

Appeal to the Commissioner for Environmental Information
Case CEI/13/0017

**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 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 of 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

The appellant made a request to the EPA contained in six emails sent between 14 and 24 June 2013, running to about 90 pages in length. The EPA decision of 15 July 2013 refused the request on the basis that it did not obviously seek access to further particular items of environmental information and did not comply with Article 6(1)(d) of the Regulations. Following intervention by my Office, the EPA accepted an internal review request on 22 August 2013. Four supplementary emails were submitted, amounting to 28 pages in total. The EPA affirmed its original decision on 11 September 2013. The applicant submitted an appeal to my Office on 18 October 2013, in a 123 page email with a 210 page attachment.

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

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 123 pages, not including attachments, and ten further emails were received, one of which ran to over 190 pages. 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, which have been investigated.

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 did "not obviously seek access to particular further items of environmental information" and referred to the provisions of Article 6(1)(d). Having examined the original request, I agree with the EPA that it is difficult to "ascertain precisely the subject and extent of [the] request within the text submitted". I do not consider it reasonable to expect a public authority to deal with requests under the Regulations presented in this manner and at such length, which would require it to trawl through extensive commentary, analysis and lists to seek to identify the environmental information sought. Nor do I believe that the Regulations intended this to be the case. I cannot find anything in the internal review request or subsequent submissions, which as outlined above are also lengthy and presented in a similar manner, that would cause me to change my assessment of the original request.

In its submissions to my Office, the EPA outlined the process undertaken by it in dealing with this request. It also referred to its previous submissions to my Office in relation to other appeals from this appellant, outlining the information provided to the appellant in response to his requests and the extensive correspondence between him and the EPA in this regard. My decisions in appeals CEI/13/0002 and CEI/13/0007 available on www.ocei.gov.ie refer. As well as carrying out an investigation into the appellant's original complaint relating to vibration and noise from the public road and providing him with information on this, it is clear that the EPA has engaged extensively with the appellant under the AIE Regulations, and provided him with a considerable volume of information.

I am satisfied that the original request comprising six emails submitted between 14 and 24 June 2013 does not comply with the provisions of Article 6(1)(d), in that it does not state, in terms that are as specific as possible, the environmental information that is the subject of the request. 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 and I hereby affirm its decision. I find that it was justified in refusing access to the information sought on the grounds of 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