

# Part II

## Commissioner for Environmental Information

Introduction

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## Introduction

I am pleased to report that in 2018 my Office recorded significant achievements in throughput, building on the gains which we made in 2017. The case figures are reported below in Chapter 1: The Year in Review. I draw attention here to some of the trends we noted in 2018. We recorded a 6% increase in the number of cases closed by my Office over the previous year and a 14% increase in the number of decisions made. More cases were closed and decisions made than in any other year since the establishment of the OCEI in 2007. I am also pleased to report that my Office recorded a decrease in the number of cases on hand at the year-end for the first time since 2012. An OIC Investigator was assigned to the OCEI during 2018, bringing the capacity of OCEI up to three and a half investigators.

Another positive development in 2018 was the marked decrease in the number of cases in which public authorities failed to make decisions, or issued late decisions, on requests resulting in a deemed refusal of access. We recorded a 57% decrease in the number of deemed refusals at first stage, a 50% decrease in the number of deemed refusals at second stage, and a 25% decrease in the number of deemed refusals at both first and second stage over the previous year.

My Office faced a number of challenges in 2018, including the complexity of the interplay between third party rights and access to environmental information and difficulties in interpreting the scope of the application of the definitions of “environmental information” and “public authority”. This is reflected in the sharp rise in the number of my decisions being appealed to the High Court. Twelve and half percent of the decisions I made in 2018 were appealed to the High Court. Appeals before the courts result in the diversion of my Office’s resources from processing the cases pending before me under article 12 of the AIE Regulations. Unfortunately, the high percentage of appeals is likely to have a negative effect on the ability of my Office to close cases over the coming year.

For further information on the operation of the AIE regime in Ireland, please visit my website at [www.ocei.ie](http://www.ocei.ie), which includes links to the previous **Annual Reports** of my Office, the **OCEI Procedures Manual**, the website of the **Department of Communications, Climate Action and Environment**, and **Directive 2003/4/EC**. All of my decisions can be found on the OCEI website on the ‘**Decisions**’ web page.

# Chapter 1: The year in review

## Key OCEI Statistics in 2018

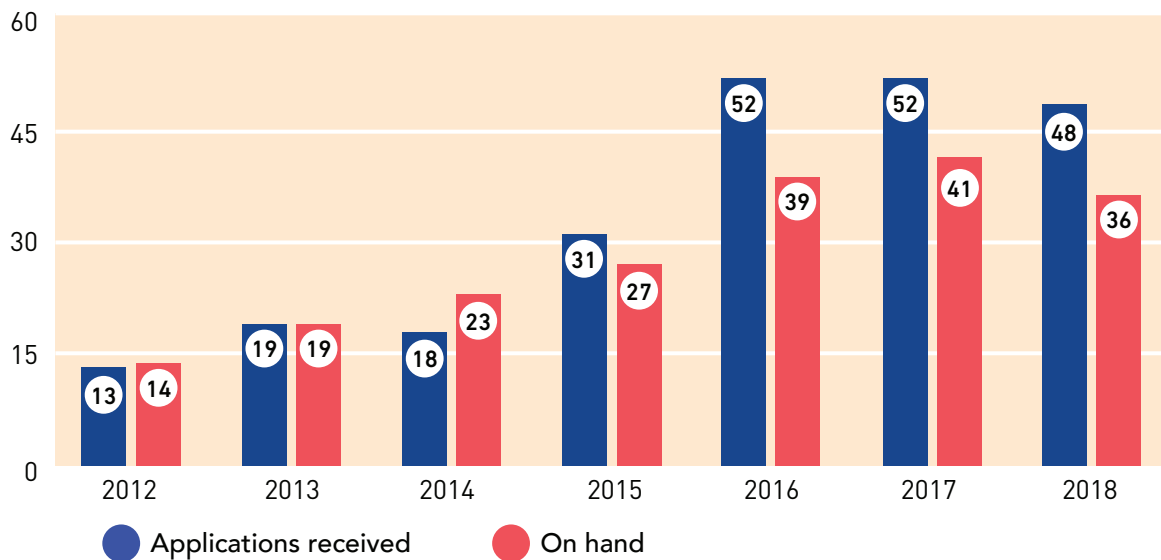
### Appeals received by the OCEI

At the start of 2018, the OCEI had 41 cases on hand. In 2018, the OCEI received 48 new appeals. In addition to the 48 new appeals, one appeal was remitted back to the OCEI by the High Court.

The number of cases on hand in the OCEI at the end of the year dropped for the first time since 2012. At 31 December 2018, the OCEI had 36 cases on hand; of these 27 were received in 2018, seven in 2017, one in 2016 and one was the case which the High Court remitted back to the OCEI. At the time of writing, I have made a new decision in the remitted appeal in Case **CEI/18/0039** Right to Know CLG and Raheenleagh Power Designated Activity Company which was again appealed to the High Court in March 2019. For more information on this case see the summary in Chapter 2: Court Proceedings. The remaining 2016 and 2017 appeals are being progressed by Investigators.

The chart below shows the number of appeals received, and the number of cases on hand (as of 31 December), each year from 2012 to 2018.

