



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Oifig an Choimisinéara um Fhaisnéis Comhshaoil

Athbhreithniú Bliantúil 2023



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Fhaisnéis Comhshaoil

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Brollach leis an gCoimisinéir um Fhaisnéis Comhshaoil

Is é cuspóir na Rialachán agus an chórais um Rochtain ar Fhaisnéis faoin gComhshaoil (RFC) a chur ar chumas bhaill an phobail eolas agus tuiscint a fháil ar an méid atá ag titim amach sa chomhshaoil timpeall orthu. Tá faisnéis thráthúil agus rochtain gan stró ar fhaisnéis faoin gcomhshaoil bunriachtanach chun cabhrú leis an bpobal páirt a ghlacadh i gcinnteoireacht faoin gcomhshaoil ar bhealach feasach.

Luaitear go soiléir sna Rialacháin RFC agus sa Treoir maidir le RFC go ndéantar talamh slán de go bhfuiltear i bhfabhar faisnéis faoin gcomhshaoil a scaoileadh. Is é ról Oifig an Choimisinéara um Fhaisnéis Comhshaoil (an OCFC) tabhairt faoi athbhreithniú neamhspleách ar chinntí a rinne údaráis phoiblí ar iarrataí ar fhaisnéis faoin gcomhshaoil.

Leagtar amach sa cháipéis seo athbhreithniú ar ár ngníomhaíochtaí don bhliain 2023, ar bhliain eile ghnóthach í don OCFC. Fuaireamar 351 achomharc in 2023 i gcomparáid le 369 in 2022. Leanann an laghdú beag seo an méadú an-tapa ar achomhairc a fuarthas le blianta beaga anuas, méadú 151% san áireamh ar achomhairc a fuarthas idir 2021 agus 2022.

Thug mé chun airde i m'athbhreithniú Bliantúil don bhliain 2022 ar an líon thar a bheith ard nach féidir glacadh leis de dhiúltú measta i measc achomharc a fuair ár nOifig. Is éard is diúltú measta ann ná nuair a theipeann ar údarás poiblí cinneadh a sholáthar in am. Thug mé chun airde gurb ionann diúltú measta agus teip dho-ghlactha thar ceann roinnt údaráis phoiblí iarrataí ar Rochtain ar Faisnéis Faoin Gcomhshaoil (iarrataí RFC) a phríoiseáil ar bhealach tráthúil.

Tá áthas orm a lua gur thugamar laghdú suntasach faoi deara in 2023 ar an líon diúltú measta. Tháinig laghdú 40% ar dhiúltú measta ar chéim an bhunchinnidh, laghdú 62% ar dhiúltú measta ar chéim an athbhreithnithe inmheánaigh agus laghdú 76% ar údaráis phoiblí ar theip orthu cinntí tráthúla a dhéanamh ag céim an bhunchinnidh agus an athbhreithnithe inmheánaigh

araon. Cuirim fáilte mhór roimh na feabhsúcháin seo. Léiríonn siad go bhfuil níos mó dá n-iarrataí RFC á bpróiseáil ag údaráis phoiblí go gníomhach ar bhealach tráthúil. Mar sin féin, teastaíonn feabhsúcháin bhreise ó roinnt údaráis phoiblí i dtaobh iarrataí RFC a phróiseáil laistigh de na hamfhrámaí reachtúla.

Nuair a fhaighimid achomharc, déanaimid meas ar gach cás chun an réiteach is fearr agus is féidir a shainiú. Déanaimid idirchaidreamh leis na páirtithe chun ceisteanna a réiteach ag an gcéim is luaithe. Cuireann an t-údarás poiblí faisnéis nó cúiseanna ar fáil, amanna, dá bharr seo chun sásaimh an achomharcóra agus aistarraingíonn an t-achomharcóir a n-achomharc dá thoradh sin.

Cé gur díomách go dteastaíonn ár n-idirghabháil chun an toradh sin a bhaint amach, fáiltímid roimh thoilteanas thar ceann roinnt údaráis phoiblí agus achomharcóirí comhaontú a bhaint amach ar achomhairc a cuireadh faoinár mbráid gan gá a bheith le cinneadh foirmiúil a eisiúint.

D'eisíomar 136 cinneadh foirmiúil in 2023. Tá díomá orm a thabhairt le fios nár dearbhaíodh cinneadh an údaráis phoiblí ach i seacht (5.14%) gcinn de na cásanna i gcrích trí chinneadh ceangailteach foirmiúil in 2023. Athraíodh cinneadh an údaráis phoiblí i gceithre cinn de na cinntí (2.94%), agus cuireadh cinneadh an údaráis phoiblí ar neamhní in 125 cás (91.91%).

Tá ráta neamhnithe díreach faoi bhun 92% beagnach mar an gcéanna le ráta neamhnithe 2022. Ábhar leanúnach buartha í an treocht leanúnach de rátaí arda neamhnithe. Ciallaíonn neamhniú, i bhformhór mór na gcásanna, nár aontaíomar le haon chuid de chinneadh an údaráis phoiblí - agus d'ordaíomar go dtabharfar faoi scrúdú úrnua ar an iarraidh nó an fhaisnéis faoi chaibidil a scaoileadh.

Shainiúimid roinnt téamaí, a chuireann leis an gcás do-ghlactha seo inar soiléir go bhfuil ag teip ar roinnt údaráis phoiblí a bhfreagrachtaí a shásamh agus iad ag déileáil le hiarrataí ar fhaisnéis faoin gcomhshaoil.

Tugaimid chun suntais, ach go háirithe, go dteipeann ar roinnt údaráis phoiblí tabhairt faoi chuardaigh, nó go dtugann siad faoi chuardaigh neamhleora, agus iad ag freagairt ar iarrataí a rinneadh ar fhaisnéis faoin gcomhshaoil. Diúltaíonn roinnt díobh rochtain ar an mbunús nach raibh an fhaisnéis atá á iarraidh acu nó nárbh ann di. Deimhníodh gurbh ann don fhaisnéis, mar sin féin, roinnt uaireanta, tar éis go ndearnamar imscrúdú agus cuardaigh chearta.

Teip eile atá ar roinnt údaráis phoiblí ná go dteipeann orthu cúiseanna a thabhairt atá lena gcinneadh. Eascraíonn an dualgas chun cúiseanna a thabhairt atá le cinneadh ón bhfreagracht dhlíthiúil atá ar an údarás poiblí faoi na Rialacháin RFC. Croíphrionsabal aitheanta atá ann freisin i ndlí riaracháin agus is gné bhunúsach é den cheartas bunreachtúil. Tá duine a ndiúltaítear dá n-iarraidh i dteideal go dtugtar cúiseanna soiléire dóibh leis an diúltú sin chun gur féidir leo dearcadh a chruthú maidir le cibé acu an bhfuil nó nach bhfuil údar leis an diúltú, nó cibé acu an bhfuil nó nach bhfuil gá le hathbhreithniú ar an diúltú.

Leanfaimid le béim a leagan ar an ngá atá le hidirchaidreamh bríoch agus comhoibriú níos fearr idir iarrthóirí agus údaráis phoiblí ar an gcéad dul síos. Nuair a chuirtear an méid iarrataí san áireamh atá á bhfáil ag roinnt údaráis phoiblí, tá ar iarrthóirí iarrataí dírithe a sheoladh, agus idirchaidreamh a dhéanamh le húdaráis phoiblí agus machnamh a dhéanamh ar scóip a n-iarrataí a chuíchóiriú pé áit ar féidir. Is dóchúla go bhfaighidh iarrthóirí an fhaisnéis atá siad i dteideal a fháil dá bharr seo.

Leagaimid amach san Athbhreithniú Bliantúil seo faisnéis bhreise maidir leis na saincheisteanna seo agus eile a bhfuil an ráta ard neamhnithe cinntí ag eascairt astu i measc údaráis phoiblí i dtaobh iarrataí RFC. Tugaimid limistéir chun solais ina gcreidimid go bhfuil gá le feabhsú agus gur féidir iad a fheabhsú. Cuirimid cás-staidéir san áireamh, ar achoimrí gearra iad ar chinntí a eisíodh, chun go mbeidh tuiscint níos fearr ag údaráis phoiblí agus ag iarrthóirí ar conas a fheidhmíonn an próiseas achomhairc RFC. Cuirimid naisc ar fáil freisin le cinntí iomlána, atá ar fáil ar ár suíomh gréasáin – www.ocei.ie.

Spreagfainn cinn údarás poiblí a chinntiú go dtugtar an tacaíocht agus an oiliúint uile riachtanach do chinnteoirí RFC, lena chur ar a gcumas cinntí cearta a dhéanamh go comhsheasmhach agus comhlíonadh na Rialachán a chinntiú.

Mheabhróinn d'údaráis phoiblí freisin go bhfuil dualgas orthu faisnéis a scaipeadh go réamhghníomhach faoin gcomhshaoil. D'fhéadfadh scaipeadh deonach níos fearr feabhas mór a chur ar rochtain agus an gá le hiarrataí ar rochtain a laghdú. Bheadh brú i bhfad níos lú dá bharr seo ar acmhainní údarás poiblí.

Mar chonclúid, ba mhaith liom buíochas a ghabháil leis na páirtithe leasmhara éagsúla, achomharcóirí, údaráis phoiblí agus an Roinn Comhshaoil, Aeráide agus Cumarsáide san áireamh dá gcomhoibriú leanúnach. Ba mhaith liom mo bhuíochas a chur in iúl, ach go háirithe, d'fhoireann uile an OCFC, faoi cheannaireacht na nImscrúdaitheoirí Sinsearacha Deirdre Gallagher agus Julie O'Leary as ucht a dtiomantais agus a ndianoibre, agus seirbhís ardchaighdeáin á soláthar acu.



Ger Deering

An Coimisinéir um Fhaisnéis
Comhshaoil
Aibreán 2024



Nuashonrú ón Ard-Stiúrthóir

Ár gCuspóirí Straitéiseacha a Bhaint Amach

I dtosach ba mhaith liom moladh a thabhairt dár bhfoireann as a n-obair dhian le linn na bliana i dtaobh leanúint lenár bpríomhchuspóir straitéiseach a bhaint chun cinntí cruinne, soiléire agus a bhfuil bunús daingean leo a sholáthar faoi achomhairc le hOifig an Choimisinéara um Fhaisnéis Comhshaoil (an OCFC). Tá cásobair an OCFC an-dúshlánach. Cé go leanaimid le hacmhainní na hOifige a mhéadú agus le hathruithe a dhéanamh ar ár bpróisis lena chinntiú gur féidir linn achomhairc a phróiseáil níos éifeachtúla, ba é an líon achomharc a bhí ar láimh ag deireadh na bliana an líon ab airde ó bunaíodh an OCFC. Léiríonn seo an chaoi gur tugadh méadú faoi deara i measc údaráis phoiblí i ngach earnáil ar iarrataí ar Rochtain ar Fhaisnéis faoin gComhshaoil (RFC) le 24 mí anuas agus gur féidir leis an tsaincheist a bhaineann le rochtain a fháil ar fhaisnéis faoin gcomhshaoil a bheith sách naimhdeach, amanna. Thugamar laghdú faoi deara ar an méid cinntí a rinneadh a achomharc leis an Ard-Chúirt i rith 2023 agus bhaineamar dul chun cinn amach i dtaobh idirchaidreamh luath agus ceart ag comhlachtaí poiblí lenár n-imscrúdaitheoirí le réitigh neamhfhoirmiúla a bhaint amach.

Sheolamar ár Straitéis 2025 i rith 2022 ina leagtar amach príomhchuspóirí ár nOifige go dtí 2025. Tá áthas orm a thabhairt le fios go ndearnamar roinnt dár gcuspóirí straitéiseacha a thabhairt chun cinn níos mó i rith 2023. I dtaobh ár gcuspóir a bhaint amach chun tuiscint níos fearr ar oibleagáidí údarás poiblí a chur chun cinn maidir le RFC, chuireamar treoir nuashonraithe le chéile ar féidir le húdaráis phoiblí a úsáid nuair atá siad ag déileáil le hiarrataí RFC. D'fhreastail ár bhfoireann ar roinnt cúrsaí oiliúna agus comhdhálacha i gcaitheamh 2023 atá ar aon dul lenár gcuspóir chun ár saineolas ar an gcóras RFC a fhorbairt agus a fhairsingiú go leanúnach. Sheolamar ár suíomh gréasáin níos luaithe i mbliana a chabhróidh lenár gcuspóir a bhaint amach chun sásraí sábháilte agus inrochtana a sholáthar do bhaill den phobal chun teacht ar ár seirbhísí.

Tá “cnámh droma chorparáideach” laistiar d’fhoireann an OCFC, a sholáthraíonn na tacaíochtaí uile cúloifige don fhoireann, chun go mbíonn ár n-imscrúdaitheoirí go léir go hiomlán ar fáil le díriú ar chásobair RFC. Is éard atá sa chnámh droma chorparáideach Acmhainní Daonna, TFC, Airgeadas, Soláthar, Saoráidí, Cúrsaí Dlí, Cumarsáid, anuas ar thacaíocht chun iarrataí ar Chosaint Sonraí agus Saoráil Faisnéise a láimhseáil. Bhain an fhoireann TFC dul chun cinn suntasach amach in 2023 trí go leor dár bhfeidhmeanna tacaíochta a sheachfhoinsiú chuig Oifig Phríomh-Oifigeach Faisnéise an Rialtais (OPOFR) agus trínár Straitéis TFC a ailíniú le straitéis an OPOFR. Cuideoidh sé seo le n-ár slandáil sonraí a fheabhsú agus athléimneacht fhadtéarmach a chruthú inár gcóras. Lean ár bhfoireann Dhlíthiúil le tacaíocht a sholáthar do gach ceann de na hoifigí maidir le cásobair agus imscrúduithe agus rinne siad ár gcostais dlí agus ár soláthar a bhainistiú agus díriú ar dhearbhu cáilíochta agus ar luach ar airgead. Ghlacamar páirt freisin sa chéad tonn de Chóras Bainistíochta Airgeadais nua na Státseirbhíse, ar thionscadal mór é dár bhfoireann Airgeadais agus táim bródúil as an obair a rinne siad leis.

Tá áthas orm leis an dul chun cinn atá á dhéanamh againn ar ár Cuspóirí Straitéiseacha. De réir mar a dhruideann an pointe leathbhealaigh linn inár Straitéis 2025, táimid ag tnúth le hathbhreithniú a dhéanamh ar ár ndul chun cinn i rith 2024 i dtaobh ár gculpóirí a fhíorú agus sainnithint a dhéanamh dteastaíonn breithniú ó chuspóirí eile.



Elaine Cassidy
Ard-Stiúrthóir

Caibidil 1

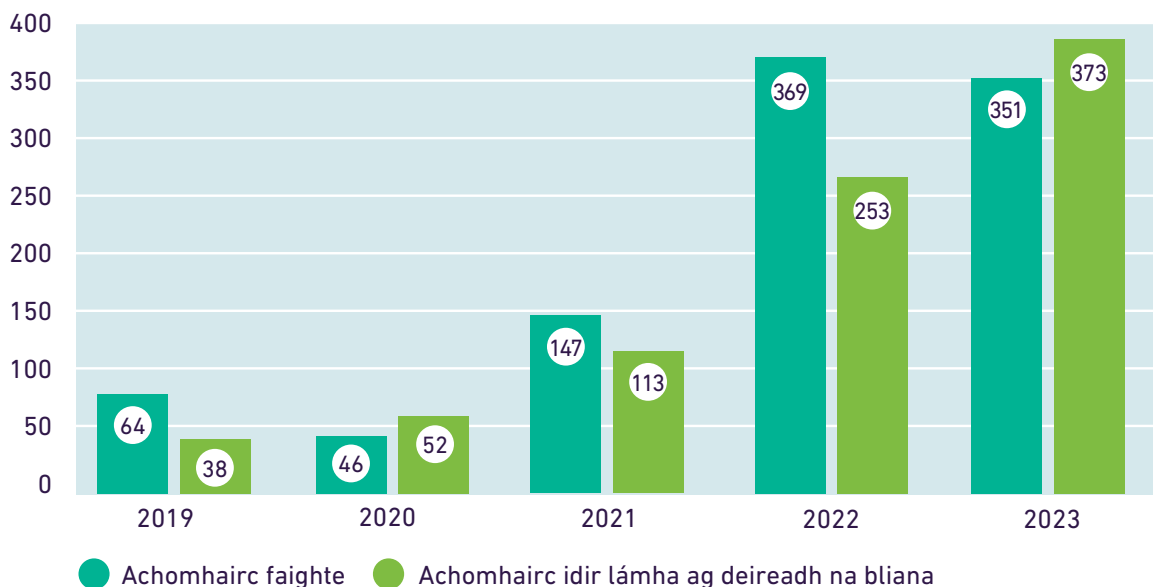
Athbhreithniú ar an mBliain



Caibidil 1: Athbhreithniú ar an mBliain

Léiríonn na cairteacha thíos an méadú easpóntantúil ar líon na gcásanna a bhí ag Oifig an Choimisinéara um Fhaisnéis Comhshaoil (OCFC) le blianta beaga anuas. Áiríodh leis seo ardú easpóntantúil 151% gan fasach ar achomhairc a fuarthas idir 2021 agus 2022. Mhaolaigh líon na n-achomharc le linn 2023. Cé gur tharla laghdú 4.87% ar líon na n-achomharc in 2023 i gcomparáid le 2022, is í 373, líon na n-achomharc deireadh bliana atá fós idir lámha, an uimhir is airde ó bunaíodh an OCFC.

Líon na n-achomarc a fuarthas agus atá idir lámha ó 2019 go dtí 2023



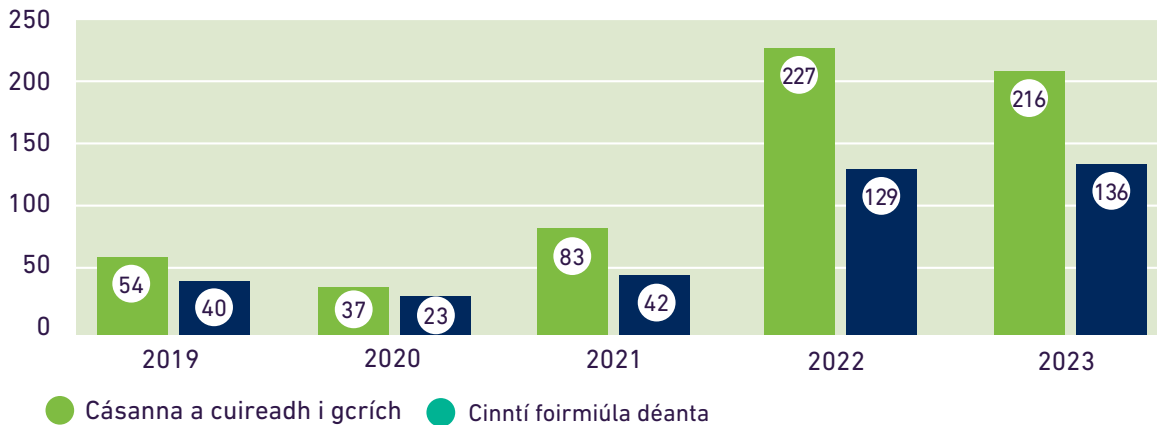
De bharr na feidhme athbhreithnithe atá againn, níl eolas ag an Oifig seo ach ar iarratais Rochtain ar Fhaisnéis Comhshaoil (RFC) a chuirtear chugainn mar achomharc, agus níl eolas againn ar fhormhór na n-iarratas RFC a dhéantar d'údaráis phoiblí nach bhfeicimid san Oifig. Sna blianta roimhe seo, bhaineamar úsáid as staitisticí náisiúnta RFC, foilsithe agus curtha le chéile ag an Roinn Comhshaoil, Aeráide agus Cumarsáide chun tuairim a fháil faoi líon na n-iarratas RFC a dhéantar go náisiúnta. Chuir sé seo ar ár gcumas céatadán na n-iarratas a chuirtear ar aghaidh chuig an OCFC a ríomh.

