Oifig an Choimisinéara um Faisnéise Comhshaoil
Office of the Commissioner for Environmental Information

Chapter 1: The Year in Review

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Introduction

My appointment as the Information Commissioner in December 2013 meant that I also became the Commissioner for Environmental Information under the European Communities (Access to Information on the Environment) (AIE) Regulations. The AIE Regulations are based on Directive 2003/4/EC on public access to environmental information and provide for a separate access regime in Ireland from that of the Freedom of Information (FOI) Act. Thus, my role as Commissioner for Environmental Information is legally independent of the role I have as Information Commissioner. Nevertheless, the operation of the Office of the Information Commissioner (OIC) necessarily impacts upon the performance of the Office of the Commissioner for Environmental Information (OCEI), as discussed below.

The right of access under the AIE Regulations applies to "environmental information" held by or for a "public authority" within the meaning of the Regulations. My role as Commissioner for Environmental Information is to review decisions of public authorities on appeal by applicants who are not satisfied with the outcome of their requests for environmental information. A right of appeal to my Office also arises where the body or person to whom an AIE request has been made contends that it is not a public authority within the meaning of the Regulations. My decisions on appeal are final and binding on the affected parties, unless a further appeal is made to the High Court within two months of the decision concerned.

For further information on the operation of the AIE regime in Ireland, please visit my website at www.ocei.gov.ie, which includes links to the previous Annual Reports of this Office, the website of the Department of the Environment, Community and Local Government, and Directive 2003/4/EC.

Appeals and enquiries

During 2013, nineteen appeals were received by my Office, an increase of six from the previous year. My Office recorded that eight of these appeals involved a deemed refusal of the request concerned at the original and/or internal review decision-making stage; this is over twice as many deemed refusals as the year before. A deemed refusal occurs when the public authority fails to issue a decision on the request within the relevant time limit specified in the Regulations (usually one month).

Sixteen appeals were closed during the year. Of these, five resulted in formal decisions, the highlights of which are set out in the chapter following. All five decisions are published in full on my Office's website at www.ocei.gov.ie.

Two cases were deemed to have been withdrawn as settled because agreement was reached on the release of information through this Office's intervention. In the first case, Dublin City Council agreed to release a copy of the contract with Covanta Energy Corporation for the construction and operation of an incinerator at Poolbeg, Dublin, subject to the deletion of certain specified financial information. The second case involved a request made to Ordnance Survey Ireland by Friends of the Irish Environment (FIE) for access to the 1973 aerial survey. The review by this Office required consideration of complex issues relating to copyright law, but ultimately a satisfactory settlement, which included access on a phased basis to "screen shot" copies of the photographs for FIE's internal use, was ultimately worked out. Yet another appeal, which involved a request made to the Marine Institute for research data relating to the mortality rates of migrating salmon, was ultimately withdrawn after all of the requested environmental information was made available to the applicant, a process that was greatly facilitated by this Office.

Two further appeals were withdrawn, one before and one shortly after acceptance, because the requested information was made available by the relevant public authorities, albeit belatedly. An additional appeal was withdrawn following contacts with my Office because of the passage of time and improvements made in the meantime in relation to an online access system within the Forest Service. The remaining appeals closed in 2013 were deemed to be invalid, primarily for failure to adhere to the relevant timescales under the Regulations.

Less than a third of the appeals arose from requests to government departments and local authorities last year. Other public authorities whose decisions were appealed included the Environmental Protection Agency, Sustainable Energy Ireland, Coillte, the ESB Networks, An Garda Síochána, Eirgrid Plc, and the Commission for Energy Regulation.

Nineteen cases were on hand at the end of the year, an increase of three from the year before. My staff recorded 46 general enquiries about the Regulations.

Article 12(6) of the Regulations

Article 12(6) gives me certain powers in dealing with an appeal. I may:

- require a public authority to make environmental information available to me,
- examine and take copies of environmental information held by a public authority, and
- enter any premises occupied by a public authority so as to obtain environmental information.

I am pleased to report that I had no need to invoke this provision in 2013.

Issues arising

In her Annual Reports, my predecessor highlighted a number of practical difficulties the OCEI has encountered in relation to the operation of the AIE regime. Given the growing backlog, I must again address the issue of resources. I also wish to call attention to the limits of my remit, the problems presented by threshold jurisdictional questions, and the need for better administrative practices by public authorities with respect to the processing of AIE requests or, better yet, avoiding AIE requests in the first instance through the active dissemination of environmental information in compliance with Article 5 of the Regulations.

Resources

The OCEI has historically been inadequately resourced. Although it is legally independent from the OIC, the OCEI does not receive a separate funding allocation from the State. Rather, Article 12(10) of the AIE Regulations provides that the Commissioner for Environmental Information shall be assisted by the staff of the OIC and "by such other resources as may, from time to time, be available to that office".

