

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/18/0013

Date of decision: 12 October 2018

Appellant: Mr X (the appellant)

Public Authority: The Department of Agriculture, Food and the Marine (the Department)

Issue: Whether the Department was justified in refusing access to townland details provided in certain "GLAS" applications involving hedge coppicing and laying measures

Summary of Commissioner's Decision: In accordance with article 12(5) of the AIE Regulations, the Commissioner reviewed the decision of the Department and found that it was justified in refusing access to the townland details requested under article 8(a)(i) of the Regulations. He affirmed the decision of the Department 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

In a request dated 9 April 2018, the appellant sought access, in pertinent part, to details of certain applications made under the Green, Low-Carbon, Agri-Environment Scheme (GLAS) involving hedge coppicing and laying measures. In a decision dated 25 April 2018, the Department granted the request in part but refused parts of it under articles 8(a)(i) and (iv) of the AIE Regulations on the basis that certain details would, in effect, involve the disclosure of confidential personal information. The decision maker referred to the protection provided to personal information under section 37(1) of the Freedom of Information (FOI) Act. In relation to the public interest, the decision maker considered that the public interest in protecting the right to privacy outweighed the public interest in granting access to the requested information in full. The Department also indicated that some of the requested information was not held by or for it, but it referred to section 15(1)(a) of the FOI Act 2014 rather than to the relevant provision of the Regulations, which is article 7(5).

On 25 April 2018, the appellant applied for an internal review of the Department's decision in relation to its refusal to grant access to the District Electoral Division (DED) and townland details sought in relation to the GLAS applications of interest to him. He disputed that the identity of either a DED or townland constitutes personal information and also argued that the details should be released in the public interest in light of the public money involved and the potential environmental impact of the hedge laying and coppicing activities being undertaken. He also suggested that there is "precedent" for the publication of DED and townland information, in reference to the Department's handling of Screening Applications under the EIA (Agriculture) Regulations. However, in a decision dated 16 May 2018, the Department affirmed its original decision in line with the reasons outlined in that decision.

On 1 June 2018, the appellant appealed to this Office against the Department's decision. He expressed dissatisfaction with the reasons given for the decision and the lack of "professional rigour" shown on internal review. He suggested that a specific showing of an adverse effect on an identifiable individual was required in relation to each of the 2566 GLAS applications that are relevant to his request. As a general matter, he continued to dispute that DED/townland details qualify as confidential personal information as opposed to the "location of environmental works". He also referred to the publication of CAP funding information under EU Regulation No. 1306/2016 and the GLAS terms and conditions referring to the requirements of the FOI Act. In addition, he maintained that the public interest favoured disclosure of the requested details. The appellant subsequently elaborated on these arguments in submissions received on 30 August 2018 and 10 September 2018, respectively.

I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the Department and the appellant. I have also had regard to: the Guidance provided by the Minister for the Environment, Community and Local Government on implementation of the Regulations; Directive 2003/4/EC, 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 the Review

In the course of the review, the Department explained for the first time that the DED and townland information requested is not captured on its GLAS database and therefore could not be provided without availing of “resources outside the GLAS section”. As GLAS applications are made through an online facility, it is not clear exactly what the Department meant by “resources”, but the appellant suggested in his submissions that the requested information could be provided through the Land Parcel Identification System (LPIS) numbers that are included in the applications and that these details would satisfy his request. When contacted by this Office, the Department ultimately accepted that the LPIS numbers could be extracted from the GLAS database. It also accepted that, given the number of farms involved, a distinction could be made between the first part of the number that would identify the DED from the remainder that would also identify the townland. The Department therefore agreed to release the DED identifiers of the relevant LPIS numbers.

Accordingly, I consider that my review in this case is concerned solely with the question of whether the Department was justified in refusing access to the information it holds in a reasonably extractable format that would identify the townlands of the GLAS applications of interest to the appellant, i.e. the remainder of the relevant LPIS numbers.

Preliminary matters

Before I set out my analysis and findings in this case, I wish to address the appellant’s comments regarding the adequacy of the Department’s decision-making. I do not consider that a decision is necessarily inadequate simply because it does not include all the detail or address all the points that a requester may wish it to. This is especially true where the arguments presented might not be relevant to the question of whether the decision to refuse access was justified or not. For instance, the publication of detailed information relating to an agricultural project that may require an Environmental Impact Assessment (EIA) does not by any means set a “precedent” for the same level of detail in relation to GLAS applications. Where an EIA may be required, the rules governing the EIA process apply, but there is nothing in the terms and conditions of GLAS to suggest that an EIA is typically of relevance. Whether the reasons given justify the refusal of access under the AIE Regulations is a matter to be decided in this review insofar as the information remains at issue. However, I note that the internal reviewer provided a further explanation for his decision in response to queries made by the appellant prior to his appeal to this Office. The fact that the appellant did not accept the explanation or consider it sufficient does not mean that the internal reviewer was required to engage in further correspondence over the matter.