### Number of appeals received and on hand from 2012 to 2018

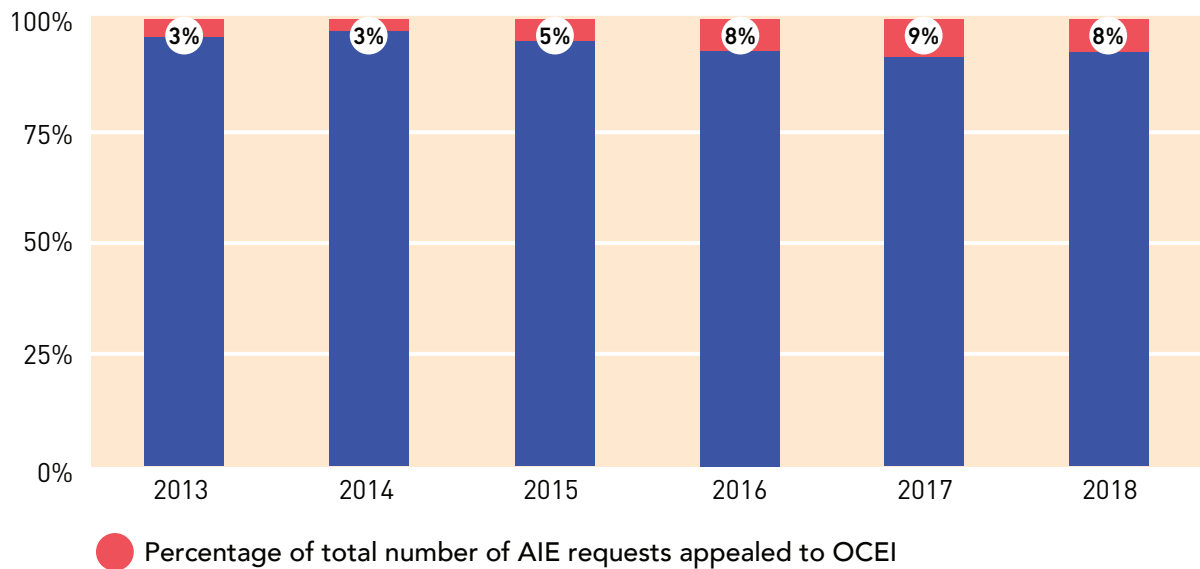


### Percentage of AIE requests appealed to the OCEI

The Department of Communications, Climate Action and Environment compile and publish National AIE Statistics each year (available on its website at [www.dccae.gov.ie](http://www.dccae.gov.ie) at its 'National AIE Statistics' webpage). I note that the percentage of the total number of AIE requests made to public authorities being appealed to the OCEI has increased steadily from 3% in 2014 to 8% in 2018. The continual increase in the percentage of AIE requests submitted to the OCEI can be

contrasted with FOI, where the percentage of applications for FOI reviews remains relatively consistent at just under 2% of the total number of FOI requests.

### Percentage of AIE requests appealed to the OCEI from 2013 to 2018



### Enquiries and statutory requests received by the OCEI

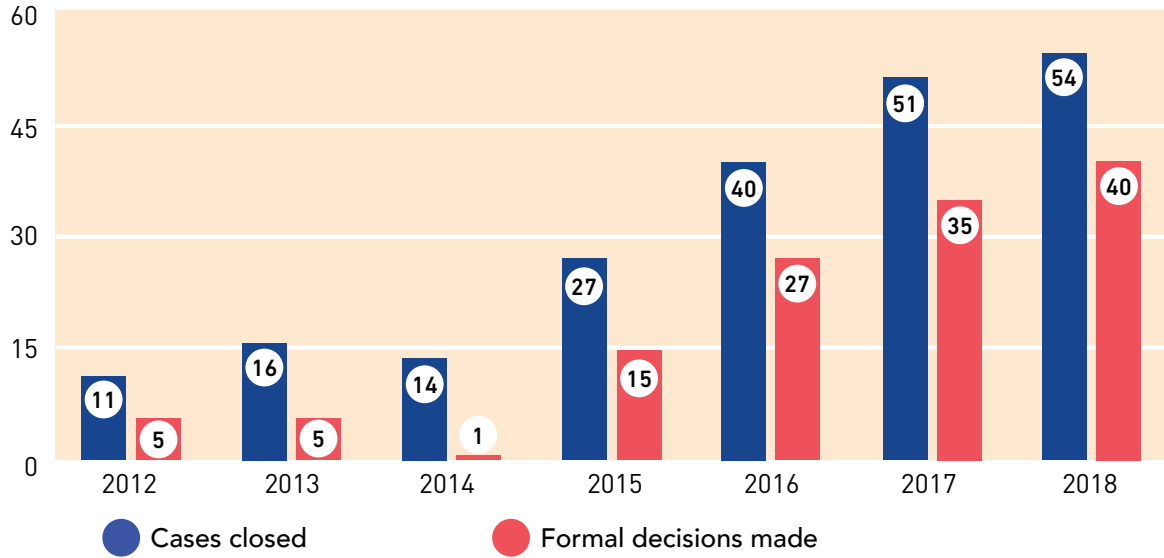
During 2018, my staff recorded 14 general enquiries about the AIE Regulations. My Office processed one request under the AIE Regulations and one request under the FOI Act 2014. It received no requests under the PSI Regulations in 2018.

### Cases closed by the OCEI

The OCEI closed 54 cases in 2018 - more cases than were closed in any other year since its establishment in 2007. I made 40 decisions in 2018; this too is more than in any other year since 2007.

