[2024] IEHC 28

THE HIGH COURT
PLANNING & ENVIRONMENT

[HC.MCA.2022.0000278]

IN THE MATTER OF ORDER 84C OF THE RULES OF THE SUPERIOR COURTS AND REGULATION 13 OF THE EUROPEAN COMMUNITIES (ACCESS TO INFORMATION ON THE ENVIRONMENT) REGULATIONS 2007 TO 2014 (BY ORDER)

BETWEEN

COILLTE CUIDEACHTA GHNÍOMHAÍOCHTA AINMNITHE

APPELLANT

AND

COMMISSIONER FOR ENVIRONMENTAL INFORMATION

RESPONDENT

AND

PERSON(S) UNKNOWN AKA JOHN AND/OR JANE DOE, IRELAND AND THE ATTORNEY GENERAL (BY ORDER)

NOTICE PARTIES

AND

RIGHT TO KNOW CLG

AMICUS CURIAE

(No. 2)

JUDGMENT of Humphreys J. delivered on Wednesday the 24th day of January, 2024

Subject-matter of the dispute

1. This request for a preliminary ruling concerns the interpretation of Articles 2(5), 3(1) and (5)(c), 4(1)(b) and 6(1) of Directive 2003/4.

2. The request is being made in proceedings concerning an appeal to the High Court by Coillte against a decision of the Commissioner for Environmental Information which in essence held that apparently anonymous or pseudonymous requests for information under Directive 2003/4 were nonetheless valid.

Legal context

European Union law

3. The following provisions of EU law are relevant:

(i) The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998 ("Aarhus Convention"), as a part of EU law (https://unece.org/DAM/env/pp/documents/cep43e.pdf), particularly:
   (a). Article 2(4);
   (b). Article 4(1) to (3); and
   (c). Article 9(1).

(iv) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41/26, 14/2/2003) particularly:
   (a). Article 2;
   (b). Article 3;
   (c). Article 4; and
   (d). Article 6.

4. EU case law relevant to the issues includes the following:

(i) Judgment of 16 December 1976, *Rewe v Landwirschaftskammer fur das Saarland*, C-33/76 ECLI:EU:C:1976:188 (https://curia.europa.eu/juris/showPdf.jsf?text=&docid=89192&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7404984);

(ii) Judgment of 17 June 1998, *Mecklenburg v Kreis Pinneberg*, C-321/96, ECLI:EU:C:1998:300 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=43940&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7410618);

(iii) Opinion of the Advocate General of 28 January 1999, *Commission v Germany,* C-217/97, ECLI:EU:C:1999:34 (https://curia.europa.eu/juris/document/document.jsf?docid=44395&doclang=EN&mode=&part=1);

(iv) Judgment of 24 September 2002, *Grundig Italiana*, C-255/00, ECLI:EU:C:2002:525 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=47690&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1018533);

(v) Judgment of 25 March 2004, *Azienda Agricola Ettore Raffa and Others*, C-482/00 (Joined cases C-480/00, C-481/00, C-482/00, C-484/00, C-489/00, C-490/00, C-491/00, C-498/00, C-499/00, ECLI:EU:C:2004:179 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=49022&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1026789);

(vi) Judgment of 13 April 2005, *Verein für Konsumenteninformation v Commission of the European Communities*, T-2/03, ECLI:EU:T:2005:125 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=60314&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7409764);

(vii) Judgment of 16 June 2005, *Maria Pupino*, C-105/03, ECLI:EU:C:2005:386 (Grand Chamber) (https://curia.europa.eu/juris/document/document.jsf?text=&docid=59363&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7409325);

(viii) Judgment of 22 June 2010, *Melki & Abedi*, C-188/10 ECLI:EU:C:2010:363 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=80748&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7407421);

(ix) Judgment of 14 February 2012, *Flachglas Torgau v Bundesrepublik Deutschland*, C-204/09, ECLI:EU:C:2012:71 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=119426&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7408798);

(x) Judgment of 19 December 2013, *Fish Legal and Shirley v Information Commissioner,* C-279/12, ECLI:EU:C:2013:853 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=145904&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7409121);

(xi) Judgment of 15 March 2018, *North East Pylon Pressure Campaign Limited v. An Bord Pleanála,* C 470/16, ECLI:EU:C:2018:185 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=200265&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7817550); and

(xii) Judgment of 20 January 2021, *Land Baden-Wurttemberg (Communications Internes)*, C-619/19, ECLI:EC:C:2021:35 (https://curia.europa.eu/juris/document/document.jsf;jsessionid=18145EB5575C3BBA145C9614CB714BD3?text=&docid=236684&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1017760).

5. Other materials include:

(i) *Kirin-Amgen Inc and Others v. Hoechst Marion Roussel Limited and Others* [2004] UKHL 46, [2005] RPC 169, (https://publications.parliament.uk/pa/ld200304/ldjudgmt/jd041021/kirin-1.htm); and

(ii) the UNECE publication, The Aarhus Convention: An Implementation Guide (2nd Ed., UN, 2014) at pp. 55-56 (https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition).

Domestic law

6. The transposing legislation, the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 are consolidated at https://revisedacts.lawreform.ie/eli/2007/si/133/front/revised/en/html.