This Office has previously noted that AIE imposes significant obligations on public authorities that are designed to facilitate public access to environmental information. However, it seems to

me that the corollary is that members of the public should be mindful of the administrative burden that responding to access requests may entail in the context of the public authority's other functions and obligations, including the obligation to respect the rights of third parties who may be affected by the access request. In fairness to the applicant, I note that one of his submissions did indicate, in the context of the volume of GLAS applications, that he was aware of the additional burden of work that an AIE request puts on a public authority.

In addition, I wish to explain the approach of this Office to granting access to parts of records. Article 10(5) of the Regulations states: "Nothing in article 8 or 9 shall authorise a public authority not to make available environmental information which, although held with information to which article 8 or 9 relates, may be separated from such information." This means, in effect, that a request should be granted in part where environmental information may be separated from other information that is subject to refusal under article 8 or 9 of the Regulations. However, I consider that article 10(5) necessarily applies only where it is reasonably practicable to sever the information concerned in this manner. While AIE imposes significant obligations on public authorities, the obligations are not intended to amount to an unreasonable administrative burden. Therefore, as with section 18 of the FOI Act, I consider a reasonable and proportionate approach should be taken in determining whether to grant access to information in part.

Analysis and Findings

The grounds for refusal of a request for environmental information are set out in articles 8 and 9 of the AIE Regulations, but any proposed refusal is subject to the provisions of article 10 of the Regulations. Article 10(1) states: "Notwithstanding articles 8 and 9(1)(c), a request for environmental information shall not be refused where the request relates to information on emissions into the environment". Article 10(3) of the Regulations requires public authorities to consider each request on an individual basis and to weigh the public interest served by disclosure against the interest served by refusal. Article 10(4) provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest. I take article 10(4) to mean, in line with the Minister's Guidance, that there is generally a presumption in favour of the release of environmental information. However, as discussed below, this is subject to the strong protection afforded to the right to privacy under European and Irish law.

Although the Department refused access to the townland details sought under both articles 8(a)(i) and (iv) of the Regulations, I consider that article 8(a)(i) is the most relevant provision to consider in this case. Article 8(a)(i) provides for the refusal of environmental information where disclosure of the information would adversely affect the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law.

GLAS is a scheme designed under the Common Agricultural Policy (CAP) that provides funding to farmers who undertake, on a voluntary basis, to carry out activities that promote biodiversity, protect water quality, and help combat climate change. It is intended to achieve the objectives of Articles 28 and 30 of Regulation (EU) No. 1305/2013 on support for rural development by the

European Agricultural Fund for Rural Development (EAFRD). To comply with the scheme, an applicant must fulfil a number of core requirements, including the requirement to have a qualified agricultural advisor prepare and submit the GLAS application. The terms and conditions of the scheme specify that a participant must be the holder of an active herd number with Herd Owner status and must also have all lands farmed declared in his/her name on the Integrated Administration and Control System (IACS). Thus, it is my understanding that where the applicant is not the owner of the lands concerned, a lease covering the period of the scheme is required. It is therefore apparent to me that information provided by a GLAS applicant about the location of the lands that will be used to carry out the relevant environmental activities is information relating to the property of the applicant and also his/her employment as a farmer.

A townland in Ireland is a small geographical area of land. According to the appellant's own submissions, there are approximately 2.3 registered farmers per townland in Ireland. The appellant also accepts that, in some cases, albeit not all, the townland corresponds with the home address of the GLAS applicant concerned. Given the small geographical area involved, I accept that identifying the townland of a GLAS applicant's lands would be likely to reveal the identity of the applicant in conjunction with the location of his/her lands and, in some cases, his/her home address. This could occur by pooling information through "local knowledge", as the Department has suggested in correspondence with the appellant. I accept that there is a reasonable possibility that pooling information can occur in a process where the number of participants is limited. The identity of the townland could also be pooled together with other information that is publicly available about all CAP beneficiaries.

In order to comply with its obligations under EU Regulation 1306/2013, the Department provides for the publication on its website of the following information about all of the beneficiaries of CAP funding, both legal and non-legal persons, for a period of two years:

- the name of the beneficiary (unless the amount of payment under CAP funds is less than €1,250, in which case the individual is identified by a code);
- the municipality where the beneficiary is resident;
- the amount of payment corresponding to each measure received by the beneficiary; and
- the nature and description of each measure.

A municipality generally coincides with an electoral area, but may consist of more than one such area. Article 58 of EU Commission Implementing Regulation 908/2014 specifies:

"Where the information to be published for the purposes of the third paragraph of Article 112 of Regulation (EU) No 1306/2013 would, due to the limited number of beneficiaries residing or registered in a given municipality, allow for the identification of a natural person as a beneficiary, the Member State concerned shall publish as information, for the purposes of point (b) of the first subparagraph of Article 111(1) of that Regulation, the next larger administrative entity of which the municipality in question is part of."

Article 112 of Regulation 1306/2013 relates to the threshold under which a beneficiary may only be identified by code. Thus, the EU Commission recognises that, if the number of beneficiaries in a given geographical area is small enough, disclosure of the location of the geographical area may allow for the identification of a particular beneficiary.

