**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/16/0011**

**Date of decision:** 24 April 2017

**Appellant:** James Cullen (the appellant)

**Public Authority:** Raidió Teilifís Éireann (RTÉ)

**Issue**: Whether the appellant's request for an internal review was in accordance with article 11 of the AIE Regulations. Whether RTÉ was justified in refusing the appellant's request on the basis that the request was manifestly unreasonable with regard to volume and range

**Summary of Commissioner's Decision**: In accordance with article 12(5) of the Regulations, the Commissioner reviewed RTÉ's decision on the appellant's request. He found that RTÉ's letter of 20 January 2016 constituted a refusal of the appellant's request, and that the appellant's subsequent internal review request was in accordance with article 11 and was not premature. Notwithstanding this, the Commissioner found that refusal of the appellant's request was justified under article 9(2)(a), as the request was manifestly unreasonable having regard to the volume and range of information sought. He considered the public interest test under article 10(3) and found that the public interest in disclosure of information did not outweigh the interests served by refusal in this case

**Right of Appeal:** A party to this appeal or any other person affected by this decision may appeal this decision 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 7 December 2015, RTÉ broadcast an episode of the "RTÉ Investigates" programme entitled "Standards in Public Office". On or about 17 December 2015, the appellant posted a letter to RTÉ requesting access to environmental information under the AIE Regulations. The appellant's request was for access to *"all information in relation to the RTÉ program "RTÉ Investigates Standards in Public Office" screened by RTÉ on 7 Dec 2015, held by or in possession of RTÉ whether broadcast or not, including but not limited to copies of all notes, memoranda, minutes of meetings, names of all persons involved in it and how much they were paid, all footage, etc."*

On 20 January 2016, the Head of Statutory Compliance with RTÉ wrote to the appellant, stating that the request had been received on 7 January 2016. RTÉ stated that the content matter of the request did not relate to environment, and asked the appellant if he wished to reconstitute the request as a Freedom of Information request. In an email of 26 January 2016, the appellant requested an internal review of RTÉ's decision to refuse his request.

RTÉ replied to the appellant's internal review request in a letter of 19 February 2016. This letter stated that RTÉ had considered the type of information requested by the appellant, and said that some of this information (such as planning information and information on ownership of land) may be publicly available as a matter of law (and therefore outside the remit of the AIE Regulations). RTÉ characterised the appellant's request as "broad", and stated that RTÉ was "minded to refuse" the request on the basis that it was manifestly unreasonable with regard to volume and range, and also on the ground that the request was formulated in too general a manner. RTÉ invited the appellant to make a more specific request, and cited article 7(8) of the AIE Regulations in this regard. This letter concluded the correspondence between the parties: the appellant did not respond to the invitation to make a more specific request, and RTÉ did not subsequently notify the appellant of an internal review decision. The appellant appealed the refusal of his request to my Office on 16 March 2016.

**Scope of review**

Article 11 of the AIE Regulations provides that, where a public authority refuses a request, the applicant may ask the public authority to review that decision. Articles 10(7) and 12(4)(a)(ii) of the AIE Regulations provide that where no decision on a request (or on internal review) is notified to an applicant within the time specified, the request is deemed to have been refused, giving rise to a right of appeal to my Office. In the course of my review on this appeal, I have considered whether the appellant's request for an internal review was prematurely made, bearing in mind RTÉ's response and the time periods set out in the AIE Regulations. I have also considered the application of article 9(2)(a). This article provides for refusal of requests which are manifestly unreasonable with regard to volume or range. In circumstances where no formal decision was made by RTÉ at internal review stage, my Investigator wrote to the parties and invited their submissions on this ground for refusal.

The AIE Regulations transpose Directive 2003/4/EC into Irish law. This Directive implements the first pillar of the 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). In making this decision I have had regard to the *Guidance for Public Authorities and others on implementation of the Regulations* (May 2013) published by the Minister for the Environment, Community and Local Government [the Minister's Guidance]; and *The Aarhus Convention: An Implementation Guide* (Second edition, June 2014) [the Aarhus Guide].

**RTÉ's submissions**

RTÉ stated that the Appellant's AIE Request was received by its Group Secretary on 7 January 2016. RTÉ contended that the appellant's request for an internal review was premature. RTÉ accepted that it did not issue a formal decision within the time allowed by the AIE Regulations (one month in this case); however; it contended that it was not in a position to refuse the appellant's request as he had not replied to the letter of 20 January 2016.

RTÉ stated that it consulted the RTÉ Investigations Unit to ascertain the extent of information captured by the request. RTÉ's Investigations Unit stated that thousands of documents are captured by the request. With regard to the public interest in disclosure, RTÉ characterised this interest as being of reduced weight in circumstances where much of the information it relied on in its investigation is in the public domain. RTÉ submitted that article 9(2)(a) was intended to ensure the proper application of resources of public authorities. RTÉ submitted that the interests served by disclosure did not outweigh the negative impact that processing the request would have on its resources.

**The appellant's submissions**

The appellant stated that he could not recall the date his request was posted. He contended that his AIE request was not too general, and submitted that much of the information he requested is likely to be held in electronic format, and would therefore be easily accessible.

The appellant submitted that the public interest in disclosure of information on the television programme outweighed the interest served by refusal, on the basis that RTÉ did not receive any information from confidential sources in connection with the programme in question. The appellant stated that the investigation was carried out on RTÉ's own initiative.

**Analysis and Findings**

**At what point was the appellant entitled to request an internal review?**

The appellant's request was made in the form of a hand-written letter and sent by post. The letter is dated 17 December 2015. The appellant was unable to recall the exact date he posted the letter. The letter was stamped as received by RTÉ's Group Secretary on 7 January, three weeks after the letter was drafted. The AIE request was not acknowledged for a further two weeks.

