



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: OCE-93422-N0K3Q1

Date of decision: 15 July 2021

Appellant: Mr. X

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

Issue: Whether DAFM is entitled to rely on article 9(2)(c) of the AIE Regulations in respect of its partial refusal of information relating to screening applications under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 (as amended) (the “**2011 Regulations**”).

Summary of Commissioner's Decision: The Commissioner found that DAFM was not justified in relying on article 9(2)(c) of the AIE Regulations in the circumstances and directed release of the information requested.

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

1. On 14 April 2020, the appellant requested the following information from the Department of Agriculture, Food and the Marine in respect of “screening applications made under the EIA (Agriculture Regulations)”:
 1. Copies of all Appropriate Assessment screening reports – 2011 to present
 2. The case reference for all applications referred to NPWS and / or IFI and copies of the consultation responses received from NPWS and / or IFI – 2011 to present.
 3. For all screening decisions published for 2017 and 2018
 - a. Linear Measurement in metres or Area in hectares of the works
 - b. Electoral Division.
 4. For 2019 and 2020, full details of all screening applications under the Environmental Impact Assessment (Agriculture) Regulations 2011. The information requested to include the following details
 - a. Date of application
 - b. Date of decision
 - c. County
 - d. DED
 - e. Townland
 - f. Linear Measurement in metres or Area in hectares
 - g. Details of the nature and extent of the proposed works including the anticipated outcomes
 - h. Decision Status
 - i. Where Approval has been granted details of any conditions that apply.
2. On 22 April 2020, the appellant spoke to a member of staff in DAFM by telephone with regard to his request. The next day, the appellant emailed DAFM to “confirm a revision of [his] request”, thereby excluding part 2 of the request, all elements of part 4 pertaining to the year 2020, and parts g and i of part 4 altogether.
3. On 8 May 2020, DAFM emailed the appellant with a decision in relation to his request. The first part of the appellant’s request was refused on the basis that such information was not held by DAFM. The appellant was provided with an Excel Spreadsheet with information relating to the remaining portion of his request. This Spreadsheet contained three work sheets, each labelled 2017, 2018 and 2019 and containing the details requested in relation to EIA screening applications for each year. DAFM did not provide details in respect of one screening application made in 2018 and eight screening applications made in 2019 on the basis that a decision had not yet been made in respect of them. DAFM relied on the exception contained at article 9(2)(c) of the AIE Regulations as grounds for the refusal of the information within the scope of the appellant’s request which was contained in the files relating to those nine screening applications. It did not provide any further detail as to the basis on which it considered article 9(2)(c) to apply, nor did it provide any detail as to the public interest balancing exercise required under article 10(3) of the AIE Regulations or as to



the estimated time needed for completion of the materials requested in accordance with article 10(6).

4. The appellant sought an internal review of DAFM's decision on 11 May 2020. His request for an internal review noted that "for the most part", he was "satisfied with the decision and the records provided as discussed and agreed following discussion with the decision maker". However, he sought an internal review of the decision to rely on article 9(2)(c) of the AIE Regulations as the basis for refusing access to the information withheld. He argued that article 9(2)(c) did not apply in the circumstances of the case and made the following points in respect of that argument:
 - (i) He noted that his request specifically sought records relating to applications for screening. He submitted that records of the processing of an application and any consequent decision were materially distinct from the records of the application itself and that any record relating to the application which is, in and of itself complete, is not "material in the course of completion" and is not covered by the article 9(2)(c). In support of this assertion, the applicant drew DAFM's attention to my previous decisions on this matter.
 - (ii) He submitted that the fact that a decision had not been reached by DAFM on particular screening applications did not mean that the records relating to those applications were incomplete and therefore exempt from release.
 - (iii) He argued that to suggest that article 9(2)(c) should apply to any application for consent that has not received a decision would remove the possibility of public consultation in development processes such as planning applications and forestry applications.
 - (iv) He submitted that the absence of a consultation process under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 (as amended) (the "**2011 Regulations**") had no bearing on the principle that records relating to completed applications should be subject to release.
 - (v) He noted that there was no evidence of DAFM having complied with articles 10(4) and 10(5) of the AIE Regulations with respect to the original decision.

