

An Garda Síochána

Oifig Saorála Fáisnéise,
An Garda Síochána, Teach áth Luimnigh,
Lárionad Gnó Udáras Forbartha Tionscail,
Baile Sheáin, An Uaimh,
Contae na Mí.
C15 DR90



Freedom of Information Office,
An Garda Síochána, Athlumney House,
IDA Business Park,
Johnstown, Navan,
Co Meath.
C15 DR90

Teileafón/Tel: (046) 9036350

Bí linn/Join us  

Láithreán Gréasain/Website:
www.garda.ie

Ríomh-phoist:/Email: foi@garda.ie

Re: Access to Information on the Environment (AIE) Regulations Request AIE-002-2022 Part Granted

Dear

I refer to your request under the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 (S.I. No. 133 of 2007, S.I. No. 662 of 2011 and S.I. No. 615 of 2014) (hereafter referred to as the AIE Regulations) which was dated and received in this office on 22nd February, 2022.

Your request sought:

I wish to make an applicant for environmental information pursuant to the AIE Regulations as follows:

- 1. All information held by An Garda Síochána in relation to the use of explosives/blasting for quarry operations in relation to a permitted quarry operated by John Nulty Ltd. at Ardkill More, Carrickaboy, Cavan, County Cavan, to include any notifications of such blasting and/or complaints from neighbours in relation to the same.*
- 2. The relevant period is from 1 January 2016 to date.*

I wish to inform you that I have decided to part-grant your request on 22nd March 2022.

The purpose of this letter is to explain my decision.

Summary of Decision

The AIE Regulations are based on Directive 2003/4/EC. The Regulations provide for the right of access to environmental information held by or for public authorities and set out the basic terms and conditions of, and practical arrangements for, the exercise of this right of access. In

line with Article 2(1) of the Directive, Article 3(1) of the AIE Regulations defines "environmental information" as

"any information in written, visual, aural, electronic or any other material form on –

- (a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites... and the interaction among these elements,*
- (b) Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,*
- (c) Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,*
- (d) Reports on the implementation of environmental legislation,*
- (e) Cost benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and*
- (f) The state of human health and safety... conditions of human life, cultural sites and built structures... affected by the state of the elements of the environment... or through those elements, by any of the matters referred to in paragraph (b) and (c)".*

Upon receipt, your request was forwarded to the Cavan/Monaghan Divisional Office where a number of records have been identified in respect of your request. I have examined each of these records and considered their release under the Regulations. Records have been located in respect of the use of explosives/blasting for quarrying operations and a number of other records have been located in relation to complaints received in respect of such blasting. I intend to deal with each set of records separately.

(1) Information held in relation to the use of explosives/blasting for quarry operations

Your request firstly seeks records for *"All information held by An Garda Síochána in relation to the use of explosives/blasting for quarry operations in relation to a permitted quarry operated by John Nulty Ltd. at Ardkill More, Carrickaboy, Cavan, County Cavan, to include any notifications of such blasting"* in the period from 1st January 2016 to 22nd February 2022. Records in respect of this element of your requests are attached herewith. In accordance with the terms of the AIE Regulations, redactions have been applied to these records.

Article 8(a)(i)

A number of redactions have been made to these records in accordance with the provisions of the AIE Regulations. Article 8(a)(i) of the Regulations states that:

8. A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information –

(a) would adversely affect –

- (i) the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law*

Article 8 is a mandatory provision within the Regulations, whereby “a public ***shall not** make available environmental information*” where the provisions of this Article apply. As such I have applied a number of redactions in respect of personal information relating to third parties contained within the attached records.

Article 10(1) of the Regulations requires that the provisions of Article 8 cannot be applied where the redacted information relates to information on emissions into the environment. I am satisfied that the redacted personal information does not relate to emissions into the environment.

Articles 10(3) and 10(4) of the Regulations require that, prior to applying Article 8(a)(1), I weight the public interest served by disclosure against the interest served by refusal. In considering the public interest factors which favour releasing the records I have taken account of the following:

- The intention of the AIE Regulations to favour release of environmental information in the broadest possible manner
- Ensuring openness and transparency of organisational functions to the greatest possible extent,
- The public interest in members of the public exercising their rights under the Regulations,
- That there is more than just a transitory interest by the public in this information,
- The right to privacy is outweighed by the needs of the public.

