



Oifig an Choimisinéara um Faisnéise Comhshaoil
Office of the Commissioner for Environmental Information

PROCEDURES MANUAL

**APPEALS UNDER ARTICLE 12 OF THE EUROPEAN
COMMUNITIES (ACCESS TO INFORMATION ON THE
ENVIRONMENT) REGULATIONS 2007 TO 2014**

8 October 2015

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Part 1 - Introduction

1. Introduction

- 1.1. This manual sets out the procedures of the Office of the Commissioner for Environmental Information for dealing with appeals under Article 12 of the AIE Regulations. It has been published for the benefit of members of the public and public authorities alike who may be involved in appeals before the Office.
- 1.2. Article 12 is silent on the matter of procedure, but reflects the close connection between this Office and the Office of the Information Commissioner. Therefore, the Commissioner has adopted procedures that are largely consistent with the procedures for the conduct of a review under section 22 of the Freedom of Information (FOI) Act. The procedures are aimed at being as informal as possible while ensuring consistency and fairness in our approach to dealing with appeals. The procedures set out in this manual should, in the normal course of events, be adhered to insofar as practicable. In all cases, however, the Office will aim to ensure that the approach adopted for dealing with an appeal is fair, and is seen to be fair, to all parties concerned.

2. Making an appeal to the Office of the Commissioner for Environmental Information

- 2.1. The role of the Commissioner for Environmental Information is to review decisions of public authorities on appeal by applicants who are not satisfied with the outcome of their requests for information under the AIE Regulations.
- 2.2. Under Article 12(4)(a) of the Regulations, an appeal to the Commissioner must be initiated **not later than one month** after the internal review decision has been received by, or was required to be notified to, the applicant. Under Article 12(4)(b) of the Regulations, the Commissioner may extend the time limit for initiating an appeal where, in the circumstances of a particular case, it is reasonable to do so.
- 2.3. A person who wishes the Commissioner to review a decision of a public authority must give notice of the appeal in writing or electronic form and pay the appropriate fee by the applicable deadline. The use of the online facility for making an appeal is encouraged (see www.ocei.gov.ie), but notice of an appeal may also be given by email to info@ocei.gov.ie, provided that the appropriate fee is paid by the applicable

deadline.¹ Alternatively, an appeal may be made by post or hand-delivery to the Office at the following address:

Office of the Commissioner for Environmental Information
18 Lower Leeson Street
Dublin 2
DO2 HE97

2.4. It is necessary for the appellant to establish the validity of the appeal. An appeal is only valid insofar as it relates to information that was sought in the original request. In addition, compliance with the relevant time limits set out in the Regulations is required, and the applicable appeal fee must be paid.

2.5. Accordingly, the appeal should include the following:

- the appellant's name, telephone number, and any other contact details, including an email address (if available),
- the appropriate fee (see 3.1),
- the relevant information if it is claimed that no fee or a reduced fee is applicable,
- the name of the public authority to which the AIE request was made,
- the reference number of the public authority's decision (if available), and
- a copy of the decision-making records (i.e. the original request, original decision, internal review request, and internal review decision, as well as any other relevant correspondence with the public authority, such as any clarification or extension sought) insofar as available.

2.6. In addition, the appeal should identify the particular aspect(s) of the public authority's decision that the appellant is unhappy with. If the appellant is a person other than the applicant, including a third party, who would be incriminated by the disclosure of the environmental information concerned, this should be specified. A standard appeal form is available online at www.ocei.gov.ie (see also Appendix 1).

2.7. An appeal to the Commissioner, irrespective of the means by which notice is given, is deemed not to have been made until it is received by the Office and the appropriate payment has been made (see 3.3).

2.8. An appeal can be made either by the individual concerned or by another person acting on behalf of the individual (e.g., a solicitor²). In the latter case, written authorisation to

¹ Notice of appeal made by email must be in plain text format and be directed to info@ocei.gov.ie. An appeal made by email to the address of an individual staff member is not valid.

act on the appellant's behalf will be requested. The person will be informed that failure to provide written authorisation may delay the acceptance of the appeal, or lead to the appeal being rejected as invalid.