5. DAFM provided the appellant with an internal review outcome on 9 June 2020. It affirmed the original decision and provided the following reasons to the appellant in support of this decision:
 - (i) DAFM noted that under the 2011 Regulations, it was not required to publish EIA screening applications and associated records but rather decisions made in respect of those applications.
 - (ii) DAFM argued that accordingly, having regard to article 10(3) of the AIE Regulations, the public interest was not necessarily served or undermined by it not making available records of such screening applications prior to a decision having been made by DAFM in respect of those applications.
 - (iii) DAFM noted that records relating to screening applications had previously been made available upon request under the AIE Regulations where decisions had already been made by it in respect of those applications. It also noted that where similar requests were made in the future, DAFM would endeavour to cooperate fully in meeting all aspects of those requests, as it had in the past.



- (iv) DAFM also noted that reference to the article 10 criteria set out in the AIE Regulations was “unfortunately omitted as part of the basis of [the original response]”. However, the internal review outcome did not address article 10(4) or article 10(5) of the AIE Regulations, both of which had been mentioned in the appellant’s request for internal review.

6. The appellant appealed to my Office on 12 June 2020.

Scope of Review

7. DAFM provided the appellant with a spreadsheet with specified details of applications and decisions for the years 2017, 2018 and 2019. However, DAFM withheld information relating to a number of screening applications made in 2018 and 2019 on the basis that decisions in respect of these applications have yet to be finalised. DAFM has relied on article 9(2)(c) of the AIE Regulations in support of that decision. The appellant has appealed this partial refusal.
8. DAFM’s original refusal related to information contained in nine screening applications to DAFM which were ongoing at the date of the original request on 14 April 2020 and in respect of which a decision had not been reached. However, DAFM notified this Office that an error had been made with respect to details of one screening application within the scope of the appellant’s request (2019/EIA/S/67). It noted that it had been mistakenly concluded that a decision had not been issued by the date of the appellant’s request in April 2020 when this was in fact not the case and a decision had issued in February 2020. My understanding is that a copy of the information contained in this screening application was subsequently provided to the appellant (on 6 May 2021) and it is thus not within the scope of this appeal. This leaves information relating to eight screening applications to DAFM, which were ongoing at the date of the original request on 14 April 2020 but in respect of which DAFM had not reached a decision, referred to in this decision as the “**Screening Applications**”, to be considered.
9. My review is therefore concerned with whether DAFM is entitled to rely on article 9(2)(c) of the AIE Regulations in respect of its partial refusal of information relating to the Screening Applications.

Submissions of the Parties

10. Following acceptance of the appellant’s appeal by my Office, DAFM provided copies of the relevant information along with a Schedule of Records. It also provided a background note, on 17 July 2020, which described the Environmental Impact Assessment Screening Service to which the information related. DAFM outlined that the information on screening applications requested by the applicant was generated as a result of the 2011 Regulations. The 2011 Regulations require that Environmental Impact Assessments be conducted before certain types of development on agricultural land are carried out i.e. restructuring of rural land holdings, the commencement of the use of uncultivated land or semi-natural areas for intensive agriculture and land drainage works on agricultural lands. The 2011 Regulations provide for two thresholds with regard to each prescribed form of agricultural land use. Where the size of the land on which the works are being carried out exceeds the bigger threshold the carrying out of an Environmental Impact Assessment is mandatory. Where the smaller threshold is exceeded, it is necessary to apply to DAFM for a screening of the proposed activity. Screening may also be necessary in some cases where the



threshold has not been exceeded e.g. if the proposed activity is within, near or may affect a National Heritage Area or a National Monument or if it is a “notifiable action” in a European site such as Special Area of Conservation, Special Protected Area or a Natural Heritage Area. Screening is a cost-free process by which DAFM examines the proposed activities for environmental impact to determine if they can go ahead without the need for an Environmental Impact Assessment.

