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(Please Note; I wish to make this Submission in confidence; please redact my personal details)

I would like to thank the Department for the opportunity to make a submission in this matter; I do not intend to make too long a submission nor detail the many frustrations i have had myself with AIE Regulations and its' interpretation by Public bodies in this state.

I will follow the suggested template of the 4 general 'Consultation questions' asked on your website;

Q1. What, in your opinion, are the Positive Benefits of the AIE Regulations?

Environmental information and information on plans, projects and schemes etc which may have an affect 'on' the environment which are not routinely published by Public bodies may be sought using the AIE regulations.

For example using AIE Regulations, I was able to uncover a PCB dumping incident in my neighbourhood; information which had never been released publicly. The OCEI decided in my favour seeking environmental Information from the HSE in a related case to the PCBs (CEI/16/0049). In a different case, I discovered(using the AIE Regulations with EPA/Irish Water and my local authority) that a reported spillage of Sewage into a neighbouring SAC River was very much larger than reported ; I argued for and won a case with the OCEI over my Local Authorities failure to release Traffic safety Audits, as they in the first instance stated such information was not 'environmental information' ; I later had to resend a very similar case back to the OCEI, as my local authority tried to argue that correspondence re same was not environmental information (see CEI/18/0014 and CEI/19/0050), likewise, thanks to a referral to the OCEI (CIE/17/0039) Structural reports relating to the building of a Bridge were finally released by my local authority- again, it had argued such information was not 'environmental information' amongst other arguments. Recently, in a case(CEI/19/0049) taken because of a Flawed decision by Department of housing, planning and local government not to release documents in relation to the URDF Funding Call 1, the OCEI found again in my favour; having most likely applied recent case law, the Commissioners decision has opened up this funding call to AIE requests where such funding, namely URDF funding by its nature acts like a 'catalyst for development'; therefore a two billion euro scheme has become more transparent. This was a very important decision by the OCEI and welcomed.

There have been other favourable decisions and the occasional not so; as gratifying as it can be to 'win' the argument; all this comes, at significant personal cost over time (that is not at all factoring the actual time spent on drafting and researching) - I submit this is unfair, I also submit that in the event that I am unhappy with the OCEI decision, failing contacting a lawyer with the relevant expertise, there is no provision for 'an honest broker' within the Regulations(I accept that the OCEI does its' role fairly), who can advise an applicant of their rights and entitlements under the Regulations- again, I detect an institutional bias of sorts in favour of those with specialised understanding of the Regulations ; but little for an individual who may, through an issue randomly being relevant to them seeking to realise the full reach of the Regulations; could there be a facility for the OCEI to refer any cases to an Independent legal council to advise whether the applicant may have a storable case in the High Court? Again, a weakness in the Regulations seems to be a presumption that all are coming to the Regulations with the same level of knowledge, when this clearly is not the case.

Those of us who use the Regulations - in the public interest, without the back up of legal counsel are at an enormous disadvantage, and I submit this is inimical to the AIE Regulations and the Spirit of the Directive, and the access to Justice measures. I submit an Independent Advocate for Applicants be considered as a position, perhaps in a different Department even, which could take on such a role. As it is, we have a state sponsored body in An Táisce which acts as an independent body which monitors and advocates for good environmental and planning ; a similar entity, perhaps partnering with FLAC could be designed to help non professional applicants, and or community groups who may need advice about the Regulations. In time this could be cost neutral as it would likely lead to fewer frivolous requests and a more streamlined appeal system, which has the capacity to represent everybody.

Q2. Should any specific part of the Regulations be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary. Please note you must include the article of the AIE Regulations to which you are referring i.e :

Article 3 - Interpretation

I submit there is scant knowledge of the A-F definitions of what constitutes 'environmental Information' amongst Public Bodies - continually, when you read decisions of the OCEI, this remains a serious issue, and that this is causing a big problem, by creating extra work for OCEI needlessly and delaying the speedy release of Environmental Information.

I further submit that a definitive list of Public bodies which fall under the AIE Regulations must be published and updated at least biannually; I submit that any body or entity in receipt of public funding, held in trust on behalf of the state or where the state has a significant % ownership therein, or where such an entity performs public duties ought to be obliged to prove they are not a Public body and/or that the AIE Regulations should not apply to them. In short any entity or body, seeking to avoid the AIE Regulations should be made state their reasons - and have those challenged by the Minister; essentially, that the AIE Regulations can only be an opt out regimen- with the concomitant cutting of public funds, benefits, licenses and agreements if the should so do.

