



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

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 2018

(the AIE Regulations)

Case CEI/18/0017

Date of decision: 1 July 2018

Appellant: Mr A

Public Authority: Galway County Council (the Council)

Issues: Whether the Council was justified in granting access to the information requested by making it available for inspection at its office in accordance with article 7(3)(a)(ii) of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner found that in the circumstances of this case the Council was justified in granting access to the information sought in two planning enforcement files by making them available for inspection at its office in accordance with article 7(3)(a)(ii) of the AIE Regulations. He varied the Council's decision to include an additional seven enforcement files which, during the course of the Commissioner's review, the Council offered to provide the appellant access to, by also making them available for inspection at its office.

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

This case has a long and complicated background and this is the second appeal to my office arising from it.

On 5 October 2016 the appellant requested "all environmental information" held by the Council with regard to Coshla Quarries Limited. The appellant stated that information which should be readily available includes:

- "[1.] Water Discharge Licence; Flow rates and emission limit values, etc.
- [2.] Details of how and where concrete delivery trucks serving the facility are to be washed out.
- [3.] Details from the dust monitoring programme and dust suppression measures.
- [4.] Details of the monthly survey and monitoring programme of dust and particulate emissions.
- [5.] Details of noise levels measured from the noise sensitive locations.
- [6.] Details from the monitoring programme with regard to vibration levels from blasting.
- [7.] All details from the comprehensive monitoring programme referred to in condition number 17 of said planning permission.
- [8.] Details of the implementation of the road safety recommendations as set out in Junction Safety Assessment prepared by Tobin Consulting Engineers (received by An Board Pleanala on the 3rd of November, 2010) for the junction of the Cashla Road (L7109) with the R339 regional road."

The Council wrote to the appellant on 30 November 2016 stating that all documents regarding compliance with the planning conditions were available to view in its Planning Office or on its website at www.galway.ie and that certain other information should be requested from the Roads Section in the Council. On 15 December 2016 the Council received a request from the appellant for a review of that decision. The appellant did not receive a response to that request and appealed the Council's deemed refusal of his internal review request to my Office on 2 February 2017. I made a decision on 27 November 2017 annulling the Council's decision on the basis the Council had not completed a thorough search for all relevant records held within the scope of the request. I expressed my expectation that the Council would proceed to process the appellant's request.

On 9 April 2018 the Council made a fresh decision on the appellant's request. It provided the appellant with copies of information relating to items 1 to 7 listed above. Regarding item 8, it stated that the specific record sought was not available but provided the appellant with a copy of a letter confirming that the works agreed had been carried out to the satisfaction of the Roads & Transportation Section of the Council. The Council's decision went on to note that the appellant's request was "very general" and that no time period has been specified in the request.

On 30 April 2018 the appellant requested an internal review of the Council's decision. The Council made its internal review decision on 25 May 2018 affirming its decision on items 1 to 7 of the request and providing further information relating to item 8. The internal review decision

noted that the appellant's request was "broadly based requesting 'all environmental information' held by the Council relating to the Coshla Quarries". It stated that the Council has a number of files, and listed three files: EN 11/22, W/469/13, and QSP 159. The decision stated that it was granting access to the environmental information in the files by making them available for inspection in accordance with article 7(3)(a)(ii) of the AIE Regulations. It also stated that the appellant should give advance notice for the inspection of each file and that "[c]opies of specific information can be made available on request following inspection".

The appellant wrote to my Office on 26 June 2018 appealing the Council's decision. In his appeal the appellant stated that the internal review decision referred to a file that did not appear to exist. He also stated that the Council's website referred to other enforcement files which were being withheld. The appellant went on to list seven files.

In carrying out my review I had regard to the submissions made by the appellant and the Council. I also had regard to:

- the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister's Guidance),
- Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based,
- the 1998 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), and
- the Aarhus Convention—An Implementation Guide (Second edition, June 2014) (the Aarhus Guide).

Scope of Review

As noted above, the appellant in his appeal to this Office referred to seven enforcement files relating to Coshla Quarries Limited which were absent from the Council's internal review. The Council provided this Office with a Schedule of Records containing details of files relevant to this case which are held by it and includes the three files referred to in the Council's internal review decision and the seven files referred to by the appellant in his appeal. The Schedule states that one of the files referred to in its internal review decision - EN 11/22 - is an unrelated enforcement file. I consider that the reference to EN 11/22 in the Council's internal review decision was an error and that it intended to refer to file EN 11/212. Accordingly, I am satisfied that there are nine files which are the subject of this appeal: EN 08/115, EN 08/311, EN 08/394, EN 11/212, EN 13/101, EN 17/036, EN 17/212, W/469/13 Vol 1 & 2 and QSP 159.

Preliminary Matters

My Office recognises that article 15(5) of the Regulations implies that a case may be resolvable other than by way of a binding decision. A case may be closed by way of settlement between the parties or by withdrawal of the appeal altogether. My Office explored a settlement between the parties, in particular my investigator explored with the Council whether it would consider granting the appellant access to the seven additional enforcement files in the manner it granted access to the three files in its internal review decision i.e. by way of inspection at the Council's office. This approach, if successful, would have resulted in the appellant receiving a quicker

resolution of his case and from the Council and my Office's point of view would have required less time and resources in bringing the case to a close.

