to provide information sought in part 3 of the request, for no stated reason, was not justified. However, I am satisfied that refusal of part 3 would have been justified on the ground that it was not held and I hereby vary TII’s decision to reflect that finding.

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

29 May 2018