I mbliana, áfach, tá ár n-athbhreithniú bliantúil á ullmhú agus á fhoilsiú níos luaithe sa bhliain ná mar a rinneadh roimhe seo. Mar thoradh air sin, níl an Roinn críochnaithe le staitisticí náisiúnta RFC a bhailiú agus a chur le chéile. Mar sin, ní féidir linn céatadán na n-iarratas RFC a tháinig isteach chugainn san Oifig a ríomh. Is féidir teacht ar staitisticí ó bhlianta roimhe seo ag an nasc seo mar aon leis na staitisticí RFC do 2023 a eiseofar in am tráth:

<https://www.gov.ie/en/collection/257c4-national-aie-statistics/#>

Torthaí ar Achomhairc

Líon na gcásanna a cuireadh i gcrích agus na cinntí foirmiúla a rinneadh

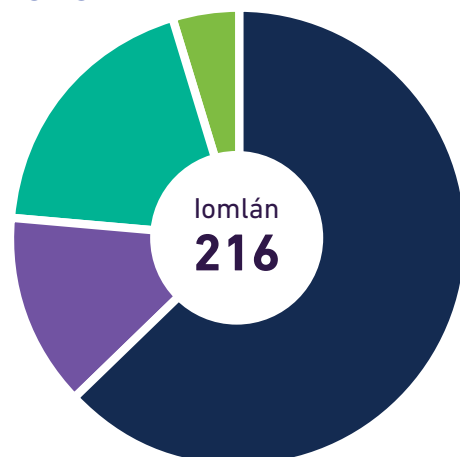


Tar éis dúinn achomharc bailí a fháil, déanaimid measúnú ar gach cás chun an réiteach is fearr is féidir a shainiú. Breithnímid an bhfuil ionchas réasúnta ann go réiteofar cás gan cinneadh foirmiúil ceangailteach a eisiúint. Tá sé mar aidhm againn cúrsaí a réiteach ag an gcéim is luaithe den phróiseas.

Bainimid an méid sin amach tríd an méid seo a leanas a dhéanamh:

- cúinsí an cháis a phlé leis an achomharcóir lena chinntiú go bhfuil an tuiscint atá againn ar raon feidhme a n-achomharc ceart agus go bhfuil sé laistigh de raon feidhme a n-iarratais bhunaidh;
- a áirithiú go bhfreastalófar ar na gnéithe is práinní nó is ríthábhachtaí den achomharc a luaithe is féidir; agus
- iarracht a dhéanamh teacht ar shocrú idir an t-údarás poiblí agus an t-achomharcóir.

Cásanna a cuireadh i gcrích sa bhliain 2023



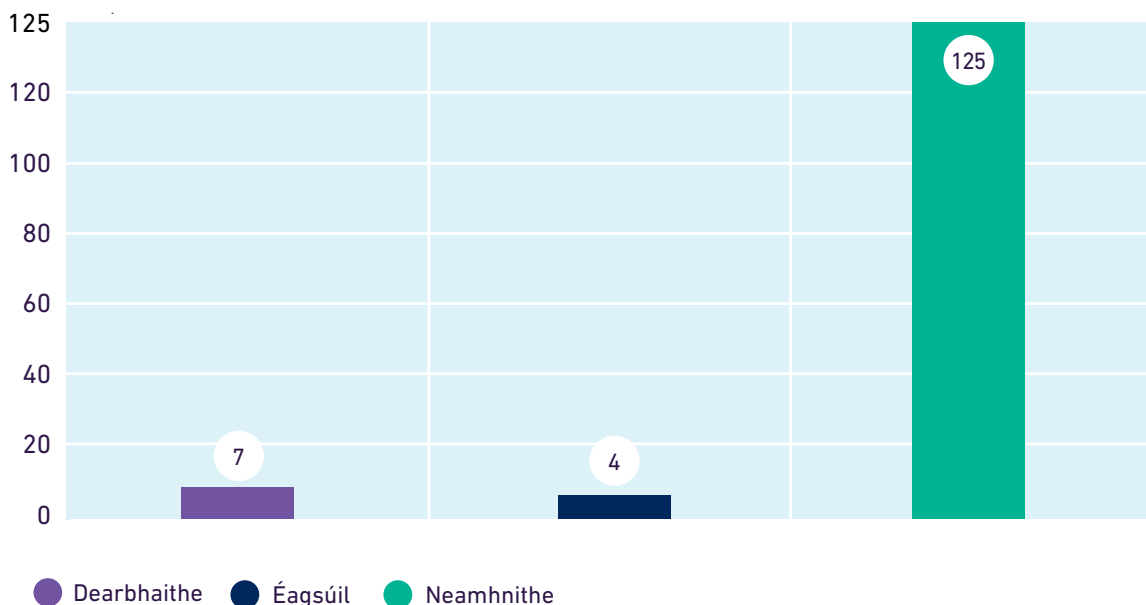
Cásanna dúnta ag an Aonad Tacaíochta: I gcásanna nár thug údarás poiblí cinneadh d'iarrastasóir laistigh den achar ama atá leagtha síos sna Rialacháin RFC, is féidir leis/léi achomharc a dhéanamh leis an Oifig seo bunaithe ar dhiúltiú measta. Sna cásanna seo, iarrfaidh ár nAonad Tacaíochta ar an údarás poiblí cinneadh déanach a sholáthar don achomharcóir. Tugaimid stádas éifeachtach ar an gcinneadh déanach seo mar go dtarlaíonn sé lasmuigh den achar ama atá leagtha síos sa reachtaíocht. Nuair a sholáthraíonn údarás poiblí stádas éifeachtach, dúnann an tAonad Tacaíochta na cásanna sin. Thit sciar na gcásanna a dhún an tAonad Tacaíochta in 2023 – dúnadh 29 achomharc – agus b'ionann sin agus 13.43% de na cásanna a dúnadh sa bhliain sin. Is ionann é seo agus laghdú 6% i gcomparáid le 2022 inar dhún an tAonad Tacaíochta cúigiú (19.38%) de chásanna.

Socráithe: Tugaimid tuairisc gur socraíodh cásanna más rud é, tráth ar bith tar éis glacadh le hachomharc, go nglacann an t-údarás poiblí bearta a fhágann nach dteastaíonn cinneadh ceangailteach foirmiúil ó achomharcóir. Is féidir teacht ar réiteach ag céim ar bith den phróiseas imscrúdaithe sula n-eisítear cinneadh foirmiúil. Dúnadh 41 achomharc faoi shocrú in 2023.

Is údar misnigh dúinn go bhfuil roinnt údarás poiblí agus achomharcóirí toilteanach teacht ar chomhaontú maidir le hachomhairc a cuireadh ar aghaidh chuig ár nOifig gan gá le cinneadh foirmiúil a eisiúint.

Cásanna a cuireadh i gcrích le Cinneadh

Toradh na gcásanna a cuireadh i gcrích le cinneadh



Sa chás go gcuirtear athbhreithniú i gcrích trí chinneadh ceangailteach foirmiúil, bainimid úsáid as na catagóirí seo a leanas

- Rinneadh an cinneadh a dhearbhu: Aontaíonn an OCFC go hiomlán leis an údarás poiblí
- Athraíodh an cinneadh: Go n-athraíonn an OCFC aon chuid de chinneadh an údaráis poiblí ach ní athraíonn sé an cinneadh in a iomlán
- Cinneadh a cuireadh ar neamhní: Ní aontaíonn an OCFC le haon chuid de chinneadh an údaráis poiblí

I seacht gcás (5.14 %) de na 136 gcás a dúnadh le cinneadh ceangailteach foirmiúil in 2023, rinneadh cinneadh an údaráis poiblí a dhearbhu. I gceithre cinn de na cinní (2.94 %), rinneadh an cinneadh a athrú agus in 125 (91.91%) rinneadh an cinneadh a neamhniú.

Tá an ráta neamhnithe seo, díreach faoi bhun 92%, beagnach mar an gcéanna leis an ráta neamhnithe a bhí ann in 2022. Is cúis imní i gconáí í an treoht leanúnach seo maidir le rátaí neamhnithe arda.

Ciallaíonn na neamhnithe sin, i bhformhór mór na gcásanna, nár aontaigh muid le haon chuid de chinneadh an údaráis poiblí — agus d'ordaíomar dó tabhairt faoi scrúdú nua ar an iarratas nó an fhaisnéis atá i gceist a scaoileadh.

Achomhairc Tríú Páirtí

Aithnítear i reachtaíocht intíre agus i reachtaíocht RFC an Aontais Eorpaigh nach mór cearta tríú páirtí a chothromú leis an gceart chun rochtain a fháil ar fhaisnéis faoin gcomhshaoil. Forálann airteagal 12(3)(b) de Rialacháin RFC gur féidir le duine seachas an t-iarratasóir nó tríú páirtí achomharc in aghaidh cinneadh chuig OCFC a thionscnamh sna cásanna seo a leanas:

“go ndéanfaí duine seachas an t-iarratasóir, lena n-áirítear tríú páirtí, a ionchoiriú tríd an bhfaisnéis chomhshaoil lena mbaineann a nochtadh”.

In 2023, d'eisiamar cinneadh sa chás **OCE-120059-J8M5X7, Comhlacht A agus an Coimisiún um Rialáil Fónais**. Bhain sé seo le hachomharc tríú páirtí a fuaireamar sa bhliain 2022.

Diúltuithe Measta

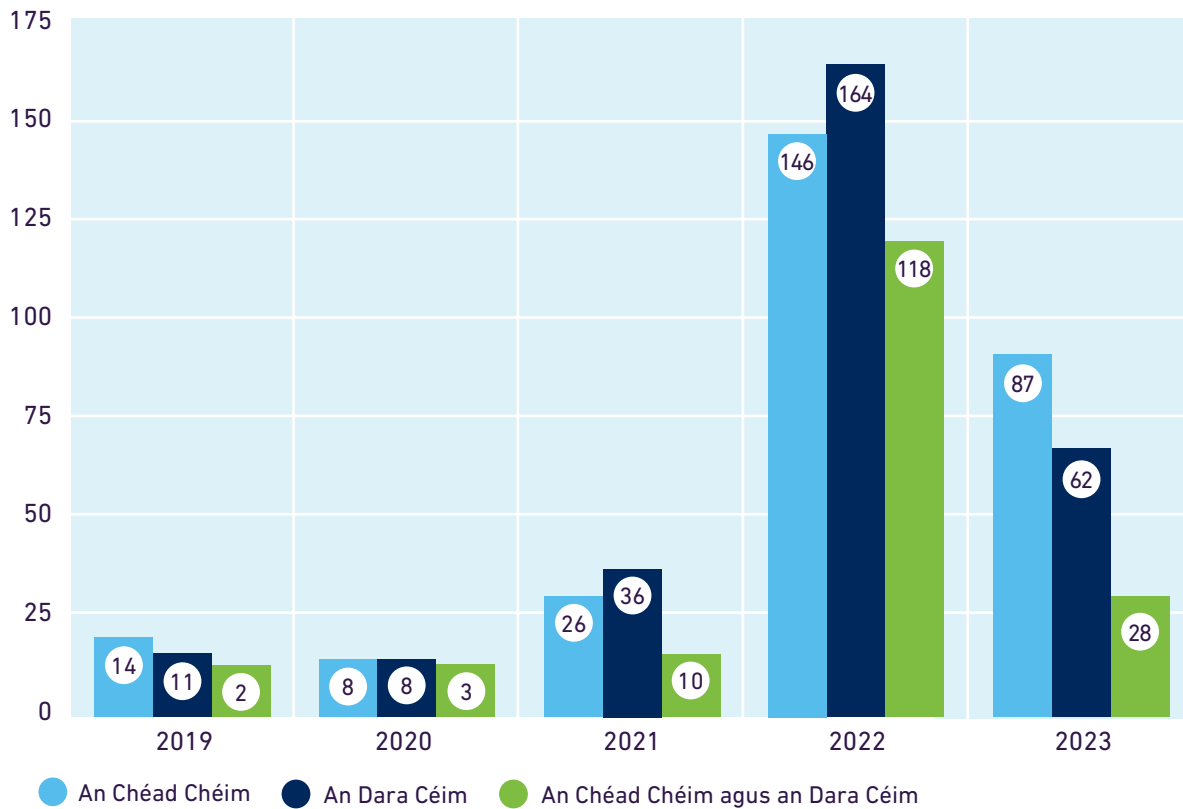
Tarlaíonn diúltiú measta nuair a theipeann ar údarás poiblí cinneadh a dhéanamh in am nuair a chuirtear san áireamh an spriocam atá leagtha síos sna Rialacháin RFC do na cinní tosaigh agus ag an gcéim athbhreithnithe inmheánaigh.

Inár dtuairisc bhliantúil 2022, phléamar líon ard na ndiúltuithe measta a fuarthas mar achomharc san Oifig seo in 2022 agus dúramar nach raibh sé inghlactha go dteipeann ar roinnt údaráis poiblí iarratais RFC a phróiseáil go tráthúil.

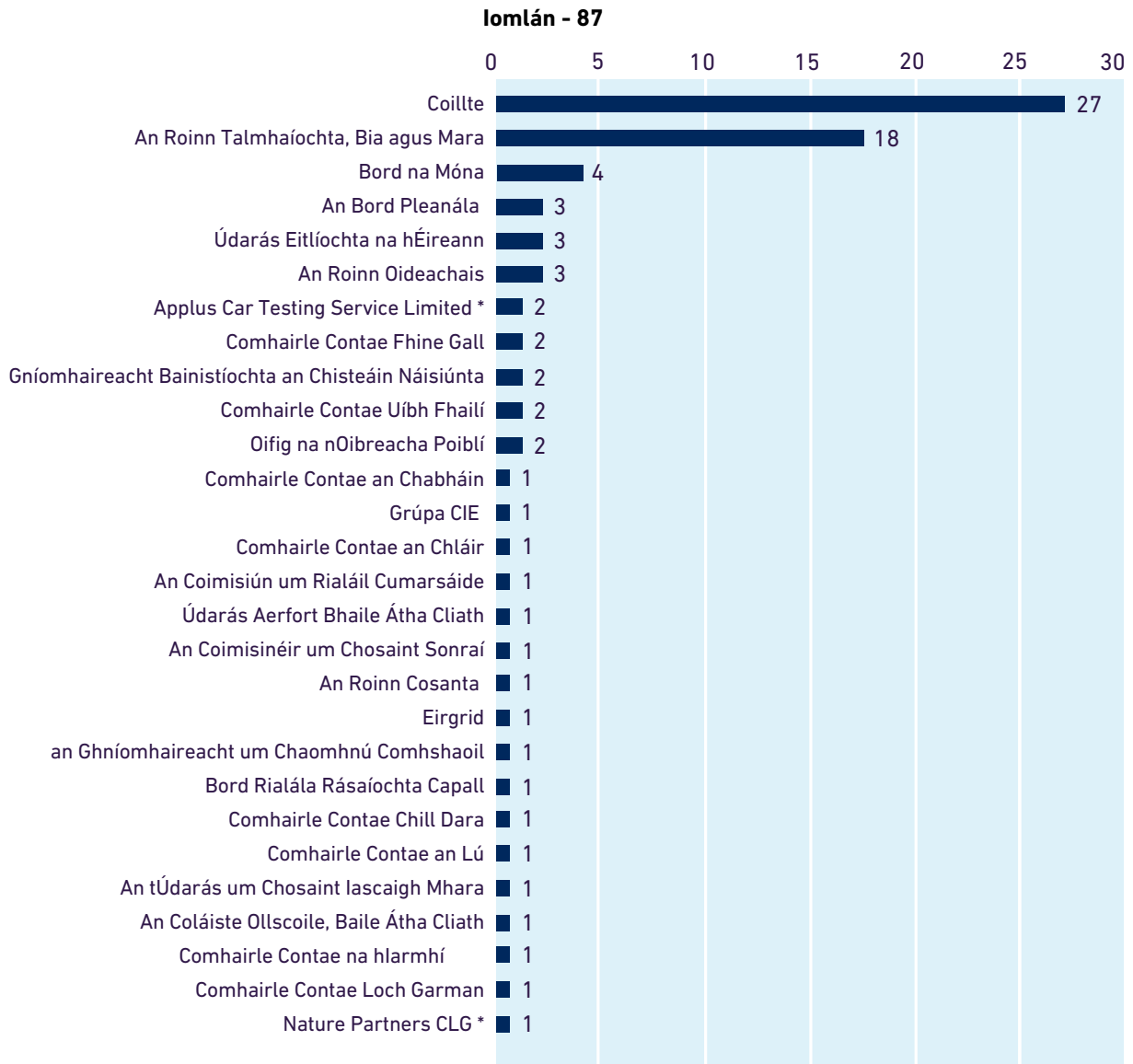
Is cúis áthais dúinn a thabhairt faoi deara go raibh laghdú suntasach ann i líon na ndiúltuithe measta in 2023. Fuaireamar 351 achomharc san Oifig seo. Tharla laghdú 40.41% ar líon na ndiúltuithe measta ag an gcinneadh tosaigh, laghdú 62.19% ag an gcéim athbhreithnithe inmheánaigh agus laghdú 76.27% ar líon na n-údarás poiblí ar theip orthu cinneadh tráthúil a dhéanamh ag an dá chéim. Is ábhar misnigh dúinn an laghdú seo i sciar na ndiúltuithe measta. Léiríonn sé go bhfuil níos mó iarratas RFC á bpróiseáil go tráthúil ag na húdaráis phoiblí.

É sin ráite, d'fhéadfaí tuilleadh feabhais a chur ar chúrsaí. Sna figiúirí thíos, fecitear go bhfuil líon ard cásanna ann inar theip ar údaráis phoiblí cinneadh a dhéanamh in am ag gach céim den phróiseas próiseála d'iarratais RFC.

