

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 2014 (the AIE Regulations)

Case CEI/16/0048

Date of decision: 24 November 2017

Appellant: Right to Know CLG (the appellant)

Public Authority: Meath County Council (the Council)

Issues: Whether the Council's decision to part grant the appellant's request for access to environmental information failed to take into account all information held by or for the Council, and was therefore not made in accordance with the AIE Regulations. Whether the Council's decision to part refuse the appellant's request was justified on the basis that certain information requested was not held by or for the Council.

Summary of Commissioner's Decision: In accordance with article 12(5) of the Regulations, the Commissioner reviewed the Council's decision. He annulled the Council's internal review decision on the basis that the decision failed to consider all information held by the Council, and incorrectly characterised the scope of the request. The Commissioner expressed his expectation that the Council should make a new decision on the appellant's request.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal this decision 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

On 26 September 2016, the Council received a request for access to environmental information from the appellant, pursuant to article 7 of the AIE Regulations. The appellant's request concerned the Old Mill site in Julianstown, County Meath, and sought access to "all information...in relation to (a) the dereliction of the site; and (b) proposals to sell and/or develop the site". The appellant specified that it sought information created after 10 October 2007.

The Council did not make a decision on the AIE request within the time provided by the AIE Regulations, and therefore the request was deemed to be refused on 25 October 2016. On 26 October 2016 the appellant requested an internal review pursuant to article 11 of the AIE Regulations. In an internal review decision of 17 November 2016, the Council disclosed seven categories of information to the appellant relating to the dereliction of the Old Mill site. Insofar that the appellant sought access to information on "proposals to sell and/or develop the site", the Council stated that it was "not the registered owner of the site" and as such had "no proposals to sell and/or develop the site".

On 26 November 2016 Right to Know appealed to my Office against the Council's internal review decision. The appellant stated that the Council's internal review decision was inadequate, as it failed to consider all information held by the Council.

The appellant's second AIE Request

In its internal review decision of 17 November 2016, the Council disclosed copies of four of letters sent by the Council to the owners of the Old Mill. These letters from 2015 and 2016 refer to additional correspondence and a meeting between the Council and the land owners. These letters also refer to complaints and representations made to the Council concerning the derelict appearance of the site. The appellant made a second AIE request to the Council (reference AIE/10/16) seeking, among other things, access to the land owners' responses to the Council's letters, and information on the meeting between the Council and the land owners. In its decision on this second request, the Council expressly refused access to the following information:

- responses from the land owners to the Council's letters of February 2015 and February 2016,
- information on the meeting between the Council and the land owners referred to in the Council's letters of February 2016, and
- information on other conversations and correspondence between the Council and the land owners.

The Council refused access to the above information on the basis that the exception to disclosure under article 8(a)(i) applied to the information, as disclosure would adversely affect the confidentiality of personal information. The appellant's second AIE request is not the subject of this appeal; however, there is significant overlap between the two requests.

Scope of Review

In the present case, the Council's internal review purported to grant the appellant's request by disclosing some information, and by stating that the Council itself had no plans to develop the site. The appellant has disputed the adequacy of this decision. My approach to cases where a public authority states that all relevant information has been disclosed is to assess the adequacy of the searches for information, and to decide whether the public authority was justified in stating that access had been provided to all relevant environmental information. I have also considered whether the Council's characterisation of the scope of the appellant's AIE request was reasonable.

The appellant's position

The appellant stated that its request relates to a former mill which has been unoccupied since 2007 as a result of a fire. The appellant submitted that the Council's internal review decision failed to consider all relevant information held by or for the Council. In support of this contention, the appellant stated that the information disclosed at internal review stage made references to additional records, including additional third party correspondence, which were not addressed by the Council's decision. The appellant brought to my attention correspondence in which a Council member stated that multiple development proposals for the site were under consideration. The appellant also stated that in 2007 the Council's Conservation Office prepared a report for the purposes of section 57 of the Planning and Development Act in October 2007, which was not disclosed.