3. Appeal fees

3.1. Under Article 15(3) of the Regulations, a fee of €50 must be charged for making an appeal to the Commissioner unless the person concerned qualifies for a reduced fee of €15. A reduced fee of €15 applies where the person making an appeal is:

- a medical card holder,
- a dependant of the medical card holder,
- a person other than the applicant, including a third party, who would be incriminated by the disclosure of the environmental information concerned.

3.2. The required fee must be paid when the appeal is made. Where the original decision of the public authority was untimely (Article 10(7) refers), the Commissioner may waive all or part of the appeal fee (Article 15(6) of the Regulations refers). Otherwise the Regulations do not allow for the acceptance of an appeal where a fee has not been paid.³

3.3. Therefore, where the required fee is not paid by the applicable deadline, the Commissioner is obliged to reject the appeal as invalid. If the person wishing to make an appeal claims that a reduced fee applies, then evidence of eligibility for the reduced fee (e.g., a copy of the person's medical card) must be submitted by the applicable deadline. If the person wishing to make an appeal seeks a waiver of the appeal fee, then evidence of eligibility for the waiver (e.g., a copy of the decision-making documents showing that the original decision was untimely) must likewise be submitted by the applicable deadline.

² Appeals made on behalf of a person other than an individual (e.g., appeals made on behalf of a body such as a newspaper, private company, etc.) will be regarded as being made by that body or organisation. If, for example, at the conclusion of the Commissioner's review the individual who made the appeal on behalf of the body no longer acts on behalf of that body, then all correspondence will be addressed to an appropriate individual in that body or organisation.

³ However, where a case has been closed because of a "deemed refusal" of an internal review request or the determination of a threshold jurisdictional question, no additional fee will apply where the appellant seeks a further review following notification of the public authority's revised position on the request (see 11.1 & 16.2). Similarly, the appeal fee will be waived where the appeal relates to a previous search case (see 22.3).

4. Payment of fees

4.1. Fees can be paid using any of the following methods:

- **Online:** <https://www.ocei.gov.ie/en/make-an-appeal/pay-online/>
- **Cheque/Bank Draft/Postal Order:** crossed and made payable to the Office of the Commissioner for Environmental Information
- **Cash:** Fees in cash may be paid in person⁴ at the Office of the Commissioner for Environmental Information, 18 Lower Leeson Street, Dublin 2, between the hours of 9.15 a.m. and 5.30 p.m. Monday to Thursday and 9.15 a.m. to 5.15 p.m. Friday.

4.2. Where a fee is paid and it is subsequently determined that the original decision of the public authority was in fact untimely, the fee may be waived or refunded in full or in part. Likewise, where a fee is paid and the appeal is subsequently deemed to be withdrawn, the fee may be waived or refunded in full or in part.

Part 2 - Validation

5. Validation

5.1. As noted above, it is necessary for the appellant to establish the validity of the appeal. This section describes the process to be followed by the Support Unit in confirming whether a new appeal is valid and thus eligible for acceptance.

6. Recording the date of receipt

6.1. The date on which notice of an appeal is received will be recorded to enable compliance with the relevant time limits set out in the Regulations to be monitored. Where notice of an appeal is received in writing or electronic form by the Office outside of office hours, i.e. outside the hours of 9.15 a.m. and 5.30 p.m. Monday to Thursday and 9.15 a.m. to 5.15 p.m. Friday, it will be deemed to have been received on the next day on which the Office is open and dated accordingly.

⁴ Cash should not be sent by post.