The chart below shows the number of cases closed, and the number of decisions made, each year from 2012 to 2018.

### Number of cases closed and formal decisions made from 2012 to 2018



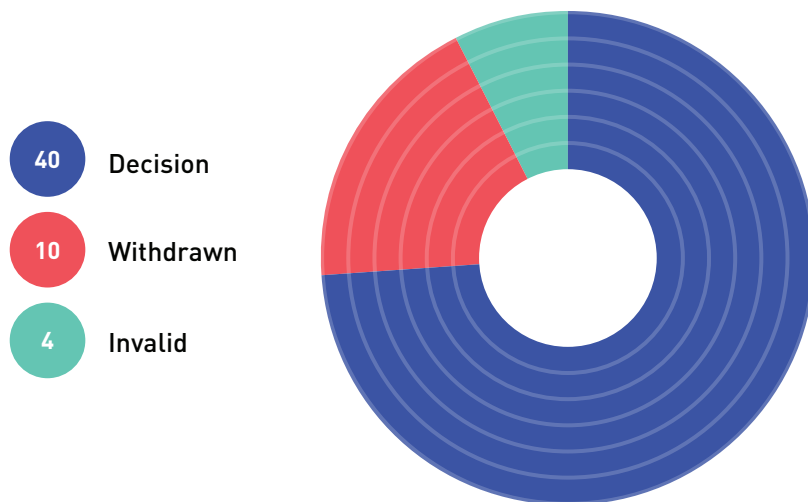
The outcome in the 54 cases closed by the OCEI in 2018 was:

- 40 cases closed by decision
- four invalid cases
- ten cases withdrawn or deemed to have been withdrawn

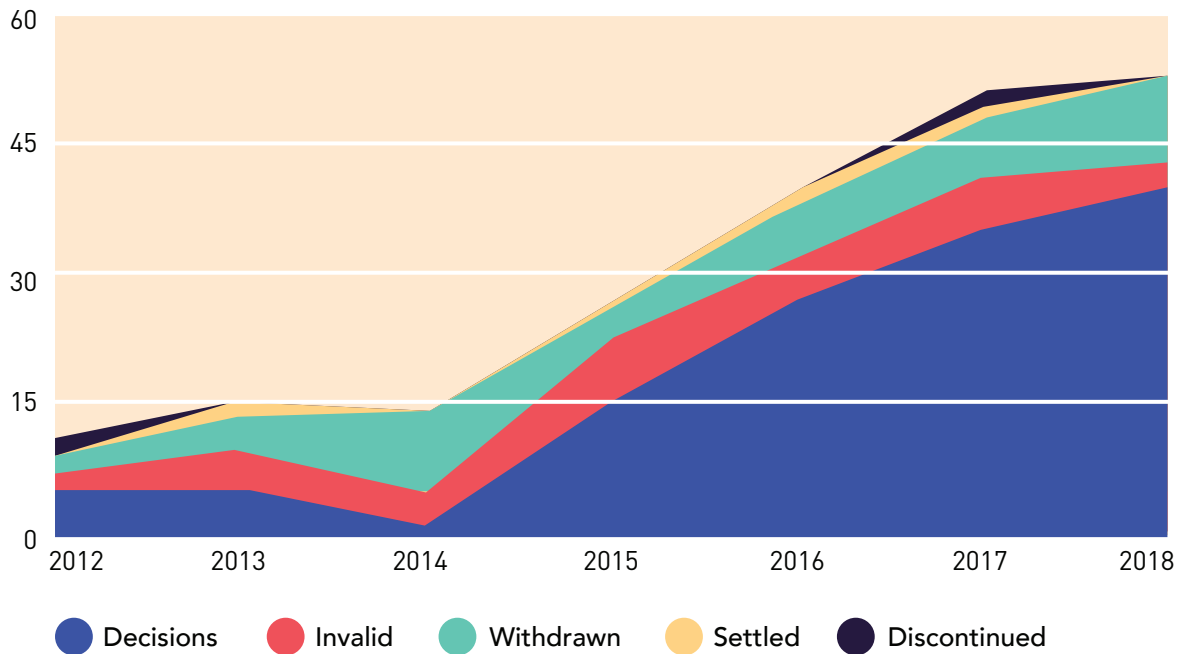
The average number of days taken for an appeal to be closed was 279 days in 2018. This is an increase of 17 days from 262 days in 2017.

The charts below show the outcome in cases closed by the OCEI in 2018 and the outcome in cases closed by OCEI from 2012 to 2018.

### Outcome in cases closed in 2018



## Outcome in cases from 2012 to 2018



## Powers under article 15(5) of the AIE Regulations

A case closed by withdrawal can be withdrawn either:

- by the appellant or
- by me pursuant to article 15(5) of the AIE Regulations which recognises that a case may be resolvable otherwise than by way of a binding decision

Article 15(5) provides that:

“The Commissioner may deem an appeal to be withdrawn if the public authority makes the requested information available, in whole or in part, prior to a formal decision of the Commissioner under article 12(5).”

I deemed two cases to be withdrawn pursuant to article 15(5) in 2018.

The appellant in each case requested that I proceed to make a decision on issues that had arisen prior to the release of the information concerned. However, in circumstances where, following the intervention of my Office, the requested information had been released to the appellant in full, I did not consider that my Office had a further role in the matter. In my view, it would not have been an appropriate use of my Office’s limited resources to carry out a comprehensive first instance review, and make a decision, where the environmental information requested had been released in full. In the circumstances, I considered it appropriate to deem the appeals to be withdrawn under article 15(5) of the AIE Regulations, and as is my Office’s practice in such cases, to refund the appeal fee.