11. DAFM’s background note also explained that the appellant’s original request sought details from all screening files from 2011 to the date of his request. DAFM noted that in light of its view that such a request would have been manifestly unreasonable, as it would have required manually copying and analysing hundreds of files, it spoke with the appellant to determine whether his request could be re-formulated. DAFM noted that the appellant agreed to amend his request and to accept a spreadsheet with specified details of application for the years 2017, 2018 and 2019, as outlined in further detail at paragraph 2 above.
12. DAFM explained that it part-granted the appellant’s request by way of its original decision of 8 May 2020. It noted that it refused access to information relating to nine screening applications which had yet to be finalised. It relied on article 9(2)(c) of the AIE Regulations in respect of this refusal. DAFM also noted that once the nine applications were finalised, it would be required to publish the decision made in respect of each of those applications as provided for under the 2011 Regulations. DAFM noted that cases which had not been finalised may require further detail from the applicant and in some cases may result in enforcement proceedings or legal action by DAFM.
13. DAFM explained that each screening application is processed manually and that a Clerical Officer maintains a spreadsheet logging each application and its current status. It noted that screening applications were received by administrative staff who acknowledge receipt of the application and, where necessary, refer a copy to other relevant bodies such as the National Parks and Wildlife Service. The administration section creates a file which is given to an Agricultural Inspector who in turn requests a DAFM Inspector in the relevant area to conduct a site visit. Once all relevant reports are received, the Agricultural Inspector makes a decision to approve the proposed works (with or without conditions) or to refuse approval and the applicant is notified of the decision. The completed file is then returned to the Administration Section for central filing, and completion of the spreadsheet record.
14. DAFM also advised this Office of the error referred to in paragraph 8 above.
15. Finally, DAFM explained that it had refused access to information in relation to the Screening Applications under article 9(2)(c) for the following reasons:
 - (i) The 2011 Regulations require the publication of decisions such that details in relation to the Screening Applications would in due course be published on the DAFM website.
 - (ii) DAFM had previously provided redacted copies of completed applications on foot of requests under the AIE Regulations.
 - (iii) The Environmental Impact Assessment Screening Service is an open-ended scheme with applications being made to DAFM on a continuous basis.



- (iv) The majority of uncompleted screening applications will be processed by DAFM in due course but some may require legal action as work is sometimes carried out without approval, some may require mandatory Environmental Impact Assessment or Appropriate Assessment and DAFM is not in a position to ascertain this until work on the screening application is complete and a decision has been made by the relevant inspector.

16. The appellant provided his submissions on 3 May 2021 which can be summarised as follows:

- (i) He confirmed he was satisfied that the scope of this appeal was limited to whether DAFM was entitled to refuse access to information within the scope of his request in respect of the Screening Applications under article 9(2)(c) of the AIE Regulations;
- (ii) He submitted that article 9(2)(c) of the AIE Regulations did not provide DAFM with grounds to refuse access to all information requested relating to the Screening Applications. He submitted that DAFM was required to assess each individual record relating to his request restrictively and on an individual basis and that if such records were complete, the status of the application process as a whole could not provide grounds for refusal under article 9(2)(c). He noted that his request was for information in respect of screening applications and that if an application has been accepted it must be assumed that the application is deemed complete and that the application document itself, and the records which form part of the assessment process, must be records which are no longer in the course of completion.
- (iii) He submitted that the fact that the 2011 Regulations did not oblige DAFM to publish screening applications and associated records, and only required publication of decisions reached on such applications, did not provide DAFM with grounds to refuse to provide such information when requested in accordance with the AIE Regulations.
- (iv) He submitted that DAFM, in its internal review outcome, made no reference to the content of his request for an internal review including his observation that no reference had been made in DAFM's original decision to articles 10(4) or 10(5) of the AIE Regulations and his reference to my previous decisions.
- (v) He noted that DAFM's internal review outcome had stated that "the public interest in not necessarily served or undermined by not making available records of these applications prior to a decision made in respect of these applications". He submitted that DAFM had not set out the assessment of the public interest factors which led to this conclusion. He noted that the Minister's Guidance provided that public authorities should "maintain a presumption in favour of the disclosure of environmental information, and seek to respond positively and promptly to requests". He submitted that DAFM had effectively reached a neutral conclusion with respect to the public interest test and that the outcome of such a neutral conclusion should have been that the records were released rather than withheld.
- (vi) He also submitted that there was a strong public interest argument in favour of release of the information requested in that the public, including eNGOs, may be in a position to identify issues with applications that could result in environmental impacts such that they could identify those potential impacts to DAFM prior to a decision being made.
- (vii) The appellant submitted that the right to access environmental information contained in the Aarhus Convention, the AIE Directive and the AIE Regulations is central to ensuring effective public participation in environmental decision-making, ensuring accountability for such