Article 4 - Scope

'Environmental Information held by, or on behalf of a public authority shall be made available in accordance with these Regulations' ; I have concerns that public bodies can 'farm off' certain information to be held within files by private contractors on projects which in turn can be more difficult to access, as the private contractor can argue for Commercially sensitive reasons not to release etc. Though, likely rare; I submit it is a weakness that can be exploited by Public bodies who if they were so minded could store sensitive environmental information with affiliates, attempting to hold that information beyond reach of the AIE Regulations; or at least a protracted Referral with the OCEI. See CEI/17/0039 for similar issues.

Article 5 - A public authority shall-

(a) - I have never once seen a public campaign by the Department informing the public of their rights under the Regulations; not once.

(b) - My own Local authority as recently as today has no AIE decision log on their website nor any links to the Annual Environmental Reports. Nothing. I submit the Department Audits Local authorities about their compliance under the Directive and the AIE Regulations.

(c) - Again, when AER reports are not searchable on a Local Authorities site, this is not acceptable. If bodies copied or cc'd 'environmental information files to a dedicated 'environmental information' account; this in turn could save time with requests if it is also word searchable. Audits and Environmental reports are routinely being added to Local authorities websites. Perhaps, software like there is for Planning files could be used for when an audit or environmental report is filed for an area; giving it an identifiable marker would also help the public search for new reports/audits etc in their area of interest. The software and technology is there; it just needs to be reconciled.

(d) A above I submit that such registers are not being maintained in accordance with the AIE Regulations. I submit the Department undertake an Audit to gauge the level of non compliance in this regard.

5. 2. I submit is not in compliance, as indicated above.

5. 3. I submit that a defined sanction apply to any Public body that fails to notify the public about re same. I refer you to the instance where Kilkenny county council failed to alert the public a couple of summers ago when millions of litres of raw sewage entered the River Nore due to a blockage. They later stated that it was the duty of HSE to communicate any Public health warnings; this is an example of how not to go about compliance with 5.3. of the Regulations.

5. 5. This remains an outlier; with exception of some links to EPA, there are very few links online which bring the public to documents about their immediate environs (save for planning files, which often can contain decent levels of information; however such files are usually published in DJVU or JPEGs ; why can't local authorities publish in PDF? Would lead to quicker downloads and in turn dissemination and greater compliance with the Directive.

Article 6 - Request for environmental Information

1 (1) A-C ; Why the insistence on an 'open Sesame' formulaic wording? I fear that the public who may in effect be seeking environmental information, but who fail to state the specific words or state the Act may be disenfranchised of their rights under the Directive- again, I fear it is an inherent bias in favour of those with a certain level of the Directive and Regulations. This can lead to refusals to release documents or can lead to partial releases where the public in turn (unaware of the Regulations) cannot appeal or seek an internal review. Surely, a more imaginative, broad approach channeling the spirit of the Directive about how the AIE regulations are triggered can be found?

6. 2. An AIE request into a sensitive matter in a small town or rural area could be tantamount to stating an interest in to why they are making a request; is there not a facility where greater level of privacy can be afforded to an applicant in such circumstances? Perhaps via an Independent third party? Again, those with means can hire Lawyers, whereas those without may not have such a prospect.

N.B. About this Article- In many of my Requests to Public Bodies, this remains one of the most inefficient parts; namely, that Public bodies have no comprehensive understanding of what constitutes 'Environmental Information' - there is seldom a consideration- a proper enquiry of the A-F definitions under the AIE Regulations and therefore, many cases that present before the Commissioner seems to spend a great deal of time, trying to decide in the first instance whether the public Body was correct to refuse a request due to it not being 'environmental Information'.

I also submit, that in some of the decision of AIE decision makers of Public Bodies, there does not appear to be a up to date knowledge of the most recent case law and/or decisions of the OCEI; I submit that where a Public Body fails to apply the contemporary decision making of the OCEI to their decisions; something which in turn causes further referrals to the OCEI; more serious sanctions should apply; it is a waste of time and resources for the OCEI to decide upon cases that have already in the round been decided upon (acknowledging that all cases are different) - again, this can be used cynically by Public Bodies if they were of the mind to so behave.

Article 7 - Action on a request

7. 1. 'held by, or for' - I have stated concerns about 'farming off ' of sensitive environmental information to third parties, which can delay the AIE process and make appeals to the OCEI inevitable; Perhaps something can be done about this dynamic.