Ireland, through the Department of the Environment, Community, and Local Government, submitted its first National Implementation Report on the implementation of the Aarhus Convention in Ireland to the secretariat of the Aarhus Convention on 31 December 2013. The Department had prepared two preliminary draft reports and invited comments from stakeholders, members of the public and other interested parties, but this Office was not among the parties that were expressly invited to comment. However, specific issues that were reportedly raised in the context of the submissions received by the Department included the lack of resources of the OCEI and the time taken for appeals to be heard (with the average length of time for an appeal being calculated at 12.3 months).

The Implementation Report correctly notes that "the OCEI is funded through the general government allocation to the Office of the Ombudsman and that it is a matter for that Office to allocate the funding to the various bodies under its remit as it deems appropriate". Nevertheless, I wish to clarify that, following correspondence with the Department on the

matter, this Office wrote directly to the Department of Public Expenditure and Reform in February 2012 to request a specific financial allocation for the OCEI, particularly in relation to the legal costs that are incurred in the performance of the Commissioner's functions under the AIE Regulations. To date, no such financial provision for the OCEI has been made, which leaves me in a difficult position given the number of complex or novel legal issues that continually arise in applying the AIE Regulations. However, as the Implementation Report acknowledges: "the significant economic challenges facing the State arising from the financial crisis have presented significant funding difficulties for all public service organisations, including the Office of the Ombudsman".

I am pleased that, at the time of writing, four new Administrative Officers are due to join the OIC shortly. The additional staff resources, together with the implementation of reforms arising from the organisational review recently carried out, should significantly improve case turnaround and throughput overall. As the OIC and the OCEI share staff resources, the two Offices necessarily employ similar structures and processes; thus, the OIC organisational review is likely to impact both directly and indirectly on the processing of AIE appeals. Nevertheless, the OIC still has very few resources to spare for the time being. I am expressly required under the FOI Act to complete reviews within four months of the receipt of the application in so far as practicable, an obligation I must have regard to in relation to any decision on the distribution of resources within my Vote. The number of new FOI cases is rising, with a further significant increase in demand expected when the FOI Bill is enacted into law. Moreover, many FOI reviews and the majority of AIE appeals are of a time-consuming nature due to such factors as the volume of records involved, the complexities of the subject matter and/or the legal issues arising, delays in the receipt of required information from the bodies concerned, the need for third party consultation, and the expectations of the applicants. The organisational review is likely to have only a limited impact on the individual turnaround times for these types of cases.

However, the number of AIE appeals is also rising, with the result that the backlog has grown despite an increase in the closure rate. The consequent delays in bringing AIE appeals to completion are certainly regrettable, though, as my predecessor acknowledged, the delays will be difficult to overcome given the demands of the AIE regime as it currently operates in Ireland on the one hand and the dearth of available resources on the other. Nevertheless, in my Strategic Plan, I am committed to striving to provide a high quality and timely service to members of the public in the performance of my functions under both the FOI Act and the AIE Regulations. Accordingly, measures have already been taken to increase staff resources in the OCEI, and it is hoped that new structures, processes, training programmes and knowledge management systems will be in place in the near future that will ultimately improve output and reduce the backlog in both Offices.

Limits of remit

Some confusion seems to exist among the public and public authorities alike in relation to my role under the AIE Regulations. My sole statutory function as Commissioner for Environmental Information is to decide on appeals that have properly been made under Article 12 of the Regulations. I do not have any specific statutory role in relation to alleged bad practice by public authorities under the Regulations nor do I have jurisdiction to investigate cases which have not been formally appealed. I note in particular that my Office has no enforcement powers in relation to Article 5 of the Regulations.

Article 5 imposes significant obligations on public authorities that are crucial to the effective administration of the AIE regime. The requirements of Article 5 include the following:

- informing the public of their rights under the Regulations and providing information and guidance on the exercise of those rights;
- making all reasonable efforts to maintain environmental information held by or for the public authority in a manner that is readily reproducible and accessible by information technology or by other electronic means;
- ensuring that environmental information compiled by or for the public authority is up-to-date, accurate and comparable;
- maintaining registers or lists of the environmental information held by the public authority and designating an information officer for such purposes or providing an information point to give clear indications of where such information can be found.

Article 5 of the Regulations is based largely on Article 7 of the Directive, which in turn derives from Article 5 of the Aarhus Convention. According to the State's Aarhus Convention Implementation Report, it was submitted during the public consultation exercise that limiting the jurisdiction of the OCEI to cases relating to Article 4 of the Convention [relating to access to environmental information upon request] is a challenge in the implementation of Article 5. The State responded to this submission by making the following observation: "However, the Aarhus Convention does not require that a review procedure be in place for article 5 of the Aarhus Convention."