In considering the public interest factors which favour withholding the records I have taken account of the following:

- Allowing a public body to hold personal information without undue access by members of the public,
- The public interest is not best served by releasing these records,
- That there is a reasonable and implied expectation that personal information of third parties will remain confidential,
- That there is no overriding public interest that outweighs the individual’s right to privacy.

Having balanced the factors both for and against the release, I have decided that the public interest in preserving the personal information and the reasonable expectation that personal information can be maintained in a confidential manner by An Garda Síochána, outweighs the limited public interest which would be served were these parts of the attached records released to you.

Article 8(a)(iv)

I have also made a number of redactions to the attached records in accordance with Article 8(a)(iv), which states that

8. A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information –

(a) would adversely affect –

(iv) without prejudice to paragraph (b), the confidentiality of proceedings of public authorities, where such confidentiality is otherwise protected by law (including the

As noted above, Article 8 is a mandatory provision within the Regulations, whereby “a public ***shall not*** make available environmental information” where the provisions of this Article apply. The Regulations provide that where the confidentiality of the proceedings of public authorities is otherwise protected by law, information relating to such proceedings may not be made available under the AIE Regulations. This includes information exempt from disclosure under the Freedom of Information Act. In effect, this means that if information about the proceedings of a public body, would were an FOI request to be made seeking discovery of it, be capable of being protected under the FOI Act, a public body must not release this information under the AIE Regulations.

The Freedom of Information Act provides significant protections against the release of records held by An Garda Síochána relating to law enforcement and public safety. In particular Section 32(1)(a)(ix) and Section 32(1)(c) provide that a request for records, the release of which may reasonably be expected to prejudice or impair the security of a building or other structure or to facilitate the commission of an offence, may be refused. Certain redacted information contained within the attached records satisfy the provisions of Section 31(1)(a)(ix) and Section 32(1)(c) of the Freedom of Information Act and as such fall within the grounds set out at Article 8 of the Regulations which mandate refusal

Article 10(1) of the Regulations requires that a request shall not be refused pursuant to Article 8, where the request relates to information on emissions into the environment. The information redacted in accordance with Article (8)(a)(iv) does not relate to emissions into the environment and as such the provisions of Article 10(1) do not apply.

Articles 10(3) and 10(4) of the Regulations require that, prior to applying Article 8(a)(iv), I weight the public interest served by disclosure against the interest served by refusal. I am mindful of the protections given by the Oireachtas against the release of records relating to law enforcement and public safety matters and to the consequences of the release of such information into the public domain. I am especially conscious of the need for An Garda Síochána to be able to maintain confidentiality in law enforcement and public safety matters. In particular, I am concerned that the release of detailed information in respect of explosives and associated materials could provide the opportunity for nefarious actors to utilise such information to engage in criminal activities which would endanger both the safety of life and property. In addition, I am concerned that the use of the AIE Regulations to release records in respect of operational policing matters in this instance, would create a precedent in respect of future requests.

I have considered a number of factors in favour of the release of the records sought. I am particularly conscious of the intention of the Regulations to favour release of environmental information in the broadest possible manner. I have also considered the right of the public to access to information on the environment and in exercising their rights under the AIE Regulations, ensuring openness and transparency of An Garda Síochána’s functions, the ability of the public to hold the decisions of public bodies to scrutiny, and the need for the public to be better informed on environmental affairs.

However having considered the factors both in favour and against release, I am satisfied that the public interest served by the release of the records sought does not outweigh the substantial public interest served by the ability of An Garda Síochána to carry out its law enforcement and

public safety functions effectively. As such I am applying the provisions of Article 8(a)(iv) to certain information contained within the attached records.