Article 113 of Regulation 1306/2013 states:

"Member States shall inform the beneficiaries that their data will be made public in accordance with Article 111 and that the data may be processed by auditing and investigating bodies of the Union and the Member States for the purpose of safeguarding the Union's financial interests."

In accordance with the requirements of Directive 95/46/EC, where personal data is concerned, the Member States shall inform the beneficiaries of their rights under the data protection rules and of the procedures applicable for exercising those rights."

Directive 95/46/EC is the data protection directive which has now been replaced by the General Data Protection Regulation (GDPR). Regulation 1306/2013 was adopted in part in order to bring EU rules on transparency with respect to CAP payments in line with the principle of proportionality following the judgment of the Court of Justice of the European Union (CJEU) in Joined Cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen (Schecke)*, available [here](#).

In its judgment, which dealt with the publication of information about CAP beneficiaries under previous Regulations, the Court found that CAP beneficiaries have a right to respect for their private life in general and to protection of their personal data in particular under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union ("the Charter"). The Court explained that the right to respect for private life with regard to the processing of personal data concerns any information relating to an identified or identifiable individual. The Court clarified that legal persons may be entitled to the protection of personal data only insofar as the official title of the legal person identifies one or more natural persons, but it referred elsewhere in its judgment to the unreasonable administrative burden of seeking to determine whether the name of

each legal person would identify a natural person. The Court also clarified that the term "private life" must not be interpreted restrictively and thus it is of no relevance that the data relating to CAP beneficiaries concerns activities of a professional nature. The Court found, in essence, that the publication of information about the aid received by the named beneficiaries constitutes an interference with the rights conferred by Articles 7 and 8 of the Charter and that the interference must be proportionate to the legitimate aim of increasing transparency with respect to the use of agricultural funds. The Court stated that "[n]o automatic priority can be conferred on the objective of transparency over the right to protection of personal data . . . even if important economic interests are at stake".

As the Recitals to Regulation 1306/2013 explain, the publication of "a certain level of information" about beneficiaries is intended to be made in such a way as to limit the interference with their right to private life in general and to their right to protection of their personal data in particular. The focus of the discussion in the Recitals regarding the principle of proportionality is on the need for a threshold in terms of the amount of aid received, but it is readily apparent that identification of the municipality in which the beneficiary is resident or registered is generally regarded as the relevant geographical information that should be made available in order to strike the appropriate balance between the need for transparency and the right to protection of personal data of the beneficiaries. Moreover, as noted above, beneficiaries are required to be informed of the publication of their data before that publication takes place.

In the circumstances, I am satisfied that GLAS applicants have a reasonable expectation that any townland details provided in their applications will be treated as confidential personal information. Although Regulation 1306/2013 deals with the proactive publication of information on the websites of Member States, the release of information under AIE has essentially the same consequences in that it amounts to disclosure of information into the public domain. It seems to me that disclosure of townland details without the consent of the applicant concerned would violate the principle of proportionality under EU law by revealing detailed information about the location of the farmlands used by the applicant in seeking GLAS benefits. In some cases, it would also reveal the applicant's home address in a manner that would certainly be regarded as a serious interference with the right to respect for private life. The appellant suggests that information of the same kind is available from the Property Registration Authority and the Register of Electors, but these sources of information do not directly relate to a farmer's status as a CAP beneficiary or GLAS applicant, nor do they necessarily identify the precise location of lands used for farming, though they may also contribute to the pooling of information about an identifiable individual.

I conclude that the townland details provided in a GLAS application qualify as personal information that is held by the Department on the understanding of confidence. The confidentiality of the information is protected by EU law and also by section 37 of the FOI Act. Moreover, the right to privacy has been recognised as an unenumerated right under the Irish Constitution. I do not accept, as the appellant suggests, that the contract that a GLAS applicant agrees to by participating in the scheme undermines his or her right to privacy under AIE or FOI with respect to the townland details. I therefore find that the townland details fall within the exception to access provided for by article 8(a)(i) of the AIE Regulations.

In relation to the the public interest test under article 10(3) of the AIE Regulations, I note that the right to privacy is afforded strong protection under both European an Irish law. In this context, I am mindful of the balance struck between transparency and the right to privacy by EU Regulation 1306/2013 in keeping with the *Schecke* judgment. I consider that the information published under EU Regulation 1306/2013 together with the additional details made available to the appellant through the partial grant of his request in this case satisfies the public interest in openness and transparency in relation to GLAS to a large extent. I am satisfied that the public interest served by disclosure of the townland details sought does not outweigh the interest served by refusal. I am also satisfied that article 10(5) does not apply in the circumstances of this case.

Decision

In accordance with article 12(5) of the AIE Regulations, I have reviewed the decision of the Department in this case. I find that Department's decision to refuse the appellant's request for access to the townland details of the relevant GLAS applications was justified under article 8(a)(i) of the Regulations. I affirm the Department'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 Information
12 October 2018