7. Registering new appeals

- 7.1. Irrespective of the means by which notice is given, receipt of the appeal should be acknowledged immediately and a new case file should be opened. If the decision-making records have not been provided with the notice of appeal, the appellant should be asked to forward the necessary documentation or information within 3 days of the acknowledgement. Where the appeal fee or other information is required, this should also be specified in the acknowledgement; the appellant should be given a period of 1 week, or until the expiration of the appeal period, in which to comply.
- 7.2. The public authority concerned should also immediately be notified of the receipt of the appeal, preferably by email. Generic email addresses should be used for written communication with the public authority wherever possible. For the purposes of confirming the procedural history of the appeal, the public authority should be asked to forward by email to info@ocei.gov.ie, within 3 days, copies of
- the original AIE request
 - the original decision (or confirmation that no decision was made)
 - the request for internal review (or confirmation that none was received)
 - the internal review decision (or confirmation that no decision was made)
 - any other relevant correspondence (e.g., clarification sought of request, extension sought, etc).
- 7.3. If the public authority indicates that the request has not been through the process of internal review, then the public authority should be asked to confirm this in writing and to forward a copy of the original request and the authority's original decision.
- 7.4. Where the requested documentation or information is not provided by the public authority within the time specified, an Investigator should be informed and a reminder should issue by email. The public authority should be advised that, if the requested documentation or information is not provided within 3 days of the reminder, the appeal will be accepted on the basis of the appellant's representations (where the appeal otherwise appears to be valid).

8. Screening

- 8.1. Once the relevant deadlines have expired, the screening checklist, included with this document at Appendix 2, should be used in determining whether the appeal should be accepted or not. Following the screening, the case file should be referred to the head of the Support Unit or an Investigator if it appears the appeal is invalid.

Otherwise the appeal should be accepted (see paragraph 10.1).

9. Discretion to admit late appeals

9.1. Article 12(4)(a) provides an appeal to the Commissioner must be initiated **not later than one month** after the internal review decision has been received by, or was required to be notified to, the appellant. However, the Commissioner may extend this period if he is satisfied that it is reasonable to do so in the circumstances of a particular case.

9.2. This means that late appeals should not be admitted as a matter of course. Among the grounds which might be considered reasonable in some cases are 'force majeure' situations, e.g., illness, absence from home, failure by the public authority to give the applicant details of his/her right of appeal to this Office, or evidence of genuine confusion by the appellant in relation to the appeal process. However, the Commissioner will decide each case on its merits and it is not possible to set out in advance a comprehensive set of grounds that will be considered reasonable.

9.3. In cases where the appeal is initiated outside the deadline, the appellant should be informed in writing that the appeal is out of time and that the Commissioner will only admit a late appeal if there are reasonable grounds for doing so. The appellant will be invited to make a submission setting out any reasonable grounds for extending the appeal period.

9.4. If the appellant requests the Commissioner to exercise his discretion and puts forward grounds for doing so, the matter should be discussed with an Investigator or Senior Investigator prior to making a recommendation as to whether to accept or reject the appeal. In certain cases, the Commissioner may invite the public authority's comments on a late appeal submission.

10. Notification of acceptance of the appeal

10.1. As soon as it has been decided to accept an appeal, it is necessary to notify:

- the public authority concerned
- the appellant.

11. Deemed refusals

11.1. In cases where the appeal has been accepted on the basis of a “deemed refusal” of an internal review request under Article 12(4)(a)(ii) (i.e. on the basis of the public authority having failed to issue a decision on a request for internal review within the relevant time limit set out in the Regulations), the Support Unit should immediately instruct the public authority to notify the appellant of its position on the request. Once the public authority notifies the appellant of its position on the request, the case file relating to the appeal accepted on the basis of the deemed refusal of the request should be closed and the parties notified that the Commissioner will review the revised position on the request if the appellant notifies the Office within a specified period (normally 4 weeks) that s/he remains dissatisfied. Where the appellant seeks a review of the revised position within the specified period, a new case file will be opened. If, however, the appellant is satisfied with the revised position, or otherwise does not indicate dissatisfaction with the position within the specified period, the appeal fee (if any) will be refunded.

12. Other appeals

12.1. Otherwise, the notification of acceptance should invite the parties to make submissions within 3 weeks of the date of acceptance.