## Powers under article 12(6) of the AIE Regulations

Article 12(6) of the AIE Regulations provides that in the course of carrying out a review of an appeal I may:

- require a public authority to make environmental information available to me
- examine and take copies of environmental information held by a public authority
- enter any premises occupied by a public authority so as to obtain environmental information

I am pleased to report that I had no need to apply these powers in 2018.

## Deemed refusals

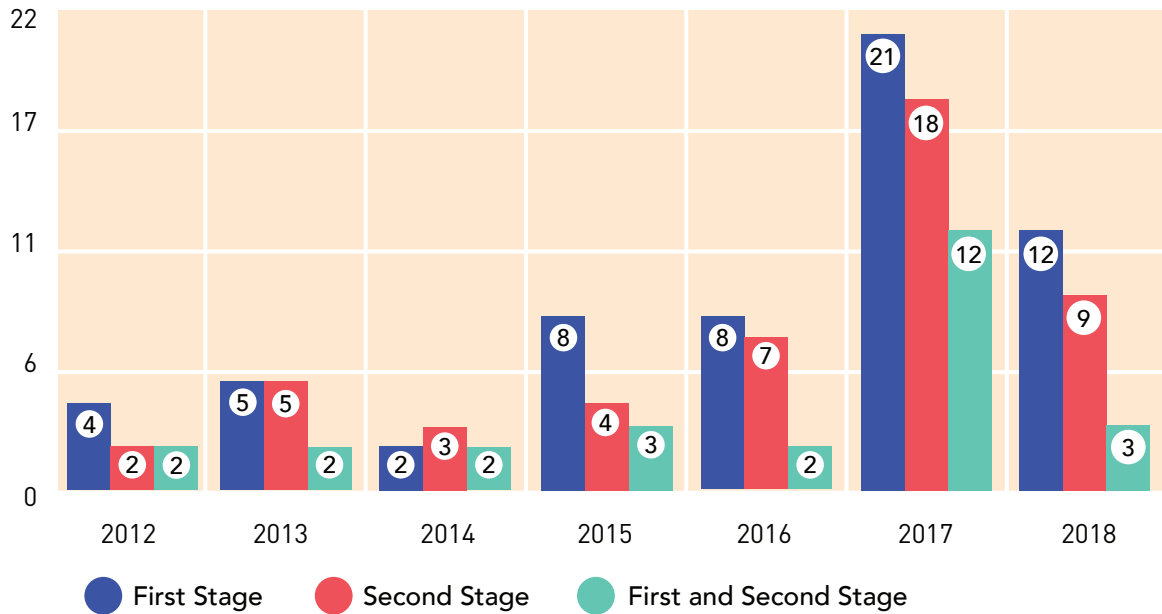
The AIE Regulations impose statutory time limits on public authorities for processing requests. Where no decision is issued or a decision is issued late, either on the original request (at first stage), or on the internal review request (at second stage), a decision refusing the request is deemed to have been made by the public authority ('deemed refusal'). Following a deemed refusal at second stage, an applicant is entitled to appeal to me for a review of the public authority's refusal within one calendar month of the date it should have received the public authority's decision.

## Decrease in the number of deemed refusals

In my 2017 Annual Report, I reported that there was a sharp rise in the number of deemed refusals recorded by my Office. I am pleased to report that we saw a marked decrease in the number of deemed refusals in cases accepted for review in 2018. We noted a 57% decrease in the number of deemed refusals at first stage over the previous year and a 50% decrease in the number of deemed refusals at second stage. We also recorded a 25% decrease in the number of deemed refusals of the same request at both the first and second stages over the previous year. While there is still a way to go in reducing further the number of deemed refusals or "non-replies", I welcome what seems to be an improvement in the compliance rate by public authorities and hope that this continues in 2019.

The chart below shows the number of deemed refusals at first stage, second stage and at both first and second stage recorded by my Office from 2012 to 2018.

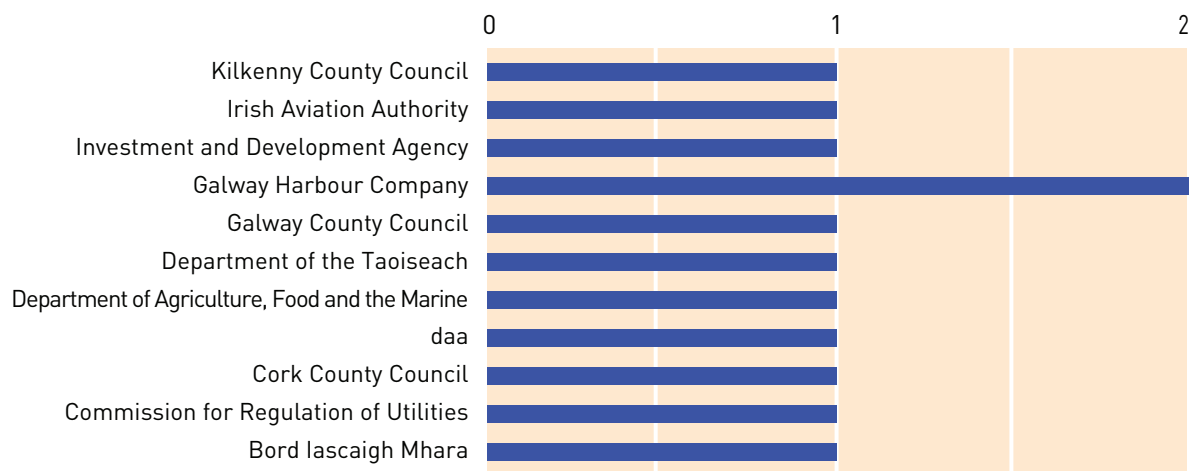
## Decisions where public authorities failed to make a decision from 2012 to 2018