(2) Complaints received in respect of blasting

Your request also sought information in respect of “*complaints from neighbours*” in relation to the use of explosives/blasting. Complaints made to An Garda Síochána, and Garda actions on foot of complaints are core operational policing matters. In order for records to fall within the scope of the AIE Regulations, the records must meet the definition of “*environmental information*” as set out at Article 3(1) of the Regulations outlined above. The European Court of Justice has found that while the AIE Regulations provide a broad definition of the term “*environmental information*”, they are not intended to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal, with one of the environmental factors mentioned. This view has been affirmed by the Commissioner for Environmental Information in decision CEI/15/0007 where the Commissioner held that “*in order for the AIE Regulations to apply, information must have more than a minimal connection to the state of the elements of the environment*”

I do not consider that complaints received by Gardai and Garda actions in respect of complaints, constitutes “*environmental information*” as defined by the AIE Regulations. In reaching this decision, I am mindful of a previous decision of the Commissioner for Environmental Information (Gavin Sheridan & the Central Bank of Ireland, CEI/11/001) wherein the Commissioner determined that in order for information to fall within the definition of environmental information, it must be “*indicative of the environmental impact of the activity to which it relates*”. Having examined the records in question, I am satisfied that they do not relate to the environmental impact of the activity in question. Details of complaints received and subsequent Garda activities are not indicative of the environmental impact of particular policing activity. I am of the view that the connection between the requested information and any impact on the environment is too remote, and subject to too many variables, to qualify as environmental information. As such, I am refusing this aspect of your request as the records sought in this part of your request do not meet the definition of “*environmental information*” set out in Article 3(1) of the Regulations.

I have also considered the provisions of Article 8(a)(iv) in respect of this element of your request. As outlined above, the Regulations provide that where the confidentiality of the proceedings of public authorities is otherwise protected by law, information relating to such proceedings may not be made available under the AIE Regulations.

The FOI Act provides significant protections against the release of records held by An Garda Síochána relating to operational policing. Part 1(n) of the FOI Act provides that records relating to the core business of An Garda Síochána, i.e. operational policing matters, are exempted from release. As this part of your request relates to operational policing matters, which are exempt from disclosure under the provisions of the FOI Act, I am also applying the provisions of Article 8(a)(iv) of the AIE Regulations in refusing this part of your request.

Article 10(1) of the Regulations requires that a request shall not be refused pursuant to Article 8, where the request relates to information on emissions into the environment. I am satisfied that these operational policing records do not relate to emissions into the environment and as such the provisions of Article 10(1) do not apply.

Article 10(3) further requires that I weight the public interest served by disclosure against the interest served by refusal. I am mindful of the comprehensive protections given by the Oireachtas, in the FOI Act, against the release of records relating to operational policing matters and to the consequences of the release of such information into the public domain. Additionally, I am concerned that the release of the records sought in this instance would impact on future decisions by An Garda Síochána. In light of the nature of much of the work undertaken by An Garda Síochána, I am particularly conscious of the need for An Garda Síochána to be able to maintain confidentiality in its decision making processes around operational policing matters. I am particularly concerned that the use of the AIE Regulations to release records in respect of operational policing matters in this instance, would create a precedent in respect of future requests.

I have considered a number of factors in favour of the release of the records sought, namely the right of the public to access to information, the ability of the public to hold the decisions of public bodies to scrutiny, and the need for the public to be better informed on environmental affairs. However having considered the factors both in favour and against release, I am satisfied that the public interest served by the release of the records sought does not outweigh the substantial public interest served by the ability of An Garda Síochána to carry out its law enforcement functions.

Right of Appeal

Under Article 11 of the AIE Regulations you have a right to seek an internal review of this decision. An internal review involves a complete reconsideration of the matter by a member of the staff of this Organisation, of the same or higher rank than the original decision-maker, who may affirm, vary or annul the original decision made. The decision of this review will be communicated to you within one month of receipt of your application for an internal review.

In the event that you wish to make such an appeal, you can do so by writing to, *Freedom of Information Office, An Garda Síochána, Athlumney House, IDA Business Park, Johnstown, Navan, Co. Meath C15 DR90* referring to this decision and quoting your AIE reference number. You must make this request within one month of the date of this notification, (the making of a late appeal may be permitted in appropriate circumstances).

Should you have any questions or concerns regarding the above, please contact me by telephone at (046) 9036350.

Yours sincerely,



ASSISTANT PRINCIPAL

PAUL BASSETT

FREEDOM OF INFORMATION OFFICER

22nd

MARCH 2022