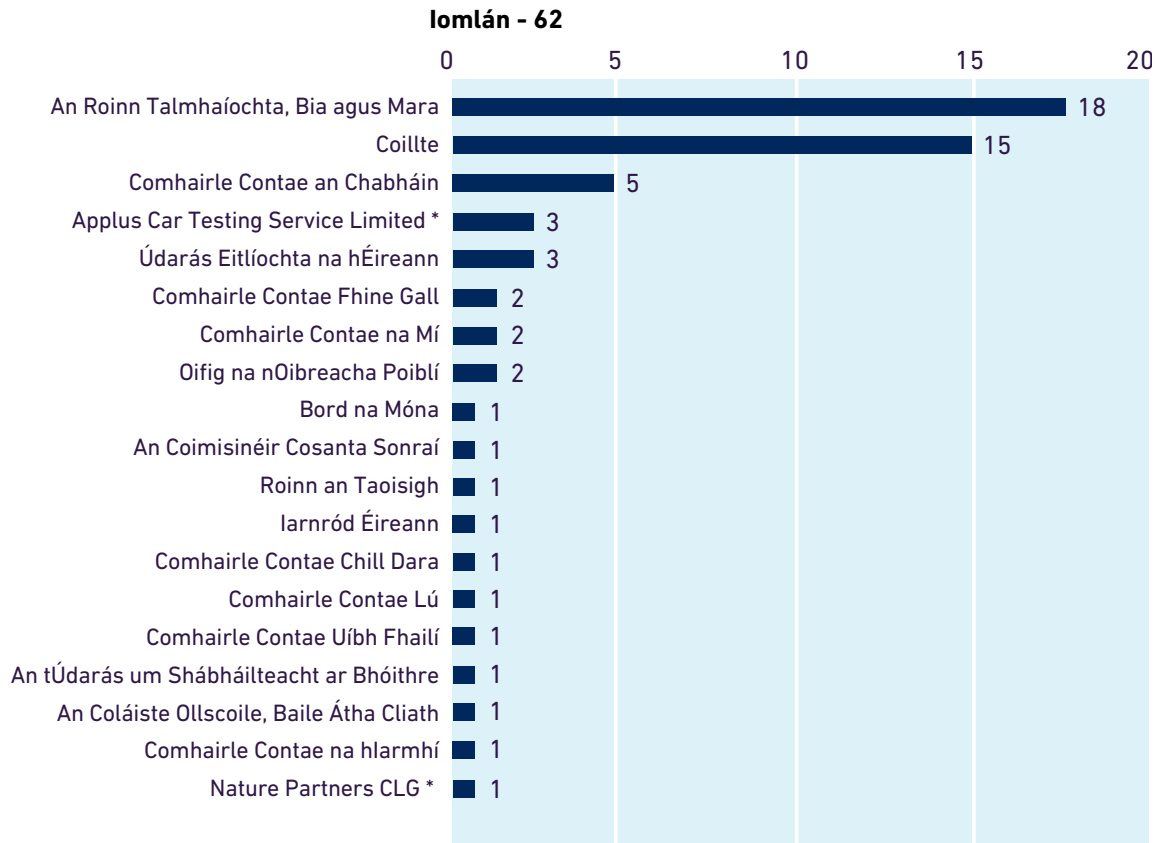
Cásanna inar theip ar údaráis phoiblí cinneadh a thabhairt in am



Diúltuithe measta ag an gcéad chinneadh



Diúltuithe measta ag an Athbhreithniú Inmheánach (an dara céim)



*An cheist a bhaineann leis na cásanna sin is cé acu is údarás poiblí é an t-aonán, a ndearnadh an t-iarraitas air, nó nach ea de réir an tsainmhínte atá le fáil i Rialacháin RFC.

Coinneáil ar an eolas

D'fhreastail ár bhfoireann ar roinnt cúrsaí oiliúna agus comhdhálacha le linn 2022. Chuir siad sin deiseanna tábhachtacha ar fáil chun nascadh le cleachtóirí agus acadóirí agus foghlaim uathu. D'fhreastail foireann OCFC ar Chomhdháil DLí agus an Chomhshaoil i gColáiste na hOllscoile, Corcaigh i mí Aibreáin 2023 agus thug siad cur i láthair ag an gComhdháil. Ina theannta sin, d'fhreastail ár bhfoireann ar imeachtaí a d'óstáil Ionad na hÉireann um an DLí Eorpach agus Lónra Comhshaoil na hÉireann níos deireanaí sa bhliain.

Ghlacamar páirt in imeacht oiliúna in Aibreán 2023 leis an Roinn Gnóthaí Eachtracha maidir le hiarratais RFC a phróiseáil. Cuirimid fáilte i gcónaí roimh an deis déileáil le páirtithe leasmhara, go háirithe oifigigh RFC, agus léargas a thabhairt maidir leis na saincheistanna a thagann chun cinn san Oifig le feabhas a chur ar phróiseáil ar iarratais RFC.

Straitéis agus Rialachas Corparáideach

Soláthraíonn Oifig an Ombudsman tacaíocht ó Sheirbhísí Corparáideacha d'Oifig an Choimisinéara um Fhaisnéis Comhshaoil agus do roinnt Oifigí reachtúla eile. Cé go ndéanann na hOifigí éagsúla feidhmeanna reachtúla soiléire ar leith, feidhmíonn an Oifig mar ghníomhaireacht chónasctha aonair i dtéarmaí eagraíochtúla. Tá an Oifig maoinithe ag Vóta amháin agus á maoirsiú ag Oifigeach Cuntasaíochta (Ard-Stiúrthóir) a fhaigheann tacaíocht ó Choiste Comhairleach Bainistíochta. Agus iad i mbun a gcuid oibre glacann ár bhfoireann leis na hoibleagáidí traidisiúnta príobháideachta agus ioncracais i bhfeidhmiú a ndualgas oifigiúil agus ag an am céanna ag cosaint agus ag caomhnú neamhspleáchas reachtúil agus feidhmeanna gach ceann de na comhoifigí ina n-oibríonn siad.

Tá nuashonruithe maidir lenár Rialachas Corparáideach leagtha amach ar an leathanach [Straitéise agus Rialachais](#) ar láithreán gréasáin Oifig an Ombudsman.

Cuimsíonn an nasc seo nuashonruithe maidir le:

- ár bPlean Straitéiseach 2022-25
- ár gcomhlíontacht leis na ceanglais faoi Acht na Gaeilge
- ár gcomhlíontacht le ceanglais an Achta um Nochtadh Cosanta
- ár gcomhlíontacht leis na ceanglais faoin Acht a.42 IHREC (an dualgas ar sheirbhísigh phoiblí i ndáil le cearta daonna)
- ár gCreat Rialachais Chorparáidigh
- ár bhFoireann Ghlas (lena n-áirtear ár gcomhlíonadh leis an Acht um Ghníomhú ar son na hAeráide agus um Fhorbairt Ísealcharbóin)
- ballraíocht eagraíochtaí.

Caibidil 2

Téamaí a eascraíonn as achomhairc a réitíodh in 2023



Caibidil 2: Téamaí a eascraíonn as achomhairc a réitíodh in 2023

Tá roinnt téamaí aitheanta againn, a tháinig chun cinn le linn achomhairc a bheith á réiteach ag an Oifig seo. Leagtar béim sa chuid seo ar na réimsí ina gcreidimid go bhfuil feabhas riachtanach agus gur féidir feabhas a chur orthu. San áireamh againn anseo tá cás-staidéir, ar achoimrí gearra iad ar chinntí a eisítear, ionas go mbeidh tuiscint níos fearr ag údaráis phoiblí agus ag iarrthóirí ar an gcaoi a bhfeidhmíonn an próiseas achomhairc RFC. Cuirimid naisc ar fáil freisin chuig na cinntí iomlána atá ar fáil ar ár suíomh gréasáin.

Is iad seo a leanas na príomhthéamaí ar mian linn aird a tharraingt orthu:

1. An dualgas cúiseanna a thabhairt do chinntí faoi na Rialacháin RFC;
2. An riachtanas cuardach sásúil a dhéanamh;
3. Iarratais ar léir nach bhfuil réasúnach a bhreithniú;
4. Idirghníomhaíocht leis an OCFC.

Dualgas chun cúiseanna a thabhairt do chinntí faoi na Rialacháin RFC

Ceanglaítear ar údaráis phoiblí, mar ábhar dlí, cúiseanna a thabhairt lena gcinntí. Ceanglaíonn airteagail 7(4) agus 11(4) de na Rialacháin RFC ar údaráis phoiblí cúiseanna don diúltiú a sholáthar ag an gcéim thosaigh agus ag céim an athbhreithnithe inmheánaigh araon, ar aon dul le hAirteagal 4(5) den Treoir RFC. De réir Réamhaithrise 16 den Treoir RFC "...Ba chóir cúiseanna an diúltaithe a sholáthar don iarratasóir laistigh den achar ama atá leagtha síos sa Treoir seo." Foráiltear in Airteagal 4(5) den Treoir RFC "go gcuirfear in iúl don achomharcóir mainneachtain an údaráis phoiblí an fhaisnéis go léir nó cuid di a sholáthar... San fhógra luafar na cúiseanna gur diúltaíodh don iarratas...".

Arís in 2023, ba é an téama coitianta a bhain leis na hachomhairc a ndearna an Oifig seo imscrúdú orthu ná teip na n-údarás poiblí réasúnú leordhóthanach a chur ar fáil dá gcinntí. Tagann an easpa comhlíonta sin chun cinn ar bhealaí éagsúla. Chomh maith le cásanna nár tugadh míniú ar bith ina leith, áirítear cásanna ina ndeireann údaráis phoiblí nach faisnéis chomhshaoil í an fhaisnéis, nó nach bhfuil aon fhaisnéis ábhartha acu, gan aon mhionsonraí a chur ar fáil maidir leis an gcaoi ar thángthas ar na conclúidí sin. Chuimsigh sé freisin cásanna ina luann údaráis phoiblí foras le diúltú dá bhforáiltear i Rialacháin RFC gan míniú a thabhairt ar cén fáth gur mheas siad, go háirithe, go mbeadh feidhm ag an bhforas sin, nó cén fáth gur mó an leas chun an fhaisnéis a dhiúltú ná leas an phobail ina nochtadh.

Má theipeann ar údarás poiblí cúiseanna a thabhairt ag aon chuid den phróiseas RFC, sáraíonn sé na dualgais a chuireann Rialacháin RFC agus an Treoir ar údaráis phoiblí. Mar thoradh air sin, baintear úsáid neamhéifeachtúil as acmhainní d'údaráis phoiblí, don OCFC, don achomharcóir agus don tseirbhís phoiblí i gcoitinne.

Tá sé soiléir sna Rialacháin agus sa Treoir RFC go bhfuil toimhde ann i bhfabhar scaoileadh faisnéise comhshaoil. Tríd is tríd, ciallaíonn sé seo nuair a dhéantar iarratas faoi na Rialacháin RFC, nach mór d'údarás poiblí an fhaisnéis uile a iarrtar a chur ar fáil nó a leagan amach go soiléir cén fáth nach measann sé gur gá nó gur cuí an fhaisnéis go léir nó cuid di a chur ar fáil. Ní mór gach iarratas a bhreithniú ar bhonn aonair.

Ina theannta sin, i *Right to Know v An Taoiseach* [2018] IEHC 372 leag an Ard-Chúirt amach go soiléir nach leor ach foráil de na Rialacháin RFC a lua chun an dualgas cúiseanna a thabhairt a chomhlíonadh. Le cásdlí CBAE maidir leis an Treoir agus maidir le Rialachán Aarhus AE, dearbhaítear freisin cineál fairsing an dualgais cúiseanna a thabhairt.

Thar aon ní eile, is é bunchuspóir an dualgais cúiseanna a thabhairt ná cead a thabhairt don fhaighteoir an bonn ar a ndearnadh an cinneadh a thuiscint, ionas gur féidir leo cinneadh a dhéanamh an mian leo agóid a dhéanamh i gcoinne an chinnidh sin. Is léir ó aighneachtaí chuig an Oifig seo gur minic a chuireann iarrthóirí, in easpa réasúnaíocht ar bith ar fáil dóibh maidir le cinneadh, agóid in aghaidh chinneadh an údaráis phoiblí ar an mbonn sin amháin. Ó idirghníomhaíochtaí le hachomharcóirí, go háirithe ag céim an tsocraithe go luath, is léir dúinn go nglacfaidh roinnt iarrthóirí le toradh an iarratais gan dul ar iontaoibh na hOifige seo, dá mbeadh an réasúnaíocht soiléir ón tús.

Is é ár gcur chuige ginearálta i leith cásanna inar dhiúltaigh an t-údarás poiblí cúiseanna sásúla a sholáthar ná cinneadh an údaráis phoiblí a chur ar neamhní agus ordú a thabhairt dó dul i mbun próisis chinnteoireachta nua nó an fhaisnéis a scaoileadh.

Sna cás-staidéir feictear samplaí den líon suntasach achomharc ar dhéileáil an OCFC leo le linn 2023 nuair nár tugadh cúis shoiléir lena gcinntí. Tá tuilleadh samplaí le feiceáil freisin sa mhír a bhaineann le “Cásanna Cuardaigh”.

Teipeann ar Údarás Eitlíochta na hÉireann cúiseanna a thabhairt le diúltú faisnéis a sholáthar faoi thimpiste

Sa chás seo, an cheist a bhí ann ná an raibh údar ag Údarás Eitlíochta na hÉireann (ÚEE) diúltiú don iarratas a rinne an t-achomharcóir ar fhaisnéis a bhain leis “an tuairisc a d’ullmhaigh Rialtóirí Aerthráchta faoin timpiste R116 ag Cuan an Fhóid Duibh i mí an Mhárta 2017.”

Sa chinneadh a rinne sé ar dtús, chuir ÚEÉ tuairisc ÚEÉ ar fáil don achomharcóir agus dúirt sé go raibh an t-eolas a bhí á lorg le fáil ann. Dúirt an t-achomharcóir, san iarratas a rinne sí ar athbhreithniú inmheánach, nárbh í sin an Tuairisc Rialtóra Aerthrachta a bhí á lorg aici. San athbhreithniú inmheánach, dúirt ÚEÉ go bhfuil sonraí oibríochtúla faoi chosaint Rialacháin AE 376/2014, a bhaineann le tuairisciú, le hanailísiú agus obair leantach maidir le teagmhais a tharlaíonn san eitlíocht shibhialta. Mhínigh sé freisin gurb é an tAonad um Imscrúdú Aerthionóiscí an comhlacht cú chun a leithéid d'fhaisnéis a sholáthar.

D'iarr an Oifig seo go minic le linn an athbhreithnithe ar ÚEÉ cóip den Tuairisc Rialtóra Aerthrachta a sholáthar agus lorgaíomar deimhniú maidir le cén fáth go mbeadh díolúine ag baint lena leithéid d'fhaisnéis a scaoileadh faoi Rialacháin an AE. Rinne ÚEÉ tagairt arís do Rialachán AE 376/2014, gan sonraí a thabhairt faoin mbaint atá ag an Rialachán seo leis an iarratas, agus dúirt sé arís gurb é an tAonad um Imscrúdú Aerthionóiscí an comhlacht cú chun a leithéid d'fhaisnéis a sholáthar. Níor mhínigh ÚEÉ an chúis ar dhiúltaigh sé an fhaisnéis a bhí á lorg a scaoileadh. Níor fhreagair sé ceistanna áirithe a chuir an Oifig seo ach an oiread.

Sa chinneadh a rinne sé, chuir an Coimisinéir béim ar dhualgas na n-údarás poiblí faoin Treoir RFC agus na Rialacháin RFC cúiseanna a sholáthar nuair a dhiúltaítear d'iarratas RFC. Ní raibh an Coimisinéir sásta gur chomhlíon ÚEÉ go hiomlán an Treoir RFC agus na Rialacháin RFC. Dúirt sé nár luaigh ÚEÉ aon chúis faoin Rialachán AE mar údar chun an Tuairisc Rialtóra Aerthrachta a dhiúltú. Dúirt sé nach é ról an OCFC forais nó cúiseanna a dheimhniú thar ceann ÚEÉ.

Mar thoradh air sin, chuir an Coimisinéir ar neamhní go hiomlán cinneadh ÚEÉ agus thug sé ordú dó dul i mbun próisis chinnteoireachta nua maidir le hiarratas an achomharcóra, ceann a bheidh ag teacht le Rialacháin an RFC.

OCE-127739-F6N9X8 *An tUasal H agus Údarás Eitlíochta na hÉireann*

Ní léiríonn cinneadh na Roinne Talmhaíochta ar fhógraí láithreáin foraoiseachta go gcuirfí isteach ar rúndacht

Sna cásanna seo, ban cheist a bhí ann ná an raibh an ceart ag an Roinn gan rochtain a sholáthar ar ainmneacha agus seoltaí ar fhógraí láithreáin foraoiseachta.

Dhiúltaigh an Roinn, ina cinntí, rochtain a sholáthar ar ainmneacha agus ar sheoltaí faoi airteagal 8(a) (i) de na Rialacháin RFC, ina ndéantar an fhoráil "ní chuirfidh údarás poiblí faisnéis chomhshaoil ar fáil...i gcás ina ndéanfadh nochtadh na faisnéise dochar do



rúndacht faisnéise pearsanta a bhaineann le duine nádúrtha nár thoiligh go scaoilfí an fhaisnéis sin, agus má tá an rúndacht sin cosanta faoin dlí”.

Sa chinneadh a rinne sé, tharraing an Coimisinéir aird ar an tábhacht a bhaineann ar fhoclaíocht na forála díolúine faoi chaibidil agus an cóir brath uirthi. Má táthar ag brath ar airteagal 8(a)(i) de na Rialacháin RFC, ní mór d’údarás poiblí a léiriú go bhfuiltear ag déileáil le faisnéis phearsanta a bhaineann le duine nádúrtha nár thoiligh go scaoilfí an fhaisnéis; go bhfuil rúndacht ag baint leis an fhaisnéis phearsanta, go bhfuil foráil faoin dlí do rúndacht na faisnéise pearsanta sin; agus go mbeadh drochthionchar ar an rúndacht sin dá scaoilfí í. Ní mór don údarás poiblí a léiriú go bhfuil nasc soiléir idir scaoileadh na faisnéise atá á coinneáil agus aon drochthionchar. Ba chóir go bhféadfaí an riosca a thuar go réasúnta go mbainfear an bonn den rúndacht agus ní cóir gur riosca hipitéiseach amháin atá i gceist.

Dúirt an Coimisinéir gur léir go raibh easpa cúiseanna mar bhonn don diúltiú a rinne an Roinn an fhaisnéis a scaoileadh. Mhínigh sé nach leor foráil díolúine a lua gan míniú a sholáthar. Bhí sé sásta nár sholáthair an Roinn cúiseanna leordhóthanacha mar bhonn don diúltiú.

Thug an Coimisinéir faoi deara freisin gur chuimsigh an fhaisnéis a bhí á coinneáil, ainmneacha agus seoltaí daoine a rinne iarratas ar cheadúnais fhoraiseachta. Bhí sé sásta go bhfuil ainm, baile fearainn agus contae iarratasóra le feiceáil ar fhógra láithreáin atá ar taispeáint go poiblí mar chuid den nós imeachta iarratais atá i bhfeidhm chun ceadúnas foraiseachta a fháil. Mar sin, ós rud é go raibh an fhaisnéis seo san fhearann poiblí roimhe seo sa chomhthéacs sin, chinn sé nach faisnéis rúnda í. Chinn sé, mar sin, nár chruthaigh an Roinn gur cuireadh an fhaisnéis in eagar de réir riachtanas na Rialachán RFC.

Chuir an Coimisinéir cinneadh na Roinne ar neamhní agus dhírigh sé go scaoilfí na nainmneacha agus na seoltaí a bhí ar na fógraí láithreáin foraiseachta a bhain le hábhar.

Tá an cinneadh iomlán ar fáil ag: **OCE-128262-B9G0Z2** and **OCE-138020-L5T6K8** *An tUasal F agus an Roinn Talmhaíochta, Bia agus Mara*

An riachtanas cuardaigh leordhóthanacha a dhéanamh

Mar a tharla sna blianta roimhe seo, d’eascair roinnt achomharc a fuarthas san Oifig in 2023 as diúltuithe ó údarais phoiblí, faisnéis a eisiúint d’iarratasóirí, nó gan ach faisnéis a scaoileadh go páirteach chucu, ar an mbonn nach raibh an fhaisnéis sin acu.

Is é cur chuige na hOifige seo nuair atáthar ag déileáil le cásanna inar dhiúltaigh údarás poiblí d’iarratas faoi airteagal 7(5) ná scrúdú a dhéanamh ar na céimeanna a tógadh chun faisnéis comhshaoil ábhartha a shainaithint agus a aimsiú, ag brath ar chúinsí faoi leith. Chun a dheimhniú ar tógadh céimeanna cuí, cuirtear i bhfeidhm caighdeán réasúntachta.

