

Our Reference: FPL/642/02744
Your Reference: AIE/02-20

29 September 2020

By email only

National Standards Authority of Ireland
aie@nsai.ie

Our clients: Public.Resource.Org Inc and Right to Know CLG

RE: European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (the “AIE Regulations”)

Dear Sir or Madam

I refer to your letter dated 23 September 2020 and to the clarification email dated 24 September 2020.

The requestors welcome the decision to grant the request however they do take issue with the proposed form and manner of access.

While the requestors are happy to accept electronic copies of the Requested Standards, the form and manner proposed is neither acceptable nor lawful we therefore ask that the Requested Standards be provided by email to info@fplogue.com in the form and manner specified below. It is apparent that granting the request in this form and manner would not be unreasonable.

If NSAI is not prepared to forward unencumbered pdf copies of the Requested Standards by email then please treat this letter as a request for internal review based on the following grounds.

First it must be recalled that the NSAI is an Irish public authority tasked with the transposition into Irish law of EU harmonised standards for which the reference numbers have been published in the Official Journal of the European Union¹.

NSAI, therefore, has a statutory obligation to publish the harmonised standards requested and it is clear that they don't constitute documents that the NSAI has acquired voluntarily under licence as seems to be suggested.

¹ The reference to “worldwide” standards in the decision seems to be incorrect since the request is for access to certain EU harmonised standards

Second the harmonised standards at issue form part of Irish² and EU law³ and as a consequence must be made freely available, based on the concept of the rule of law and also based on Article 7(2)(a) of Directive 2003/4.

Third, a request for access to environmental information can only be refused based on the AIE Regulations. It is impermissible for a public authority to agree with a third party the form and manner by which access is granted or that a fee will be charged. Any such restrictions agreed with ISO and CEN-CENELEC are therefore automatically unenforceable insofar as they interfere with the statutory obligation imposed on NSAI to make environmental information available upon request subject to the AIE Regulations and the AIE Directive.

Fourth, it is clear that Article 7(3) of the AIE Regulations is not applicable since access via the NSAI “webstore” cannot be considered as being “*available to the public in another form or manner that is easily accessible*” nor is access in this form or manner “*reasonable*”.

The reason for this is that to access the Requested Standards via the webstore a substantial payment is required. It also appears that the requestors are being asked to agree to terms and conditions. Neither is permitted under the AIE Regulations. My clients are also given to understand that in addition to the webstore terms and conditions, purchasers also must enter into a licence agreement with a private third party and that the electronic documents have certain technical restrictions imposed via password protection. Again, these conditions cannot be imposed under the AIE Regulations.

In relation to charges, since electronic access has been granted to discrete documents there is no reasonable basis to charge for either search and retrieval or copying costs. Therefore, access should be granted without a charge.

For completeness, since one of our clients is based in the United States, in situ inspection is neither feasible nor reasonable.

We therefore request electronic access to the Requested Standards in pdf format with any technical restrictions and/or password protections removed. The documents should be sent via email to info@fplogue.com

Yours faithfully



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² *James Elliot Construction Limited v Irish Asphalt Limited* [2014] IESC 74

³ Judgment of 27 October 2016, *James Elliot Construction*, Case C-613/14, ECLI:EU:C:2016:821 paragraph 40