

**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/16/0020

Date of Decision: 20 February 2017

Appellant: RR Projects

Public Authority: IDA Ireland

Issue: Whether IDA Ireland's decision to refuse access to environmental information on the specific measures undertaken to ensure it met its public participation obligations under the Aarhus Convention in relation to the Derrydonnell data centre project was justified on the basis that no such information is held

Summary of Commissioner's Decision: In accordance with article 12(5) of the AIE Regulations, the Commissioner reviewed the decision of IDA Ireland and found that it was justified in refusing access to the information sought under article 7(5) of the Regulations. He affirmed the decision of IDA Ireland accordingly.

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

On 25 February 2015, Apple Inc announced plans to build a €850 million data centre on lands owned by Coillte situated at Derrydonnell, Athenry, Co. Galway. On 10 March 2016, a request was made to IDA Ireland (the IDA) on the appellants' behalf through their former solicitor seeking access under the AIE Regulations to environmental information regarding the IDA's compliance with public participation obligations under the Aarhus Convention in relation to the Derrydonnell data centre project. Requests for access to records relating to the project itself had previously been made to the IDA on behalf of the appellants; access to relevant records had been granted in part and refused in part.

The original request in this case sought three categories of information:

1. All strategic environmental assessments relevant to the Derrydonnell data centre project and the underlying plans, programmes or policies;
2. Information on how the IDA ensures public participation in relation to its activities, plans, programmes and policies which affect or may affect the environment (i.e. matters within the scope of Articles 6 and 7 of the Aarhus Convention); and
3. Information on the specific measures taken by the IDA to ensure that it met its obligations under the Aarhus Convention in relation to Apple's Derrydonnell project.

However, following the IDA's original decision dated 12 March 2016, the appellants sought internal review in relation to category 3 alone on the basis that IDA had not given access to the specific information sought concerning its process for compliance with its public participation obligations "when it provided a 'property solution' to Apple for its proposed data centre in Galway".

In its belated internal review decision dated 10 May 2016, the IDA confirmed that it "did not undertake or manage a public consultation process in respect of the site in Athenry which is of interest to Apple". It explained: "IDA Ireland only undertakes public consultation in regard to lands in cases where we are responsible for developing and utilising the site. Where a client will develop and own a site we act in an advisory capacity to the client." Thus, the IDA effectively refused category 3 of the request under article 7(5) of the AIE Regulations on the basis that no relevant information is held. An appeal was subsequently made to my Office for a review of the IDA's decision.

I have now completed my review of the IDA's decision in this case under article 12(5) of the Regulations. In carrying out my review, I have had regard to the statement of appeal made on the appellants' behalf dated 17 May 2016 and to the submission made by the IDA on 5 October 2016. I note that the appellants were notified of the IDA's position as set out in its submission and given until 15 February 2017 to reply. No reply or other submission has been received from the appellants to date. I have decided to conclude this matter by way of a formal, binding decision.

Scope of the Review

My review in this case is concerned solely with the question of whether the IDA's decision to refuse access to environmental information on the specific measures undertaken to ensure it met its public participation obligations under the Aarhus Convention in relation to the Derrydonnell project was justified on the basis that no such information is held.

Analysis and Findings

Article 7(5) of the AIE Regulations provides that where information requested is not held by or for a public authority, it must inform the applicant as soon as possible. Articles 11(5)(b) and 12(3)(a) provide that an applicant may appeal an internal review decision to my Office where the request has been inadequately answered.

In this case, the IDA stated in its internal review decision that it did not undertake or manage a public participation process in relation to the Derrydonnell project. It explained: "IDA Ireland only undertakes public consultation in regard to lands in cases where we are responsible for developing and utilising the site. Where a client will develop and own a site we act in an advisory capacity to the client." In a submission made to this Office dated 5 October 2016, the IDA gave a more detailed explanation of its reasons for concluding that it does not hold any records relating to how it may have met its public consultation obligations under the Aarhus Convention in relation to the Derrydonnell project. In notifying the appellants of the IDA's position as set out in its submission, this Office noted that records relevant to a previous AIE request relating to the Derrydonnell project had been examined and that no basis for disputing the IDA's position had been found. As this Office explained to the appellants, there simply is no evidence that the IDA carried out any public participation activities in order to meet any actual or perceived obligations under the Aarhus Convention in relation to the Derrydonnell project. In the circumstances, I am satisfied that no records relating to any such public participation process are held by or on behalf of the IDA and that article 7(5) therefore applies.

Decision

In accordance with article 12(5) of the AIE Regulations, I have reviewed the decision of the IDA in this case. I find that the IDA's decision to refuse the appellants' request for access to environmental information on the specific measures undertaken to ensure it met its public participation obligations under the Aarhus Convention in relation to the Derrydonnell project was justified under article 7(5) of the Regulations. I affirm the IDA's decision accordingly.

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 Informatio

20 February 2017