In cases accepted by my Office in 2018, the Office recorded that there were 12 deemed refusals at first stage and nine deemed refusals at second stage. We also noted that three public authorities failed to make decisions at both the first and second stages. The three public authorities were: Bord Iascaigh Mhara; Cork County Council; and daa.

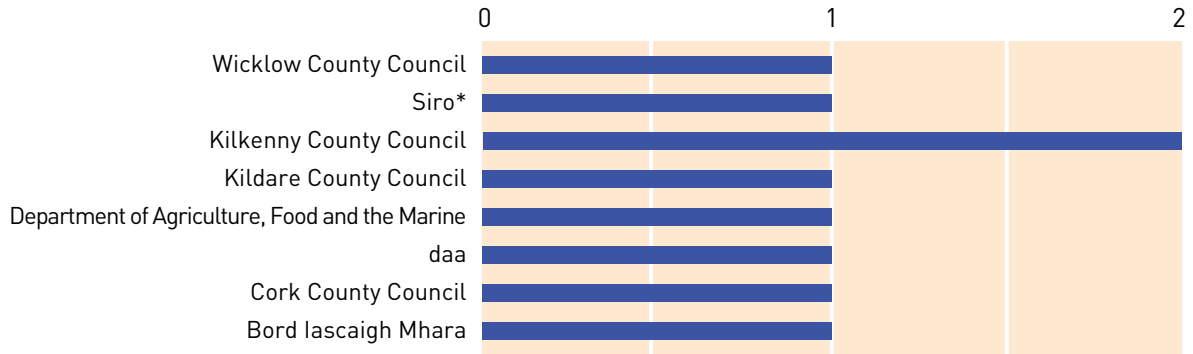
The charts below show which bodies failed to make decisions at first stage, at second stage, and the number of deemed refusals by each body.

### Deemed refusals at first stage





## Deemed refusals at second stage



\* Whether the body is a public authority within the meaning of the definition “public authority” in article 3(1) of the AIE Regulations is the issue at the centre of the appeal

## Chapter 2: Court proceedings

A party to a review or any other person who is affected by a decision of my Office may appeal to the High Court on a point of law pursuant to article 13 of the AIE Regulations. A decision of the High Court can be appealed to the Court of Appeal/Supreme Court.

### Court of Appeal

One High Court decision was appealed to the Court of Appeal in 2018.

#### Redmond & Anor v Commissioner for Environmental Information 2016/27 JR

In Case **CEI/14/0011** (Mr Jim Redmond and Coillte Teoranta), I found that certain information on the transfer of land did not fall within the scope of the definition of environmental information in article 3(1) of the AIE Regulations. The appellants applied to the High Court for a judicial review of my decision in March 2016. The High Court in **Redmond & anor v Commissioner for Environmental Information & anor [2017] IEHC 827** found that I was correct in concluding that the information concerning the sale of the leasehold of land was not environmental information within the meaning of the AIE Regulations. The High Court’s judgment was appealed to the Court of Appeal in March 2018. The matter is listed for hearing before the Court of Appeal on 13 January 2020.

### High Court

Five of the decisions I made in 2018 were appealed to the High Court. Three were appealed by the public authority and two were appealed by the appellant.

## Right to Know CLG v Commissioner for Environmental Information 2018/119 MCA

In Case **CEI/17/0021** (Right to Know CLG and Department of Transport, Tourism and Sport), I found that a letter and submission sent by Ibec to the Department was not environmental information within the meaning of article 3(1) of the AIE Regulations. While the submission referred to transport measures affecting or likely to affect the elements and factors of the environment, I found that the connection between the submission and those measures was too minimal to be information “on” those measures within the meaning of the definition of environmental information in article 3(1)(c) of the AIE Regulations. Right to Know CLG appealed my decision to the High Court on 11 April 2018. The matter is listed for hearing on 17 July 2019.

## Coillte Teoranta v Commissioner for Environmental Information 2018/453 MCA

In Case **CEI/17/0022** (Right to Know CLG and Coillte), I found that in the circumstances of this case the particular land sales were measures likely to affect the elements and factors of the environment within the meaning of article 3(1)(c) of the AIE Regulations. I also found that the identity of the purchasers was information “on” those sales, and therefore, environmental information under article 3(1)(c). Coillte appealed my decision to the High Court on 7 December 2018. We await the setting of a hearing date for this appeal.