12.2. Unless the appeal arises from a decision to refuse the request under Article 11(5)(a) of the Regulations,⁵ the notification to the public authority should also include a request for a numbered copy of the subject records to be forwarded to this Office together with a schedule within 2 weeks of the date of acceptance. The request for a schedule should specify that the records be listed sequentially by number and that the following information also be provided: the date of the record; the title of the record (where relevant); a brief description of the record; whether access to the record has been granted or refused; and, if access was refused, the relevant provisions of the Regulations on which the refusal was based.

12.3. Where the subject records are not provided by the public authority within the time specified, an Investigator should be informed and a reminder allowing 3 further days should issue by email. Where the records are not provided within 3 days of the

⁵ Article 11(5)(a) of the Regulations clarifies that a decision to refuse a request for environmental information, which may be appealed to the Commissioner, includes a request that "has been refused on the grounds that the body or person concerned contends that the body or person is not a public authority within the meaning of these Regulations". Thus, where a body or person contends that it is not a public authority for the purposes of the Regulations, this is a matter for the Commissioner to determine on appeal. However, as a general matter, the notification of acceptance in such cases should not include a request for the subject records.

reminder, the matter should be forwarded to an Investigator or Senior Investigator for the purpose of recommending that the Commissioner issue an enforcement notice under Article 12(6) of the Regulations.

Part 3 - Investigation

13. Investigation

13.1. When the subject records have been received from the public authority, the case will be allocated to an Investigator, subject to capacity.

14. Prioritisation

14.1. It is the Commissioner's objective to provide a timely and effective review procedure in all cases. As a general rule, fairness requires that priority be given to cases on the basis of age. Thus, older cases will generally be dealt with before more recent cases.

14.2. Cases will not be dealt with solely by reference to age. In some circumstances, more recent cases may be dealt with before older cases. The circumstances in which this may arise include:

- where it is determined at the time of allocation that the case is suitable for immediate processing because of the relatively straightforward issues or small number of records involved;
- where the case was previously before the Commissioner on the basis of a valid threshold question (see paragraph 16.2);
- where it is more efficient to deal with a particular recent case alongside an older case (for example, a recent case is very similar to an older case and the same issues arise in both);
- where it is more efficient to deal with a particular group of cases together because they involve related issues;
- where, for staff development purposes, a particular case or category of case is allocated to a particular Investigator;

- where the appellant seeks priority for a specific pressing reason; however, as most appellants will be anxious, understandably, to have their cases expedited, this ground will apply in exceptional circumstances only and only where resources allow – time-consuming cases involving a large volume of records and/or complex issues are unlikely to be considered suitable for expedited processing;
- where the Commissioner forms the view that a particular case should be expedited, for example, in order to give general guidance to public authorities on the processing of a particular request or category of request.

15. Appraisal for best resolution

15.1. Upon assignment, the Investigator should carry out an appraisal of the case in consultation with the relevant Senior Investigator to decide on the best approach for resolving the case.

15.2. As Article 15(5) recognises, a case may be resolvable otherwise than by way of a binding decision. A case may be brought to closure by way of settlement between the parties or by withdrawal of the appeal altogether. It is relevant to note that appeal fees are refundable in full or in part where a binding decision is not required because of a settlement or withdrawal of the appeal.

15.3. As part of the appraisal, the Investigator should attempt to

- assess whether any party, other than the appellant and the public authority concerned, needs to be notified of the appeal (see instructions in paragraphs 17.1 to 18.1),
- assess whether the case may be capable of being resolved without a binding decision,
- assess, in particular, whether the case may be suitable for settlement, and
- assess what, if any, further information is needed from the parties.

15.4. Following the appraisal, progress on the case will be monitored through weekly/fortnightly case reviews with the relevant Senior Investigator.

15.5. In each case, the Investigator should check at the outset of the appraisal whether the point at issue has been decided already in another case or is currently under consideration in another case. The form of research is at the discretion of the

Investigator, but will normally involve a check of the case tracking system and the reference materials available at the Office.