Go minic ní mór don údarás poiblí roinnt comhthéacs a sholáthar maidir leis an tsaincheist chomh maith le heolas faoina nósanna imeachta inmheánacha agus na doiciméid a d'fhéadfaí a bheith ag súil go nginnfear iad mar thoradh ar iarratas faoi leith. Ní gnách go gcuardaíonn an Oifig seo faisnéis comhshaoil.

Is éard atá i gceist le hAirteagal 7(5) de na Rialacháin RFC ná an fhoráil a fheidhmíonn nuair nach bhfuil an fhaisnéis iarrtha i seilbh an údaráis phoiblí nó nach bhfuil an fhaisnéis á coimeád thar ceann an údaráis, nó ní ann don fhaisnéis; agus ceanglaíonn sé ar an údarás poiblí é sin a chur in iúl don iarrthóir. Mar sin féin, cé nach nach bhfuil aon ní sna Rialacháin faoi chuardaigh a dhéanann údaráis phoiblí, chun go mbeidh údarás poiblí ábalta brath ar an airteagal seo, is réamhriachtanas nádúrtha é go mbeidh curdach réasúnta déanta aige mar fhreagairt ar iarratas faoi na Rialacháin RFC chun a bheith cinnte nach bhfuil an fhaisnéis ina seilbh acu. Tá baint ag an riachtanas seo leis an dualgas atá ar údaráis phoiblí údar a thabhairt dá gcinntí, lena n-áirítear dearbhú nach bhfuil an fhaisnéis atá faoi réir iarratais RFC ina seilbh acu.

Agus é ag déileáil le cásanna den chineál seo, ní mór don Choimisinéir a bheith sásta go ndearna údaráis phoiblí cuardaigh réasúnta agus leordhóthanach chun an fhaisnéis go léir a shainathint agus a aimsiú atá á coinneáil aige nó atá ábhartha d'iarratas an achomharcóir, agus gur cuireadh an fhaisnéis sin go léir ar fáil don achomharcóir de réir na Rialachán, seachas sa chás go bhfuil sí faoi réir díolúine.

Nuair a bhí achomhairc á bpróiseáil bunaithe ar airteagal 7(5) in 2023, thug an OCFC faoi deara nach ndearna údaráis phoiblí, i líon suntasach de chásanna, cuardach ar bith an fhaisnéis a d'iarradh a shainathint nó rinneadh curadaigh neamhleora.

Más amhlaidh nach ndearna údaráis phoiblí faisnéis a chuardach ar chor ar bith nó má rinne said cuardach a bhí neamhleor, níltear ag comhlíonadh na Rialacháin RFC, atá bunaithe ar fhaisnéis comhshaoil a bheith ar fáil, faoi réir roinnt díolúintí teoranta. Cuirtear i gcuimhne d'údaráis phoiblí nach féidir leo na rialacháin RFC a chomhlíonadh mura ndéanann siad cuardach leordhóthanach. Ar an dóigh sin, beidh siad ag freastail ar leas an phobail trí fhaisnéis comhshaoil a scaoileadh d'iarrthóirí.

Ba chóir a nótáil go gcuireann na cásanna cuardaigh seo ualach trom ar acmhainní na hOifige seo mar éilíonn siad go gcaithfidh imscrúdaitheoirí am ag déileáil le húdaráis phoiblí chun cuardaigh a dhéanamh nó má chinntear gan cuardaigh a dhéanamh, cibé cé acu. Go minic,



tarlaíonn sé go sainaithnítear taifid bhreise agus go scaoiltear iad, nó soláthraítear tuilleadh sonraí, agus mar thoradh air sin, tá na hachomharcóirí sásta an t-achomharc a tharraingt siar. Sá dá chás seo, bheadh sé níos fearr dá ndéanfadh na húdaráis phoiblí cuardach leordhóthanach ar dtús chun gach taifead ábhartha a shainaithint agus dóthain sonraí a sholáthar ina gcinntí tosaigh agus san athbhreithniú inmheánach chun go mbeidh iarrthóirí ábalta a mheas an bhfuil taifid bhreise ann a bhaineann lena n-iarratas. Bíonn mar thoradh ar chuardach neamhleora de chuid na n-údarás poiblí ná go ndéantar achomharc go dtí an Oifig seo, agus dá bharr sin baineann na húdaráis phoiblí úsáid as tuilleadh acmhainní chun iarratais RFC a phróiseáil.

Scaipeadh gníomhach d’Fhaisnéis Comhshaoil

Ceanglaíonn forálacha airteagal 3(5) agus 7 den Treoir RFC ar Bhallstáit córais a chur i bhfeidhm a chinnteoidh go gcoimeádann údaráis phoiblí faisnéis comhshaoil agus go ndéanann siad í a thaifeadadh i gceart ionas gur féidir í a scaipeadh agus a chur ar fáil don phobal. Tá dualgas ar údaráis phoiblí faoi airteagal 4 de na Rialacháin RFC, faisnéis chomhshaoil a choinneáil ar bhealach atá in-atáirgthe agus inrochtana go héasca chun a chinntiú go bhfuil sí cruinn agus cothrom le dáta. Ceanglaíonn sé freisin ar údaráis phoiblí cláir nó liostaí faisnéise comhshaoil a choimeád agus go mbeidh sé soiléir cá bhfuil an fhaisnéis sin le fáil.

Ina theannta sin, tá sé de dhualgas ar údaráis phoiblí cinnte a dhéanamh de go bhfuil dóthain nósanna imeachta i bhfeidhm chun a chinntiú go gcuirtear ar fáil d’achomharcóir an fhaisnéis atá ina seilbh acu nuair a dhéantar iarratas RFC, agus go bhfuil an fhaisnéis sin, chomh fada agus is eol dóibh, cruinn. Mar a dúradh cheana, níl sé inmhianach go mbeidh mórán comhfhreagrais ann idir údarás poiblí agus OCFC chun a chinntiú go ndéantar a leithéid de chuardach.

Is maith is eol do OCFC go n-úsáideann na cuardaigh a dhéanann údaráis phoiblí acmhainní, agus i roinnt cásanna baintear baill foirne ó dhualgais thábhachtacha eile. Má dhéantar cuardach go maith agus ar bhealach cuí, áfach, beidh mar thoradh air sin ná go mbeidh laghdú ar an ualach oibre, mar beidh na hiarrthóirí sásta, má thugtar an t-eolas sin dóibh, go ndearna na húdaráis phoiblí cuardach cuimsitheach, níos sásta ná mar bheidís dá bhfaigheadh siad litir ina ndiúltaítear an fhaisnéis a scaoileadh nó cuid di a scaoileadh. Dá réir sin, ní dócha go ndéanfaidh siad iarratas ar athbhreithniú inmheánach maidir leis an gcinneadh tosaigh nó, ní dócha go ndéanfaidh said achomharc go dtí ár nOifig maidir le torthaí an athbhreithnithe inmheánaigh, agus is fearr is féidir an fhoireann a oibríonn ar iarratais sna húdaráis phoiblí a imlonnú.

Cuardach neamhleor déanta ag an Roinn Talmhaíochta i 20 achomharc

Sa chás thíos, léirítear mainneachtain údaráis phoiblí maidir lena a dhualgas cuardach leordhóthanach a dhéanamh. Is cás ilchodach é a eisíodh ar 30 Bealtaine 2023 a bhain le 20 achomharc a cuireadh ar aghaidh chuig OCFC agus a tháinig chun cinn toisc gur dhiúltaigh an Roinn Talmhaíochta, Bia agus Mara faisnéis a bhain le cúrsaí foraoiseachta.

I ngach achomhairc, d'aithin OCFC nár chomhlíon próiseas cinnteoireachta na Roinne na freagrachtaí a chuireann na Rialacháin RFC ar údaráis phoiblí. Sa chinneadh tugadh faoi deara, tar éis athbhreithniú a dhéanamh ar na hachomhairc, nach ndearna an Roinn cuardaigh sásula agus ba dhíol suntais é nár thug an Roinn cúis ar bith gur diúltaíodh do na hiarratais ina cuid cinntí. Tugadh faoi deara sa chinneadh, ní hamháin de bharr na Rialachán agus na Treorach RFC atá an dualgas ann cúiseanna a thabhairt, ach aithítear mar bhunphrionsabal é go ginearálta sa dlí riaracháin agus is eilimint bhunúsach é den cheartas bunreachtúil (féach, mar shampla, *Right to Know v An Taoiseach* [2018] IEHC 372, *Meadows v an tAire Dlí agus Cirt* [2010] IESC 3 agus *Balz & Anor v An Bord Pleanála & Ors* [2019] IESC 90). Tuigtear ó na breithiúnais seo, má dhiúltaítear faisnéis a sholáthar d'iarrthóir, nó cuid den fhaisnéis din, tá an t-iarrthóir i dteideal míniú soiléir a fháil don diúltiú sin. An chúis taobh thiar den dualgas seo ná chun go mbeidh ar chumas iarrthóra cinneadh a dhéanamh é nó í féin an bhfuil údar leis an diúltiú sin. Bhí an Coimisinéir den tuairim go raibh sé “do-ghlactha gur sholáthair an Roinn na cúiseanna díreach céanna mar fhreagairt ar mhórán iarratas, gan fiú leibhéal bunúsach den réasúnaíocht taobh thiar den chinneadh a sholáthar. Téann sé seo i gcoinne fuarlitreach agus spioraid na Rialacháin RFC faoina bhfuil an Roinn ceangailte”. Chun a ceart a thabhairt don Roinn, tar éis cumarsáid ó OCFC, d'admhaigh sí go bhféadfadh sé nár chomhlíon sí go hiomlán na Rialacháin RFC agus na hiarratais seo á bpróiseáil aici. Toisc gur measadh nach raibh sé cuí ordú a thabhairt an fhaisnéis a bhí á lorg sna hachomhairc seo a scaoileadh, cuiradh ar ais chuig an Roinn iad le haghaidh athbhreithnithe nua agus próisis chinnteoireachta nua.

Tá an cinneadh iomlán ar fáil ag: **OCE-125285-R5R7T4** *Achomharcóirí éagsúla agus an Roinn Talmhaíochta, Bia agus Mara (an Roinn)*

Iarratais ar léir go bhfuil siad míréasúnta

De réir airteagail 9(2) de na Rialacháin RFC, a thrasúíonn airteagal 4(1)(b) ón Treoir RFC, “go bhféadfaidh údarás poiblí diúltú faisnéis a chur ar fáil má mheastar go bhfuil an t-iarratas míréasúnta, mar gheall ar an réimse ábhair atá á lorg, má tá an t-iarratas ró-ghinearálta nó mura bhfuil an t-ábhar a iarradh curtha i gcrích go fóill.”

Sa chás go bhfuil sé ar intinn ag údarás poiblí iarraidh faoi airteagal 9(2)(a) de Rialacháin RFC a dhiúltú, ba cheart dó cuidiú ar dtús leis an iarrthóir an iarraidh a athfhoirmliú de réir mar is cuí. Ba cheart d'údaráis phoiblí agus d'iarrthóirí araon féachaint le hidirchaidreamh cuiditheach a dhéanamh d'fhonn an iarraidh a phróiseáil go hiomlán chomh héifeachtúil agus is féidir.

Tuigtear faoi airteagal 7(2)(b) de na Rialacháin RFC agus airteagal 3(2)(b) den Treoir RFC go mbeifear ag próiseáil iarratais an-mhóra agus casta, agus ceadaítear síneadh ama ar an ngnáthamfráma aon mhí faoina gcleanglaítear an t-údarás poiblí cinneadh a eisiúint. Ní gá, mar sin, go mbeidh iarratas clúdaithe faoin díolúine “míréasúnta go follasach” toisc go bhfuil sé ollmhór nó casta.

Níl sé i gceist le díolúine airteagail 9(2)(a) go tabharfaí cead do na húdaráis phoiblí gan a ndualgais a chomhlíonadh maidir le faisnéis comhshaoil a eagrú agus a scaipeadh faoi airteagal 5 de na Rialacháin RFC agus airteagal 7 den Treoir RFC. Tugtar cur chuige sriantach mar údarás de réir réamhaithrise 16 den Treoir, ina ndeirtear go mba chóir “go mbeadh scaoileadh faisnéise ann mar rial ghinearálta” agus de réir airteagail 10(4) de na Rialacháin ina bhforáiltear go mba chóir “cúiseanna diúltaithe a thuiscint ar bhonn sriantach ag tabhairt aird ar leas an phobail má scaoiltear faisnéis”. Ina theannta sin, ceanglaítear faoi airteagal 10(5), i gcúinsí ina bhfuil díolúine ag baint le cuid den fhaisnéis a iarradh nach mór don údarás poiblí a mheas an féidir codanna den iarratas a fhreagairt.

An follasach go bhfuil iarratas míreasúnta change to “an bhfuil iarratas míreasúnta go follasach, is gá scrúdú a dhéanamh ar an tionchar a bheadh ag déileáil leis an iarraidh ar an údarás poiblí. Is ar an údarás poiblí atá an fhreagracht a léiriú go bhfuil an tasc míreasúnta. Ceanglaítear ar údaráis phoiblí cúiseanna a thabhairt le haon diúltú den sórt sin ag céim an chéad chinnidh agus ag céim an chinnidh maidir le hathbhreithniú inmheánach araon.

Sna cás-staidéir thíos feictear samplaí d’achomhairc a raibh baint ag OCFC leo le linn 2023. Níor thug na húdaráis phoiblí údar leis an gcinneadh a rinne said gan rochtain ar fhaisnéis a cheadú faoi airteagal 9(2) de na Rialacháin RFC. I ngach ceann de na cásanna seo, cuireadh cinneadh an údaráis phoiblí ar neamhní agus cuireadh ar ais iad chun go ndéanfaí measúnacht nua orthu.

Fuarthas nach raibh aon údar le cinneadh Oifig na nOibreacha Poiblí go raibh iarratas míreasúnta amach is amach

Sa chás seo, scrúdaigh an Coimisinéir an raibh údar ag Oifig na nOibreacha Poiblí (OOP), faoi airteagal 9(2)(a) de na Rialacháin RFC, rochtain ar fhaisnéis a dhiúltaí. Bhain an fhaisnéis seo le tuilte agus/nó le hoibreacha cosanta tuilte a bhí molta ag Loch Fuinseann, Co Ros Comáin agus ar tháinig an fhaisnéis seo faoi scóip iarratais an iarrthóra, ina raibh cúig chuid, nó nár tháinig.

Ina chinneadh, ghlac an Coimisinéir leis gur sholáthair OOP sonraí don Oifig seo maidir le méid na faisnéise a bhí á lorg agus an obair a bheadh riachtanach chun iarratas an achomharcóra a phróiseáil. Bunaithe ar fhiricí an cháis, áfach, bhí an Coimisinéir den tuairim nach iarratas a bhí míreasúnta go follasach a bhí i gceist leis an iarratas.

Le linn an athbhreithnithe, chinn sé freisin go bhféadfadh sé nach ndearna OPP cuardaigh réasúnta ná leordhóthanacha chun an fhaisnéis a bhí á coinneáil aici a shainaithe agus a aisghabháil laistigh de scóip an iarratais cúig chuid a rinne an t-achomharcóir.

Mar thoradh air sin, chuir sé cinneadh OOP ar neamhní go hiomlán agus thug sé ordú go dtosófaí ar phróiseas nua cinnteoireachta de réir fhorálacha na Rialachán RFC.

Tá an cinneadh iomlán ar fáil ag: **OCE-115424-T4K5P6** *An tUasal B (thar ceann cliaint) agus Oifig na nOibreacha Poiblí*

Ní léiríonn cinneadh na Roinne Talmhaíochta go bhfuil ualach riaracháin iarratais míréasúnta amach is amach

An rud a raibh faoi chaibidil anseo ná an raibh údar ag an Roinn Talmhaíochta, Bia agus Mara (an Roinn) faoi airteagal 9(2)(a) de na Rialacháin RFC, diúltiú d'fhaisnéis a scaoileadh maidir le fógraí tosaíthe agus deiridh de chuid na Roinn maidir le ceadúnais/faomhadh foraoiseachta a tháinig laistigh de scóip iarratais an achomharcóra.

Sa chinneadh a rinne sé, tharraing an Coimisinéir aird ar an eisceacht in airteagal 9(2)(a) de na Rialacháin RFC agus nach bhfuil feidhm ag an eisceacht seo ach amháin sa chás go bhfuil ualach an-trom i gceist le riarachán an iarratais. Sa chás seo, chinn an Coimisinéir nár chuir an Roinn cúiseanna sásúla ar fáil agus níor léirigh sí conas a bheadh costas nó iarracht díréireach ag teastáil ón Roinn chun déileáil leis an gcás seo. Níor chruthaigh an Roinn go gcuirfí isteach go mór ar ghnáthghníomhaíochtaí na Roinne ná go bhféadfaí a mheas gur iarratas a bhí míréasúnta go follasach a bhí ann faoi mar thuigtear airteagal 9(2)(a).

Chinn an Coimisinéir freisin nach raibh údar ag an Roinn brath ar airteagal 9(2)(b) de na Rialacháin RFC mar níor sholáthraigh sí aon réasúnaíocht chun tacú leis an gcinneadh a rinne sí gur cuireadh an t-iarratas le chéile ar bhealach a bhí róghinearált.

Chuir an Coimisinéir cinneadh na Roinne ar neamhní agus chuir sé an cás ar ais chuig an Roinn chun go ndéanfadh sí an t-iarratas a phróiseáil de réir fhorálacha na Rialacháin RFC.

Tá an cinneadh iomlán ar fáil ag: **OCE-129253-V8R6Z0** *An tUasal A agus an Roinn Talmhaíochta, Bia agus Mara*

Idirghníomhaíocht le OCFC: Comhoibriú agus dul i ngleic leis na Rialacháin RFC

Ba é an téama coitianta a bhain leis na hachomhairc a ndearna an Oifig seo imscrúdú orthu in 2023 ná an gá atá ann i gcónaí go mbeidh rannpháirtíocht agus comhoibriú feabhsaithe ann idir iarrthóirí agus na húdaráis phoiblí ar an gcéad dul síos. Mar gheall ar líon na n-iarratas atá á fáil ó roinnt de na húdaráis phoiblí, ní mór d'iarrthóirí iarratais a chur isteach a dhíríonn go díreach an tsaincheist, agus déileáil leis na húdaráis phoiblí agus scóip na n-iarratas a bheachtú, más féidir.

Lena chois sin, ní mór d'údaráis phoiblí a chinntiú go bhfaigheann na cinnteoirí an tacaíocht agus an oiliúint atá riachtanach chun go ndéanfaidh siad cinntí atá ceart agus a chomhlíonann na Rialacháin.



Má oibríonn na páirtithe leasmhara le chéile chun an méid thuas a bhaint amach, cuirfear ar fáil d'iarrthóirí an fhaisnéis luachmhar atá á coinneáil ag údaráis phoiblí ach ní bheidh gá achomharc a dhéanamh don Oifig seo. Ar an dóigh seo, seachnófar an mhoill fhada d'iarrthóirí faisnéis a fháil, faisnéis a bhfuil siad i dteideal í a fháil, agus ní bheidh údaráis phoiblí ag baint úsáide as achmhainní teoranta chun déileáil le hachomhairc nach bhfuil gá leo.