## Electricity Supply Board v Commissioner for Environmental Information 2019/47 MCA

In Case **CEI/18/0003** (Lar McKenna and Electricity Supply Board), I found that a transcript of a hearing of the property arbitrator was environmental information under article 3(1)(c) of the AIE Regulations on the basis that it was information “on” the development of electricity infrastructure which is a measure or activity affecting or likely to affect the elements and factors of the environment. I went on to find that the ESB was justified in refusing access to a copy of the transcript under article 9(1)(d) of the AIE Regulations. However, in the circumstances of the case, I required the ESB to grant access to the transcript by way of inspection in situ at its office. The ESB appealed my decision to the High Court on 11 February 2019. We await the setting of a hearing date for this appeal.

## An Taoiseach v Commissioner For Environmental Information 2019/48 MCA

In Case **CEI/18/0010** (Áine Ryall and the Department of the Taoiseach) I found, among other findings, that article 9(2)(d) of the AIE Regulations applied to a memo prepared in the Department of An Taoiseach concerning proposals to limit the time frame for seeking the judicial review of planning consents for strategic infrastructure developments. I also found that the interest served by maintaining the confidentiality of the Cabinet’s internal communications outweighed the public interest in the disclosure of that information, except for small amounts of factual information in the memo, which I required the Department to release. The appeal was withdrawn on the consent of both parties on 4 March 2019.

## Right to Know CLG v Commissioner for Environmental Information 2018/216 MCA

In Case **CEI/17/0030** (Right to Know CLG and Raheenleagh Power DAC), I found that Raheenleagh Power DAC was not a public authority within the meaning of article 3(1) of the AIE Regulations. The appellant appealed my decision to the High Court on 24 May 2018. On 22 October 2018 the High Court, on the consent of all parties made an order setting aside my decision in CEI/17/0030 and remitting the matter to me for further consideration. My Office conducted the fresh review on the basis of procedures agreed with the parties. I made a new decision in Case **CEI/18/0039** (Right to Know CLG and Raheenleagh Power Designated Activity Company) on 9 January 2019 in which I found that Raheenleagh Power Designated Activity Company was not a public authority within the meaning of article 3(1) of the AIE Regulations. Right to Know CLG appealed my decision in Case CEI/18/0039 to the High Court on 7 March 2019. We await the setting of a hearing date for this appeal.

## Friends of the Irish Environment v Commissioner for Environmental Information 2017/298 MCA

I reported in last year's Annual Report that my decision in Case **CEI/16/0038** (Friends of the Irish Environment Limited and The Courts Service) was appealed to the High Court. In that case I found that the Courts Service is not a public authority within the meaning of article 3(1) of the AIE Regulations when it holds information in a judicial capacity on behalf of the Judiciary. The appeal was heard by the High Court in April 2019. The Court decided to refer a question of law to the Court of Justice of the European Union for a preliminary ruling regarding the scope of the 'when acting in a judicial capacity' exception to the definition of "public authority".

## Judicial Review

In addition to the five appeals to the High Court under article 13, there was one judicial review in 2018 of a decision made by the Department of the Taoiseach under the AIE Regulations. The Department's decision in that case was not appealed to my Office and we were not a party to the judicial review proceedings.

## Right to Know CLG v An Taoiseach & anor [2018] IEHC 371

The High Court quashed a refusal by the Department of the Taoiseach to provide access to documents showing Cabinet discussions on Ireland's greenhouse gas emissions. The Court stated that article 10(3), (4) and (5) mandates a public authority to:

- consider each request on an individual basis
- weigh the public interest served by disclosure against the interest served by refusal
- interpret the grounds for refusal on a restrictive basis having regard to the public interest served by disclosure and
- consider the possibility of providing partial access to information

It stated that a public authority may refuse access to environmental information only where the requirements of those provisions have been substantively and procedurally adhered to. The Court held that the Department's internal review decision did not comply with the requirements of the AIE Directive as it had not considered the public interest in favour of disclosure and the reasons given for the decision were inadequate.

### Communication to the Aarhus Convention Compliance Committee

I reported in my **2016 Annual Report** that Right to Know CLG made a communication to the Aarhus Convention Compliance Committee (**ACCC/C/2016/141**) in relation to aspects of Ireland's compliance with the Convention. That communication referred to the processing of cases by the OCEI. The Compliance Committee heard the communication at its 62nd meeting held from 5 to 9 November 2018. At the time of writing, I have not been provided with information relating to the Compliance Committee's findings and recommendations on the communication. Information on the communication can be found on the Compliance Committee's website at [www.unece.org/env/pp/cc/com](http://www.unece.org/env/pp/cc/com).

## Chapter 3: Issues arising

### Increase in the number of appeals to the High Court under article 13

The expanded staffing of my Office in recent years has allowed for a marked increase in the number of cases processed on an annual basis, including in the number of decisions I have made. During 2018, however, there was also a sharp rise in the number of my decisions being appealed to the High Court under article 13 of the AIE Regulations. Of the 40 decisions I made in 2018, five, or 12.5%, were appealed to the High Court. My Office spends substantial resources in responding to such litigation.

The appeals involve multiple issues, but all five include a ground of appeal alleging that I misapplied either the definition of "environmental information" or "public authority", and in one appeal both definitions, in article 3 of the AIE Regulations. The high percentage of appeals highlights the complexity that can be involved in interpreting these definitions. Four concern the application of the definition of environmental information. Interestingly, one appeal alleges that I interpreted the definition of "environmental information" too narrowly and the remaining three, in essence, allege that I interpreted the definition too broadly. One concerns a finding I made that a particular entity was not a public authority, while another concerns a finding I made that the body was a public authority. My Office welcomes the clarity that the judgments in these appeals can bring to the key definitions of "environmental information" and "public authority". However, I have concerns about the financial and staff time resources involved in responding to the Court appeals.