16. Threshold jurisdictional questions

- 16.1. Some cases may involve a valid jurisdictional question, i.e. a legitimate question as to whether the request concerned is for “environmental information” or whether the body or person to whom the request has been made is a “public authority” within the meaning of the Regulations. A question of this nature must be resolved definitively as a threshold jurisdictional matter, since the Commissioner’s powers apply only with respect to environmental information held by or for a public authority.
- 16.2. In dealing with an appeal involving a valid threshold jurisdictional question, a determination on the threshold question must be made before the review may proceed. Once the determination is made, the case should be closed, administratively if agreement is reached but otherwise by way of a binding decision by the Commissioner. If it is determined that the matter is within the remit of AIE, and no appeal to the High Court is made, the public authority should then deal with the request in accordance with the Regulations. If the appellant remains dissatisfied with the handling of his/her request following internal review and thus appeals again to this Office with respect to the original request, then the matter will be reopened administratively without payment of a new fee and given priority treatment by this Office insofar as it is practicable to do so. If, however, it appears that the threshold jurisdictional questions have been raised merely as a delaying tactic, then an alternative approach may be taken

17. Notification of relevant third parties

- 17.1. Under AIE, only a third party who would be “incriminated” by the disclosure of the environmental information concerned has a right of appeal to the Commissioner. However, the Commissioner takes the view that procedural fairness requires that a third party be notified of an appeal and be given an opportunity to make submissions where the interests of the third party would be affected by any proposed disclosure of the environmental information under review.
- 17.2. Situations in which a third party notification is required include where the proposed disclosure would arguably amount to a breach of privacy or confidentiality or adversely affect the commercial interests or reputation of the third party concerned. However, mere mention of or reference to a third party in the records under the review is not

sufficient; the third party must have a sufficient interest in the matter because of the risk of an adverse effect arising from disclosure.

17.3. Therefore, as part of the appraisal following assignment of a case, the Investigator should identify all third party information at issue and consider whether third party notification of the appeal may be required before any proposal to release the information is made.

17.4. Regardless of the interests involved, there is no need to notify any third party at the outset of the review where it appears on the face of it that the decision of the public authority was justified. If, however, it is determined at a later date that the decision was not justified, whether having regard to the public interest or otherwise, then any affected third party should be notified without further delay.

17.5. The Commissioner's attention should be drawn to cases in which a recommendation is made to direct the public authority to release environmental information referring or relating to a third party that has not been notified of the appeal.

18. Form of notification of affected third parties

18.1. A third party notification should generally contain the following:

- some details of the request made and at least a brief description of the environmental information concerned that is relevant to the third party's interests,
- an explanation of the procedural history of the matter, insofar as relevant, and of the Commissioner's role,
- some details of the public authority's decision, the grounds for refusal relied on, and any other relevant provisions of the Regulations,
- notification of other material issues for consideration,
- an invitation to consent to release (in suitable cases), and
- an invitation to make submissions (which need not be confined to the matters raised by the Investigator) if the party objects to release.

19. Notification of material issues

19.1. As noted below, the policy of this Office is that, in general, submissions will not be exchanged between parties to a review. However, in exceptional cases, submissions

may be exchanged with the consent of the relevant parties. The parties should be notified of material issues arising for consideration in any event.

19.2. As submissions may contain sensitive information that would not be appropriate for disclosure to others, submissions are not exchanged as a general rule. Accordingly, any objection to the exchange of submissions will be respected by this Office.

19.3. Formal preliminary view letters are discouraged in the normal course of a review. The use of formal preliminary view letters in special circumstances should be agreed with the relevant Senior Investigator in advance.

19.4. However, an Investigator may set out his or her view of the likely outcome of the review on an informal basis, e.g., by telephone followed by a brief email, in the following circumstances:

- when seeking to narrow the scope of the review,
- when endeavouring reach a settlement or similar resolution without a binding decision, and
- when seeking further information from the public authority or other relevant party.

In any event, the Investigator should notify the relevant party or parties, preferably by email, of material issues arising for consideration. Such issues would include applicable grounds for refusal not previously raised, pertinent search details not previously disclosed to the appellant, and new court judgments which may have a bearing on the outcome of the review.

19.5. Parties notified of an Investigator's views on the likely outcome of the review or of material issues arising for consideration should be given an opportunity to comment, usually no longer than 3 weeks. Where a party fails to respond within the timeframe specified, the Commissioner may proceed to a decision without further reference to the party concerned.