On 19 September 2018 the Council wrote to the appellant stating that it was considering allowing him access to the seven additional enforcement files by way of inspection. It explained that at least two of the enforcement files resulted from complaints from third parties and that it would need to examine the files before the appellant could inspect them in order to protect the personal data of third parties. The appellant informed my Office that he respectfully declined the Council's proposal to allow him to inspect the files and stated that he would like the Commissioner to proceed to make a final determination on his case.

I appreciate that this is the second time that the appellant's request has been appealed to me. Given the lengthy process the appellant went through; my office considered that settling his case would be particularly beneficial to him. However, as a settlement could not be reached between the parties, I will bring this appeal to a conclusion with a formal decision.

Analysis and Findings

Article 7(5) of the AIE Regulations is the relevant provision to consider where the question arises as to whether the requested information is held by or for the public authority concerned. This Office's approach to dealing such cases is set out in previous decisions, such as CEI/13/0015 (Mr. Lar McKenna and EirGrid plc) and CEI/11/0009 (Ms. Rita Canney and Waterford City Council), available at www.ocei.ie. As these decisions explain, I must be satisfied that adequate steps have been taken to identify and locate relevant records, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, I consider that a standard of reasonableness must necessarily apply. It is not normally my function to search for information.

My investigator wrote to the Council noting that the Schedule of Records provided to this Office shows that the Council holds additional information relating to Coshla Quarries Limited over and above that disclosed to the appellant in response to his AIE request. In order to ascertain whether any additional information relating to Coshla Quarries Limited is held by or for the Council my investigator asked the Council to provide an account of the steps actually taken to search for information relevant to the AIE request. The Council provided information on its records management policy and a description of records relevant to the appellant's request. The Council explained that planning application files are scanned and made available on its website for public viewing, that planning enforcement files are stored in the planning office both physically and electronically and that quarry files are held in the planning office and are publicly available. It stated that a search was carried out by computer reviewing the online planning system and relevant scanned documents for the planning reference number for Coshla Quarries Limited. In addition, it states that records were sought from the Roads and Environment departments and were released to the appellant.

Having reviewed the copies of the information provided to the appellant in its initial and internal review decisions and considered the Council's description of its search efforts, I am satisfied that the Council has provided the appellant with access to the information it holds relating to items 1 to 8 of his request.

I now turn to the remaining aspect of the appellant's request for "all environmental information" held by the Council with regard to Coshla Quarries Limited. The Council submits that the only

information which the appellant has not been granted access to at this point in time is contained in the enforcement files which it has offered him access to, in accordance with its "usual practice by attending the Planning office". Given that the Council has provided the appellant with access to the information it holds relating to items 1 to 8 of his request and its description of its records management policy and records relevant to the request, I accept that the outstanding information falling within the scope of the request is the environmental information in the enforcement files concerning Coshla Quarries Limited.

Having reviewed the file, I take the view that the Council's settlement offer was a firm offer of access by way of inspection. I note that the Council stated that providing access to enforcement files by way of inspection at its planning office is its usual practice.

At this point in time the Council has offered to grant the appellant access to all nine enforcement files it holds relating to the appellant's request by way of inspection at its planning office, subject to the appellant giving the Council advance notice of which files he wants to inspect and when. The Council has also offered to copy specific information at the appellant's request following his inspection of the files.

Article 7(3)(a)(ii) provides that where a request is made to a public authority for access to environmental information in a particular form, access must be given in that form unless access in another form would be reasonable. I note the broad nature of the request in this case and the large volume of information involved. The Council confirmed during the course of this review that it holds nine files relating to Coshla Quarries Limited: EN 08/115, EN 08/311, EN 08/394, EN 11/212, EN 13/101, EN 17/036, EN 17/212, W/469/13 Vol 1 & 2 and QSP 159. The Schedule of Records the Council submitted to this Office indicates that the combined number of pages in those nine files runs to approximately 1227 pages of information. In my view, the work that would be involved in providing the appellant with a copy of all the information in the nine files would likely run the risk of affecting the Council's other work and would be an unreasonable requirement. In the circumstances of this case, I find that it is reasonable for the Council to provide the appellant access to the information sought by way of inspection in accordance with 7(3)(a)(ii) of the AIE Regulations.

I should say here that given the Council's poor handling of the appellant's request at the time it was initially made, I can see why the applicant decided that he required a formal, binding decision on his case. However, I accept the Council's statement during the course of this review that it is doing its utmost to provide the appellant with all the information he seeks. I hope that the appellant's inspection of the files will have the added benefit of permitting him to view the files, and all the information within them, in their full context which may go some way to reassure him that he has access to all of the information he requested over two years ago.

Decision

Having completed my review, I find that in the circumstances of this case the Council was justified in granting access to the environmental information in W/469/13, and QSP 159 by making them available for inspection in accordance with article 7(3)(a)(ii) of the AIE Regulations. I vary the Council's decision to include the additional enforcement files referred to in the Council's settlement offer of 19 September 2018: EN 08/115, EN 08/311, EN 08/394, EN 11/212, EN 13/101, EN 17/036, EN 17/212.

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 July 2019