Whether the absence of a review procedure for the Article 5 obligations is an oversight or not, I am not in a position to assume functions that have not been conferred on me by statute. It would of course be inappropriate for me to act in an ultra vires manner in any event, but I also do not have the resources to stray outside the limits of my remit. I have referred above to an appeal involving a request made to the Marine Institute for research data relating to the mortality rates of migrating salmon. The request was made by an academic institution which initially declined to withdraw the appeal even after all of the requested environmental information had apparently been made available to it. The applicant did not expressly dispute that all relevant information held by the Marine Institute had been released, but rather sought to have certain information clarified. In other words, it seemed that the applicant

effectively sought to ensure that the released information was up-to-date and accurate. I wish to stress that it is not within my remit to enforce the requirement that a public authority ensure that environmental information compiled by or for it is up-to-date, accurate and comparable. My Office has no further role in the matter once a public authority has agreed to release all of the requested information, regardless of whether the accuracy of the information is in dispute. In such cases, I consider it appropriate to exercise my discretion to deem the appeal to be withdrawn under Article 15(5) of the Regulations.

Threshold jurisdictional questions

Another area of confusion relates to the scope of the jurisdiction of the entire AIE regime. In the UK, a single request covering both environmental and non-environmental information can be accepted as valid in relation to both types of information and then be dealt with through the same overall process under the FOI Act and/or the Environmental Information Regulations (EIRs) as appropriate. In Ireland, public authorities and bodies are obliged to offer some assistance to an applicant, where relevant, in making a valid request, but in any event, the request must explicitly state whether it is made under the AIE Regulations or under the FOI Act. If it is made under the AIE Regulations, it may then be rejected on the basis that it is not for "environmental information", since the right of access under AIE applies only with respect to environmental information as defined in Article 3(1) of the Regulations; despite the obligation to offer assistance, there is no automatic default mechanism for the request to be dealt with under the FOI Act. If the matter is then appealed to my Office, the question of whether the request is for environmental information or not must be resolved definitively as a threshold jurisdictional matter, since my powers as Commissioner for Environmental Information likewise apply only with respect to environmental information. The same quandary arises where the body or person to whom the AIE request has been made contends that it is not a public authority within the meaning of the Regulations. Moreover, I note that, provided that the public authority (actual or disputed) appears to be acting in good faith, it would not be a good use of this Office's very limited resources to deal with substantive issues in the alternative while valid threshold questions of jurisdiction remain outstanding.

As discussed in the first decision I issued upon becoming Commissioner for Environmental Information (see Case CEI/12/0004, Mr. Gavin Sheridan and Dublin City Council (20 Dec. 2013), available at www.ocei.gov.ie) it seems to me that the most sensible approach for dealing with appeals involving valid threshold jurisdictional issues in the circumstances is as follows: Once a determination on the threshold question is made, the case should be closed, administratively if agreement is reached but otherwise by way of a binding decision. If it is determined that the matter is within the remit of AIE, and no appeal to the High Court is made, the public authority should then deal with the request in accordance with the Regulations. If the appellant remains dissatisfied with the handling of his/her request following internal review and thus appeals again to this Office with respect to the original request, then the matter will be reopened administratively without payment of a new fee

and given priority treatment by this Office insofar as it is practicable to do so. If, however, it appears that the threshold jurisdictional questions have been raised merely as a delaying tactic, then an alternative approach may be taken.

The need for improved administrative practices

Although this Office has no enforcement powers in relation to Article 5 of the Regulations, it has previously observed that compliance with its information management requirements would ultimately reduce the staff resources required for the search and retrieval of environmental information. The active dissemination of the environmental information held by a public authority through publication on its website could obviate the need for a formal access request in the first instance. As noted above, one appeal was withdrawn last year following improvements made in relation to an online access system within the Forest Service.

Compliance with Article 5 and the other administrative provisions of the Regulations would also reduce the number of valid and invalid appeals being received by my Office. The statutory deadlines for issuing decisions on AIE requests and on internal review are mandatory. A public authority is required to answer a request within one month of its receipt. Where appropriate for reasons of volume or complexity, the Regulations allow for an extension of the deadline for making an original decision on a request for a period no later than two months from the date on which the request was received, but the applicant must be notified in writing of the extension before the expiry of the original one-month deadline. Failure to meet the statutory deadlines results in a deemed refusal of the request, which in turn starts the period running for seeking internal or external review of the refusal decision. Unlike the FOI Act, the AIE Regulations do not make any provision for the extension of the period in which to make an internal review request, which can result in applicants failing to meet the relevant deadline where public authorities have complicated matters through belated replies.