Más gá achomharc a dhéanamh, tá sé ríthábhachtach go mbeidh idirchaidreamh sásúil ann go luath le OCFC le réiteach neamhfhoirmiúil ar achomhairc a bhaint amach, nuair is féidir. D'éirigh go maith leis an gcur chuige le bliain anuas agus tá OCFC tiomanta d'úsáid a bhaint as réitigh neamhfhoirmiúla nuair is féidir. Le linn na bliana seo caite, bhí idirchaidreamh an-mhaith idir an Oifig seo agus iarrthóirí agus baill an Roinn Talmhaíochta, Bia agus Mara foirne ábhartha laistigh de na húdaráis phoiblí a fhaigheann formhór na n-iarratas RFC, ar nós an Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta, agus Coillte, agus táimid ag súil go leanfar leis an gcaidreamh sin.

Sna cás-staidéir thíos, feictear samplaí den idirchaidreamh tairbhiúil seo, agus samplaí inar theip ar údaráis phoiblí na riachtanais a chomhlíonadh a cheanglaítear orthu faoi na Rialacháin RFC.

Teipeann ar Údarás Eitlíochta na hÉireann dul i mbun caidrimh le OCFC le linn imscrúdaithe

Sa chás seo, rinne an t-achomharcóir iarratas d'Údarás Eitlíochta na hÉireann (ÚEÉ) ag lorg cóip de thaifid faoi réad eitilte gan aithint a thuairiscigh roinnt píolótaí aerlíne do Rialtóirí Aertráchta na Sionnaine amach ó chósta thiar na hÉireann.

D'fhreagair ÚEÉ agus dúirt sé nárbh fhéidir leis na taifid sin a aimsiú. Ina dhiaidh sin, rinne an t-achomharcóir achomharc leis an Oifig seo ina ndúirt sé go raibh tuairiscí feicthe aige sna meáin go ndearna ÚEÉ tuairisc iomlán faoin teagmhas.

Scríobh imscrúdaitheoir na hOifige seo chuig ÚEÉ ar cheithre ócáid idir Eanáir agus Meitheamh 2023 agus iarradh ar ÚEÉ aighneachtaí mionsonraithe a sholáthar maidir leis an achomharc seo. Ní bhfuarthas freagra ar bith ar an gcomhfhreagras seo. Ar deireadh, chuir OCFC glaoch ar ÚEÉ. Le linn an ghlaigh seo, dúradh leis an imscrúdaitheoir nach raibh an t-oifigeach RFC ag obair ar an láithreán ar an lá sin agus nach sé ar fáil. Dúradh leis go gcuirfí an teachtaireacht ar aghaidh don oifigeach RFC agus go bhfaigheadh sé freagra a luaithe ab fhéidir. Ní raibh tuilleadh teagmhála ann ó ÚEÉ.

Mar sin, ní raibh ar chumas na hoifige seo athbhreithniú cuimhsitheach a dhéanamh sa chás seo de bharr easpa teagmhála ó ÚEÉ. Ceanglaítear ar údaráis phoiblí na Rialacháin RFC a chomhlíonadh agus sa chinneadh a rinne sé, dúirt an Coimisinéir go raibh iompar ÚEÉ do-ghlactha agus go mba chóir dó bearta a chur i bhfeidhm láithreach chun a chinntiú go mbeidh teagmháil cheart ann le OCFC agus go gcomhlíonfar na Rialacháin RFC.

Chuir an Coimisinéir cinneadh ÚEÉ ar neamhni agus thug sé ordú dó próiseas nua cinnteoireachta a thosú. Tugadh ordú d'ÚEÉ gach céim réasúnta a thógáil chun aon fhaisnéis a thagann faoi scóip an iarratais a rinne an tachomharcóir, a shainathint agus a aisghabháil agus na céimeanna sin a chur i láthair don achomharcóir, mar a éilítear faoi na Rialacháin RFC.

Tá an cinneadh iomlán ar fáil ag: **OCE-127738-G5G7B7** - *X agus Údarás Eitlíochta na hÉireann*

Toilíonn Coillte do phróiseas neamhfoirmiúil cinnteoireachta

Le blianta beaga anuas, chonacthas méadú suntasach ar líon na n-iarratas ag lorg faisnéis comhshaoil ó údarais phoiblí, agus dá bharr sin, chonacthas méadú ar líon na n-achomharc a cuireadh chuig an Oifig seo. Mar thoradh air seo, feictear go bhfuil brú níos mó ar fhoireann na n-údarás poiblí agus ar fhoireann na hOifige seo araon déiláil leis na hiarratais seo go tráthúil.

Cé go bhfuil méadú tagtha ar líon na n-iarratas ar fhaisnéis comhshaoil a thagann isteach go dtí údarais phoiblí faoi na Rialacháin RFC le fiche a ceathair mí anuas, is iad na húdarais a bhfuil baint dhíreach acu le hoibríochtaí sa comhshaoil nádúrtha a bhfuil méadú an-suntasach feicthe acu faoin gcóras RFC. Is léir é seo ó líon na n-achomharc a tháinig isteach chuig OCFC mar gheall ar Coillte, an comhlacht leathstáit a dhéanann bainistíocht ar thalamh foraoiseachta na hÉireann. Cuireann Coillte spás áineasa ar fháil freisin chomh maith le hathshlánú dúlra agus fotháirgí foraoiseachta a phróiseáil. De bharr méid agus nádúr dinamiciúil an eastáit foraoiseachta atá faoi bhainistíocht Coillte, tá líon suntasach tagtha ar líon na n-iarratas a fhaigheann sé.

Go luath sa bhliain 2023, rinneadh athbhreithniú ar ár riar cásanna agus chonacthas sna cásanna ina raibh baint ag Coillte leo, gur dócha go gcuirfí na cinntí a rinne Coillte ar neamhni agus go gcuirfí na hiarratais isteach arís. Mar thoradh air seo, phléamar é seo le Coillte agus nach mbeadh gá le cinneadh aonair a dhéanamh i ngach cás sula gcuirfí na hiarratais isteach arís.

Sainathníodh 20 achomharc mar chuid den athbhreithniú seo agus bhain siad leis an gcaoi a bhí airteagal 7(5) de na Rialacháin RFC á chur i bhfeidhm ag Coillte. Baineann sé seo leis an bpróiseas cuardaigh a dhéanann údarais poiblí nuair a fhaightear iarratas ar fhaisnéis agus bhain na 20 achomharc le cinntí a rinne Coillte ar dháta idir 2022 agus go luath i 2023, bunaithe go príomha ar oibríochtaí foraoiseachta de chuid Coillte. D'aithin an Oifig seo go raibh na cásanna seo oiriúnach chun go ndéanfaí athbhreithniú orthu mar, le himeacht aimsire agus feabhsuithe ar phróisis cuardaigh Coillte, bheifí ábalta tuilleadh eolais a shainathint agus a scaoileadh don achomharcóir i ngach cás.

Aithnítear sa phróiseas seo gur féidir acmhainní a shábháil, san Oifig seo agus san údarás araon. Is féidir teacht ar réiteach neamhfoirmiúil gan aon ghá go ndéanfaidh an Oifig seo cinneadh foirmiúil.

Sa chinneadh a rinne sé, mar aitheantas ar cé chomh toilteanach is a bhí Coillte déileáil leis an bpróiseas neamhfhoirmiúil réitigh seo, mhol an Coimisinéir an comhlacht as an gcur chuige a thóg sé chun na cásanna seo a athphróiseáil cé go mbeadh ualach oibre breise ar fhoireann Coillte dá bharr.

Tá an cinneadh iomlán ar fáil ag: **OCE-135470-K8Q9G8** *Achomharcóirí éagsúla agus Coillte*

Teipeann ar An Bord Pleanála dul i ngleic go sásúil leis an gcóras RFC

Chuir an t-achomharcóir iarratas le sé chuid, faoi bhráid An Bord Pleanála (ABP) ina raibh sé ag lorg rochtain ar fhaisnéis maidir le miondealú costais a bhain le himeachtaí athbhreithnithe breithiúnaigh.

Sa chinneadh tosaigh a rinne sé, ní dhearna ABP aon tagairt don fhaisnéis agus níor shainaithin sé an fhaisnéis a bhí á coinneáil aige nó á coinneáil ar a shon laistigh de scóip an iarratais. Ina ionad sin, dúirt sé gur mheas sé go raibh an fhaisnéis “íogair ó thaobh na tráchtála de de bhun airteagail 8(a)(iv) de na Rialacháin RFC” agus faoi bhun ailt 36(1)(b) den Acht um Shaoráil Faisnéise. Ba chóir a lua ag an bpointe seo nach ndearna an t-údarás tagairt ar bith d’aon chuid den fhaisnéis eile a bhí á lorg ag an achomharcóir.

Tugadh cuireadh do ABP teacht chuig athbhreithniú inmheánach, agus mar fhreagra d’eisigh ABP an cinneadh a rinneadh san athbhreithniú inmheánach ina dúirt sé go mícheart

“más mian leis an achomharcóir iarratas ar athbhreithniú a dhéanamh leis an gCoimisinéir Faisnéise, is féidir é seo a dhéanamh trí teagmháil a dhéanamh le hOifig an Choimisinéara Faisnéise, le ríomhphost nó ar líne. Ba chóir duit d’iarratas a dhéanamh laistigh de 6 mhí ón dáta atá ar an bhfógra seo”.

Léiríonn an ráiteas seo, ina ndeirtear go mba chóir don achomharcóir teagmháil a dhéanamh le hOifig an Choimisinéara Faisnéise, agus ag an am céanna, ina luaitear amfráma mícheart thar ceann na hOifige seo chun tús a chur le hachomharc tar éis cinneadh an athbhreithnithe inmheánaigh a bheith faighte, léiríonn sé nach bhfuil an t-údarás ar an eolas maidir le riachtanais an chórais RFC.

Mar thoradh ar fhiosruithe a rinne an t-imscrúdaitheoir sa chás seo, tháinig sé chun cinn gur chinn ABP go raibh an ceart aige diúltiú d’iarratas an achomharcóra, ar an mbonn go raibh an fhaisnéis a bhí á lorg íogair ó thaobh na tráchtála de, ach nach raibh measúnú déanta ag ABP ar an fhaisnéis a iarradh.

Chinn an Coimisinéir nár déileáladh leis an achomharc de réir airteagal éagsúil sna Rialacháin RFC, agus thug sé ordú do ABP tús a chur le próiseas nua cinnteoireachta maidir le hiarratas an achomharcóra.

Tarraingítear aird sa chás seo ar an ngá atá ann go dtuigfidh údaráis phoiblí na riachtanais a cheanglaítear orthu faoin gcóras RFC. Ag an am céanna, léirítear cé chomh tábhachtach is atá sé déileáil le hachomharcóirí agus leis an Oifig seo chun toradh sásúil agus tráthúil a chinntiú ar achomhairc ar fhaisnéis comhshaoil.

Tá an cinneadh iomlán ar fáil ag: **(OCE-163880-Q2N3W3** *An Dr. Fred Logue agus An Bord Pleanála*

Caibidil 3

Cúrsaí Dlíthíochta



Caibidil 3: Cúrsaí Dlíthíochta

Fuair ár nOifig achomharc reachtúil amháin sa bhliain 2023. Déileáladh leis seo agus cuireadh ar aghaidh é chun go ndéanfaí cinneadh nua gan gá le héisteacht a bheith ann.

Fuaireamar roinnt breithiúnas suntasach in 2023, atá leagtha amach thíos, ó chásanna ar ndéileálar leo in 2021 agus 2022. Tráth an fhoilsithe seo, tá ceithre chás beo againn os comhair na gCúirteanna. Is achomharc é ceann amháin a fuarthas go luath in 2024. I mBealtaine 2023, chuala an Chúirt Uachtarach an cás Right to Know CLG v an Coimisinéir um Fhaisnéis Comhshaoil. Baineann sé le Raheenleagh Power DAC, agus an údarás poiblí é nó nach ea faoi arteagal 3 de na Rialacháin RFC. Eisíodh an cinneadh ar 6 Márta 2024 ([2024] IESC 7).

Breithiúnais Chúirte a seachadaíodh

Bord na Móna PLC v Coimisinéir um Fhaisnéis Comhshaoil & Right to Know CLG [2023] IEHC 57

Mar a luadh inár dTuarascáil Bhliantúil 2022, seachadaíodh i mí Feabhra 2023 cinneadh na hArd-Chúirte maidir leis an achomharc a rinne Bord na Móna faoi chinneadh na hOifige seo dar dáta 15 Meán Fómhair 2021 sa chás OCE-93469-W3X0R6. I gcinneadh an Choimisinéara, maidir le faisnéis a bhí laistigh de scóip an iarratais, agus a bhí á coinneáil ag Bord na Móna Biomass Limited, fuarthas go raibh an fhaisnéis sin “á coinneáil do” Bord na Móna plc faoi mar a thuigtear na Rialacháin RFC. Ina chinneadh tosaigh, chinn an Coimisinéir go mba chóir léirmhíniú rialaitheach a thabhairt don téarma ‘á coinneáil do’ faoi dlí an AE a chuirtear i bhfeidhm go seasta ar fud na mBallstát ar fad. Ní bheadh sé ag teacht leis an bprionsabal sin dá mbeadh míniú an téarma ‘á coinneáil do’ ag brath ar choinceapa casta a bhaineann le dlí náisiúnta Ballstáit amháin, an rud a chuir Bord na Móna faoinár mbráid. Dá réir sin, chuir an Coimisinéir cinneadh Bhord na Móna ar neamhní ar an mbonn nach raibh údar aige diúltú rochtain ar an bhfaisnéis a sholáthar bunaithe ar airteagal 7(1) agus (5) de na Rialacháin RFC. Sheas breithiúnas na hArd-Chúirte le cinneadh na hOifige seo. Eisiadh an t-achomharc agus cuireadh an cás ar aghaidh chuig Bord na Móna chun é a phróiseáil.

Coimisinéir um Fhaisnéis Comhshaoil v Coillte Teoranta & People Over Wind [2023] IEHC 227

I Meán Fómhair 2021, chuir an Coimisinéir a bhí ann ag an am roinnt ceisteanna faoi bhráid na hArd-Chúirte maidir le léirmhíniú airteagal 8(a)(iv) agus 9(1)(c) de na Rialacháin RFC agus an t-idirghníomhú atá eatarthu agus an tAcht um Shaoráil Faisnéise 2014 (Acht 2014). Cuireadh breithiúnas na hArd-Chúirte maidir leis na ceisteanna seo ar fáil ar 28 Aibreán 2023.

Chinn an Ard-Chúirt go gcruthaíonn roinnt díolúintí in Acht 2014 rúndacht maidir le himeachtaí údarás poiblí chun críche airteagal 8(a)(iv) de na Rialacháin RFC, nuair atá an fhaisnéis atá á lorg díolmhaithe faoi na forálacha sin. Ní bhaineann na cosaintí seo ach le comhlacht poiblí atá faoi réir an Achta 2014, áfach. Ós rud é gur gníomhaireacht dhíolmhaithe í Coillte faoin Acht, ní féidir léi úsáid a bhaint as forálacha an Achta 2014 nuair is mian leis brath ar airteagal 8(a)(iv) de na Rialacháin RFC. Ós rud é nach raibh Coillte ábalta úsáid a bhaint as forálacha an Achta 2014, ní dhearna an Chúirt aon mheasúnacht ar na ceisteanna a bhain le hairteagal 9(1)(c) de na Rialacháin RFC.

Bhí na cásanna a bhain leis na saincheisteanna seo ar feitheamh fad is bhíomar ag feitheamh ar bhreithiúnas na hArd-Chúirte. Tá measúnacht ar siúl i bhformhór na gcásanna seo anois, agus déileálfar leis na cinn atá fágtha le linn 2024.

Coillte Cuideachta Ghníomhaíochta Ainmnithe v Coimisinéir um Fhaisnéis Comhshaoil & Daoine Anaithnide [2023] IEHC 640.

Baineann an breithiúnas seo le hachomharc a rinneadh i gcoinne cinneadh an Choimisinéara sa chás OCE-124853-T4T4P0. Bhain an cinneadh seo líon suntasach d'iarratas a fuair Coillte idir Márta agus Bealtaine 2022. Líomhnaíonn Coillte nár sholáthair na hiarrthóirí a n-ainmneacha dlíthiúla. I ngach cás, scríobh Coillte chuig an t-achomharcóir chun deimhniú a fháil maidir lena (h)aimn dlíthiúil agus chun seoladh an iarrthóra a dheimhniú. Ar deireadh, chinn Coillte nach ndearnadh na hiarratais de réir airteagal 6(1) de na Rialacháin toisc gur theip ar na hachomharcóirí a n-ainmneacha agus a seoltaí dlíthiúla a dheimhniú.

Ina chinneadh, chinn an Coimisinéir gurb é cuspóir airteagal 6(1)(c) ná cinnte a dhéanamh de go bhfuil údarás poiblí ábalta dul i dteagmháil go héifeachtach le hiarrthóirí chun a chinntiú go bhfuil ceart éifeachtach ar rochtain ar fhaisnéis comhshaoil acu. Mar sin, fuair an Coimisinéir nach bhfuil sa tagairt “ainm” in airteagal 6(1)(c) ach bealach chun fógra a chur chuig duine ó údarás poiblí maidir le hiarratas, cé acu an nochtar fíorchéannacht an duine nó nach nochtar. Mar an gcéanna, beartaíodh sa chinneadh go gcuireann an tagairt “seoladh”, bealach ar fáil d’údarás poiblí chun dul i dteagmháil le hiarrthóir.

Rinne Coillte achomarc chuig an Ard-Chúirt i gcoinne an chinnidh. I mbreithiúnas a d’eisigh sé ar 22 Samhain 2023, bheartaigh an Breitheamh Humphreys roinnt ceisteanna a chur ar aghaidh chuig an Chúirt Bhreithiúnais Eorpach. Tugadh na ceisteanna seo chun críche san Ard-Chúirt ar 24 Eanáir 2024 agus cuireadh cúig cheist go dtí an Chúirt Bhreithiúnais Eorpach le haghaidh réamhrialaithe. Táimid ag súil go ndéileálfaidh an Chúirt Bhreithiúnais Eorpach leo sa bhliain 2025.



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Office of the Commissioner for Environmental Information

Annual Review 2023



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Environmental Information

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Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Annual Review 2023

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Foreword by the Commissioner for Environmental Information

The purpose of the Access to Information on the Environment (AIE) Regulations and regime is to enable members of the public to know and understand what is happening in the environment around them. Timely and easy access to environmental information is essential to assist the public to participate in environmental decision-making in an informed manner.

The AIE Regulations and AIE Directive make it clear that there is a presumption in favour of the release of environmental information. The role of Office of the Commissioner for Environmental Information (OCEI) is to carry out independent reviews of decisions made by public authorities on requests for environmental information.

This document sets out a review of our activities for 2023, which was another busy year for the OCEI. We received 351 appeals in 2023 compared to 369 in 2022. This small reduction follows the exponential increase in appeals received in recent years, including a 151% increase in appeals received between 2021 and 2022.

In my Annual Review for 2022, I drew attention to the unacceptably high number of deemed refusals in appeals received by our Office. A deemed refusal is where a public authority fails to deliver a decision on time. I pointed out that deemed refusals are an unacceptable failure on the part of some public authorities to process Access to Environmental Information (AIE) requests in a timely fashion.

I am pleased to note that in 2023 we observed a significant fall in the number of deemed refusals. There was a 40% decrease in deemed refusals at original decision, a 62% decrease in deemed refusals at internal review stage and a 76% decrease in public authorities failing to

make timely decisions at both original and internal review decision stages. I very much welcome these improvements. They demonstrate that public authorities are actively processing more of their AIE requests in a timely fashion. However, further improvements are necessary by some public authorities in processing AIE requests within the statutory timeframes.

