



Right To Know <requests@righttoknow.ie>

Re: Request for information under the Access to Information on the Environment Regulations 2018 in AIE/2018/001

1 message

Lisa Underwood <Lisa.Underwood@o cei.ie>
To: "requests@righttoknow.ie" <requests@righttoknow.ie>
Cc: OCEI Shared Mailbox <info@o cei.ie>

Mon, Oct 8, 2018 at 4:45 PM

Our reference: AIE/2018/001

8 October 2018

Right to Know CLG

requests@righttoknow.ie**Re: Request for information under the Access to Information on the Environment Regulations 2018 in AIE/2018/001**

Dear Right to Know

I refer to your request under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (S.I. No. 133 of 2007, S.I. No. 662 of 2011, S.I. No. 615 of 2014 and S.I. No. 309 of 2018) (the AIE Regulations) for the following information:

A list of cases where the request was deemed withdrawn under article 15(5) of the AIE Regulations including the following:

- Case number
- Date requested was accepted by OCEI
- Date it was deemed withdrawn
- Name of the public authority

Please provide the information for decisions made from 1 January 2015 to date [28 September 2018].

Information held by or for the OCEI

Having carried out a physical and electronic search for information relating to your request, I wish to confirm that a list of cases where the request was deemed withdrawn under article 15(5) of the AIE Regulations is not held by or for us. However, I can confirm that we do hold the information requested in a database that this Office uses to track appeals made to the Commissioner.

Decision on request

I have reviewed the information held by the OCEI to ascertain whether it constitutes “environmental information” as defined in article 3(1) of the AIE Regulations. Having reviewed the information, I decided today (8 October 2018) that the information you requested is not “environmental information” within the meaning of the definition in article 3(1) of the AIE Regulations.

Article 3(1) 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 information requested is administrative in character and relates to the processing of appeals made to the Commissioner under the AIE Regulations such as the date an appeal was accepted by the Office, the date when it was closed and what the overall outcome of the appeal was.

The information requested does not contain (nor does it concern or relate to) the following information:

- (a) The state of the elements of the environment or the interaction among any of element(s) of the environment. Therefore, the information is not environmental information within the meaning of article 3(1)(a).
- (b) Any of the factors of the environment affecting or likely to affect the elements of the environment. Therefore, the information is not environmental information within the meaning of article 3(1)(b).
- (c) Any measures or activities affecting or likely to affect the elements and factors referred to in article 3(1)(a) or (b) or measures or activities designed to protect those elements. In [CEI/12/0008](#) (Ms Attracta Uí Bhroin and Department of Arts, Heritage and the Gaeltacht), which is available on our website at www.ocei.ie, the previous Commissioner for Environmental Information in considering whether information concerning the processing of requests under the AIE Regulations by public authorities was information on a measure or activity under article 3(1)(c) stated that:

“Thus, while public access to environmental information may eventually lead to a better environment through more effective public participation in environmental decision-making, I do not accept that the processing of AIE requests by public authorities is itself is "designed" to protect the elements of the environment or that it otherwise qualifies as a measure or activity within the meaning of paragraph (c) of the environmental information definition.”

While that decision concerned information on the processing of AIE requests by public authorities, it is my opinion that the same principle applies to information about the processing of AIE appeals by this Office. While the definition of environmental information is broad, it is not unlimited, for example see the European Court of Justice judgment in *Glawischnig v. Bundesminister für soziale Sicherheit und Generationen*, Case-316/01 (12 June 2003) where the Court stated in relation to the previous Directive on access to environmental information that it was not intended “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)” (the corresponding provision to article 3(1)(a) to (c)). I have decided that the information requested is not environmental information within the meaning of article 3(1)(c), i.e. it is not information on measures or activities affecting or likely to affect the elements and factors or measures or activities designed to protect the elements of the environment.

(d) Any reports on the implementation of environmental legislation. As described above the information is administrative in character and does not report on the implementation on the AIE Regulations or other environmental legislation, therefore, the information is not environmental information within the meaning of article 3(1)(d).

(e) Any cost-benefit or any other economic analyses and assumptions that were used within the framework of the measures and activities referred to in article 3(1)(c). Therefore, the information is not environmental information within the meaning of article 3(1)(e).

(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 article 3(1)(a) or, through those elements, by any of the matters referred to in article 3(1)(b) and (c). Therefore, the information is not environmental information within the meaning of article 3(1)(f).

As the information requested is not information on any of the paragraphs at (a) to (f) of article 3(1) of the AIE Regulations, I have decided to refuse your request on the basis the information requested does not fall within the definition of “environmental information”. As the information requested is not environmental information it follows that AIE Regulations and the right of access under them does not apply to it.

Right to request an internal review

Under Article 11 of the AIE Regulations you have a right to seek an internal review of this decision. In the event that you wish to request an internal review, you can do so by writing to the Information Officer, The OCEI, [18 Lower Leeson Street, Dublin 2](#) or aie@ocei.ie, referring to this decision and quoting your AIE reference number. You must make this request within one month of the date of this notification. There is no fee for an internal review.

An internal review involves a reconsideration of the matter by a different member of staff of this Office, of the same or higher rank than the original decision-maker, who may affirm, vary or

annul the original decision made. The decision of this review will be communicated to you within one month of receipt of your application for an internal review.

If you have any queries or need any assistance in relation to requesting an internal review our Information Officer can be contacted by telephone at +353 6395689, or emailed at aie@ocei.ie.

Freedom of information

You may also make a request for information under the Freedom of Information Act 2014 (FOI Act 2014). You can do by writing to info@ocei.ie or post it to the FOI Officer, Office of the Commissioner for Environmental Information, [18 Lower Leeson Street, Dublin 2, D02 HE97](#) stating that you are making a request under the Freedom of Information Act 2014 or FOI Act 2014.

Yours sincerely

Lisa Underwood

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