decisions and making sure that the best possible decision is made. He submitted that the 2011 Regulations were a means of providing oversight on plans and projects which could impact significantly on the environment and that public participation in such plans and projects was a requirement of the EIA Directive which underpinned the 2011 Regulations.

- (viii) He submitted that in circumstances where Ireland is in a State-declared biodiversity emergency, transparency over records of this type is very much in the public interest such that even if article 9(2)(c) did apply, there is a strong public interest in favour of release of the information. The appellant submitted that DAFM had not presented any public interest case for the withholding of such information.
 - (ix) With regard to DAFM's statements regarding its response to similar requests, the appellant submitted that DAFM's decision must be assessed on the basis of the AIE Regulations and not on its past conduct. He submitted that the decision in this case must be made on its own merits and that the argument that information would be released once a decision had been made did not provide grounds for the current refusal.
 - (x) The appellant submitted that article 10(4) of the AIE Regulations required that grounds for refusal be "interpreted on a restrictive basis having regard to the public interest served by disclosure". He submitted that by conjoining all of the individual records relating to a specific application into one, DAFM had not interpreted his request on a restrictive basis.
 - (xi) He submitted that there was no evidence that DAFM had given consideration to article 10(5) of the AIE Regulations.
 - (xii) He also noted that having refused his request on the basis of article 9(2)(c), DAFM was obliged to inform him of the estimated time required for completion and failed to do so in contravention of article 10(6) of the AIE Regulations.
17. In her request to DAFM for submissions, my Investigator sought an update on the status of the Screening Applications. She also sought submissions from DAFM as to the basis on which it considered article 9(2)(c) should apply, having regard to the restrictive test mandated by article 10(4). She asked DAFM to outline its examination of the public interest, and to set out its view as to whether partial release in accordance with article 10(5) might be possible.
18. DAFM provided submissions on 13 May 2021, reiterating its position as set out in July 2020. In answer to the specific issues raised by my investigator, DAFM noted that decisions had been made in respect of seven of the eight Screening Applications within the scope of this appeal. It stated that a staff member was currently updating the list of 2019 applications for publication on the DAFM website but that completion of this task had been delayed by a combination of the manual work associated with its completion (which I understand to be a reference to the fact that information relating to screening applications is inputted manually into DAFM's record keeping systems), the limited resources available and the reduction in office attendance since March 2020 in accordance with public health requirements. One Screening Application (the "Outstanding Screening Application") had yet to be finalised. DAFM noted that this case was currently with an Inspector for consideration of next steps including possible legal action.
19. DAFM submitted that the refusal of records under article 9(2)(c) was correct. It noted that screening applications are processed individually and are a complex exercise involving several areas



of DAFM. It noted that some applications require consultation with other bodies and that such consultation periods can last up to 8 weeks. With regard to partial disclosure under article 10(5), DAFM submitted that screening applications were processed on a whole case management system and argued that no records were standalone or immune from amendment or clarification until the process is complete and the decision is made. It argued that separation of the records relating to a screening application prior to the making of a decision in respect of such application would be premature and not applicable as documents can be reverted back to either the application, the National Monuments Service, the National Parks and Wildlife Service or DAFM inspectors for further information at any point during the screening application process.

