



**Roinn Cumarsáide, Gníomhaithe
ar son na hAeráide & Comhshaoil**

Department of Communications,
Climate Action & Environment

UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE

Ms. Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
Palais des Nations, Room 429-4
CH-1211 GENEVA 10
Switzerland

Your ref: ACCC/C/2013/107

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland with the provisions of the Convention on public participation in decision-making in relation to the extension of the duration of 3 planning permissions for a quarry (ACCC/C/2013/107)

Dear Ms Marshall

We refer to your email dated 20th February 2017 concerning Ireland's objection to the publication of a document provided by the Communicant to the Committee which contained apparently confidential correspondence between persons who are not party to the within proceedings. Please find enclosed Ireland's response:

Fáiltítear roimh comhfhreagras i nGaeilge

INTRODUCTION

1. On the 28th November 2016 Ireland objected to the use by the Communicant of a document which contained apparently confidential correspondence between persons who are not party to the proceedings before the Committee.
2. Ireland submitted that the Communicant had insufficiently redacted the documentation, and that this constituted a breach of privacy and data protection for the clients and legal representatives involved.
3. On this basis, Ireland requested that the Committee withdraw the document in its present form.
4. On 20th February 2017 the Committee responded to Ireland's request by confirming the temporary removal of the relevant document.
5. The Committee sought clarification from Ireland on two matters:
 - (i) First, which information in the document is considered confidential and requiring redaction;
 - (ii) Second, on what grounds this information should be redacted, bearing in mind the grounds set out in article 4, paragraph 4 of the Convention.

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6. The document is a letter from a firm of legal costs accountants¹ to a firm of solicitors enclosing a marked-up Bill of Costs.² The document is a private communication between two firms, one a solicitor and the other a legal costs accountant drawing costs for the purpose of proceedings. It is either a confidential communication between a solicitor and his own costs accountant whilst proceedings are in being and adjourned before the Taxing Master, or it is a communication between a solicitor and an independent costs accountant drawing costs for the purpose of the adjourned hearing before the Taxing Master.
7. In either case, it is not a document produced or authored by a public body, it is confidential and potentially privileged, and neither party to the present proceedings has it within their power to waive that confidentiality or privilege. It is entirely inappropriate and improper that the document was adduced before the Committee in the knowledge that it would become public.
8. It is unclear how the Communicant came to be in possession of the document. Under normal circumstances, there is no reason why such a document would be available in the public domain. There is no evidence that the Communicant obtained the permission of the persons to whom the letter relates before publishing it to the Committee.

¹ A legal costs accountant deals with the preparation and taxation of legal costs.

² Section 68 of the Solicitors (Amendment) Act, 1994 provides for charges to clients. Under these provisions a solicitor should furnish a detailed statement of all the legal costs to his client. This statement of costs should contain: (a) a summary of the legal services provided; (b) the total amount of damages received or other monies recovered; (c) details of all the charges incurred and the nature of same. Generally, at the conclusion of the business or by arrangement with the client the solicitor will produce a detailed statement of costs and this is known as a Bill of Costs. Source: [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/681C14C83675610680257DE0005E17C1/\\$FILE/Taxation%20of%20Costs%202015.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/681C14C83675610680257DE0005E17C1/$FILE/Taxation%20of%20Costs%202015.pdf).

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9. Though the document is redacted, a cursory search of the website of the Irish courts service (www.courts.ie) using basic words in document such as “*carwash*” and “*water recycling*” leads to a High Court judgment which is almost certainly the case to which the document relates.
10. The judgment is particularly easy to identify given that the document clearly refers to a) the year of judgment b) the name of the applicant c) the name of the respondent public body d) the fact that the first named Notice Party is a town council e) the fact that the second named Notice party is a natural person and f) that the case relates to the award of a planning permission and g) the name of the judge.
11. Ireland is particularly concerned that the High Court judgment contains the full name of the second named Notice Party (a natural person) and refers to the location of the area of land which was the subject of the dispute.
12. The fact that the document appears to relate to private correspondence, that the Communicant has offered no explanation as to why such a document came to be in his possession, and that the document in its current form easily allows identification of the parties whose names have been redacted raises serious confidentiality and data protection concerns.
13. Ireland notes the Committee’s reference to Article 4 (4) of the Convention in its e-mail of 20th January 2017. However, it is quite clear that the document in question does not constitute

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“environmental information” as defined in Article 2 (3) of the Convention.³ Further, it is not a document which could have been subject to a request by the Communicant to a public authority, as envisaged by Article 4 (1) of the Convention. Accordingly, Ireland considers that Article 4 of the Convention is of no application in to the matter at issue.

14. Ireland does not propose at this stage to make detailed submissions on the features of domestic data protection law which are potentially implicated by the foregoing. However, should the Committee find it helpful, Ireland would be willing to provide same. In particular, Ireland is bound by its obligations in European Union law under the Data Protection Directive 95/46/EC,⁴ Article 16 TFEU, and Article 8 CFREU. The relevant domestic law provisions are found in the Data Protection Act 1988, the Data Protection (Amendment) Act 2003, and the Regulations made thereunder.
15. Ireland further notes that both Article 12 UNDHR and Article 17 ICCPR provide that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, and that everyone has the right to the protection of the law

³Article 2 (3) provides as follows: *“Environmental information” means any information in written, visual, aural, electronic or any other material form on:*

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.”

⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

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against such interference or attacks. With regard to data privacy in particular, Ireland observes that Article 17 ICCPR has been interpreted by the UN Human Rights Commission in its General Comment 16 of 1988 to include certain data protection guarantees.⁵ Ireland considers that, should the document be republished on the website of the Committee, this may constitute a breach of those guarantees. In any event, it is properly for the parties to those proceedings to address the Committee on such issues, and not either Ireland or the Communicant in these proceedings.

16. As a final point, the document at issue is entirely irrelevant to the present proceedings before the Committee. Ireland has objected throughout the proceedings before the Committee to an abstract examination of its costs regime based on hypothetical speculation.
17. Ireland notes there has been a suggestion that further redactions could be made. The same points apply as have been made above. Furthermore, even if it were legitimate to have the document before the Committee in that way (which, for the reasons set out above, it is not) redacting the document even more heavily will simply move it further away from a particular factual nexus that could confer it any relevance when considering aspects of

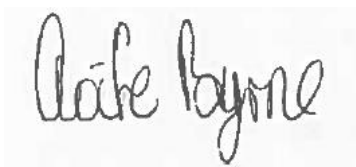
⁵ See General Comment 16 at para. 10 “*The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person’s private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.*”

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national law and practice. Moreover, Ireland is (naturally) a stranger to the facts of that case and can simply not respond.

18. For all of the above reasons, Ireland respectfully reiterates its request that the document remain permanently removed from the Committee's website.

Yours sincerely,



Aoife Byrne

National Focal Point - Aarhus

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