It would be helpful, and good administrative practice generally, if public authorities were to acknowledge AIE requests upon receipt and advise the applicants of the applicable deadlines for taking action on the requests, including in relation to internal review and, where relevant, the right of appeal to this Office. Other relevant administrative provisions include the requirement to offer assistance in making a request for environmental information, the requirement to offer assistance in the preparation of a more specific request where necessary, and the requirement to take all reasonable efforts to contact any affected third party where relevant; these requirements do not, in and of themselves, affect the statutory deadlines for making a decision on a request, however.

> *"It would be helpful .... if public authorities were to acknowledge AIE requests upon receipt and advise the applicants of the applicable deadlines for taking action on the requests"*

High Court and Supreme Court judgments

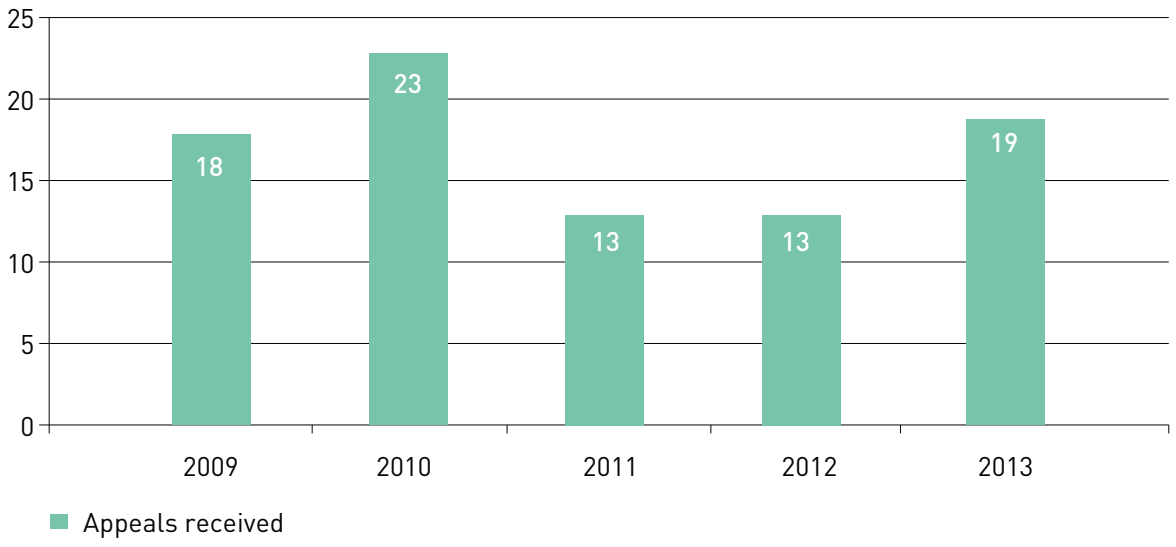
A party to an appeal to my Office or any other person affected by my decision may appeal to the High Court on a point of law from the decision. Judgment in the case of National Asset Management Agency v. Commissioner for Environmental Information [2013] IEHC 86, was delivered by the High Court (Mac Eochaidh J) on 27 February 2013, upholding the decision of my predecessor in Case CEI/10/0005, Mr. Gavin Sheridan and the National Asset Management Agency (13 Sept. 2011), in which she found that NAMA is a public authority within the meaning of the Regulations. NAMA appealed the judgment to the Supreme Court, which is due to hear the matter on 7 April 2014. An appeal to the High Court in a similar case dealing with the scope of the public authority definition, CEI/10/0007, Mr. Gavin Sheridan and Anglo Irish Bank (29 Sept. 2011), has been stayed by agreement pending the outcome of NAMA's appeal.

Another appeal to the High Court brought by Bord na Móna in relation to CEI/12/0003, Mr. Andrew Jackson and Bord na Móna (23 Sept. 2013) was withdrawn following delivery of a judgment by the European Court of Justice that was considered to have a direct bearing on the appeal.