## Disclosure of environmental information and third party rights

During 2018, my Office received its first two third party appeals pursuant to article 12(3)(b) of the AIE Regulations which includes a right of appeal for third parties that would be adversely affected by disclosure of the environmental information. Both of these appeals were subsequently withdrawn by the third parties.

In addition to the two third party appeals my Office received pursuant to article 12(3)(b) of the AIE Regulations, I also made a number of decisions in 2018 which considered the exceptions to disclosure in the AIE Regulations which provide for the non-disclosure of environmental information where disclosure would adversely affect the rights of third parties. Some examples of those decisions are included in Chapter 4: Decisions.

## Chapter 4: Decisions

### Formal decisions

In 2018, I made 40 decisions on appeals under the AIE Regulations. In 25, or 62.5%, of my decisions I found that refusal of access to environmental information was justified in full (although not always for the same reasons provided by the public authority).

In 15, or 37.5%, of my decisions I found that refusal of access was not justified (either in part or in full). In nine of the 15 decisions, I required the public authorities to provide the appellants with access to environmental information. In 3 cases, the public authorities granted access in full to the environmental information requested during my review. In the remaining 3 cases, I found that refusal of the requests were not justified and that the public authority in question should make a fresh decision on the request. Therefore, I remitted the cases back to the public authorities to do so.

In 15, or 37.5%, of my decisions I considered the application of the definitions of “environmental information” and “public authority” in article 3 of the AIE Regulations.

In 14, or 35%, of my decisions I considered whether disclosure of the information would adversely affect the rights of third parties such as the confidentiality of personal information, commercial or industrial confidentiality and intellectual property rights.

### Decisions of interest

The following are some examples of the decisions I made in 2018. The full text of all of the decisions is available at [www.ocei.ie](http://www.ocei.ie).

#### Personal information

Article 8(a)(i) was a central issue in six of my decisions in 2018. Article 8(a)(i) 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.

### **Case CEI/17/0036 (ABC & Meath County Council)**

In this case the appellant sought access to information relating to sites inspected by the Council as part of its process under the Derelict Sites Act 1990. I was satisfied that some of the withheld information was personal data, the confidentiality of which was protected by EU and national law. I found that article 8(a)(i) of the AIE Regulations applied to the personal data. I also found that the interest served by refusal outweighed the public interest in disclosure. In relation to article 10(5), I considered that identifying information for separation and release would necessitate contacting a large number of parties and considering their responses, and that in some instances it would not have been appropriate or proportionate for the Council or my Office to contact the third parties. In such circumstances, I found that separating information in the spreadsheet and the database for release pursuant to article 10(5) was not practicable.

### **Case CEI/18/0013 (Mr X & the Department of Agriculture, Food and the Marine)**

In this case the appellant sought access to, among other information, townland details provided in certain Green, Low-Carbon, Agri-Environment Scheme (GLAS) applications. I accepted that identifying the townland of a GLAS applicant's lands would be likely to reveal the identity of the applicant in conjunction with the location of his/her lands and, in some cases, his/her home address. I recognised that there is a reasonable possibility of pooling information with other available information in a manner that would be likely to reveal the identity of the applicant. Having regard to relevant European law, I was satisfied that GLAS applicants have a reasonable expectation that any townland details provided in their applications will be treated as confidential personal information and that the confidentiality of the information is protected by law. I found that article 8(a)(i) of the AIE Regulations applied to the townland details. I also found that the interest served by refusal outweighed the public interest in disclosure. In addition, I found that article 10(5) did not apply in the circumstances of this case.

## **Commercial or industrial confidentiality**

Article 9(1)(c) was a central issue in six of my decisions in 2018. Article 9(1)(c) provides that a public authority may refuse to make environmental information available where disclosure of the information requested would adversely affect commercial or industrial confidentiality, where such confidentiality is provided for in national or community law to protect a legitimate economic interest.

### **Case CEI/17/0051 (Ms X and the Department of Agriculture, Food and the Marine)**

In this case the appellant sought access to stocking rates in inspection reports for all marine and fresh water fin-fish farms for a three-year period. I found that it was necessary to show, at a minimum, that disclosure would result in some harm to the economic or commercial

interest of the party seeking protection by way of confidentiality. I did not consider that a general or speculative claim of harm to a company's competitive position was sufficient. I noted that there was a distinction between standing stock and actual production. I accepted that production data would be commercially valuable in the competitive fish farming market and that details regarding suppliers, actual supply into the market, and destinations would be key factors in determining sales prices and market share. I also accepted that the information was commercially confidential and that disclosure would be harmful to the commercial interests of the farms concerned. I found that article 9(1)(c) applied to the actual production data provided in any of the reports relating to the farms or companies which objected to the release of their details. I also found that the interest served by refusal outweighed the public interest in disclosure. However, in the circumstances of the case I did not accept that disclosure of the information in the inspection reports about the standing stocking rates would be harmful to any commercial or economic interest that is protected by law. I found that the Department was not justified in refusing access to the information about the standing stocking rates in the inspection reports and required the release of this information.

