

Mr. Tony Lowes,
Friends of the Irish Environment,
Allihies,
Castletownbere,
Co. Cork.

20 June 2008

**Re: European Communities (Access to Information on the Environment)
Regulations 2007
Request No. AIE 04/08**

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Dear Sir,

I refer to the above application for information received on 22<sup>nd</sup> April, 2008.

The information that I have gathered falls mainly into five categories:

- Technical Reports
- Minutes of meetings of the Steering Group set up to advise Government
- E-mails between Council staff and its agents
- C1 details (shipment of waste within the state)
- TFS (Transfrontier Shipment of Waste) documents

I regret that a large percentage of the information requested by you must be refused. To appreciate the reasons behind my decision it is important that you would understand the context. In collecting this information, it has come to my attention that a Steering Group was set up to inform Government and assist them in deciding the future of the site. The more recent technical reports were commissioned for the same purpose. A submission to Government was scheduled for last July, but with the change of Government this was adjourned. The DoEHLG informs me that this will hopefully proceed in the near future. In the meantime, recent technical reports, as well as the minutes of meetings of the Steering Group, are refused as they form part of the deliberative process of the Council and of the Government. E-mails are refused on the same basis, and additionally because they form internal communication. C1 details and TFS documentation is released, and is attached, along with some technical reports and some monitoring data. A large number of samples/analyses/tests were taken by our contractors over

the last 9 months to classify materials for disposal. We do not yet have these results, but they will be supplied to us by the contractors in due course.

A full explanation, as well as the legislation governing my decision, is attached. A complete schedule will accompany the documents, which will be compiled and posted to you early next week.

***Right to appeal***

You may appeal this decision within 4 weeks of receiving this letter. Appeals should be in writing and addressed to the Director of Corporate, Community and Economic Development, Cork County Council, Floor 14, County Hall, Cork. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Authority.

Yours sincerely,

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Cathal de Baróid  
Administrative Officer

## **AIE Request 04/08**

Note in relation to documents withheld.

Internal e-mails (e-mails between Council staff, the DoEHLG, and any of their agents) are deemed internal communication, and subject to a public interest test, may be declared exempt, in accordance with Article 9 (2) (d) of the Regulations.

### *Discretionary grounds for refusal of information*

9. (1) A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect—

(a) international relations, national defence or public security,

(b) the course of justice (including criminal inquiries and disciplinary inquiries),

(c) commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest, or

(d) intellectual property rights.

(2) A public authority may refuse to make environmental information available where the request—

(a) is manifestly unreasonable having regard to the volume or range of information sought,

(b) remains formulated in too general a manner, taking into account article 7(8),

(c) concerns material in the course of completion, or unfinished documents or data, or

**(d) concerns internal communications of public authorities, taking into account the public interest served by the disclosure.**

*The public interest in this case is not served by the release of the material, as this material may contain information which would assist the deliberative process of the Local Authority and/or Government, particularly in light of the forthcoming submission to Government. In this respect the information is also protected under Article 8 (a) (iv) of the AIE Regulations 2007 combined with Section 21 (1) (a) and Section 21 (1) (c) of the FOI Act 1997.*

### *AIE Regulations 2007*

#### *Article 8*

8. A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information—

(a) would adversely affect—

(i) 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,

(ii) the interests of any person who, voluntarily and without being under, or capable of being put under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information,

(iii) the protection of the environment to which that information relates, or

**(iv) without prejudice to paragraph (b), the confidentiality of the proceedings of public authorities, where such confidentiality is otherwise protected by law (including the Freedom of Information Acts 1997 and 2003 with respect to exempt records within the meaning of those Acts);**

or

(b) to the extent that it would involve the disclosure of discussions at one or more meetings of the Government, is prohibited by Article 28 of the Constitution.

*FOI ACT 1997.*

*Functions and negotiations of public bodies.*

*Section 21.*

21. —(1) A head may refuse to grant a request under section 7 if access to the record concerned could, in the opinion of the head, reasonably be expected to—

**( a ) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of the public body concerned or the procedures or methods employed for the conduct thereof,**

( b ) have a significant, adverse effect on the performance by the body of any of its functions relating to management (including industrial relations and management of its staff), or

**( c ) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or a public body.**

(2) Subsection (1) shall not apply in relation to a case in which in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under section 7 concerned.

Recent technical reports, along with the minutes of the Steering Group meetings will form the basis for Government deliberations and policy, and as such, are withheld under Article 8 (a) (iv) of the AIE Regulations 2007 combined with Section 21 (1) (a) and Section 21 (1) (c) of the FOI Act 1997, as given above. In both cases, the release of these cannot be justified on the grounds of public interest.

Cathal de Baroid  
Administrative Officer.  
20 June 2008