Part 4 - Proceeding to Closure

20. Settlements & withdrawals

20.1. As part of the appraisal for best resolution, the Investigator should consider whether there is a reasonable possibility of resolving the case without issuing a binding decision

by endeavouring to reach a settlement or by discussing with the appellant whether, in the circumstances of the case, s/he may wish to withdraw the appeal.

20.2. A withdrawal may include a deemed withdrawal following a grant of access by the public authority to some or all of the environmental information requested where the appellant raises or pursues no further issue for review (Article 15(5) refers). The prior approval of the Commissioner is required, however, before an appeal may be deemed to be withdrawn without the explicit or implicit consent of the appellant.

20.3. Resolving cases through settlement or withdrawal has a number of advantages. From an appellant's point of view, settlement or withdrawal can result in a speedier resolution of the matter and a refund of the appeal fee. From the point of view of the public authority, granting access to the environmental information in question can avoid the need for any further time consuming written submissions.

20.4. In endeavouring to reach a settlement, the Investigator should make it clear that settlement is not an exercise designed to reduce the rights of the appellant in any way. Rather, it is a process which is aimed at narrowing the differences between the sides. In some cases, a point is reached at which the appellant is happy to accept the decision of the public authority as modified in the course of the settlement procedure. In other cases, differences remain which can only be resolved by way of a binding decision of the Commissioner. Even if a binding decision is required, the settlement process can help to ensure that the decision concentrates only on the essentials of the dispute between the parties.

20.5. In any case where the Investigator considers that there is a possibility of settling the case or narrowing the differences between the parties, s/he should contact the parties concerned, using informal methods of communication wherever possible (e.g., telephone call followed by brief email), and outline the possible basis of the settlement. In considering the possibility for settlement, regard should be had not alone to granting access to the environmental information at issue, but also to the possibility that a different form of access might be acceptable to the parties or that a deferral of access for a specified period might be acceptable.

21. Cases requiring further investigation

21.1. In many cases, the Investigator will have insufficient information to enable a reasonable judgment to be made as to the likely outcome of the case.

- 21.2. In such cases, the Investigator should consider whether a request should be made to the public authority, or other parties as appropriate, for further information that may be relevant to the review. Normally, a period of 3 weeks should be given for making a response. Progress on the matter should be closely monitored in case reviews with the relevant Senior Investigator.
- 21.3. In contacting the public authority or a third party, attention should be drawn to the scheme of the Regulations, and of Directive 2003/4/EC upon which the Regulations are based, which makes it clear that there is a presumption in favour of release of environmental information. It should also be noted that, where the public authority or third party fails to respond within the timeframe specified, the Commissioner may proceed to issue a decision without further reference to the parties.
- 21.4. Before proceeding to make a recommendation to the Commissioner, the Investigator should consider whether or not it is necessary to notify the appellant of any new issues which may have arisen out of his or her investigations. New issues may arise as a result of the public authority raising a matter for the first time or where the Investigator identifies an issue that had not previously been raised by the parties.
- 21.5. In deciding whether to issue such a notification, the Investigator should consider whether the new issue might be influential in persuading the Commissioner to uphold the decision of the public authority. Where such material issues are identified, the appellant should be given an adequate opportunity to comment on those matters identified by the Investigator or on any other matters which he/she considers relevant to the review. Where an Investigator is satisfied that no new issues arise, or that the appellant has had an adequate opportunity to make submissions addressing the material issues arising in the case, s/he may make a recommendation to the Commissioner, without further reference to the appellant.

22. Search cases

- 22.1. Search queries may be at issue where a request is refused, in full or in part, on the basis that the public authority does not hold the information concerned.
- 22.2. Article 7(5) of the Regulations is the relevant provision that applies where the requested information is not held by or for the public authority concerned. A similar though not identical ground for refusal in relation to records "not held" is provided for under section 15(1)(a) of the FOI Act. Accordingly, the Commissioner's approach in dealing with cases where a public authority has effectively refused a request under Article 7(5) is guided by the experience of the Office of the Information Commissioner

in relation to section 15(1)(a) cases. Relevant guidelines are available on the website of the Office of the Information Commissioner at <http://www.oic.gov.ie/en/About-Us/Policies-and-Strategies/FOI-Manuals/Procedures-Manual/Appendix-3.html>.

