

Date: 17/05/2021

Our reference: AIE 202105

RE: REQUEST FOR ACCESS TO RECORDS

Dear ,

I refer to your request which you have made under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (AIE Regulations) and the Aarhus Convention for access to records held by the Land Development Agency. Your request is dated 30th April 2021 and a copy is attached for ease of reference.

Decision

Under Article 9(2)(a) of the AIE Regulations, where a request is manifestly unreasonable having regard to the volume or range of information sought, a public authority may refuse to make environmental information available. I sent an email to you on 4th May to offer assistance in narrowing the scope of your request so that we could respond; unfortunately, you have not narrowed the scope of the request and therefore I am refusing your request in accordance with Article 9(2)(a).

In Decision Number [CEI/18/0046](#), the Office of the Commissioner for Environmental Information (OCEI) found that a request may be refused on the basis that it was manifestly unreasonably because of the volume of records potentially falling within the scope of the request. The decision also clarifies the situation with regard to both the AIE Regulations and the Aarhus Convention where it states:-

“Article 9(2)(a) of the Regulations provides that a public authority may refuse to make environmental information available where the request is manifestly unreasonable having regard to the volume or range of information sought. It is based on Article 4(1)(b) of the Directive and indirectly on Article 3(3)(b) of the Convention, neither of which expressly refers to the volume or range of the information sought, however. The Supreme Court explained in National Asset Management Agency v Commissioner for Environmental Information [2015] IESC 51 (O’Donnell J.) that the provisions of the Regulations “must be understood as implementing the provisions of the Directive 2003/4/EC (and indirectly the [Aarhus] Convention) and . . . ought not to go further (but not fall short of) the terms of that Directive.”

The decision further states...

“I accept that the volume of the information requested is not itself a determinative factor in relation to the question of whether a request is manifestly unreasonable, but it is relevant in determining

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whether the processing of the request would result in an unreasonable interference with the work of the public authority concerned. As I stated in Case CEI/17/0047: “While article 9(2)(a) refers to a request being manifestly unreasonable having regard to the volume or range of information sought, the volume or range of information requested alone is not enough to refuse a request. Rather, the volume or range is a consideration to be taken into account when determining if a request is manifestly unreasonable where, for example, processing the request places an unreasonable administrative burden on the relevant public authority, diverting it away from its core work.” I find support for my approach in the Explanatory Memorandum for the Proposal for a Directive of the European Parliament and of the Council on public access to environmental information ([52000PC0502](#); Official Journal C 337 E, 28/11/2000 P/ 0156-0162):

“Public authorities should also be entitled to refuse access to environmental information when requests are manifestly unreasonable or formulated in too general a manner. Manifestly unreasonable requests would include those, variously described in national legal systems as vexatious or amounting to an abus de droit. Moreover, compliance with certain requests could involve the public authority in disproportionate cost or effort or would obstruct or significantly interfere with the normal course of its activities. Authorities should be able to refuse access in such cases in order to ensure their proper functioning.”

I also note that in a more recent report adopted by the ACCC on 18 June 2017, on a request for advice by Belarus, [ACCC/A/2014/1](#), the ACCC itself expressly acknowledged at paragraph 28 that volume and complexity are among the relevant factors to consider in relation to whether or not a request is manifestly unreasonable:

“The Committee emphasizes that whether or not a request is manifestly unreasonable relates to the nature of the request itself, for example, its volume, vagueness, complexity or repetitive nature, rather than the reason for the request, which is not required to be stated. The Committee accordingly recommends to the Party concerned that it informs its authorities that, when handling information requests within the scope of article 4 of the Convention, they are not permitted to require applicants to give a reason for their request.””

The OCEI also comments...

“In this case, the Table of Contents for the PPP Contract at issue and TII’s decision indicate that the request is very similar in nature and scale to the request concerned in Case CEI/17/0019. It is apparent from the decision itself that the claim for refusal under article 9(2)(a) is not merely based on volume in the sense of the effort to retrieve the information and make it available through electronic means or otherwise but rather the resources that would be required in first searching the Contract for environmental information and then in fully processing the request, including any required third-party consultation, insofar as the Contract contains environmental information. As in Case CEI/17/0019, I accept that this would be a very large task, going beyond what the AIE scheme requires of public authorities.”

The comments above are particularly relevant to your request – you have sought access to “*Allbartha Talún* environmental information in all formats (minutes, emails, notes, reports, discussion items, plans,

text messages, proposals etc) in relation to the Land Development Agency (LDA), its activities and projects including those in which the LDA was an associate or participated in a joint venture or joint enterprise.” To respond to this request, the LDA would have to examine every record, and in particular, those relating to the projects listed in sections 1 to 11 of your request, to extract the environmental information falling within the definition in both the Regulation and the Convention. Then we would have to review all such documentation to determine whether it would be appropriate for release; there is likely to be many third parties involved in these projects and we would have to consult with affected third parties prior to releasing such records. This would be a very large task and would significantly affect the LDA’s ability to continue its day-to-day work.

Public Interest

Article 10(3) requires that each request is considered on its merits and includes a consideration of the public interest factors. I consider the public interest factors below to be relevant to this request:-

Factors favouring response

- Ensuring LDA’s process and procedures are open to public scrutiny
- Ensuring public consultation on any matters or plans that may affect the community, at an appropriate time in the process

Factors favouring refusal

- The time and cost of processing the request would, among other things, materially distract LDA from its statutory duties
- The time and cost to third parties could be excessive, unreasonable and expose LDA to a claim for compensation for such work from third parties
- For the most part, the projects are at conceptual stage only and release of such records would be premature.

I find that the public interest factors in favour of release do not outweigh the factors against release and therefore your request is refused.

Assistance

I remain happy to assist you in narrowing the scope of your request and if you would like to discuss the options open to you, please contact me at xxx

Appeal Rights



If for any reason you wish to appeal this decision you may do so by writing to the Internal Reviewer, LDA, 2nd Floor, Ashford House, Tara Street Dublin 2 or by email to foi@lda.ie. You must make your appeal within one month of this notification and this appeal is free of charge.

If you are unhappy with our internal review decision, you have a right to submit a further appeal to the Office of the Commissioner for Environmental Information (OCEI). You must make this appeal within a month of receiving our internal review response and the fee for such an appeal is €50.

Contact details for OCEI are as follows:-

6 Earlsfort Terrace, Dublin 2, D02 W773.

Phone: +353-1-639 5689

Email: info@ocei.ie

Yours sincerely,



Monika Szyszko,
Compliance Manager.

