



<Dorota-Anna.BURSA@ec.europa.eu>

11.07.2011 14:49

To <Public.Participation@unece.org>

cc

bcc

Subject "C/54" Email 2

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**From:** ENV CHAP

**Sent:** Thursday, August 12, 2010 9:38 AM

**To:** WEGERDT Patrick (ENV); BURSA Dorota Anna (ENV); WALKER Margaret (ENV)

**Cc:** ARIAS SANCHEZ Maria Encarnacion (ENV)

**Subject:** FW: EU CHAP(2010)00645: Access to Information on the Environment (AIE) Request under S.I. NO. 133 of 2007 to DCENR and Decision of Broadcasting Authority of Ireland

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**From:** Pat Swords [mailto:pat.swords.chemeng@gmail.com]

**Sent:** Wednesday, August 11, 2010 8:17 PM

**To:** ENV CHAP; info@ocei.ie

**Cc:** info; Brendan Cafferty

**Subject:** EU CHAP(2010)00645: Access to Information on the Environment (AIE) Request under S.I. NO. 133 of 2007 to DCENR and Decision of Broadcasting Authority of Ireland

**To:** Commissioner for Environmental Information

**Date:** 11/8/2010

I will be lodging an appeal related to the failure of the Department of Communications, Energy and Natural Resources to reply to the Access to Information Request on the Environment, which is now over two months old.

**To:** CHAP (2010) 00645

It is clear from the attached correspondence relating to RTE / Broadcasting Authority of Ireland and the failure of the Department of Communications, Energy and Natural Resources to reply to the Access to Information on the Environment request below that the Irish Administration has simply no interest in complying with the requirements of the Aarhus Convention on dissemination of information on the environment through the State Broadcasters (public authorities). Unfortunately the requirements of the legislation are simply being ignored. It is particularly distressing, see Audio file below on Shell to Sea, that a militant group can be given free reign on the national broadcaster to make false and abusive claims about a fully compliant project which has exceeded the requirements of the Environmental Acquis, and that no attempt is made to broadcast the correct environmental information held by the regulatory process.

- <http://www.rte.ie/radio1/todaywithpatkenny/2010-07-01.html>

----- Forwarded message -----

From: **Pat Swords** <[pat.swords.chemeng@gmail.com](mailto:pat.swords.chemeng@gmail.com)>

Date: Tue, Aug 10, 2010 at 4:33 PM

Subject: Re: FW: Access to Information on the Environment (AIE) Request under S.I. NO. 133 of 2007 to DCENR

To: Barry Fulham <[Barry.Fulham@dcenr.gov.ie](mailto:Barry.Fulham@dcenr.gov.ie)>

Cc: Customer Service <[Customer.Service@dcenr.gov.ie](mailto:Customer.Service@dcenr.gov.ie)>, Caroline Henry <[Caroline.Henry@dcenr.gov.ie](mailto:Caroline.Henry@dcenr.gov.ie)>, Keith Flanagan <[Keith.Flanagan@dcenr.gov.ie](mailto:Keith.Flanagan@dcenr.gov.ie)>

Considering he is a legal person you should remind him of his obligations under the law to reply to such requests under the Statutory Period and your obligations as civil servants to apply the Directive (2003/4/EC) as implemented in Irish Law (S.I. No. 133 of 2007). If this had been addressed already as is a legal requirement we would not be in the position I have highlighted below. Furthermore it is totally unacceptable after over two months to reply is "considering the issues you have highlighted". When do I get my reply or do I simply go yet again to appeal and the EU Complaints Process?

On Tue, Aug 10, 2010 at 12:18 PM, Barry Fulham <[Barry.Fulham@dcenr.gov.ie](mailto:Barry.Fulham@dcenr.gov.ie)> wrote:

Pat,

Apologies for the delay in replying to you on this matter. This Department's legal advisor is continuing to consider the issues you have highlighted and as soon as he is in a position to submit his response to me, I shall subsequently forward you on our reply.