The Council's position

In a submission to my Office, the Council clarified that it holds two files relating to the Old Mill site, one of which includes "derelict site notices/reports" and the other relating to interactions with the owners of the land and representations received by the Council concerning the site.

The Council stated that its internal review decision disclosed "relevant information relating to dereliction", and clarified that it subsequently disclosed the "entire contents" of the dereliction file to the appellant on foot of its second AIE request (with the exception of a "summary of events", which the Council refused to disclose).

In relation to the second part of the appellant's request, the Council reiterated that it does not own the site, and has no plans to develop the site. The Council stated that, following the appellant's second AIE request, it acknowledged that it held information on the development of the site by third parties. The Council refused to disclose this information. The Council refused to disclose this information because it related to persons who "had requested their information be kept confidential".

Analysis and findings

Consideration of the adequacy of the Council's internal review decision

This case concerns a request made to the Council for access to information on two related subject matters: the dereliction of the Old Mill site, and proposals to sell or develop that site after October 2007.

With regard to the issue of dereliction, it is clear that the Council disclosed some, but not all of the information it held on this subject at internal review stage. In particular, I note that the Council made no reference in its internal review decision to the responses from the site owners to its letters sent in 2015 and 2016; neither did it include any of the "numerous complaints and representations" on the site, which were referred to in the correspondence disclosed to the appellant on internal review. This may have been a reasonable approach had such third party correspondence been outside the scope of the appellant's first request; however, the appellant's request sought access to all correspondence in relation to dereliction, and not merely correspondence issued by the Council. Accordingly, I am satisfied that the Council's decision was inadequate, as it clearly failed to take account of all information it held at the time the request was made.

With regard to the appellant's request for all information on the proposed sale or development of the site, the Council appears to have interpreted this as a request for information on the sale or development of the site **by the Council itself**, and implied that it did not hold such information. In my view, the Council mischaracterised the appellant's request, which had the effect of artificially limiting the matters to be considered. It is not reasonable to read the appellant's request as being limited to information on actions by the Council. I note that at the time of the appellant's first AIE request, the Council had contacted the owners of the site seeking their proposals on how to "remove the aspect of dereliction". It is therefore difficult not to view the Council's internal review decision as intentionally evasive, as it answered a manifestly different question to the one asked by the appellant, and avoided consideration of relevant matters on which it holds information. For these reasons, I am satisfied that the Council's decision on the second part of the appellant's AIE request was inadequate, as it unreasonably limited the scope of matters to be considered and did not fully address the subject matter of the request.

In its submission to my Office, the Council stated that the appellant's second request was "more specific", and suggested that this was the reason for the significantly different outcome in that decision. I note that the Council did not invite the appellant to make a more specific request under article 7(8) of the AIE Regulations when processing the first request, and instead appears to have unilaterally narrowed the scope of the request. It is clear that the appellant's second AIE request was necessary primarily because the Council failed to properly consider the appellant's request on the first occasion.

I note that following the appellant's second AIE request the Council acknowledged that it held additional information, some of which it disclosed to the appellant. Notwithstanding this, I am concerned that there may be additional information not covered by the second AIE request, which has not yet been properly considered by the Council.

Decision

I annul the Council's internal review decision on the basis that the that the request failed to consider all information held by the Council, and incorrectly characterised the scope of the appellant's request. In the light of my decision, should no appeal be made to the High Court in the time allowed by the AIE Regulations, I expect the Council to make a new decision on the appellant's request.

In making a new decision on this request, the Council should conduct a thorough search for all relevant information it holds, and should also consider whether any other information is held on its behalf. The Council should also consider whether additional information may be held apart from the two official files on the Old Mill (for instance information held by individual staff members apart from the official files). If necessary, the Council should contact the appellant in order to clarify the scope of the request in advance of making a new decision.

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
24 November 2017