22.3. As a general rule, where a public authority locates additional records containing the environmental information requested during the course of a review, the review should be brought to closure without a determination on the question of access to those records. The public authority should then make a new decision under Article 7 of the Regulations on the question of access to the records concerned (which in turn will be subject to right of review). If, following internal review, a further review on the matter by the Commissioner is sought, the appeal fee will be waived in full, since any such review would relate, in effect, to a decision on the merits that was significantly out of time.

23. Conclusion of the appeal

23.1. Following investigation, the case should be ready to be brought to conclusion by settlement, withdrawal, or binding decision.

23.2. Having considered all the relevant facts and arguments contained in the submissions of all parties, along with any legal advice and any directions of the Commissioner, the Investigator should review the status of the case. The Investigator may conclude at this stage that the case is one which is capable of being settled as a result of a modification of the position of the public authority or a modification of the request or both.

23.3. On the other hand, the Investigator may come to the conclusion that neither party is likely to further modify its position in a way which will lead to settlement or withdrawal of the case. In such cases, the Investigator should prepare a submission and proposed decision for transmission to the Commissioner, along with the full file.

23.4. The purpose of a submission is to ensure that the Commissioner is fully informed as to the relevant facts of the case, arguments presented and any legal advice, and to explain the approach taken in the case to the extent that this is not apparent from the decision. The submission should direct the Commissioner's attention to any documents in the file which the Investigator considers will be of particular assistance to him in reviewing the case. A detailed submission is normally not required, however.

23.5. Once the case has concluded, the Investigator must:

- arrange for all parties to be notified of the outcome in writing;

- arrange in conjunction with the Support Unit for the return of any original files or records supplied to the Office by the public authority.

23.6. In cases which are concluded by way of an express withdrawal of the appeal, the following instructions should be followed. If the appellant indicates orally that the appeal may be treated as having been withdrawn, then written confirmation should be issued, preferably by email. Notification of the withdrawal, whether initially made orally or in writing, should be sent to the public authority and any other relevant parties as appropriate.

23.7. Where it is proposed to deem an appeal to be withdrawn based on release of the environmental information requested, the appellant should be notified of the proposal and be given an opportunity to respond. Where the appellant raises no objection to the proposal, the appeal may be deemed as withdrawn based on the appellant's actual or implied consent. Written confirmation of the withdrawal and case closure should be issued to the appellant, the public authority, and any other relevant parties as appropriate. Where an objection to the proposal is raised, however, the matter should be referred to the relevant Senior Investigator.

Appendix 1



Oifig an Choimisinéara um Faisnéise Comhshaoil
Office of the Commissioner for Environmental Information

Appeal to the Commissioner for Environmental Information

Your personal details

Name:	
Address:	
Telephone:	
Email:	

Your Appeal

Name of public authority to which you made your AIE request:
Public authority's reference number (if you know it):
Details of appeal:

A fee must be paid at the time of making an appeal to the Commissioner for Environmental Information. Where the correct fee is not paid, the Commissioner cannot accept the appeal and it is deemed not to have been made.

Fees may be paid by Cheque/Bank Draft/Postal Order, crossed and made payable to the "Office of the Commissioner for Environmental Information", or by cash, in person at the Office from 9.15 am to 5.30 pm (Mon. to Thurs.) and 9.15 am to 5.15 pm (Fri.). **Please do not send cash by post.**

Appeal type	Fee
Access to Information	€50
Access to information by the holder of a current Irish medical card or a dependent of same (copy of medical card required)	€15
Third party appealing a decision of a public authority to grant access to environmental information	€15

Fee payable and attached: €

Signed _____ Date _____

Please address to: Office of the Commissioner for Environmental Information, 18 Lower Leeson Street, Dublin 2

Appendix 2

CHECKLIST 1.