When we receive an appeal we assess each case in order to identify the best possible resolution. We engage with the parties in order to resolve matters at the earliest stage. This sometimes results in information or reasons being provided by the public authority to the appellant's satisfaction resulting in the appellant withdrawing their appeal.

While it is disappointing that our intervention is required in order to achieve such an outcome, we welcome the willingness on the part of some public authorities and appellants to reach agreement on appeals that have been referred to us without the need for a formal decision to be issued.

We issued 136 formal decisions in 2023. I am disappointed to report that in only seven (5.14%) of the cases closed by formal binding decision in 2023, the decision of the public authority was affirmed. In four of the decisions (2.94%), the decision of the public authority was varied and in 125 cases (91.91%) the public authority's decision was annulled.

An annulment rate of just below 92% represents a near identical annulment rate to that of 2022. This continuing trend of high annulment rates remains a cause for concern. Annulments mean that, in an overwhelming majority of cases, we did not agree with any part of the public authority's decision - directing it to either undertake a fresh examination of the request or to release the information at issue.

We have identified a number of themes, which are contributing to this unacceptable situation where some public authorities are clearly failing in their responsibilities when dealing with requests for environmental information.

In particular, we note some public authorities fail to carry out searches, or carry out inadequate searches, when responding to requests made for environmental information. Some refuse access on the basis that they did not hold the requested information or that it did not exist. However, on numerous occasions, the information was found to exist following our intervention and proper searches.

Another failing by some public authorities is their failure to give reasons for their decision. The duty to give reasons for a decision arises from the legal responsibility the public authority has under the AIE Regulations. It is also a recognised core principle in administrative law and a fundamental element of constitutional justice. A person having a request refused is entitled to be provided with clear reasons for that refusal so that they can form a view as to whether the refusal is justified, or whether a review of the refusal is warranted.

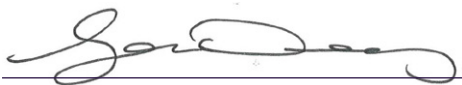
Something I will continue to highlight is the need for meaningful engagement and enhanced cooperation between requesters and public authorities in the first instance. Given the volume of requests being received by a number of public authorities there is a need for requesters to submit focused requests, and also to engage with public authorities and consider refining the scope of their requests wherever possible. This is more likely to result in requesters receiving the information they are entitled to.

In this Annual Review we have set out further information on these and other issues that are resulting in the high annulment rate of decisions by public authorities regarding AIE requests. We highlight areas in which we believe improvement is both necessary and possible. We include case studies, which are brief summaries of decisions issued, so that public authorities and requesters will have a better understanding of how the AIE appeals process functions. We also provide links to the full decisions, which are available on our website - www.ocei.ie.

I would urge the heads of public authorities to ensure AIE decision makers receive all necessary support and required training, to enable them to consistently make correct decisions and ensure compliance with the Regulations.

I would also remind public authorities that they have a duty to proactively disseminate information on the environment. Greater voluntary dissemination could significantly enhance access and reduce the need for access requests. This would result in greatly reduced pressure on the resources of public authorities.

In conclusion, I want to thank the various stakeholders including appellants, public authorities and the Department of Environment, Climate and Communications for their continued cooperation. In particular, I want to record my thanks to all the staff of the OCEI, under the leadership of Senior Investigators Deirdre Gallagher and Julie O'Leary for their commitment and hard work, in delivering a high quality service.



Ger Deering
Commissioner for
Environmental Information
April 2024



Update from the Director General

Realising our Strategic Objectives

At the outset I would like to compliment our staff for their hard work during the year in continuing to meet our key strategic objective of delivering accurate, clear and well-grounded decisions on appeals to the Office of the Commissioner for Environmental Information (OCEI). OCEI case work is very challenging. While we continue to increase the Office's resources and make changes to our processes to ensure we can process appeals more efficiently, the number of appeals on hand at year end is the highest figure since the establishment of the OCEI. This is reflective of the fact that public authorities in all sectors have experienced an increase in Access to Information on the Environment (AIE) requests over the past 24 months and that the issue of accessing environmental information can, at times, be quite adversarial. We saw a reduction in the number of decisions appealed to the High Court during 2023 and we achieved progress in terms of early and proper engagement by public bodies with our investigators to achieve informal solutions.

During 2022 we launched our Strategy 2025 which sets out our Office's key objectives to 2025. I am pleased to say that we further progressed a number of our strategic objectives during 2023. In terms of achieving our objective of promoting a greater understanding of public authorities' obligations in relation to AIE we produced an updated guide for public authorities to use when dealing with AIE requests. Our team attended a number of training courses and conferences over the course of 2023 which is in keeping with our objective of continuously developing and expanding our expertise of the AIE regime. Earlier this year we launched our new website which will help achieve our objective of providing safe and accessible mechanisms for members of the public to access our services.

Behind the OCEI team, we have a “corporate spine”, which provides all of the back office supports to the team, so that all our investigators are fully available to focus on AIE casework. The corporate spine consists of HR, ICT, Finance, Procurement, Facilities, Legal, Communications, as well as support in handling Data Protection and FOI requests. The ICT team achieved significant progress in 2023 by outsourcing many of our support functions to the Office of the Government Chief Information Officer (OGCIO) and by aligning our ICT Strategy with that of the OGCIO. This will have the effect of improving our data security and creating long term resilience in our systems. Our Legal team continued to provide support to each of the offices on casework and investigations and has managed our legal costs and procurement with a focus on quality assurance and value for money. We have also taken part in the first wave of the new Civil Service Financial Management System, which was a major project for our Finance team and I am proud of the work they did on it.

I am pleased with the progress we are making on our Strategic Objectives. As we near the halfway point in our Strategy 2025 we look forward to reviewing our progress during 2024 in terms of realising our objectives and identifying if other objectives require consideration.



Elaine Cassidy
Director General

Chapter 1

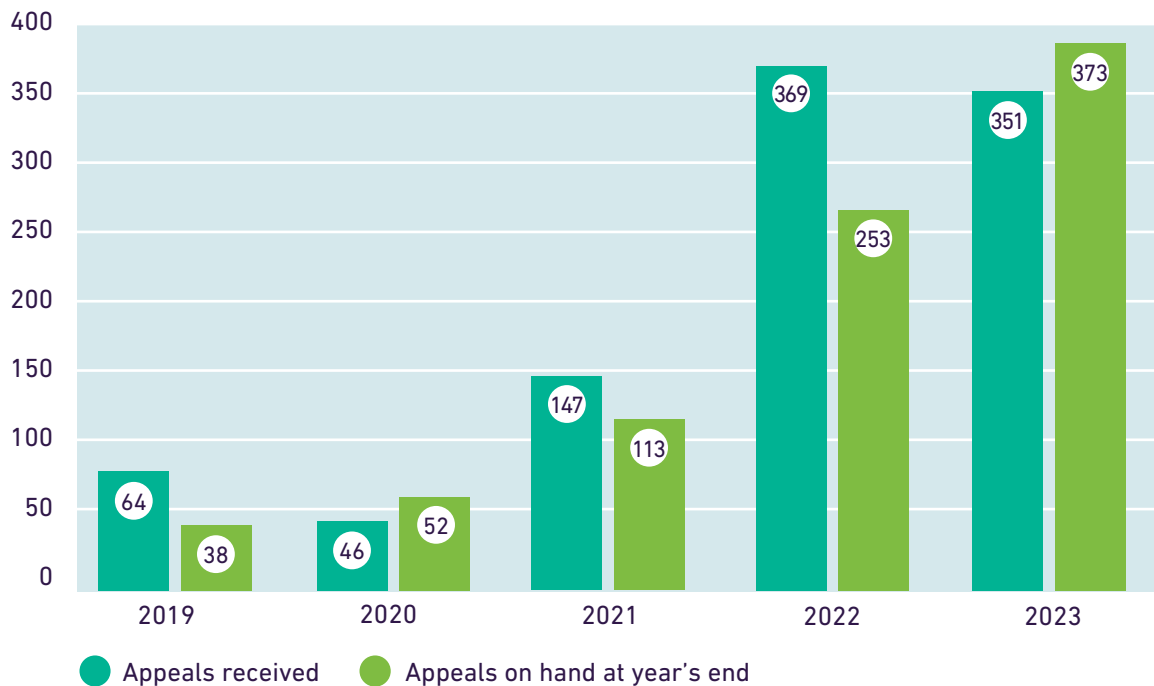
The Year in Review



Chapter 1: The Year In Review

The charts below demonstrate the exponential increase in case numbers experienced by the Office of the Commissioner for Environmental Information (OCEI) in recent years. This included an unprecedented 151% increase in appeals received between 2021 and 2022. The number of appeals received plateaued during 2023. While 2023 saw a 4.87% decrease in appeals received in comparison to 2022, the 373 appeals on hand at year end is the highest figure since the establishment of the OCEI.

Number of appeals received and on hand from 2019 to 2023

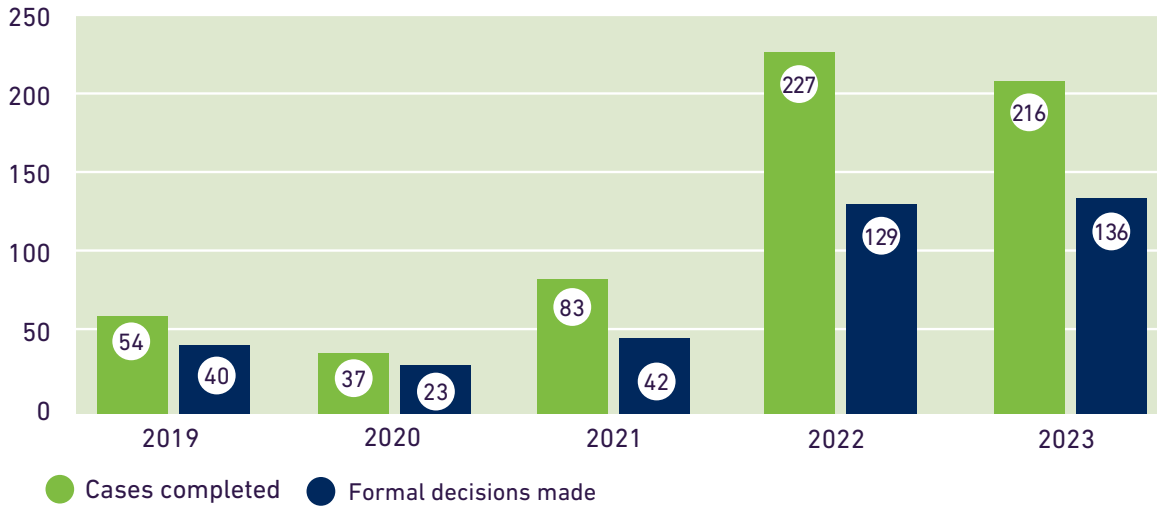


By virtue of our review function, our Office is only aware of Access to Information on the Environment (AIE) requests that have been appealed to us, and not the vast majority of AIE requests made to public authorities which do not reach our Office. In previous years, we have used the national AIE statistics compiled and published by the Department of the Environment, Climate and Communications to get a picture of the level of AIE requests made nationally. This allowed us to calculate the percentage of requests that are appealed to the OCEI.

However, our annual review is being prepared and published earlier in the year than previously. Consequently, the Department has not yet completed the gathering and collating of the national AIE statistics. We are therefore not in a position to calculate the percentage of AIE requests that reached our Office. Previous years' statistics may be found at the following link, along with the national AIE statistics for 2023 in due course: <https://www.gov.ie/en/collection/257c4-national-aie-statistics/#>

Appeal Outcomes

Number of cases completed and formal decisions made

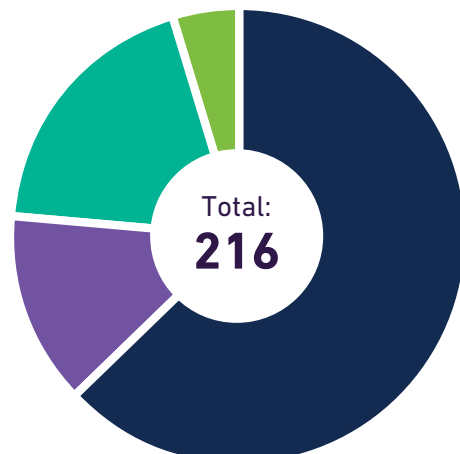
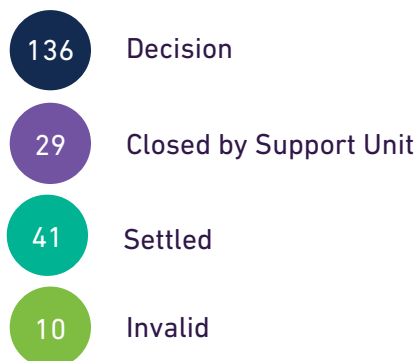


Upon receiving a valid appeal, we assess each case in order to identify the best possible resolution. We consider whether there is a reasonable prospect of resolving a case without issuing a formal binding decision. Our aim is to resolve matters at the earliest stage in the process.

We achieve this by:

- discussing the circumstances of the case with the appellant to ensure our understanding of the scope of their appeal is correct and is within the scope of their original request;
- ensuring that the most urgent or crucial elements of the appeal are attended to at the earliest opportunity; and
- endeavouring to reach a settlement between the public authority and the appellant.

Cases completed in 2023



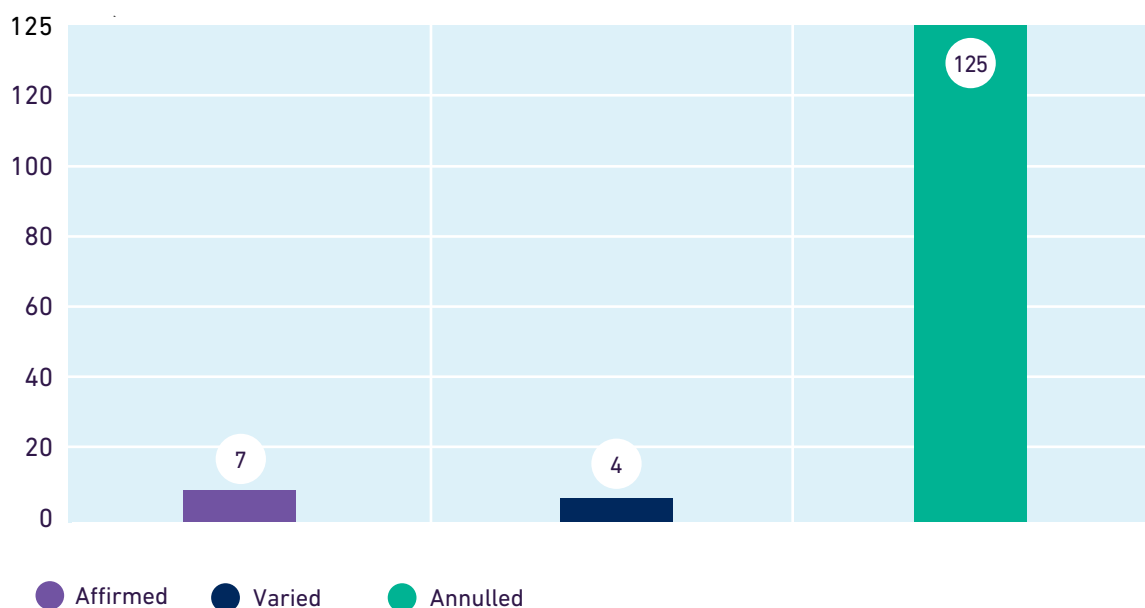
Cases closed by Support Unit: In cases where a public authority has not provided a requestor with a decision within the timeframe required by the AIE Regulations, a requestor can appeal to our Office on the basis of a deemed refusal. In these cases, our Support Unit will ask the public authority to provide a late decision to the appellant. We refer to this late decision as an effective position as it is given outside of the statutory timeframes. Once a public authority provides an effective position, these cases are closed by the Support Unit. The proportion of cases closed by the Support Unit fell in 2023, with 29 appeals closed, amounting to 13.43% of all cases closed in that year. This represents a decrease of around 6% compared to 2022, where just under one fifth, 19.38%, of cases closed were closed by the Support Unit.

Settled: We report cases as settled where, if at any time following acceptance of an appeal, the public authority takes steps that result in an appellant not requiring a formal binding decision. A settlement can be reached at any stage of the investigation process prior to the issuing of a formal decision. 41 appeals were closed by way of a settlement in 2023.

We are encouraged by the willingness on the part of some public authorities and appellants to reach agreement on appeals that have been referred to our Office without the need for a formal decision to be issued.

Cases Completed by Decision

Outcome of cases completed by decision



Where a review is concluded by way of a formal binding decision, we use the following categorisations:

- Decision affirmed: The OCEI agrees entirely with the authority's decision
- Decision varied: The OCEI makes alteration of any part but not all of the public authority's decision
- Decision annulled: The OCEI does not agree with any part of the public authority's decision

In only seven (5.14%) of the 136 cases completed by formal binding decision in 2023 was the decision of the public authority was affirmed. In four of the decisions (2.94%), the decision of the public authority was varied and in 125 cases (91.91%) the public authority's decision was annulled.

An annulment rate of just below 92% represents a near identical annulment rate to that of 2022 cases. This continuing trend of high annulment rates remains a cause for concern.

Annulments mean that, in an overwhelming majority of cases, we did not agree with any part of the public authority's decision – directing it to either undertake a fresh examination of the request or to release the information at issue.

Third party appeals

Both domestic and EU AIE legislation recognise that third party rights must be balanced with the right of access to environmental information. Article 12(3)(b) of the AIE Regulations provides that an appeal against a decision of to the OCEI may be initiated by a person other than the applicant or a third party where:

“a person other than the applicant, including a third party, would be incriminated by the disclosure of the environmental information concerned”.

In 2023, we issued a decision in [OCE-120059-J8M5X7, Company A and the Commission for Regulation of Utilities](#). This related to a third party appeal that we had received in 2022.

Deemed refusals

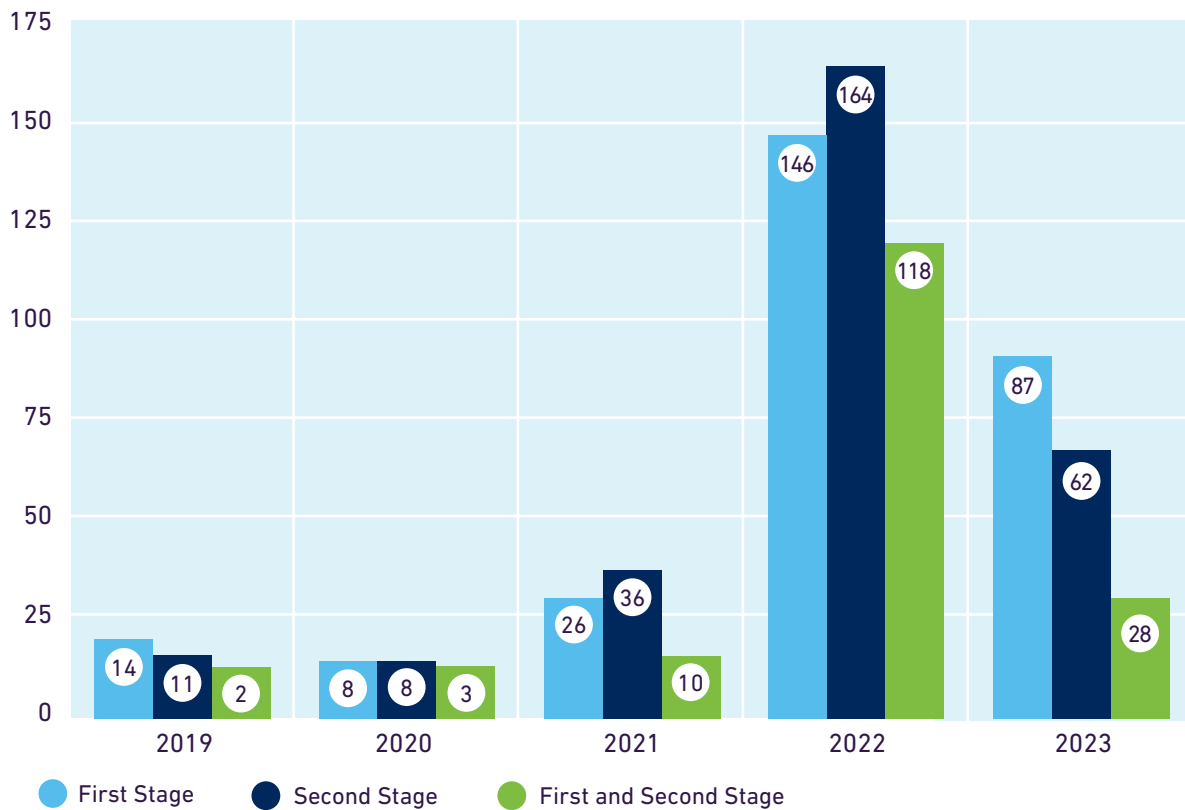
A deemed refusal is where a public authority fails to deliver a decision on time, having regard to the deadlines set out for original and internal review decisions as set out in the AIE Regulations.

