

UPDATE FOLLOWING AN ADDRESS FROM THE COMMISSIONER FOR ENVIRONMENTAL INFORMATION

1. Clarification - Definition of 'Environmental Information'

A High Court judgment on the definition of 'Environmental Information' is expected shortly, which should bring further clarity on the matter. The appeal arises from the decision of the Commissioner for Environmental Information (the **Commissioner**) in the case of Mr Stephen Minch and the Department Of Communications, Energy and Natural Resources (CEI/13/0006). In that case, the Commissioner considered the question of whether the Department was justified in refusing access to a report relating to the cost implications of various policy options for next-generation broadband implementation. He found that the report did not constitute environmental information under the Access to Information on the Environment Regulations (**AIE Regs**), as it was a high level strategy document setting targets for delivery, and had only a minimal connection to the elements of the environment, or to factors affecting the environment. On appeal of this decision, the High Court has been asked to define the boundaries of AIE.

2. Scope of 'Public Bodies'

Whilst there is no definitive list of 'Public Bodies' for the purposes of the AIE Regs, the Commissioner indicated that he could see a situation where his office was required to decide whether a private company that was carrying out what was ostensibly a public function (under a contract from a local authority) was covered by the AIE Regs. He said that in his view such companies would undoubtedly be subject to the requirements of the AIE Regs. He specifically mentioned the waste industry, in the context of providing waste services for local authorities.

3. Expansion of the Office of the Commissioner for Environmental Information

The Office of the Commissioner for Environmental Information has, in the past, been criticised for failing to make decisions within the required timeframe. Following a formal complaint to the EU the Department of Environment, Community and Local Government has finally appointed two further full time officers, which has significantly reduced the backlog of matters waiting to be determined. The staff members that deal with issues relating to the AIE Regs are: (i) Liz Dolan – Senior Investigator; (ii) Diarmuid Goulding – Senior Investigator; (iii) Ben McCabe – Investigator and (iv) Brendan Lynch – Investigator.

4. Non-Disclosure Agreements

The Commissioner mentioned that his office would have no regard to Non-Disclosure Agreements when considering the public interest in favour of the disclosure of information under the AIE Regs versus the exemption of commercial confidentiality. He mentioned that the commercial confidentiality test has been set out in the decision in *The Hill of Allen Action Group* (Case CEI/08/0001).

The Commissioner was asked whether, in circumstances where confidential research information (of an environmental nature) was provided to a Research Institute that was affiliated to or funded by Government, he would determine a request in favour of disclosure. He said that where a Public Body was party to the requested environmental information it would have to be disclosed if the public interest was in favour of such disclosure.

5. Recent Decisions

The website of the Office of the Commissioner for Environmental Information is finally up to date. The most recent decisions are:

- Friends of the Irish Environment v The Department of Agriculture, Food & the Marine (CEI/13/0001)
- Marine Terminals Ltd v Dublin City Council (CEI/14/0013)
- Wind Noise Info v Wexford County Council (CEI/14/0017)
- Oliver Cassidy v Coillte Teoranta (CEI/13/0008)
- MK v EPA (CEI/13/0007)

All decisions can be found at: www.ocei.gov.ie/en/Decisions/Decisions-List

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