Regards,

Barry Fulham

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**From:** Pat Swords [mailto:[pat.swords.chemeng@gmail.com](mailto:pat.swords.chemeng@gmail.com)]  
**Sent:** 09 August 2010 17:25  
**To:** Barry Fulham  
**Cc:** Customer Service; Caroline Henry; Keith Flanagan

**Subject:** Re: FW: Access to Information on the Environment (AIE) Request under S.I. NO. 133 of 2007 to DCENR

To: Customer Service DCENR, Barry Fulham, Caroline Henry, Keith Flanagan

Date: 9/8/2010

It's over two months since this request went in, if you don't intent to reply I'll be lodging an appeal with the Commissioner for Environmental Information as it is now over a month since I requested an internal review.

On Tue, Jul 20, 2010 at 11:06 PM, Pat Swords <[pat.swords.chemeng@gmail.com](mailto:pat.swords.chemeng@gmail.com)> wrote:

Directive 2003/4/EC is now seven years old. Article 7 (1) is clear in that:

- Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public.

I've requested nothing that should have been available a long time ago, in particular as this legislation was enacted by S.I. No. 133 of 2007, which is three years ago.

On Wed, Jul 7, 2010 at 3:02 PM, Barry Fulham <[Barry.Fulham@dcenr.gov.ie](mailto:Barry.Fulham@dcenr.gov.ie)> wrote:

Hi Pat,

Apologies for not replying to you sooner but I am currently awaiting a legal opinion on some of the issues you have raised and I expect to be in a position to furnish you with a reply shortly.

Regards,

Barry Fulham

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**From:** Pat Swords [mailto:[pat.swords.chemeng@gmail.com](mailto:pat.swords.chemeng@gmail.com)]  
**Sent:** 06 July 2010 20:02  
**To:** Customer Service  
**Cc:** Barry Fulham; Caroline Henry; Diarmuid O'Connor; Keith Flanagan  
**Subject:** Re: FW: Access to Information on the Environment (AIE) Request under S.I. NO. 133 of 2007 to DCENR

As this request has not been answered within the one month statutory period I am now requesting an internal review.

On Tue, Jun 8, 2010 at 12:41 PM, Customer Service <[Customer.Service@dcenr.gov.ie](mailto:Customer.Service@dcenr.gov.ie)> wrote:

Dear Mr Swords

I acknowledge receipt of your email below to the Departments Customer Service mailbox.

I have forwarded your email to Barry Fulham who works in the Broadcasting Policy Division in the Department for attention and direct reply to you. His contact details are as follows: email address [barry.fulham@dcenr.gov.ie](mailto:barry.fulham@dcenr.gov.ie) and Tel: 01-678 3095.

If you have any further queries in this matter you should contact Mr Fulham directly.

Regards

Patricia Travers

Customer Service Helpdesk

Department of Communications, Energy & Natural Resources

Elm House

Earlsvale Road

Cavan

Tel: 01-678 2070

LoCall: 1890 44 99 00

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**From:** Pat Swords [mailto:[pat.swords.chemeng@gmail.com](mailto:pat.swords.chemeng@gmail.com)]

**Sent:** 06 June 2010 15:33

**To:** Diarmuid O'Connor; Customer Service

**Cc:** Moynes Adrian; [foi@rte.ie](mailto:foi@rte.ie); [pol.o.gallchoir@tg4.ie](mailto:pol.o.gallchoir@tg4.ie); [info@tg4.ie](mailto:info@tg4.ie); Pat O'Brien; [oposull@gmail.com](mailto:oposull@gmail.com); Brendan Cafferty; info

**Subject:** Access to Information on the Environment (AIE) Request under S.I. N0. 133 of 2007 to DCENR

To: Department of Communications, Energy and Natural Resources (DECNR)

Directive 2003/4/EC enacts in the EU the Access to Information requirements of the Aarhus Convention on Access to Information, Public Participation in

Decision Making and Access to Justice in Environmental Matters. In Ireland S.I. No. 133 of 2007 gives effect to this Directive in the national context. Note the Directive relates both to access to information on request and the active and systematic dissemination of information on the environment to the public to achieve the widest possible systematic availability.