7. 2. - (a)(b) - Every reasonable measure should be undertaken to ensure the speediest dealing with a request; having environmental information and correspondence re same cc'd to a dedicated AIE account for the public authority etc might be a more efficient for later Search, retrieval and copy requirements. A reconsideration of how to make this more efficient must be a priority.

I submit there should be a sanction Public bodies for not referring an applicant to the relevant AIE body in the event that they rule they themselves are not that body; I fear - particularly for people with little knowledge of the AIE Regulations details that this may lead to many requests never being processed as per the Regulations. In fact, we may never know how many such instances there have been. I submit that

7. 4. - For refusals; these decisions should be communicated immediately the body has so decided, and not left to the last day for the decision to be made; this is tantamount to a deliberate delaying of the entire process by the public body and also can lead to needless later challenges.

7.5 & 7.6 - Again, these decisions should be made immediately, and not left to the final day; it should be very clear to any public body whether it holds the information and/or what other body would hold such information; it should not take month to make such a decision.

7.7 This is not in compliance in this state ; i'd highlight (CEI17/0039) Where Having initially sought an AIE seeking documents, I was informed to use FOI; which I did; I however later resubmitted an AIE when I realised that this should never have happened. Public authorities need to be audited in this regard about their non compliance, and sanctioned appropriately.

7. 10. - Timescale can be used as a means of being 'manifestly unreasonable' - entirely because of the lamentable storage of documents and files in Irish Public authorities and public bodies in general. Perhaps the Department could sponsor dedicated staffing hours to bring all public authorities records retention and archives up to a modern and digitally searchable level; whilst expensive initially, I would imagine overtime it would be cost neutral as it would save significant time on SRC etc.

7. 11. - This cannot however be used by third parties to cover for faulty work on publicly paid for schemes and projects etc; it should be accepted that third parties can also be responsible for their own companies reputational damage. Public interest demands a sensible approach here.

Article 8 - Grounds that, subject to Article 10, mandate a refusal

(a) (i)-(iii) Some public authorities have trouble discerning that a member of staff performing a role in the employment of a public body ; and it has become a feature where some declare that information relating to their duties is Personal information, when it clearly is not. Perhaps, in order to prevent any possible abuses (for instance an official investigating an emission for which they are responsible) this needs a rigorous reassessment?

Article 9 - Discretionary grounds for refusal of information

9.1.(a)- (d) Regularly I see Commercial or Industrial confidentiality being invoked - even by third parties who tendered on public projects on tenders.ie and they despite having agreed to a basic understanding of the reach of the FOI act, seem indifferent to the reach of the AIE Regulations; again (CEI/17/0039) is of not when the local authority claimed this exception, even though later the third parties didn't ; so, the public authority almost seems to have though it waits duty to preserve a purported Commercial/industrial Confidentiality that the third party contractors didn't. This, unchecked can lead to a whole filleting off the AIE regulations; the balance must always favour release, I submit.

9.2, (a)-(d) - The level of SRC that can go into AIE Request responses can vary greatly; as per (c), how long is a piece of string? Some projects, schemes and plans potentially make last years; it should not be prescriptive in this manner and at all times be reasonable, and not itself become manifestly unreasonable.

As per (d), regularly Public bodies cite this; but as the commissioner has regularly found, they fail to state a purported harm from release and in turn the likelihood of any harm actually coming from the release; for Public bodies to cite this there should be really be only exceptional reasons, as otherwise significant parts of - for example local governance would forever remain beyond the reach of the public.

Article 10 - Incidental provisions relation to refusal of information

10.1, - Re; emissions, Many public bodies have a narrow understanding of what constitutes emissions; and hence this exception is often misunderstood and not given the significance which it deserves. Perhaps, an awareness campaign about this specific part of the AIE Regs should be given to Public bodies.

10. 2-7 - as per (4) It is of little use stating that environmental information ought only to be refused on a restrictive level if fundamentally the understanding of what environmental information is- to reiterate, this lack of certainty when dealing with Public bodies is a real weakness in the Regulations.

Article 11 - Internal review of refusal

11.1 - I submit that a longer period of time ought to be allowed in order to lodge an appeal in such a situation; the fact that a deemed refusal - in other words a public body has failed to deal with the request or applicant at all is outrageous; there is simply no excuse for not applying the AIE regulations in such a manner; some leeway should as a bare courtesy then be offered to the applicant to take a longer period of time to consider their appeal. It should be the bare minimum courtesy afforded an applicant.