20. DAFM submitted that there was no adverse effect to public interest considerations under article 10(3) of the AIE Regulations having regard to the current process of screening applications by DAFM. It noted that once decisions are made in respect of screening applications, summary details in respect of the applications are published on DAFM's website as required under the 2011 Regulations. It also noted that DAFM frequently receives and grants applications under the AIE Regulations for information contained in individual screening applications and that the only redactions that were generally made in such requests were those necessary to protect the personal information of the applicant. It noted that works which may have a greater environmental impact were outside the scope of the screening process and that such works would require mandatory Environmental Impact Assessment (along with planning permission and/or a Natura Impact Statement in some cases). DAFM submitted that the 2011 Regulations did not require public consultation with regard to screening applications and argued that its current practice with regard to the refusal of information relating to a screening application prior to decision stage did not contravene the Aarhus Convention.
21. On 25 May 2021, my Investigator requested further information from DAFM. She noted that a decision had now been reached in respect of seven of the Screening Applications (the "Finalised Applications") and asked DAFM whether it now intended to release information to the appellant relating to the Finalised Applications. She also noted that DAFM had stated that the Outstanding Screening Application was currently with an Inspector for consideration of next steps including possible legal action and asked DAFM to clarify whether it was now claiming a further ground for refusal existed in respect of the withholding of the Outstanding Screening Application under article 9(1)(b) of the AIE Regulations.
22. DAFM provided the further information requested on 3 June 2021 along with a follow up attachment on 15 June 2021. In this follow up information, DAFM made the following points:
 - (i) With respect to the Finalised Applications, DAFM submitted that it had refused access to information contained in those applications in its original decision under article 9(2)(c), as decisions had not been made in respect of those applications at the time of the original decision of 8 May 2020.
 - (ii) It noted that in due course, details of the Finalised Applications would be published on its website and that this would include all the information requested by the appellant in respect of those Finalised Applications. Its submissions referred to a copy of a previous publication



- which provided an example of the details generally published with regard to screening applications in respect of which a decision had been reached.
- (iii) DAFM submitted that details in respect of the Finalised Applications had yet to be published on its website due to a delay caused by a combination of factors. It noted that priority had been given to the publication of information relating to decisions made in 2020. As noted above, the information requested by the appellant that is relevant to this appeal relates to screening applications made in 2018 and 2019.
- (iv) DAFM submitted that it continued to rely on article 9(2)(c) of the AIE Regulations as grounds for refusal of information on applications not yet finalised (i.e. the Outstanding Screening Application). It reiterated the points made in its submission of 13 May 2021 in relation to the processing of screening applications being a complex exercise carried out on an individual basis and including consultation with other bodies, site visits and reporting by relevant inspectors. It reiterated its position that screening applications are processed on a whole case management system such that no records were standalone or immune from amendment or clarification until the screening process was complete and a decision was made.
- (v) It also reiterated the point made in its submissions of July 2020 in which it noted that the majority of uncompleted screening applications will be processed in due course but some may require legal action and considerations on a case-by-case basis. It submitted on that basis that final decisions are made by referencing each step of the process and all documents such that each document is a working document until that process is complete.
- (vi) It noted that following the notification of the decision on the Outstanding Screening Application to the applicant, details would be published in accordance with the 2011 Regulations. It also noted that additional information or copies of information in relation to individual screening applications are often released on foot of AIE requests subject only to redactions being made to protect the identity of the applicant under article 8(a)(i) of the AIE Regulations.
- (vii) DAFM noted the Outstanding Screening Application had yet to be finalised and that it was intended to arrange another on-site inspection to verify the current position. It noted that if legal action was deemed appropriate then DAFM would consult its Legal Services Division for advice as to next steps. It did not however invoke article 9(1)(b) as a basis for refusal of the requested information contained in the Outstanding Screening Application.
- (viii) Finally, it submitted that there was no contravention of article 10(5) of the AIE Regulations as none of the records in relation to a screening application are considered complete by DAFM prior to the making of a final decision in respect of that application and reiterated the points made in its submission of 13 May 2021 in this regard.