In our annual report for 2022, we described the high number of deemed refusals in appeals received by our Office in 2022 as an unacceptable failure on the part of some public authorities to process AIE requests in a timely fashion.

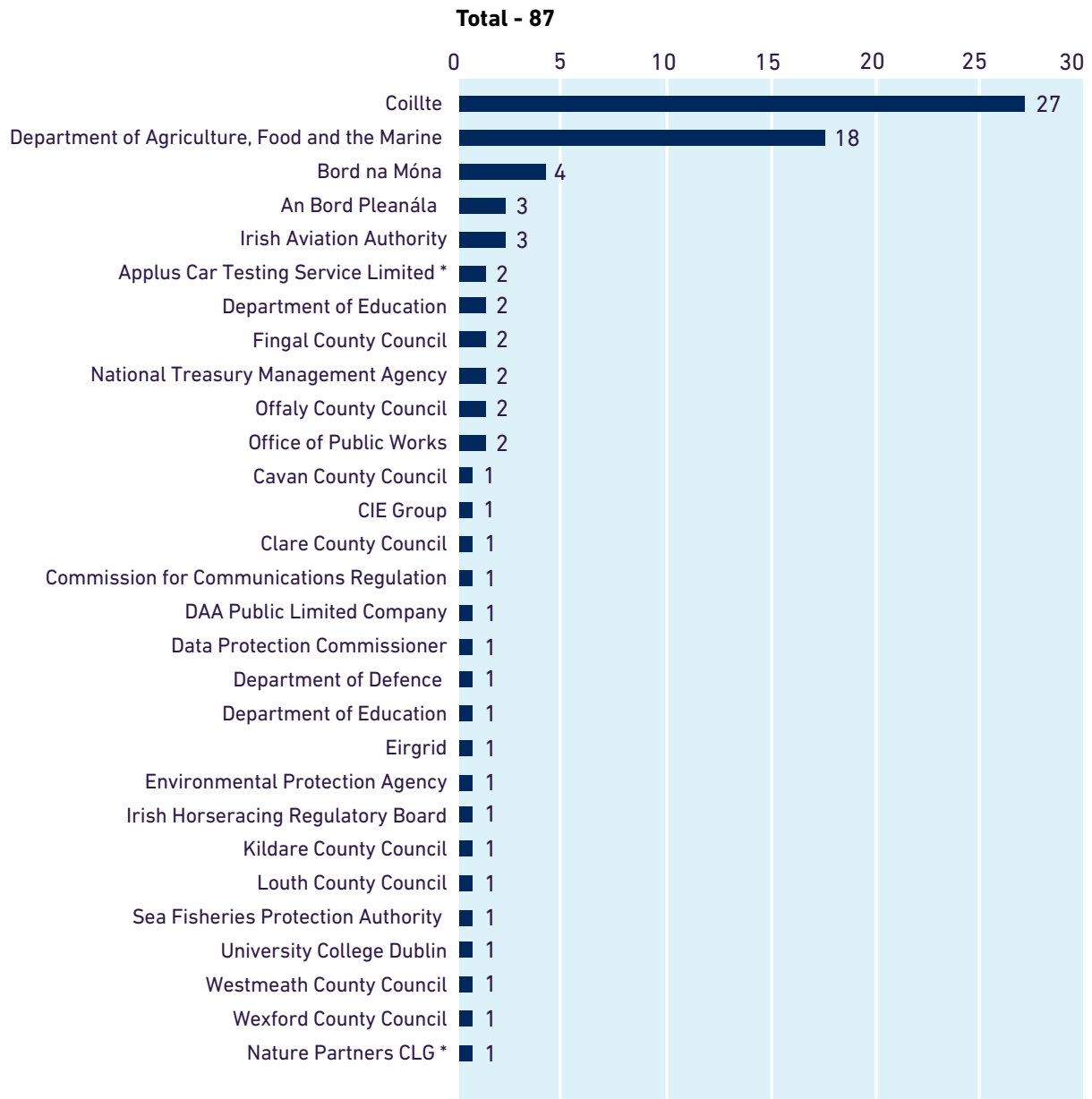
We are pleased to note that in 2023 we observed a significant fall in the number of deemed refusals in the 351 appeals which came before this Office. There was a 40.41% decrease in deemed refusals at original decision, a 62.19% decrease in deemed refusals at internal review stage and a 76.27% decrease in public authorities failing to make timely decisions at both original and internal review decision stages. This fall in the proportion of deemed refusals in cases coming before this Office is to be very much welcomed. It demonstrates that public authorities are actively processing more of their AIE requests in a timely fashion.

However, there is further room for improvement in this area. The figures detailed below set out the nonetheless high number of cases where public authorities failed to deliver a decision on time throughout all stages of public authorities processing AIE requests.

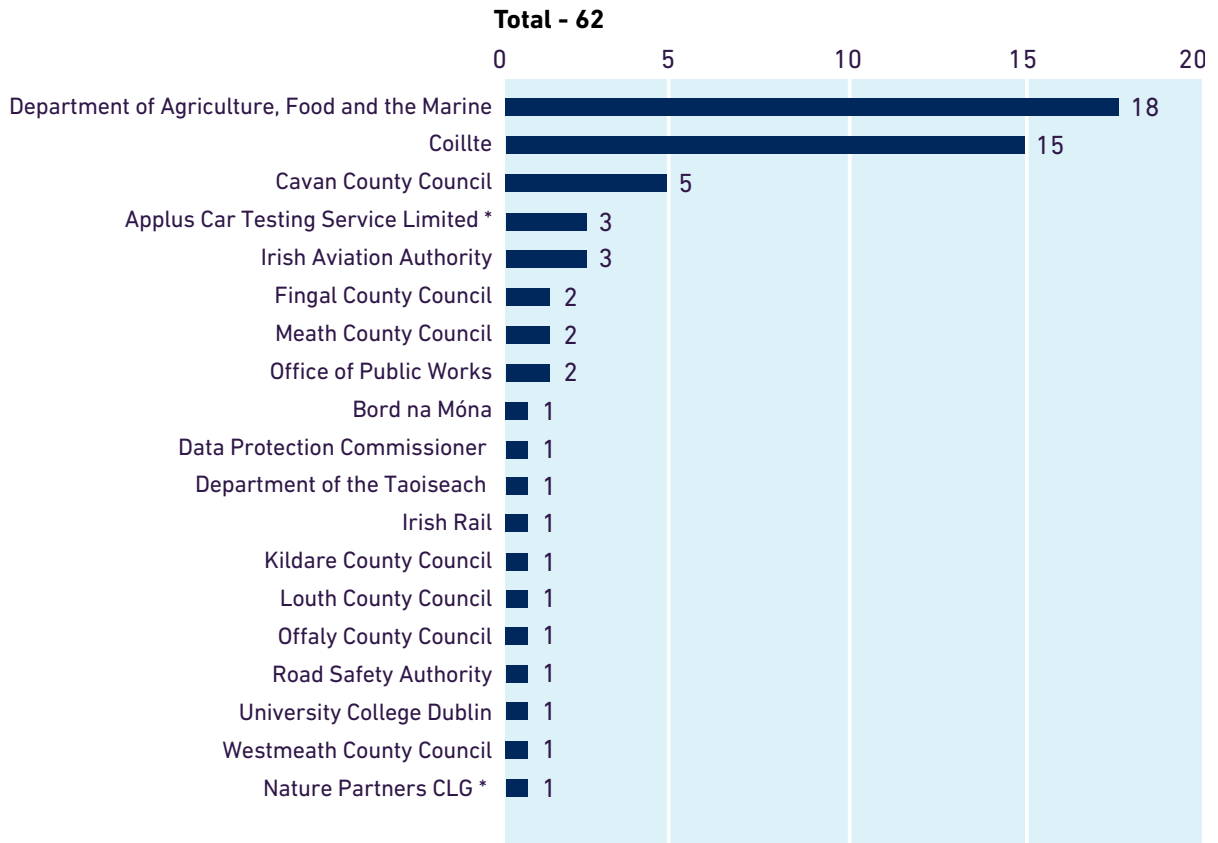
Cases in which public authorities failed to deliver a decision in time



Deemed refusals at original decision



Deemed Refusals at Internal Review (2nd stage)



*The issue in these cases is whether the entity, to which the AIE request was made, is a public authority within the definition provided by the AIE Regulations.

Keeping Informed

Our team attended a number of training courses and conferences over the course of 2023. These provided important opportunities to connect with and learn from practitioners and academics. OCEI staff attended and provided a presentation at the University College Cork Law and the Environment Conference in April 2023, and also attended events hosted by the Irish Centre for European Law and the Irish Environmental Network later in the year.

We participated in a training event with the Department of Foreign Affairs on the processing of AIE requests in April 2023. We always welcome the opportunity to engage with stakeholders, in particular AIE officers, and to provide insight into the issues encountered by our Office with a view to improving the processing of AIE requests.

Strategy and Corporate Governance

Corporate Services support for the Office of the Commissioner for Environmental Information and a number of other statutory Offices, is provided by the Office of the Ombudsman. While the different Offices each carry out separate and distinct statutory functions, the Office functions as a single amalgamated agency in organisational terms. The Office is funded by one Vote and overseen by an Accounting Officer (Director General) who is supported by a Management Advisory Committee. In carrying out their work our staff embrace the traditional obligations of privacy and integrity in the performance of official duties while at the same time protecting and preserving the statutory independence and functions of each of the constituent offices in which they work.

Updates in relation to our Corporate Governance is set out on the [Strategy and Governance](#) page on the website of the Office of the Ombudsman.

This link includes updates in relation to:

- our Strategic Plan 2022-25
- our compliance with the requirements under the Irish Language Act
- our compliance with the requirements of the Protected Disclosures Act
- our compliance with the requirements under s.42 IHREC Act (the duty on public servants in relation to human rights)
- our Corporate Governance Framework
- our Green Team (including our compliance with the Climate Action and Low Carbon Development Act)
- membership of organisations.

Chapter 2

Themes arising from appeals resolved in 2023



Chapter 2: Themes arising from appeals resolved in 2023

We have identified a number of themes which have emerged during the resolution of appeals by this Office. This section highlights areas in which we believe improvement is both necessary and possible. We include case studies, which are brief summaries of decisions issued, so that public authorities and requesters will have a better understanding of how the AIE appeals process functions. We also provide links to the full decisions, which are available on our website.

The main themes we wish to highlight are:

1. The duty to give reasons for decisions under the AIE Regulations;
2. The requirement to carry out adequate searches;
3. Consideration of manifestly unreasonable requests;
4. Interaction with the OCEI.

The duty to give reasons for decisions under the AIE Regulations

Public authorities are required as a matter of law to provide reasons for their decisions. Articles 7(4) and 11(4) of the AIE Regulations require public authorities to provide reasons for refusal at both original and internal review decision stage, consistent with Article 4(5) of the AIE Directive. Recital 16 of the AIE Directive states “...The reasons for refusal should be provided to the applicant within the time limit laid down in this Directive.” Article 4(5) of the AIE Directive provides that “[a] refusal to make available all or part of the information requested shall be notified to the applicant...The notification shall state the reasons for the refusal...”.

Again in 2023, a common theme of the appeals investigated by the Office was the failure on the part of public authorities to provide adequate reasoning for their decisions. Non-compliance with the duty to give reasons can arise in a variety of ways. In addition to cases where there is a complete absence of explanation, it includes cases where public authorities simply state that information is not environmental information, or that they do not hold any relevant information, without providing any detail as to how those conclusions were reached. It also includes cases where public authorities cite a ground for refusal provided for in the AIE Regulations without explaining why it considered that ground to apply, or detailing its examination of article 10 of the AIE Regulations, including why the interest in refusing the information outweighs the public interest in its disclosure.

Failure to provide reasons at any part of the AIE process contravenes the duties placed on public authorities by the AIE Regulations and the AIE Directive. It also results in an inefficient use of resources for public authorities, the OCEI, the appellant and the wider public service.

The AIE Regulations and AIE Directive make it clear that there is a presumption in favour of the release of environmental information. Broadly speaking, this means that where a request is made under the AIE Regulations, a public authority must either provide all of the information requested or set out clearly why it does not consider it necessary or appropriate to provide all or some of that information. Each request must be considered on an individual basis.

In addition, the High Court in *Right to Know v An Taoiseach* [2018] IEHC 372 clearly set out that merely citing a provision of the AIE Regulations is not sufficient to comply with the duty to give reasons. The Court of Justice of the European Union (CJEU)'s case law on the AIE Directive and on the EU Aarhus Regulation also confirms the extensive nature of the duty to give reasons.

Crucially, the fundamental purpose of the duty to provide reasons is to allow the recipient to understand the basis on which the decision was taken, so that they can decide whether they wish to challenge that decision. It is clear from submissions to this Office that requesters, who are provided with little or no reasoning for a decision, often challenge the public authority's decision on that basis alone. From interactions with appellants, particularly at early settlement stage, it is clear to us that some would have accepted the outcome of the request without recourse to this Office had the reasoning been made clear at the outset.

Our general approach to cases where a public authority has not provided adequate reasons is to annul the decision of the public authority concerned and direct it to conduct a fresh decision making process or to release information.

The case studies below are examples of the significant number of appeals that the OCEI dealt with during 2023 where a clear reasons for decisions were not provided. Further examples are also contained within the section dealing with "Search Cases".

Irish Aviation Authority fail to provide reasons for refusal to provide information on crash

In this case, the issue was whether the Irish Aviation Authority (the IAA) was justified in refusing the appellant's request for information related to the "report prepared by the Air Traffic Controllers on the R116 crash at Blacksod Bay in March 2017".

In its original decision, the IAA provided the appellant with an IAA report, stating that it contained the information requested. The appellant, in her internal review request, contended that the IAA report provided was not the Air Traffic Control Report she was seeking. In its internal review decision, the IAA stated that operational data is protected under EU Regulation 376/2014, which concerns the reporting, analysis and follow up of occurrences in civil aviation.

It also explained that the Air Accident Investigation Unit (AAIU) is the appropriate body from which the information sought should be requested.

On multiple occasions during the course of the review, this Office asked the IAA for a copy of the Air Traffic Controller Report and sought confirmation as to why the release of such information may be exempt under the AIE Regulations. The IAA referred again to the separate EU Regulation, Regulation 376/2014, without giving particulars of its relevance to a request made under the AIE Regulations, and reiterated that the AAIU is the appropriate body from which the information sought should be requested. The IAA did not cite or explain on what grounds pursuant to the AIE Regulations it refused to release the information sought. It also failed to respond to specific queries raised by this Office.

In his decision, the Commissioner highlighted the obligation on public authorities under the AIE Directive and the AIE Regulations to provide reasons for the refusal of an AIE request. The Commissioner was not satisfied that the IAA had substantively and procedurally complied with the AIE Directive and the AIE Regulations. He noted that IAA had failed to identify a basis under the AIE Regulations and to give reasons for refusing to provide the Air Traffic Controller Report. He commented that it is not the role of the OCEI to establish the grounds or the reasons for refusal on the IAA's behalf.

Consequently, the Commissioner annulled the IAA's decision in its entirety and directed IAA to undertake a fresh decision-making process in respect of the appellant's request in accordance with the AIE Regulations.

The full decision is available at [OCE-127739-F6N9X8](#) Ms H and Irish Aviation Authority

Department of Agriculture decision on forestry site notices fails to show that confidentiality would be affected

In these cases, the issue was whether the Department of Agriculture, Food and the Marine (the Department) was justified in refusing access to name and address details contained on forestry site notices.

The Department, in its decisions, refused access to the name and address details at issue under article 8(a)(i) of the AIE Regulations, which provides that a public authority shall not make available environmental information where disclosure of the information would adversely



affect 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.

In his decision, the Commissioner highlighted the importance of considering the wording of the particular exemption provision being relied upon. When relying on article 8(a)(i) of the AIE Regulations a public authority must show that the information at issue is personal information relating to a natural person who has not consented to its disclosure; that the personal information has an element of confidentiality; that the confidentiality of that personal information is provided by law; and that the disclosure of the information at issue would adversely affect that confidentiality. The public authority must demonstrate a clear link between disclosure of the information that has actually been withheld and any adverse effect. The risk of the confidentiality being undermined must be reasonably foreseeable and not purely hypothetical.

The Commissioner commented that there was a notable absence of reasons for the Department's refusal of the information at issue. He outlined that it is not sufficient to quote an exemption provision without providing an explanation. He was satisfied that the Department's decisions did not provide adequate reasons for refusal.

The Commissioner went on to note that the withheld information at issue comprised the names and address details of applicants for forestry licences. He was satisfied that an applicant's name, townland and county are available on a publicly displayed site notice as part of the forestry licence application procedure. Consequently, as this information had previously been in the public domain in the context of the forestry licencing process, he held that it did not fall into the realm of confidential information. He found, therefore, that the Department had not established that the information was redacted in accordance with the requirements of the AIE Regulations.

The Commissioner annulled the Department's decision and directed the release of the name and address details contained on the forestry site notices concerned.

Case **OCE-128262-B9G0Z2** and **OCE-138020-L5T6K8** *Mr F and the Department of Agriculture Food and the Marine*

The Requirement to Carry out Adequate Searches

As in previous years, a number of decisions issued by this Office in 2023 arose from refusals by public authorities to release information, or to only part-release information to requesters, on the basis that they did not hold the requested information or that it did not exist.

This Office's approach to dealing with cases where the public authority has refused a request under article 7(5) is to examine whether adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances.

In determining whether the steps taken are adequate in the circumstances, a standard of reasonableness is applied. It is often necessary for the public authority to provide some context regarding the relevant issue and information regarding its internal procedures and the type of documents one could expect to be generated related to the particular request. It is not normally the function of this Office to search for environmental information. Article 7(5) of the AIE Regulations is the provision that applies where requested information is not held by or for the public authority concerned or where it does not exist and obliges the public authority to so inform a requester. However, though the Regulations are silent on the matter of searches for information by public authorities, in order for a public authority to be able to rely on this article, a natural prerequisite is that it must first have conducted a reasonably adequate search for any information that may respond to a request under the AIE regime in order to eliminate any possibility that the information does, in fact, exist or is held by or for it. Without such a search, a public authority cannot in all truth say that it does not hold the information requested or that it does not exist. This requirement ties in with a public authority's obligation to give reasons for its decisions, including a finding that it is not in possession of information the subject of an AIE request.