11.5 (a) - If a request has been refused on basis an entity does not believe it is a public authority within the meaning of the regulations; and where the commissioner ultimately finds this not to be the case; that the entity is a public authority within the meaning of the regulations; a significant sanction ought to be considered as it is not acceptable that a matter of such importance could be up for debate. Again a register of all Public authorities as understood within meaning of the regulations must be maintained and updated regularly. I submit, it should be the duty of any entity to prove it is not a public authority as understood under the meaning of the regulations; as the spirit of the Directive always weighs in favour of the greatest transparency- if a body is trying to sidestep this - it should be required to prove it isn't a public authority, and not be left to the applicant to demonstrate it is. Any burden of proof should fall on any entity attesting that the AIE regulations don't apply due to them, I submit.

I submit, that where the Commissioner alters or varies the decision of the Public Body, this proves that there was indeed merit to the appeal, and that the Public Interest would be served in refunding the cost of the appeal to the applicant. Ideally, I think the Public body found to have made a flawed decision, should be fined, or an equivalent civil service disciplinary proceeding so as to concentrate the minds of Public body decision makers. I submit, this would lead to fewer referrals to the OCEI, and greater transparency.

I also submit that when the Commissioner decides that the Matter is 'environmental information' (assuming that was one reason for refusal initially), that it should not be referred back to the Public body again to once again make a new decision; if the OCEI through its investigation has discovered the relevant information, it should order it to be released immediately- why the further delay? This has been one of the most frustrating parts of AIE requests and if not careful, there is potential for Public bodies to use this cynically. I refer again to the Road safety Audit decisions (CEI/18/0014 and CEI/19/0050).

Article 12 - Appeal to Commissioner for Environmental Information

I submit that when the Commissioner remits a decision back to a public body (often if he finds a matter to be environmental information when the body argued otherwise), it needlessly delays the entire process as he has had sight of the records, know their import; I fail to see what purpose there is for remitting matters back to bodies in such a manner. I, as I argue also fear that Bodies may attempt to game the system by delaying the decision in such a way.

Article 13 - Appeal to high court on a point of law

Please refer to my points about this matter within this submission.

I refer you to my general concerns within this submission about access for ordinary members of the public who lack professional advice and/or understanding of the AIE Regulations and their rights under it.

Article 14 Guidelines

It is not adequate that Public authorities have read for the guidelines whilst at the same time often fail to understand and/or, comply with them. Professional training in AIE case management and decision making is an urgent matter that requires a longterm plan.

14.3. - This indicative list needs regular maintenance, and upgrading.

Article 15 - Fees

Fees remain a barrier to the meaningful participation for many members of the public; and of particular disappointment is the failure of the Regulations to provide for the repayment of fees to any member of the public who brings a case where it is shown that the OCEI has asked the body to completely change, alter or vary their decision. I believe, that the Public interest can also be served by the public not being essentially billed for highlighting flaws in this states compliance with the Directive. I have spent hundreds of euros on appeals over the past 6 years or so, and I would estimate that 80% of my cases involved the OCEI in some shape or form accepting parts of my referral.

I have found that when the OCEI has found in my favour, wholly or partially that a certain Public Interest has been served and as a minimum the Applicant should have the referral fee of standard 50 Euro returned; members of the public should not have to pay for the service of essentially finding that their public bodies are not applying the AIE Regulations properly. Infact, it could be an efficient enticer to public bodies to apply the Act properly if they are 'fined' for failing to do so. I am aware, and have used the 'deemed refusal' measure where AIE fees are relayed by the OCEI- again; why should the OCEI pay for failures of other Public bodies?

Q3. Any other Comments on the existing AIE Regulations and their implementation of the AIE Directive 2003/4EC?

Much of the AIE Regulations can be very daunting to ordinary members of the public who may stumble upon them; there is little doubt that Knowledge of the AIE Regulations tends to be confined to Lawyers, Environmental NGO's, Individuals with a particular interest in the Regulations and transparency in general- in short, it is a relatively small number of Individuals and entities; I submit, the Department has failed to actively promote the AIE Regulations as something that should be accessible to everybody. An informed populace is the cornerstone of the Directive; knowing it is your right to seek environmental information should be something that is taught in Civics in school.

The AIE regulations need an overhaul; transparency, speed and fairness should be at the heart of it; as should a less legalese language as that in itself can also be a barrier to the public getting interested in the AIE Regulations, a Public information campaign is necessary to realise the spirit of the Directive and the OCEI must be properly resourced to support this crucial oversight role.

Kind regards,