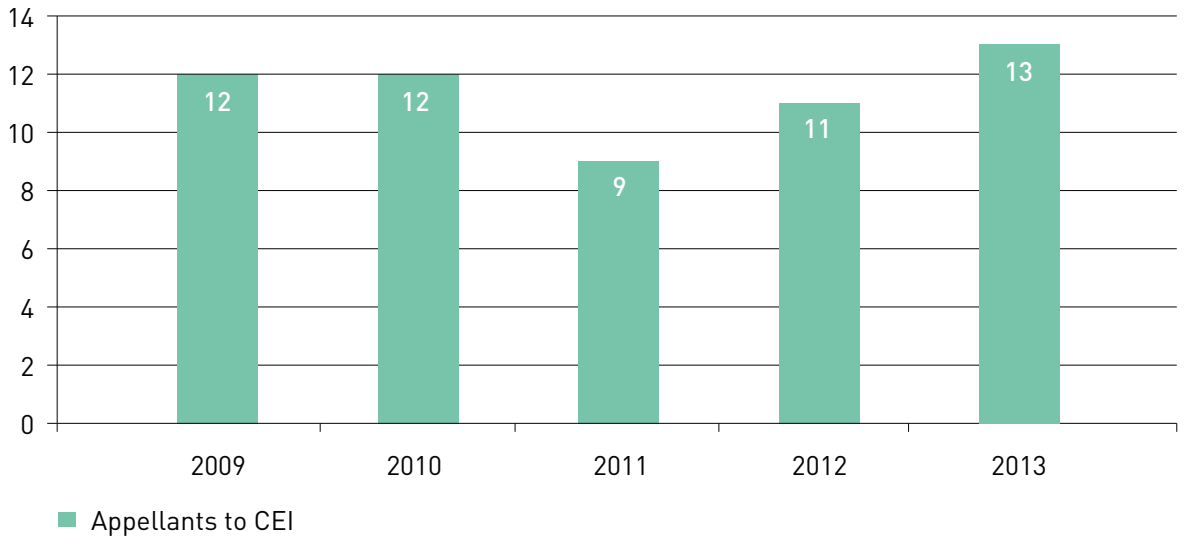
My Office withdrew its appeal to the Supreme Court against the judgment of Mr. Justice O'Neill in An Taoiseach v. Commissioner for Environmental Information [2010] IEHC 241 (Case CEI/07/0005) in early 2014. I considered that it would not be prudent to pursue a Supreme Court appeal which I had been advised was unlikely to be successful, particularly in light of the severe financial constraints within which the Office is obliged to operate in the current difficult economic climate.