Analysis and Findings

23. I have now completed my review under article 12(5) of the AIE Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and DAFM. I have also examined the information at issue. In addition, I have 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’).
24. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.
25. As noted above, the issue to be decided in this appeal is whether DAFM is entitled to rely on article 9(2)(c) of the AIE Regulations in respect of its refusal of information relating to the Screening Applications. At the time of the appellant’s request and of DAFM’s original decision and internal review outcome, the Screening Applications were all ongoing applications under the 2011 Regulations. In the course of this appeal, decisions have been issued in respect of seven of those screening applications (the “Finalised Applications”) and only one remains outstanding (the “Outstanding Screening Application”).

The Finalised Applications

26. My understanding of DAFM’s submissions of 13 May and 3 June 2021 is that it no longer relies on article 9(2)(c) in refusing the information contained in the Finalised Applications. Its position now is that such information will be made available to the appellant once details of the decisions made in each of those screening applications are published on DAFM’s website in accordance with the 2011 Regulations. DAFM submits in this regard that this would include all the information requested by the appellant in respect of those Finalised Applications.
27. DAFM provided my Office with a copy of a previous publication of decisions on screening applications. DAFM submitted that this publication contained all details generally published with regard to screening applications in respect of which a decision has been reached. I note that this sample document does not include details of the “date of application” which was sought by the appellant in his original request, nor does it include details of the “DED” of the relevant lands, although I note that the appellant’s original request has specified that this information should be provided “if possible”. I also note that details of the decisions in respect of the Finalised Applications have yet to be published such that, as of yet, the appellant’s request for information concerning the Finalised Applications remains outstanding.
28. In circumstances where DAFM is no longer relying on a provision of the AIE Regulations to refuse a request, it must provide the appellant with the information requested in his request of 14 April 2020 (modified on 22 April 2020) with respect to the Finalised Applications.



The Outstanding Screening Application

29. DAFM continues to rely on article 9(2)(c) of the AIE Regulations as the basis for refusal of the information requested which relates to the Outstanding Screening Application. DAFM has also noted that the Outstanding Screening Application remains with an Inspector for consideration of next steps. When asked by my Investigator to clarify its position, DAFM did not invoke any further grounds for refusal, such as article 9(1)(b), as a basis for refusal of the requested information contained in the Outstanding Screening Application.

30. Article 9(2)(c) of the AIE Regulations provides as follows:

“A public authority may refuse to make environmental information available where the request ... concerns material in the course of completion, or unfinished documents or data”.

31. Article 10 of the AIE Regulations provides that a public authority must comply with certain conditions before it can refuse environmental information on the basis of an exception, as follows:

“(3) The public authority shall consider each request on an individual basis and weigh the public interest served by the disclosure against the interest served by the refusal.

(4) The grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis having regard to the public interest served by the disclosure.

(5) Nothing in article ... 9 shall authorise a public authority not to make available environmental information which, although held with information to which article ... 9 relates, may be separated from such information.”

32. There are therefore three issues to be considered whether a public authority seeks to rely on an exception contained in the AIE Regulations:

- (i) Can the relevant exception be said to apply to the information in question, having regard to the restrictive test mandated by article 10(4) of the AIE Regulations?
- (ii) If so, does the interest served by refusal of the requested information outweigh the public interest in its disclosure?
- (iii) If so, is there any material contained in the information requested which can be separated from the information subject to the relevant exception, in respect of which partial disclosure could be made?

Does the relevant exception apply in this case?

33. It is my view that the information requested must be examined when assessing whether article 9(2)(c) applies, rather than the decision-making process to which the information relates. The question is whether the information requested “concerns material in the course of completion or



unfinished documents or data” and not whether the decision-making process in respect of which the information has been generated is incomplete.

