

**Appeal to the Commissioner for Environmental Information**  
**Case CEI/13/0007**

**European Communities (Access to Information on the Environment) (AIE)  
Regulations 2007 to 2014 (the Regulations)**

**Appellant:** Mr. MK

**Public Authority:** Environmental Protection Agency (EPA)

**Issue:** Whether the EPA was justified in its decision to refuse the appellant's request.

**Summary of  
Commissioner's  
Decision:** In accordance with Article 12(5) of the AIE Regulations, the Commissioner reviewed the decision of the EPA. He affirmed its decision and found that it was justified in refusing access to the information sought on the grounds that the request did not comply with Article 6(1)(d) of the Regulations i.e. the requirement that a request shall state, in terms that are as specific as possible, the environmental information that is the subject of the request.

## **Background**

On 30 April 2013, the appellant made a request to the EPA by email. The EPA made its original decision on 21 May 2013. The applicant sought an internal review on 21 June 2013 by email. The EPA issued its internal review decision on 19 July 2013 in which it affirmed its refusal of the request on the basis that the request did seek access to particular items of environmental information and did not comply with the requirements as set out in Article 6(1)(d) of the Regulations. The applicant submitted an appeal to my Office on 22 August 2013 by email.

I regret the delay that arose in dealing with this appeal, which was due both to resource issues in my Office and to the volume and nature of the applicant's submissions.

I have decided to bring this appeal to a conclusion now by way of a formal, binding decision. In so doing, I have had regard to the submissions of the appellant, in so far as they could be identified as relevant to the appeal, and those of the public authority, and to the provisions of the Regulations. I have also had regard to the Guidance provided by the Minister for the Environment, Community and Local Government on implementation of the Regulations [the Minister's Guidance]; Directive 2003/4/EC [the Directive], upon which the AIE Regulations are based; and *The Aarhus Convention: An Implementation Guide* (Second edition, June 2014) [the Aarhus Guide] relating to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which is more commonly known as the Aarhus Convention.

## **Scope of Review**

Under Article 12 of the Regulations, I must review the decision of the EPA and affirm, vary or annul it. The question before me is whether the decision of the EPA was justified.

## **Preliminary Matters**

### **Original Request**

The original request of 30 April 2013 was contained in a twelve page email to the EPA. The email was not sent to the EPA's designated AIE liaison officer, though the applicant had previously been advised of the relevant contact details. It seems to me that applicants who wish to have access to environmental information and have their requests dealt with in a timely and efficient manner would be well advised to contact the designated officer with responsibility for AIE in the first instance. Member States are required by the Directive to make practical arrangements (including the designation of information officers) for the effective exercise of the right to environmental information.

### **Appellant's submissions**

The appellant was invited by my Office, in accordance with normal practice, to make submissions which would be taken into account in dealing with the appeal. His appeal to my Office ran to some 70 pages, and seven further submissions were received, one of which ran to 164 pages. He did not appear to address the grounds for refusal by the EPA in his submissions. This follow-up activity under the Regulations, taken together with his previous engagement with the EPA, and further to his engagement with my Office in relation to other appeals, was, having regard to my knowledge and experience, and by objective standards, extensive and what might be termed obsessive in nature.

## **Functions of the Commissioner**

While I have no doubt that the matters of which the applicant complains are important and have greatly affected him, my role is confined to adjudicating on his appeal in accordance with the Regulations. I emphasise, as I have had to do in other cases, that it is outside of my remit as Commissioner to adjudicate on how public authorities carry out their functions generally. It is not within my remit to determine what measures or standards are to be used by public authorities or how they should respond to issues raised with them e.g. in this case about vibrations and noise pollution. Neither is my role one of an alternative dispute resolution process. I note that the matters the subject of the AIE request from the applicant have also been the subject of complaints by the applicant to the EPA and another public authority.

## **Analysis and Findings**

Article 6(1) provides as follows:

6. (1) A request for environmental information shall—
  - (a) be made in writing or electronic form,
  - (b) state that the request is made under these Regulations,
  - (c) state the name, address and any other relevant contact details of the applicant,
  - (d) state, in terms that are as specific as possible, the environmental information that is the subject of the request, and
  - (e) if the applicant desires access to environmental information in a particular form or manner, specify the form or manner of access desired.

In its original decision, the EPA stated that the request was contained in a 12 page email, and that it did "not seek access to particular items of relevant environmental information but appears to be more about various technical aspects of EPA reports, an analysis of the reports and documentation already provided to you against other international standards, than it is about access to environmental information". Having examined the original request, I agree with the EPA description of the request. I agree that the request does not set out clearly or specifically the information that is the subject of the request. It seems to me that it is not at all clear - even on several close readings - what specific environmental information is being sought. Much of the content appears to be the appellant's commentary on various technical matters concerning, among other issues, building damage and including British, Spanish and German standards. There are also requests to the EPA to reopen an investigation. I cannot find anything in the internal review request or subsequent submissions that would cause me to change my assessment of the original request.

In its submissions to my Office, the EPA outlined the 30 contacts between it and the appellant, over a six month period, in addition to that which related to the matters the subject of his CEI/13/0002 appeal to my Office. My decision on that appeal is available at [www.ocei.gov.ie](http://www.ocei.gov.ie).

The EPA also informed my Office that it had carried out an investigation into the appellant's original complaint relating to vibration and noise from the public road, and had provided him with details and information on this investigation.

I am satisfied that the original request of 30 April 2013 does not comply with the provisions

of Article 6(1)(d). I find accordingly.

### **Decision**

In accordance with Article 12(5) of the AIE Regulations, I have reviewed the decision of the EPA in this case. I hereby affirm its decision and I find that it was justified in refusing access to the information sought on the grounds that the request did not comply with Article 6(1)(d).

### **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**

**1 October 2015**