Statistics

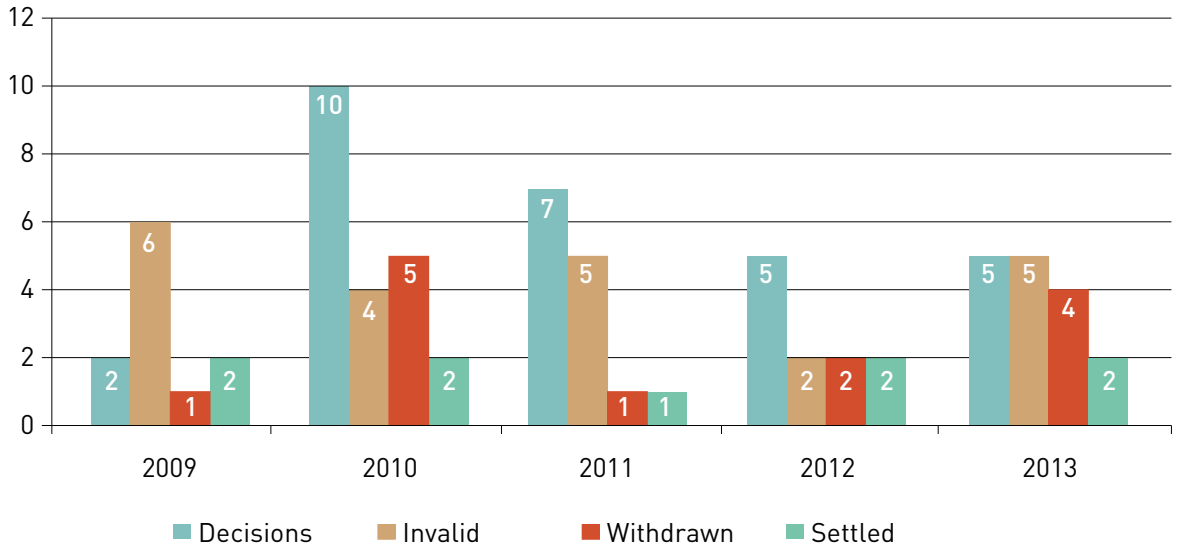
Appeals received: 19



Number of appellants to CEI: 13



Outcome of CEI appeals by year



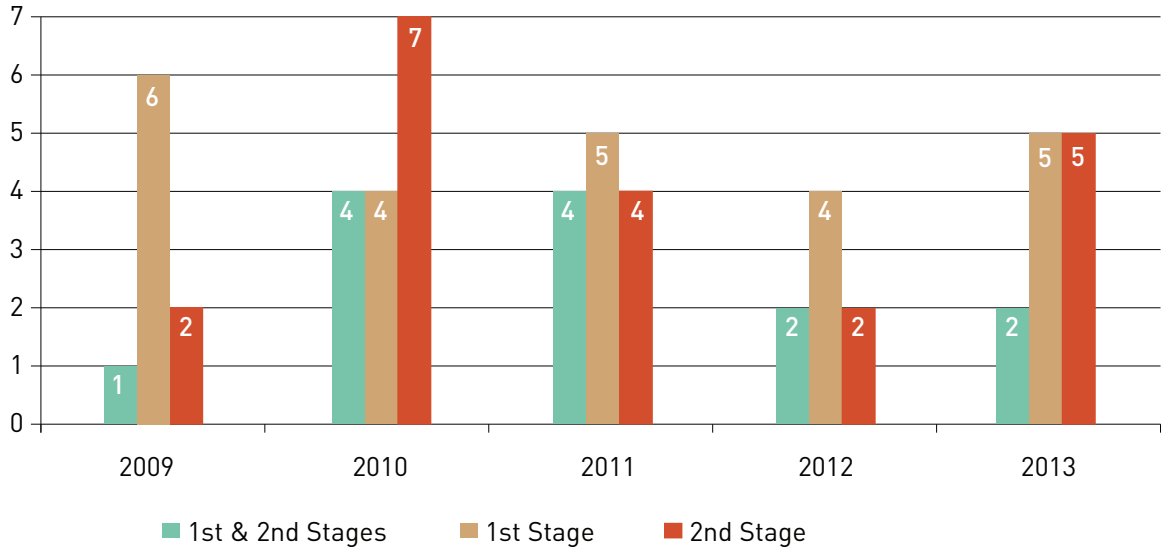
Outcome of CEI appeals by year

- 5 decisions
- 5 invalid
- 4 withdrawn
- 2 settled

Deemed Refusals

A deemed refusal occurs when the public authority fails to issue a decision on the request within the relevant time limit specified in the Regulations (usually one month).

In 2013, my Office recorded deemed refusals concerning seven public authorities who had not responded to a request within the time limits provided for in the Regulations.



Deemed refusal at first stage of the request

Five applications to public authorities were recorded by my Office as deemed refusals at the first stage of the request. The public authorities are:

- Environmental Protection Agency,
- Sustainable Energy Ireland,
- Department of Communications, Energy and Natural Resources,
- Coillte, and
- Eirgrid.

Deemed refusal at second stage of the request

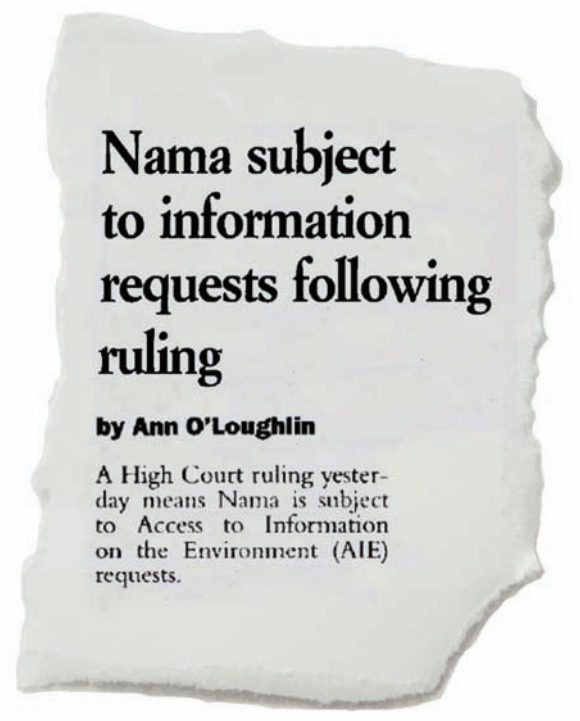
Five applications to public authorities were recorded by my Office as deemed refusals at the second stage of the request. The public authorities are:

- Sustainable Energy Ireland,
- ESB Networks (two applications),
- An Garda Síochána, and
- Eirgrid.

Deemed refusals at both stages of the requests

Two of the applications mentioned above were recorded by my Office as having deemed refusals at both stages of the request. The public authorities are:

- Sustainable Energy Ireland, and
- Eirgrid.



Nama subject to information requests following ruling

by Ann O'Loughlin

A High Court ruling yesterday means Nama is subject to Access to Information on the Environment (AIE) requests.

Irish Examiner 28-02-2013

FOI request for horse meat records refused

Department says that 'on balance, there is no public interest in releasing the records'

PAMELA DUNCAN and ALISON HEALY

The Department of Agriculture has refused to release a large number of records under the Freedom of Information (FOI) Act that relate to test results taken during the horse meat controversy.

Irish Times 30-03-2013

Oifig an Choimisinéara um Faisnéise Comhshaoil
Office of the Commissioner for Environmental Information

Chapter 2: Decisions

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In this chapter, I report on the decisions made in 2013. The full text of these decisions can be found on my website at **www.ocei.gov.ie**.