34. The Aarhus Guide supports my view that it is clear that the expression “in the course of completion” relates to the process of preparation of the information or the document. It does not relate to any decision-making process for the purpose of which the information or document at issue has been prepared. I believe that this aligns with the clear wording of article 9(2)(c) which refers in no uncertain terms to “materials in the course of completion” and not to any decision making process.
35. DAFM submitted that screening applications were processed on a whole case management system and argued that no records were standalone or immune from amendment or clarification until the process is complete and the decision is made. It submitted that screening applications are processed individually through a complex exercise involving several areas of DAFM. It noted that some applications require consultation with other bodies such as the National Monuments Service and the National Parks and Wildlife Service and that such consultation periods can last up to 8 weeks. It submitted that documents can be reverted back to either the applicant, the National Monuments Service, the National Parks and Wildlife Service or DAFM inspectors for further information at any point during the screening application process. It submitted that final decisions are made by referencing each step of the process and all documents such that each document is a working document until that process is complete.
36. However, as the appellant noted in his submissions, the elements of his request to which this appeal relates comprise details in relation to “screening applications” (emphasis added). Details such as the date on which an application was made and the county, townland and size of the relevant lands, constitute information which is known and held by DAFM at the outset of a screening application process. It cannot be said to amount to “material in the course of completion”, even if the screening application process itself is not complete. I also note that the information requested by the appellant in respect of screening applications which was released to him, was provided in the form of an Excel spreadsheet containing the requested details of applications for 2017, 2018 and 2019 extracted from the records held by DAFM in relation to each screening application. The appellant has not raised any issue in this appeal with the manner in which the information was provided to him and it appears to me to have been a pragmatic approach by DAFM. It remains open to DAFM to provide the appellant with the information in the form of documents containing that information, with all other detail redacted. In either circumstance, it is difficult to see any basis on which DAFM could rely on article 9(2)(c) to refrain from providing the appellant with the information he has requested in respect of the Outstanding Screening Application, even if a decision has yet to be reached on that application.
37. For the same reason, although article 9(1)(b) has not been expressly invoked by DAFM, I do not consider that it could be said to apply in any case to the Outstanding Screening Application. It is difficult to see how the provision of the information requested by the appellant in the form of an



Excel sheet containing details extracted from the records held by DAFM in respect of screening applications (which, as noted above, was accepted by him) could have any impact on any proceedings which may be instituted by DAFM in respect of that application, such that it would “adversely affect...the course of justice” as required in order for article 9(1)(b) to apply.

38. I also note for completeness that even if DAFM had continued to rely on article 9(2)(c) in respect of the Finalised Applications, the same rationale would apply such that article 9(2)(c) would not provide a basis for the refusal of this information in accordance with the AIE Regulations.
39. As it is my view that no grounds for refusal under the AIE Regulations arise, it is not necessary for me to consider the public interest factors, which might weigh in favour of or against disclosure of the relevant information. I will say however that the submissions received on this point from DAFM do not engage in the exercise envisaged by article 10(3) of the AIE Regulations which involves identifying the public interest in disclosure of the relevant information and the interest in refusal and weighing those interests to ascertain whether any proposed refusal is in fact justified in the individual circumstances of the request. A blanket assertion that withholding the requested information does not adversely affect the public interest is not sufficient and fails to engage with the clear wording of the AIE Directive, which demonstrates (particularly in Recitals 1 and 16) the clear public interest in the disclosure of environmental information as a starting position for any request under the AIE Regulations.

Decision

40. Having carried out a review under article 12(5) of the AIE Regulations, I annul the decision of DAFM and direct release of the information contained in the Screening Applications, which is within the scope of the appellant’s request. I note in this regard that, subject to the right of appeal referred to below, article 12(7) of the AIE Regulations requires a public authority to comply with this decision within 3 weeks of its receipt.

Appeal to the High Court

41. 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

15 July 2021