In dealing with this type of case, the Commissioner must be satisfied that reasonable and adequate searches have been carried out by public authorities to identify and locate all information held by or for it which is relevant to the appellant's request and that all such information has been provided to the appellant in accordance with the Regulations, save where any exemption may apply.

In processing appeals refused by virtue of article 7(5) in 2023, the OCEI noted that in a significant number of cases, public authorities had in fact made no search to identify the requested information or had carried out inadequate searches.

The fact that public authorities have either conducted no search for requested information or have conducted a search that has been inadequate, indicates a poor response on their part to comply with the AIE Regulations, which are premised on the free availability of environmental information, subject to a number of limited exceptions. Public authorities are reminded that only by carrying out adequate searches following receipt of a request can they be in a position to comply with the AIE regulations and serve the public interest by releasing environmental information to requesters.



It is appropriate to note that search cases constitute a heavy burden on this Office's resources, requiring time and effort to be spent by investigators to engage with public authorities on searches carried out, or not carried out as the case may be, oftentimes resulting in further records being identified and released or further details being provided which then satisfy appellants to the extent that they are happy to withdraw or settle their appeal. In both circumstances, it would be preferable for public authorities to conduct adequate searches at the outset to identify all relevant records and to provide sufficient details in their original and internal review decisions to allow requesters to assess whether or not further records relevant to their request may exist. Failure on both of these fronts often results in appeals being made to this Office which could have been avoided, which leads, in turn, to the allocation of further resources by public authorities to process AIE requests.

Active Dissemination of Environmental Information

The provisions of articles 3(5) and 7 of the AIE Directive require Member States to put in place systems to ensure that public authorities properly maintain and record environmental information so that it can be disseminated and made available to the public. Article 5 of the AIE Regulations obliges public authorities to make all reasonable efforts to maintain environmental information in a manner that is readily reproducible and accessible and to ensure that such information is accurate and up to date. It also requires public authorities to maintain registers or lists of environmental information and to give clear indications of where such information can be found.

Moreover, it is incumbent on a public authority to ensure that it has adequate processes in place to ensure that all information held by or for it is provided to an appellant in response to an AIE request and that such information is, to the best of their knowledge, accurate. As previously stated, it is not desirable that numerous exchanges of correspondence should have to take place between a public authority and the OCEI to ensure that such searches are conducted.

The OCEI is all too conscious that searches for information by public authorities are resource-intensive, and in some cases may take staff away from other core duties. However, searches done well and appropriately will lead inevitably to a reduced workload, as requesters, fully briefed of the detail of the searches undertaken, are less likely to be dissatisfied with decision letters indicating a refusal or part-refusal to release information, as they will have been apprised of the thorough searches undertaken by the public authorities. They will accordingly be less likely to request an internal review of initial decisions or, as the case may be, to appeal the results of internal reviews to our Office, all of which leads to a better deployment of staff working on AIE requests in public authorities.

Inadequate searches carried out by Department of Agriculture in 20 appeals

A case to illustrate a public authority's failings in respect of the obligation to carry out adequate searches for information is the composite decision that issued on 30 May 2023 in respect of 20 appeals made to the OCEI arising from individual refusals to release information relating to forestry matters by the Department of Agriculture, Food and the Marine (the Department).

All appeals were identified by the OCEI as cases where the Department's decision-making process did not comply with the responsibilities placed on public authorities by the AIE Regulations. The decision noted that following review by the investigator assigned to the appeals, it was identified that adequate searches had not been carried out by the Department and that there had been a notable and almost complete absence of reasons for refusal of the requests in the Department's decisions. It was noted in the decision that the duty to give reasons arises not only by virtue of the AIE Regulations and Directive, but is a generally recognised core principle in administrative law and a fundamental element of constitutional justice (see, for example, *Right to Know v An Taoiseach* [2018] IEHC 372, *Meadows v Minister for Justice* [2010] IESC 3 and *Balz v An Bord Pleanála* [2019] IESC 90. These judgments, in the same way as the AIE Regulations, make it clear that where requesters have all or part of a request refused, they are entitled to be provided with clear reasons for that refusal. This duty arises so that a requester can form a view as to whether the refusal is justified, or whether a review of the refusal is warranted. The Commissioner was of the view in these appeals that it was "unacceptable that the Department provided identical decisions in response to so many requests, without providing even a basic level of reasoning. This is contrary to both the letter and the spirit of the AIE Regulations, by which the Department is bound". To the Department's credit, following communication with the OCEI, it acknowledged that it may not have complied fully with the AIE Regulations when processing these requests. As it was not considered appropriate to direct release of the information requested in these appeals, they were remitted to the Department for a fresh review and decision-making process.

The full decision is available at [OCE-125285-R5R7T4 *Various Appellants and Department of Agriculture, Food and the Marine*](#)

Manifestly unreasonable requests

Article 9(2)(a) of the AIE Regulations, which transposes article 4(1)(b) of the AIE Directive, 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".

Where a public authority intends to refuse a request under article 9(2)(a) of the AIE Regulations, it should first assist the requester to reformulate the request as appropriate. Both public authorities and requesters should seek to liaise constructively with a view to fully processing the request as efficiently as possible.

Article 7(2)(b) of the AIE Regulations and article 3(2)(b) of the AIE Directive envisage the processing of voluminous and complex requests and provide extensions to the one-month timeframe within which a public authority is normally required to issue a decision on a request. It is clear, therefore, that a request is not necessarily covered by the “manifestly unreasonable” exception just because it is voluminous or complex.

The exception in article 9(2)(a) is also not intended to endorse any failure by public authorities to comply with their duties to organise and disseminate environmental information under article 5 of the AIE Regulations and article 7 of the AIE Directive. A restrictive approach is mandated by Recital 16 of the Directive which makes it clear that “disclosure of information should be the general rule” and by article 10(4) of the Regulations which provides that “the grounds for refusal must be interpreted on a restrictive basis having regard to the public interest served by disclosure”. Also, article 10(5) requires that, in circumstances where some of the requested information is subject to an exception, a public authority must consider whether parts of the request can be answered.

When considering whether a request is manifestly unreasonable, it is necessary to examine the impact on the public authority of dealing with the request. The responsibility is on the public authority to demonstrate that the task entailed by the request is unreasonable. Public authorities are required to provide adequate reasons for any such refusal at both original and internal review decision stages.

The case studies below are examples of appeals that the OCEI dealt with during 2023 where public authorities had not justified a decision to refuse access to information under article 9(2)(a) of the AIE Regulations. In each of these cases the decision of the public authority was annulled and remitted for fresh consideration.

Office of Public Works decision that request is manifestly unreasonable found not to be justified

In this case, the Commissioner considered whether the Office of Public Works (the OPW) was justified, under article 9(2)(a) of the AIE Regulations, in refusing access to information concerning flooding and/or proposed flood relief works at Lough Funshinagh, County Roscommon, coming within the scope of the appellant’s five-part request.

In his decision, the Commissioner acknowledged that the OPW had provided this Office with detail regarding the volume of information sought and the work required to process the appellant’s request. However, on the facts of the case, he held that the threshold for a request to be manifestly unreasonable had not been met.

During the course of his review, the Commissioner also found that reasonable and adequate searches may not have been carried out by the OPW to identify and retrieve all information held by it or for it within the scope of all five parts of the appellant’s request.

Consequently, he annulled the OPW's decision in its entirety and directed it to undertake a fresh decision-making process in accordance with the provisions of the AIE Regulations.

The full decision is available at (OCE-115424-T4K5P6 Mr B (on behalf of a client) and Office of Public Works)

Department of Agriculture decision does not show that administrative burden of request is manifestly unreasonable

The issue here was whether the Department of Agriculture, Food and the Marine (the Department) was justified, under articles 9(2)(a) and 9(2)(b) of the AIE Regulations, in refusing access to information on commencement and completion notices received by the Department in relation to forestry licences/approvals coming within the scope of the appellant's request.

In his decision, the Commissioner pointed out that the exception in article 9(2)(a) of the AIE Regulations is only available where the administrative burden entailed by dealing with the request is particularly heavy. In this case, the Commissioner found that the Department had not provided adequate reasons or demonstrated how the request would result in a disproportionate cost or effort on behalf of the Department, or would obstruct or significantly interfere with the normal course of its activities, such that the request could be considered manifestly unreasonable with the meaning of article 9(2)(a).

The Commissioner also found that the Department's reliance on article 9(2)(b) of the AIE Regulations was not justified as no reasoning had been provided in support of its position that the request was formulated too generally.

The Commissioner annulled the Department's decision and remitted the matter to the Department to process the request in accordance with the provisions of the AIE Regulations.

The full decision is available at (OCE-129253-V8R6Z0 Mr A and Department of Agriculture, Food and the Marine)

Interaction with the OCEI: Cooperation and engagement with the AIE Regulations

A common theme which again emerged from appeals investigated by this Office in 2023 was the continued need for meaningful engagement and enhanced cooperation between requesters and public authorities in the first instance. Given the volume of requests being received by a number of public authorities there is a need for requesters to submit focused requests, and also to engage with public authorities and consider refining the scope of their requests wherever possible.



In addition to this, public authorities must ensure decision makers receive all necessary support and required training to enable them to consistently make correct decisions and ensure compliance with the Regulations.

All stakeholders working together to achieve a combination of the above will result in the valuable information which is held by public authorities being made available without the need to appeal to this Office. This will avoid sometimes lengthy delays for requestors in receiving the information they are entitled to, in addition to avoiding public authorities using limited resources on unnecessary appeals.

Where there is a need to appeal, early and proper engagement with OCEI investigators to achieve informal solutions to appeals wherever possible is crucial. This has proved to be a somewhat successful over the past year and the OCEI are committed to finding informal solutions to appeals wherever possible. During the course of the last year both requestors and relevant staff within public authorities who receive the majority of AIE requests, such as the Department of Agriculture, Food and the Marine, the Department of Housing, Local Government and Heritage, and Coillte, have been fully engaged with staff of this Office and that continued engagement is most welcome.

The Case Studies below highlight where this engagement has been beneficial and also instances where the interactions of public authorities fail to meet requirements placed on them by the AIE Regulations.

Irish Aviation Authority fails to engage with OCEI during investigation

The appellant in this case made a request to the Irish Aviation Authority (IAA) for a copy of records on the sightings of unknown aerial object(s) reported to Shannon Air Traffic Control by a number of aircraft crew off the west coast of Ireland.

The IAA responded, stating that it was unable to locate records relevant to the request. The appellant subsequently brought an appeal to this Office and submitted that he had seen media reports which stated that the IAA had carried out a full report into the incident.

This Office's investigator wrote to the IAA on four separate occasions between January and June 2023, inviting the IAA to make detailed submissions on this appeal. No response was received to any of this correspondence. In a final attempt to secure engagement on this appeal the investigator called the IAA. During this call, he was informed that the AIE officer was working offsite on the day and was unavailable. He was assured that the message would be passed on and he would receive a response as soon as possible. There was no further contact from the IAA.

This office was therefore unable to carry out a thorough review in this case due to the absence of engagement by the IAA. Public authorities must comply with the AIE Regulations and in the decision the Commissioner outlined that the conduct of the IAA in relation to this appeal had been unacceptable and it should immediately put in place appropriate measures to ensure proper engagement with the OCEI and with its obligations under the AIE Regulations.

The Commissioner annulled the decision of the IAA and directed it to carry out a fresh decision-making process. While doing so, the IAA was directed to take all reasonable steps to identify and retrieve any environmental information held by or for it within the scope of the appellant's request and to set out in detail to the appellant the steps it had taken, as required by the AIE Regulations.

The full decision is available at (OCE-127738-G5G7B7 - X and Irish Aviation Authority)

Coillte agrees to an informal decision making process

In recent years a notable increase in requests to some public authorities for information on the environment has resulted in a parallel increase in appeals to this Office by appellants seeking to have the decisions of the public authorities reviewed. This has led to increased pressure being placed on staff both within the public authorities and this Office to adequately deal with these requests in a timely manner.

Although public authorities in all sectors have experienced an increase in requests for information under the AIE Regulations over the last twenty-four months, those authorities involved directly with operations in the natural environment have seen a particularly dramatic increase in requests under the AIE regime. Evidence of this can be seen by the number of appeals received by the OCEI concerning Coillte, who are involved in the management of Ireland's semi-state forestry land while also being involved in providing recreation space, nature rehabilitation and the processing of forestry by-products. Due largely to the size and dynamic nature of the forest estate which Coillte manages, as well as the increased public interest in the operations of this body, Coillte has seen a dramatic rise in the number of requests it has received.

In early 2023 a review of our current case-load indicated that in a significant number of cases involving Coillte, a full investigation of all of the circumstances of the appeal would likely result in the decisions of Coillte would be annulled and the request remitted. As a result of this, discussions were held with Coillte regarding the remittal of these decisions without the need for an individual decision in each instance.

The 20 appeals identified as part of this review concerned the application by Coillte of article 7(5) of the AIE Regulations, which deals with the search process to be carried out by a public authority once a request for information is received and were each the subject of a decision by Coillte on a date between 2022 and early 2023 primarily on the forestry operations of Coillte. These cases were identified by this Office as suitable for review by Coillte staff to reassess

as, given the passage of time and improvements in the search abilities of Coillte, additional information relevant to each individual case could be identified and released to the appellant

This process recognises the resource savings achievable, both by this Office and the authority concerned, where informal solutions can be found for the release of information without the need for a formal decision by this Office.

In his decision, the Commissioner, in recognition of the willingness of Coillte to engage with this informal resolution process, commended the body for the approach taken to reprocess these cases despite the extra workload this would place on its staff.

The full decision is available at (OCE-135470-K8Q9G8 *Various Appellants and Coillte*)

An Bord Pleanála fails to adequately engage with the AIE regime

The appellant submitted a six-part request to An Bord Pleanála (ABP) for access to information regarding the breakdown of costs related to judicial review proceedings.

In its original decision, ABP did not make specific reference to or identify the information held by or for it within the scope of the request but instead noted that it considered the information to be “commercially sensitive pursuant to article 8(a)(iv) of the AIE Regulations” in conjunction with section 36(1)(b) of the Freedom of Information Act 2014 (the FOI Act). It is notable at this point to highlight that the authority did not make any reference to any of the other information requested by the appellant.

In response to a request for an internal review of its decision by the appellant the ABP issued its internal review decision wherein it incorrectly stated that should the appellant,

“wish to make an application to the Information Commissioner for a review of this decision, you can do so by corresponding with the Office of the Information Commissioner, by email or online. You should make your application within 6 months from the date of this notification”.

This statement incorrectly directing the appellant to the Office of the Information Commissioner, while also outlining the incorrect timeframe allowable by this Office for the initiation of an appeal after the issuing of an internal review decision, demonstrates a clear lack of knowledge by the authority on the requirements of the AIE regime.

As a result of enquiries by the investigator in this case it further transpired that ABP had made a decision that it is entitled to refuse the appellant’s request on the basis that the information requested is commercially sensitive, without it having, in fact, considered the information requested.

The Commissioner found that the appeal was not dealt with in accordance with various articles of the AIE Regulations and directed ABP to undertake a fresh decision making process in respect of the appellant’s request.

This case highlights the need for public authorities to understand the requirements that adherence to the AIE regime place upon them while also demonstrating the need to adequately engage with appellants and this Office to ensure a timely and satisfactory outcome to appeals for environmental information which it may receive.

The full decision is available at (OCE-163880-Q2N3W3 *Dr. Fred Logue and An Bord Pleanála*)

Chapter 3

Litigation Matters



Chapter 3: Litigation Matters

Our Office received one statutory appeal in 2023. This was dealt with on consent and remitted for a new decision without the need for a hearing.

We received a number of significant judgments in 2023 from cases dealt with by us in 2021 and 2022, which are set out below. At the time of publication, we have four live cases before the Courts, one being an appeal received in early 2024.

Court judgments delivered

Bord na Móna PLC v Commissioner for Environmental Information and Right to Know CLG [2023] IEHC 57

As mentioned in our 2022 Annual Report, the High Court's decision in relation to Bord na Móna's appeal of this Office's decision dated 15 September 2021 in case OCE-93469-W3X0R6 was delivered in February 2023. The decision of the Commissioner had found that information within the scope of the request held by Bord na Móna Biomass Limited was "held for" Bord na Móna plc within the meaning provided by the AIE Regulations. The Commissioner in the original decision found that the term "held for" must be given an autonomous interpretation under EU law that is applied consistently across all Member States. It would be inconsistent with that principle if the meaning of "held for" were to depend on complex concepts, which are particular to the national law of a Member State, which had been put to us by Bord na Móna. Accordingly, the Commissioner annulled Bord na Móna's decision on the basis that it was not justified in refusing access to the information sought on the basis of article 7(1) and (5) of the AIE Regulations. The High Court's judgment upheld this Office's decision, dismissed the appeal and remitted the matter to Bord na Móna for processing.

Commissioner for Environmental Information v Coillte Teoranta & People Over Wind [2023] IEHC 227

In September 2021, the then Commissioner referred a number of questions to the High Court on the interpretation of articles 8(a)(iv) and 9(1)(c) of the AIE Regulations to the extent that they involve an interplay with the Freedom of Information Act 2014 (the FOI Act). The High Court judgment on these questions was delivered on 28 April 2023.

The High Court held that certain exemptions in the FOI Act create protection for the confidentiality of proceedings of public bodies for the purposes of article 8(a)(iv) of the AIE Regulations where the information sought is exempt within the meaning of those provisions. However, these protections are only available to a public body that is subject to the FOI Act.

As Coillte is an exempt agency under the FOI Act, it cannot avail of the provisions of the FOI Act when seeking to rely on article 8(a)(iv) of the AIE Regulations. As Coillte could not utilise the provisions of the FOI Act, the Court did not go on to consider the questions relating to article 9(1)(c) of the AIE Regulations.

Cases to which these issues applied were on hold while we awaited the High Court's judgment on these issues. The majority of these cases have now been allocated for investigation, and the remainder will be dealt with during 2024.

Coillte Cuideachta Ghníomhaíochta Ainmnite v Commissioner for Environmental Information & Persons Unknown [2023] IEHC 640

This judgment concerns an appeal of the Commissioner's decision in OCE-124853-T4T4P0. This decision concerned a significant number of requests received by Coillte between March and May 2022, where Coillte alleged that the names provided by the requestors were not their legal names. In each case, Coillte wrote to the appellant seeking to confirm that the name given was the requestors' actual name and to confirm the address of the requestor. Ultimately, Coillte deemed the requests not to be made in accordance with article 6(1) of the Regulations due to the appellants' failure to confirm their legal names and addresses.

In his decision, the Commissioner found that the purpose of article 6(1)(c) was to ensure that public authorities have an effective means of communicating with requestors to ensure the effective right of access to environmental information. The Commissioner therefore found that the reference to a "name" in article 6(1)(c) simply requires the notification of a person who may be contacted by the public authority in relation to the request, whether that person's true identity is disclosed or not. Similarly, the decision found that the reference to "address" requires that a public authority be provided with a method of contacting the requester.

Coillte appealed the decision to the High Court. In a judgment issued on 22 November 2023, Mr. Justice Humphreys decided to refer a number of questions relating to the case to the Court of Justice of the European Union. These questions were finalised by the High Court on 24 January 2024 and five questions have been sent to the CJEU for preliminary ruling. We expect this matter will be dealt with by the CJEU in 2025.