Case CEI/11/0007, Mr. Pat Swords and Department of Environment, Community and Local Government (the Department) – Decision of 20 February 2013

Whether the Department was justified in charging a fee for the costs involved in searching for and retrieving the information requested

The Department proposed to charge a search and retrieval fee of €146.65 for processing the applicant's request for records "relating to public participation and the development of policy and legislation". The former Commissioner, Ms. Emily O'Reilly, found that it is neither permissible, nor is it reasonable having regard to the Directive, for a public authority to impose search and retrieval fees for the work involved in processing an AIE request. She observed that such work is not part of the supply of information for which it is permissible to charge a fee; nor is charging for search and retrieval compatible with the prohibition on charges for the examination in situ of information requested. She considered that allowing for such a charge would also run contrary to the purpose of the AIE Directive and the information or records management practices that are required of public authorities under the AIE regime.

She noted in particular that, under the current AIE regime, the environmental information held by public authorities is meant to be systematically organised, catalogued, and at least ready for active dissemination to the public. She found that charging for search and retrieval costs is inconsistent with these intentions. She accepted, however, that costs connected with compiling or copying of the information may be included in a charge for making environmental information available under the Regulations.

Case CEI/12/0008, Ms. Attracta Uí Bhroin and Department of Arts, Heritage and the Gaeltacht (the Department) – Decision of 13 March 2013

Whether the Department was justified in refusing the appellant's request for a list of AIE requests on the ground that the information concerned is not environmental information within the meaning of the Regulations

In Case CEI/11/0001, Mr. Gavin Sheridan and Central Bank of Ireland (26 March 2012), available at www.ocei.gov.ie, Ms. O'Reilly accepted, with some reservation, that official travel by car is an activity within ambit of paragraph (c) of the definition. However, she questioned whether the definition of environmental information was intended to encompass the activities of individual staff members of public authorities as compared to higher level measures and activities such as policies, legislation, plans, programmes, and environmental agreements, i.e. the examples given in paragraph (c). In this case, she gave this question further consideration in light of her decision in CEI/11/0007, Mr. Pat Swords and Department of Environment, Community and Local Government, which is referenced above.

Ms. O'Reilly considered that the corollary to the requirements of the AIE regime must necessarily be that public authorities are permitted to take a reasonable, objective and pragmatic approach to the definition of environmental information. Moreover, she noted that, in the recent "Report from the Commission to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on public access to environmental information", dated 17 December 2012, the European Commission drew a distinction between the access rights that exist for environmental information, described as "information in any form on the state of the environment or on the state of human health and safety", on the one hand, and for "general administrative information" on the other.

Ms. O'Reilly accepted that the AIE Regulations and Directive are measures designed to protect the elements of the environment, but in an indirect and aspirational manner only. She considered that the link between AIE requests, including the administrative action taken on the requests, and any environmental impact, is too remote and subject to too many variables for information on the requests to qualify as environmental information within the meaning of paragraph (c) the definition. Moreover, while public access to environmental information may eventually lead to a better environment through more effective public participation in environmental decision-making, she did not accept that the processing of AIE requests by public authorities is itself "designed" to protect the elements of the environment or that it otherwise qualifies as a measure or activity within the meaning of paragraph (c) of the environmental information definition. She concluded that the Department's decision to refuse the appellant's request was correct. She noted, however, that the applicant was entitled to make a request for the records sought under the Freedom of Information Act.

CEI/12/0005, Mr. Pat Swords and Department of Environment, Community and Local Government (the Department) – Decision of 20 September 2013

Whether the Department was justified in refusing the appellant's request in relation to public consultation on climate policy and legislation

In this case, Ms. O'Reilly found that the Department was justified in refusing the applicant's request under Article 9(2)(a) and (b) of the Regulations. Article 9(2) of the Regulations allows a public authority to refuse to make environmental information available where the request (a) "is manifestly unreasonable having regard to the volume or range of information sought", or (b) "remains formulated in too general a manner, taking into account Article 7(8)". Where a request is made in too general a manner, a public authority is required under Article 7(8), as soon as possible and at least within one month of receipt of the request, to invite the applicant to make a more specific request and to offer assistance to the applicant in the preparation of such a request.

Ms. O'Reilly considered that the term "manifestly unreasonable" is sufficiently clear to denote, without further explanation, any request of broad or indeterminate range which has been made in bad faith or which otherwise appears to have been made for some purpose unrelated to the access process. It was readily apparent in this case that the applicant did not seek access to any identifiable environmental information which he genuinely believed may be held by the Department. Rather, he sought to challenge the Department's reliance on the mandatory greenhouse gas mitigation targets underlying the national climate policy and legislation development programme and to raise questions about the Department's intention to take "due account" of "all" submissions made in the context of the public consultation exercise being carried out at the time his request was made. While Ms. O'Reilly acknowledged that there is controversy over the commitments which have been made at national and EU level to reduce greenhouse gas emissions, she nevertheless found that the applicant's request represented a misuse of the right of access under Article 6 of the AIE Regulations. She concluded that the request was subject to refusal under Article 9(2)(a) in the circumstances.