RTÉ's first reply of 20 January 2016 stated:

"I note that you have submitted a request for information under the Access to Information on the Environment (AIE) legislation, however, the content matter of your request does not relate to the environment but rather to an RTÉ prime time investigations unit programme broadcast on 7 December 2015.

I can accept your letter under Freedom of Information legislation, and respond accordingly, but I just wanted to check with you first if you had a specific reason for making the submission under the AIE regulations?"

This response was ambiguous in some respects, and did not expressly refuse the appellant's request. However, on an objective reading of this letter, I am satisfied that RTÉ refused to process the appellant's AIE request for the stated reason that the content of the request did not "relate to the environment". I note that RTÉ's subsequent letter of 19 February 2016 states that the appellant's request was "refused" by the letter of 20 January 2016 on the basis that "no records were held". In any event, it is clear from the letter of 20 January that no further steps would be taken by RTÉ on the request unless the appellant agreed to reconstitute the request under FOI, or provide specific reasons for his AIE request. I note in this regard that applicants are not required to state an interest when making a request under the AIE Regulations.

I therefore find that RTÉ's letter of 20 January 2016, although vague in many respects, amounted to a refusal of the appellant's request for the purposes of article 7, giving rise to a right of internal review. I note that the appellant requested an internal review on 26 January 2016, which was in accordance with article 11. I am therefore satisfied that the appellant's internal review request was valid and not premature, and that his subsequent appeal to my Office was valid.

**Consideration of the ground for refusal under article 9(2)(a)**

Article 9(2)(a) of the AIE Regulations provides that a public authority may refuse to make environmental information available where a request is manifestly unreasonable having regard to the volume or range of information sought. In most appeals before my Office I require the public authority to search for and review all environmental information held, and to make this information available to my Office for the purposes of my review. However, where a public authority contends that a request is manifestly unreasonable with regard to volume or range I must address this ground for refusal as a preliminary matter, as it would defeat the purpose of article 9(2)(a) to require a public authority to process an unreasonable volume or range of information. Consideration of whether a request is manifestly unreasonable with regard to volume or range may include an assessment of the wording of a request, together with an appraisal of the information held by or for the public authority.

In this case, the appellant's request is specific insofar that it concerns an episode of an investigative television programme. In every other respect, the appellant was careful to make the request as all-encompassing as possible. The request included an illustrative list of information sought, including (but not limited to) all written information and video footage relating to the programme. RTÉ's Investigations Unit contends that thousands of documents fall within the scope of the appellant's request. I consider this estimate to be credible in circumstances where the programme was the result of an extensive investigation, and where the appellant has requested access to every conceivable piece of information relating to the programme. I am not persuaded by the appellant's submission that his request was not unreasonable as the information was likely to be held in electronic format. While I agree that electronic formats may facilitate easier access to information and reduce the administrative burden on public authorities, it would still require significant time and resources to search for and compile all of the environmental information requested by the appellant. While I make no finding on the matter, it is possible that at least some of the information identified held would have to be examined in order to establish whether it came within the definition of "environmental information" under the AIE Regulations. Accordingly, I am satisfied that the ground for refusal under article 9(2)(a) applies.

Article 10(3) of the AIE Regulations provides that a public authority must consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal. For the purposes of my review, I have weighed the interests served by refusal of the request against the public interest served by disclosure. In my view, the public interests served by disclosure include transparency and accountability of RTÉ, a public service broadcaster. The interests served by refusal of the request are the proper allocation of resources by RTÉ, and the integrity of the AIE regime. I note that RTÉ has provided the appellant with details of publicly accessible information which was used in the course of the investigation. I agree with the appellant's submission that the investigation was carried out on RTÉ's initiative; however, the fact that RTÉ may have created much of the information sought does not significantly reduce the administrative burden that would result from processing the request in its current form. On balance, I find that the public interest in disclosure does not outweigh the interests served by refusal, and therefore article 9(2)(a) applies, notwithstanding article 10(3).

**Consideration of articles 9(2)(b) and 7(8) of the AIE Regulations**

Article 7(8) provides that, where a request is made in too general a manner, the public authority must, as soon as possible and at the latest within one month of receipt of the request, invite the applicant to make a more specific request and offer assistance to the applicant in the preparation of such a request. Article 9(2)(b) provides that a public authority may refuse to make environmental information available where the request remains formulated in too general a manner, taking into account article 7(8).

I note that the ground for refusal under article 9(2)(b) is contingent on first taking account of article 7(8). General requests for environmental information should not be refused unless the applicant has been provided with an opportunity to make a more specific request, and has failed to do so. In its letter to the appellant of 19 February 2016, RTÉ stated that it was minded to refuse the appellant's request on the basis of article 9(2)(b), and invited him to make a more specific request under article 7(8). In this case, the purported invitation under article 7(8) was made outside the time period specified by that article, and at internal review stage. Accordingly, I am not satisfied that RTÉ acted in a timely manner when inviting the appellant to make a more specific request. However, in circumstances where I am satisfied that the ground for refusal under article 9(2)(a) otherwise applies, I make no findings on the application of article 9(2)(b).

**Decision**

In accordance with article 12(5) of the AIE Regulations, I have reviewed RTÉ's decision on the appellant's request. I find that RTÉ's letter of 20 January 2016 constituted a refusal of the request, and the appellant's subsequent internal review request was therefore in accordance with article 11 and was not premature. Notwithstanding this, I find that that refusal of the appellant's request is justified under article 9(2)(a), as the request was manifestly unreasonable having regard to the volume and range of information sought. I have considered the public interest test under article 10(3) and I find that the public interest in disclosure of information does not outweigh the interests served by refusal in this instance.

**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

24 April 2017