CEI SCREENING OF APPLICATIONS

REF NO _____

	<i>PART ONE-GENERAL</i>		
1.	Was the request made to a public authority as per Art 3(1) of the AIE Regs?	YES []	NO []
2.	Is the decision in respect of which the appeal has been made one that falls within Art 12(3) of the Regs?	YES []	NO []
3.	Has the appellant availed of internal review? (Note: if a 3rd party under 12(3)(b), internal review is not required.)	YES []	NO []
4.	Does the appeal to the Office of the Commissioner for Environmental Information relate entirely to a matter contained in the original request?	YES []	NO []
5.	Was the appeal to the Office of the Commissioner for Environmental Information made: <ul style="list-style-type: none"> • within 1 month of the decision? • if more than 1 month after the decision, does Art 12(4)(b) discretion to extend the time limit apply? 	YES [] []	NO [] []
6.	Does the appeal relate to a deemed refusal (Art 10(7) and /or Art 12(4)(a)(ii))?	YES []	NO []
7.	Does the appellant have proper standing?	YES []	NO []

	Is the person the original requester/applicant or some person acting on his/her behalf?	<input type="checkbox"/>	<input type="checkbox"/>
8.	Does the appellant have other reviews (FOI or AIE)? - if so, this should be brought to the attention of the head of the support unit and noted on file for info of the Investigator.	YES <input type="checkbox"/>	NO <input type="checkbox"/>
9.	Does the appeal to the Commissioner appear to relate to a matter which has been or will be the subject of another appeal? If so, the file should be brought to the attention of the head of the support unit.	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	<i>PART 2 - FEES</i>		
10.	Has the correct fee been paid? If the answer to this question is NO or the correct fee has not been paid, a letter should issue to the appellant seeking payment of the fee, because the appeal cannot be accepted as valid until the fee has been paid or waived (see “General Guidelines Re Waiver of Appeal Fee Under Article 15(6)” at the end of this checklist). A fee must be paid for all AIE appeals, but the fee may be waived if the original decision was a deemed refusal pursuant to Article 10(7).	YES <input type="checkbox"/>	NO <input type="checkbox"/>
10a.	Is the appellant a third party under Art 12(3)(b) objecting to release of the records? If so, the fee chargeable is €15.	YES <input type="checkbox"/>	NO <input type="checkbox"/>
10b.	Is the appellant a medical card holder or the dependant of a medical card holder? (Note : if this is not clear, further information may be sought from the appellant). If so, fee chargeable is €15. If so, is there any evidence to suggest that the request has been made on behalf of some other person who is seeking to avoid the payment of a fee? If not, the fee chargeable is €15.	YES <input type="checkbox"/>	NO <input type="checkbox"/>

	<u>In all other cases the fee chargeable is €50.</u>		
11.	Where the fee was received after the appeal, has the deadline date been changed and the reason been noted for the change?	YES []	NO []
12.	Where no fee was received after letter requesting fee issuing, has the appeal been rejected as invalid and the case file closed?	YES []	NO []

Signed:

Signed:

Grade:

Grade:

Date:

Date:

GENERAL GUIDELINES RE WAIVER OF APPEAL FEE UNDER ARTICLE 15(6)

- If both the original decision and the internal review decision were late, the fee should be waived.
- If the original decision was late, but the internal review decision was on time, please refer the matter to an Investigator or Senior Investigator.
- If the original decision was timely, there would appear at present to be no discretion to waive the appeal fee even in the event of a deemed refusal on internal review; i.e. the correct fee must be paid.
- However, where a case has been closed because of a “deemed refusal” of an internal review request or the determination of a threshold jurisdictional question, no additional fee will apply where the appellant seeks a further review following notification of the public authority’s revised position on the request. Similarly, the appeal fee will be waived where the appeal relates to a previous search case.

Note: If in doubt, appellants should be advised to pay the fee in accordance with Article 15(3). We can then refund the fee if it transpires that a waiver was in order.