Alternatively, Ms. O'Reilly found that Article 9(2)(b) applied. Although the Department had made only a limited effort to assist the applicant in accordance with Article 7(8), it was evident from his rapid and abrupt response to the Department's message that it was unlikely he would modify his request so as to render it more specific. The Commissioner stated that, while the AIE Regulations impose significant obligations on public authorities, it was incumbent upon the applicant to act reasonably and in good faith in making his request. She also considered that, as a general matter, "the public interest served by disclosure" is outweighed by the interest served by refusal where, as here, the request appears to have been made for some purpose unrelated to the access process.

Case CEI/12/0003, Mr. Andrew Jackson, Friends of the Irish Environment, and Bord na Móna (BnM) – Decision of 23 September 2013

Whether BnM was justified in its refusal of the appellant's request on the ground that it is not a public authority within the meaning of the Regulations

The issue presented in this case was whether BnM is a public authority within the meaning of the Regulations. In determining the matter, Ms. O'Reilly examined the history of BnM and had regard to the statutory duties and powers that remain applicable to the company, which, as she noted, is publicly owned. She also had regard to its oversight arrangements with the Department of Communications, Energy and Natural Resources.

Ms. O'Reilly emphasised that BnM's functions are statute-based and include specific duties in relation to the environment, namely, turf, bogs, and "other lands", which are all elements of the environment. She also noted that BnM carries out activities and provides services in relation to the environment. While she accepted that BnM performs its functions on a commercial basis, she considered that it does so for the benefit of the public, not for "private profit". She concluded that BnM is a public authority within the meaning of Article 3(1)(b) of the Regulations in that it is a legal person "performing public administrative functions under national law, including specific duties, activities or services in relation to the environment". In addition, she found that BnM is a public authority within the meaning of Article 3(1)(c) of the Regulations in that it is a legal person "having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b)".

BnM appealed from the decision to the High Court, but sought an adjournment of the proceedings pending delivery of the judgment of the European Court of Justice in Case C-279/12, Fish Legal and Shirley v. Information Commissioner et al. After the awaited judgment was delivered on 19 December 2013, BnM withdrew its appeal.

CEI/12/0004, Mr. Gavin Sheridan and Dublin City Council (the Council) – Decision of 20 December 2013

Whether the Council was justified in refusing access to certain items of information relating to Greyhound Waste and the transfer of the waste collection service on the ground that the information concerned is not environmental information within the meaning of the Regulations

In this, my first decision as Commissioner for Environmental Information, I outlined a framework for dealing with cases which raise valid threshold jurisdictional questions and also provided further clarification regarding the scope of the environmental information definition. The records at issue included an Asset Purchase Agreement providing for the transfer of the Council's waste collection service to a private operator, but also the list held by the Council of the potentially interested parties who were contacted as prospective bidders for the purchase, emails dealing with administrative arrangements, and other records relating to the negotiations over the commercial terms of the agreement. The Council had refused the request in full on the basis that it was not a request for "environmental information" within the meaning of the AIE Directive upon which the Regulations are based.

I have restated in Chapter 1 the approach I outlined for dealing with appeals such as this which involve valid threshold jurisdictional issues. In this case, I also adopted my predecessor's approach to the environmental information definition. I clarified, however, that while the definition is broad, the examples it provides are meant to illustrate the types of information that it encompasses. In relation to paragraph (c) of the definition, I observed that whether the link between the information concerned and the effect on the environment is sufficient to bring the information within the ambit of the definition is a matter of judgment that may depend upon the circumstances of the case. I noted that, if in doubt, it is appropriate to have regard to the purpose of AIE as reflected in Recital (1) of the Directive, emphasising that AIE is about environmental decision-making, not the general administrative activities of public authorities. Moreover, I explained that, given the obligations on public authorities that AIE imposes, it is vital to the integrity of AIE that it not be seen by the public as merely an alternative access mechanism for information that is more readily understood as falling within the ambit of the FOI Act.

I found that waste collection is an activity within the meaning of Article 3(1)(c) of the environmental information definition and that the Asset Purchase Agreement providing for the transfer of the waste collection service to a private operator is information on that activity and thus likewise qualifies as environmental information. However, I found that the link between the remaining items of information at issue and any effect on the relevant environmental elements and factors is simply too remote to bring them within the ambit of the definition of environmental information under the Regulations. I varied the decision of the Council accordingly.