Please note the recent appeal decision from the Commissioner of Environmental Information ( <http://www.wocei.gov.ie/en/DecisionsoftheCommissioner/> ) and the attached correspondence relating to the CHAP investigation of the EU regarding the implementation of Directive 2003/4/EC and other EU Directives of the Environmental Acquis in the Irish Republic. Points to be highlighted are:

- The clear concerns of the EU relating to reporting of EU Environmental Policy in the Irish Media.
- The fact that RTE considered itself exempt from the requirements of Directive 2003/4/EC due to its journalistic functions. While TG4 simply operated outside the legislation by failing to reply to a written request for information.
- The fact that RTE has no benchmarks relating to the criteria for reporting on environmental matters, i.e. what is actual significant environmental impact outside the legislative basis and what is simply here say (rumour or conjecture) that serves a purpose to create 'news' and controversy to boost ratings.
- It is clear that RTE does not have staff adequately trained in environmental matters. The regulation of industrial activities is a quasi-legal process. RTE and TG4 effectively subverted this process. Instead of reporting on the regulatory approval process for the Corrib development they instead carried out opinion poles on how 'it should be done', thereby deliberately generating controversy and inflaming the situation. (Note: It is illegal for the developer to consider an off-shore option on the Corrib development, the Directors of SEPIL being liable for a jail sentence if they did so. Unfortunately both RTE and TG4 carried out opinion poles on whether the Corrib project should be built on-shore or off-shore).
- RTE has no policy relating to its obligation under the Aarhus Convention for dissemination of environmental information.
- The European Court of Justice (C-427-07) was clear in its ruling in 2009 against the Irish State that: "*the mere availability, through publications or on the internet, of rules concerning access to administrative and judicial review procedures and the possibility of access to court decisions could not be regarded as ensuring, in a sufficiently clear and precise manner, that the public concerned was in a position to be*

*aware of its rights on access to justice in environmental matters”*. This clearly demonstrates that simply putting information on a website, such as a decision relating to regulatory approval and the reasons behind it, does not constitute active and systematic dissemination of the information on the environment, Particularly when controversy is being fuelled by other Public Bodies broadcasting completely contradictory information and ignoring the information that is held for them by the public bodies involved in regulatory approval.

My specific request relates to the definition of information on the environment given in Section 3 (1) of S.I. No. 133 of 2007, in particular administrative measures:

- What advice and guidance has DCENR issued to the Broadcasting Agencies (RTE and TG4) and other Public Bodies relating to compliance with Directive 2003/4/EC, in particular Article 7 on dissemination of environmental information. (Note: Requirements of Article 7 (1) first paragraph).
- What is the policy of DCENR relating to its obligations under the Aarhus Convention for dissemination of environmental information.
- It is very unclear from the references to the Broadcasting Acts and other publications on the website of DCENR how the requirements of the Aarhus convention on dissemination of environmental information are implemented through the published legislative acts, regulations and guidance. Can the specific sections be highlighted?
- What measures are implemented by DCENR in situations when clearly false information on the environment is being disseminated by the Broadcasting Agencies?

My contact details are:

Pat Swords BE CEng FICHEM CEnv MIEMA

10 Hillcourt Rd

Glenageary

Co. Dublin

2852768

(e-mail is best as out of the country a lot).

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Tá eolas sa teachtaireacht leictreonach seo (agus b'fhéidir sa chomhaid ceangailte leis) a d'fhéadfadh bheith príobháideach nó faoi rún. Is le h-aghaidh an duine/na ndaoine nó le h-aghaidh an aonáin atá ainmnithe thuas agus le haghaidh an duine/na ndaoine sin amháin atá an t-eolas. Murab ionann tusa agus an té a bhfuil an teachtaireacht ceaptha dó bíodh a fhios agat nach gceadaítear nochtadh, cóipeáil, scaipeadh nó úsáid an eolais agus/nó an chomhaid seo. Más trí earráid a fuair tú an teachtaireacht leictreonach seo cuir, más é do thoil é, an té ar sheol an teachtaireacht ar an eolas láithreach.

Deimhnítear leis seo freisin nár aimsíodh víreas sa phost seo tar éis a scanadh.

   
Comments to EU CHAP on RTE Appeal CEI-09-0015 May 2010.pdf D. Reply from Commission 21-01-09.pdf  
   
F. Reply from EU 19-2-09.pdf Complaint to Broadcasting Authority of Ireland PS 7-7-2010.pdf  
  
Reply to Broadcasting Authority of Ireland re RTE Complaint Reference 316-10 10-7-2010.pdf  
  
BAI Decision 9-8-2010 Complaint No. 316-10.pdf