

# Public consultation on proposed amendments to the Access to Information on the Environment (AIE) Regulations 2007-2018

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## Reply all

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AIE Consultation Submissions 2023

Flag for follow up. Start by Monday, November 20, 2023. Due by Monday, November 20, 2023.

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To whom it concerns,

As an FOI Officer for a local authority with responsibility for FOI as well as AIE compliance, I wish to make a submission regarding the above in relation to

1. Third party consultation
2. Fees

Based on the draft revision of the Regulations.

### 1. THIRD-PARTY CONSULTATION

The requirement to only carry out 3<sup>rd</sup> party consultation where environmental data has been provided voluntarily by an organisation, rather than under a legal requirement, can be problematic. We have had a case where a substantial soil testing report was submitted by a body to the EPA on the understanding that it was required to do so.

The EPA decided that the local authority was a more appropriate body to deal with the issue and forwarded on the report for follow-up.

The local authority now has the record, though it differs with the EPA in its interpretation of whether responsibility for the issues raised lies with it or the EPA.

We then receive an AIE for all documentation relating to this soil testing.

Does this situation meet the requirement for us to carry out 3<sup>rd</sup> party consultation? Difficult to say but the initial report was definitely not given to the local authority voluntarily.

### Section 6 (10)

*Where a request is made for environmental information and in the opinion of the public authority release of the information may adversely affect*

*the interests of a person (a private person or a person who owns a business?) who, voluntarily and without being under, or capable of being under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information, or*

*(c) commercial or industrial confidentiality, where such confidentiality is provided for in national, or European Union, law to protect a legitimate economic interest, the public authority shall make all reasonable efforts to contact the third party concerned to seek consent or submissions setting out why the release of the information requested would adversely affect their interests pursuant to subparagraph (a), (b) or (d) of Regulation 7(1), taking into account the provisions of Regulation 8.*

*(11) The public authority shall notify any third party under paragraph (10) of its intended decision and shall inform the third party of his or her right to appeal*

In relation to Section 6(10) (c)-no timelines are provided, as they are in the FOI Act, for 3<sup>rd</sup> party consultation with a body which might be adversely affected commercially by release of information

- at what stage should notification of 3<sup>rd</sup> party consultation take place?
- if the 3<sup>rd</sup> party wishes to engage, does the “clock” stop?
- how much time is the 3<sup>rd</sup> party to be given to make a submission?
- how much time is the AIE body allowed to consider such a decision and then make a decision.
- if the 3<sup>rd</sup> party wishes to appeal a local authority’s decision to release information, how long does the 3<sup>rd</sup> party have to make their appeal to the OCEI?

## 2. FEES

*13. (1) A public authority may levy a charge **when it supplies** environmental information in accordance with these Regulations (including when it makes such information available following an appeal to the Commissioner under Regulation 10), provided that such charge shall be reasonable having regard to the provisions of the Directive.*

The fact that a requester only becomes aware of the amount of a chargeable fee once the response to the request has been prepared is very problematic.

As a local authority we have had multiple occasions where a requester, in one case a local community/residents group submitted a request for a substantial though not unreasonable amount of environmental data and records, held by a very small section with only 1-2 staff. As a considerable amount of staff time was dedicated to searching, retrieving, and preparing the documentation for release, including photocopying, a modest fee of 80 euro was felt to be appropriate. Once the requesters were informed that the records would be made available on payment of this fee, the group decided they didn’t want the records afterall, and would not pay the fee, and all that time and effort went to waste.

If the regulations allowed for an estimate of the fee to be collected, as per FOI, and a deposit paid before the work is carried out, this situation could be avoided, or even reasonable requests might be refined further, therefore reducing the burden on bodies subject to FOI.

Subsection 2 (b) of Section 13 is also problematic, where we can’t charge a fee if the requester is willing to come and view the records on the premises.

We had a case during COVID where again a large amount of information was compiled electronically for a requester. A very modest fee was considered appropriate (we might charge a fee on 2 out of 50 requests a year). When notified of the fee, the requester said he was willing to visit the premises to view the files on site. We were closed due to COVID. The requester said that was not his problem, so we had to send him the records without any fee.

Also, providing access to some types of records on premises is not as easy as it sounds-GIS files, large data bases, electronically generated records/drone footage cannot be easily made available without considerable additional work from our IT dept. And it is not exactly environmentally friendly to be printing off colour GIS/excel spreadsheets/data bases.

If the fee is appropriate to cover search and retrieval and scheduling-then it shouldn’t matter whether the requester is willing to come and view them on our premises or not.



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