### **Case CEI/18/0009 (Shell and Topaz Aviation Ireland Limited and daa Public Limited Company)**

In this case the appellant sought access to the contract for the construction of a fuel farm at Dublin Airport. I found that the information in the contract is environmental information. I noted that, while it is open to the public authorities to enter into contracts which include confidentiality clauses, such clauses must not purport to restrict access to environmental information. Public authorities are not free to contract out of their obligations under AIE law. The public authority also argued that its employees had a statutory duty of confidentiality under particular legislation which prohibited them from disclosing confidential information. I did not accept that the statutory prohibition invoked had any bearing on whether the public authority itself (as distinct from its employees) should or could release particular information. I found that article 9(1)(c) applied to the withheld information because its disclosure would adversely affect commercial confidentiality. I also found that the interest served by refusal outweighed the public interest in disclosure.

### **Definitions of “environmental information” and “public authority”**

The application of the definitions of “environmental information” and “public authority” in article 3(1) of the AIE Regulations were central issues in 12 of my decisions in 2018.

Whether a body is a public authority within the meaning of the definition in article 3(1) of the AIE Regulations was a central issue in three of my decisions. Article 3(1) of the AIE Regulations defines “public authority” as:

- (a)** government or public administration, including public advisory bodies
- (b)** any natural or legal person performing public administrative functions under national law

- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b)

Article 3(2) of the AIE Regulations provide that the definition does not include: the President; the Office of the Secretary General to the President; the Council of State; any Commission for the time being lawfully exercising the powers and performing the duties of the President; or any body acting in a judicial or legislative capacity.

### **Case CEI/17/0015 (Francis Clauson and RPS Consulting Engineers Ltd (RPS))**

In this case the appellant was refused access to information relating to the noise monitoring programme of wind farms carried out by RPS on the basis that RPS is not a public authority. RPS is a private company contracted by Wexford County Council. The main issue was whether RPS is a public authority under article 3(1)(c). I considered that there was a distinction between a public authority delegating the actual provision of public services which are provided to members of the public to another body and a public authority purchasing works, goods or services through public procurement in order to meet its own operational needs. In the circumstances of the case, I was not satisfied that RPS in carrying out the noise monitoring programme provided public services. I found that RPS is not a public authority under article 3(1) of the AIE Regulations.

### **Case CEI/17/0016 (Lar McKenna and the Property Arbitrator)**

In this case the appellant appealed the failure of the Property Arbitrator to process his request which was previously appealed to me. In Case **CEI/15/0026** (Lar McKenna and Statutory Property Arbitrator) I found that the Property Arbitrator is a public authority within the meaning of article 3 of the AIE Regulations and I stated my expectation that he would proceed to process the AIE request. My earlier decision found that the Property Arbitrator is not excluded from the definition because he is not obliged to give reasons for his decisions. The Property Arbitrator submitted in this appeal that, contrary to my earlier finding, he is obliged to give reasons for his award decisions by virtue of the Arbitration Act 2010, which incorporates the UNCITRAL Model Law into Irish law. In the circumstances, I found that the Property Arbitrator acts in a judicial capacity when performing his statutory function within the meaning of article 3(2) and, therefore, is not a public authority within the meaning of article 3 of the AIE Regulations, when so acting.



## Chapter 5: Other matters of interest in 2018

### Amendment to the AIE Regulations

On 27 July 2018 the Minister for Communications, Climate Action and Environment signed S.I. No. 309 of 2018 European Communities (Access To Information On The Environment) (Amendment) Regulations 2018. S.I. No 309 of 2018 substituted article 3(2) with the following:

“Notwithstanding anything in sub-article (1), in these Regulations “public authority” does not include—

- (a) the President,
- (b) the Office of the Secretary General to the President,
- (c) the Council of State,
- (d) any Commission for the time being lawfully exercising the powers and performing the duties of the President, or
- (e) any body when acting in a judicial or legislative capacity.”

### Review of OCEI procedures

My Office is reviewing our processes to ensure that cases are examined, accepted, allocated and progressed in the most efficient, timely and thorough way whilst affording fair procedures to all parties concerned.

### Engagement with the Department of Communications, Climate Action and Environment

In March 2018, the Department ran an AIE Awareness and Training Event. An Investigator from my Office made a presentation which provided an overview of the Office, our role under the AIE Regulations, and guidance for AIE decision-makers on processing and making decisions on AIE requests. As in recent years, the training provided clear and useful information to public authority staff on the AIE Regulations, and I would like to thank the Department for its continued work in this regard.

In last year’s Annual Report I reported that my Office was engaging with the Department on its review of the ‘Guidance for Public Authorities and others on implementation of the Regulations’ (May 2013) published by the Minister pursuant to article 14 of the AIE Regulations. My Office provided observations on a draft version of the proposed revised guidance in early 2018. It is my understanding that the Department intends to publish the revised guidance in 2019.

In addition to revising the Minister's Guidance on the AIE Regulations, the Department also proposes to undertake a review of the AIE Regulations, which is to include a public consultation. My predecessor and I have at various times raised issues that my Office has encountered in carrying out our statutory functions under the AIE Regulations. In doing so we have suggested possible amendments to, and clarifications of, the Regulations to address such matters. My Office wrote to the Department in 2018 reiterating the issues which we consider that the Department should address when it is revising the AIE Regulations.

I look forward to further engagement with the Department in 2019 on the Minister's revised Guidance on the AIE Regulations, on its review of the AIE Regulations and on any other issues of mutual concern which may arise.