7. It should be noted that the respondents' website (https://www.ocei.ie/en/collection/148e9-legislation/#aie-regulations, archived at https://web.archive.org/web/20240116224437/https://www.ocei.ie/en/collection/148e9-legislation/#aie-regulations) incorrectly references these regulations as the European Communities (Access to Information on the Environment) Regulations 2007 to 2018, merely because they were most recently amended in 2018. This misunderstands the concept of a collective citation. The amendment of an enactment does not in itself update the collective citation. The latest collective citation was provided by the European Communities (Access to Information on the Environment) (Amendment) Regulations 2014 (S.I. No. 615 of 2014), art. 2, and remains the 2007 to 2014 regulations. The citation has not been updated since then, either by the 2018 regulations or otherwise. Hence the title to the present proceedings in the originating notice of motion is incorrect by referring to a non-existent collective citation. The referring court will make an order correcting this before matters go further.

8. Article 6 allows the making of a request for information on the environment:

"Request for environmental information

6. (1) A request for environmental information shall—

(a) be made in writing or electronic form,

(b) state that the request is made under these Regulations,

(c) state the name, address and any other relevant contact details of the applicant,
(d) state, in terms that are as specific as possible, the environmental information that is the subject of the request, and
(e) if the applicant desires access to environmental information in a particular form or manner, specify the form or manner of access desired.
(2) An applicant shall not be required to state his or her interest in making the request."

9. Insofar as Article 6(1)(c) of the 2007 regulations requires a "name" and "address", the referring court is determining that as a matter of domestic law, and unless a conforming interpretation to the contrary is required by EU law, "name" means actual name and not a pseudonym, and "address" means a current physical address at which the requester may be contacted, although not necessarily a residential address. Details of an email address if any would arise only under the phrase "any other relevant contact details".

10. Article 7 provides for the mechanics of making an appeal:

"Action on request
7. (1) A public authority shall, notwithstanding any other statutory provision and subject only to these Regulations, make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority.
(2) (a) A public authority shall make a decision on a request and, where appropriate, make the information available to the applicant as soon as possible and, at the latest, but subject to paragraph (b) and subarticle (10), not later than one month from the date on which such request is received by the public authority concerned.
(b) Where a public authority is unable, because of the volume or complexity of the environmental information requested, to make a decision within one month from the date on which such request is received, it shall, as soon as possible and at the latest, before the expiry of that month—
(i) give notice in writing to the applicant of the reasons why it is not possible to do so, and
(ii) specify the date, not later than 2 months from the date on which the request was received, by which the response shall be made,
and make a decision on the request and, where appropriate, make the information available to the applicant by the specified date.
(3) (a) Where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless—
(i) the information is already available to the public in another form or manner that is easily accessible, or
(ii) access in another form or manner would be reasonable.
(b) Where a public authority decides to make available environmental information other than in the form or manner specified in the request, the reason therefore shall be given by the public authority in writing.
(4) Where a decision is made to refuse, in whole or in part, a request for environmental information, the public authority concerned shall—
(a) subject to paragraph (b), notify the applicant of the decision not later than one month following receipt of the request,
(b) in a case to which sub-article (2)(b) applies, notify the applicant as soon as possible but not later than 2 months following receipt of the request,
(c) specify the reasons for the refusal,
(d) inform the applicant of his or her rights of internal review and appeal in accordance with these Regulations, including the time within which such rights may be exercised.
(5) Where a request is made to a public authority and the information requested is not held by or for the authority concerned, that authority shall inform the applicant as soon as possible that the information is not held by or for it.
(6) Where sub-article (5) applies and the public authority concerned is aware that the information requested is held by another public authority, it shall as soon as possible—
(a) transfer the request to the other public authority and inform the applicant accordingly, or
(b) inform the applicant of the public authority to whom it believes the request should be directed.
(7) Where a request is made to a public authority which could reasonably be regarded as a request for environmental information but which is not a request that has been made in accordance with—
(a) article 6(1), or
(b) the Freedom of Information Acts 1997 and 2003,

the public authority concerned shall inform the applicant of his or her right of access to environmental information and the procedure by which that right can be exercised, and shall offer assistance to the applicant in this regard.

(8) Where a request is made by the applicant in too general a manner, the public authority shall, as soon as possible and at the latest within one month of receipt of the request, invite the applicant to make a more specific request and offer assistance to the applicant in the preparation of such a request.

(9) Where, in a request for information on factors affecting or likely to affect the environment, the applicant specifies that he or she requires information on the measurement procedures, including methods of analysis, sampling and pretreatment of samples, used in compiling that information, the public authority shall, as Article 8(2) of the Directive requires, either make the information available to the applicant or refer the applicant to the standardised procedures.

(10) A public authority shall, in the performance of its functions under this article, have regard to any timescale specified by the applicant.

(11) Where a request is made for information which has been provided to the public authority on a voluntary basis by a third party and, in the opinion of the public authority, release of the information may adversely affect the third party, the public authority shall take all reasonable efforts to contact the third party concerned to seek consent or otherwise to release the information, pursuant to article 8(a)(ii) and article 10."

11. Hence, where no decision is made on a request within the statutory time limit, the request is in principle deemed to be refused: for examples see *Friends of the Irish Environment v. Commissioner for Environmental Information* [2019] IEHC 597, [2019] 5 JIC 2108 (O'Regan J.); *Right to Know CLG v. Commissioner for Environmental Information* [2022] IESC 19, [2023] 1 I.L.R.M. 122, [2022] 4 JIC 2902 (Baker J.).

12. Article 11 provides for internal review. The terms of engagement on which such review can happen are as follows:

"11. (1) Where the applicant's request has been refused under article 7, in whole or in part, the applicant may, not later than one month following receipt of the decision of the public authority concerned, request the public authority to review the decision, in whole or in part.

(2) Following receipt of a request for a review under sub-article (1), the public authority concerned shall designate a person unconnected with the original decision whose rank is the same as, or higher than, that of the original decision-maker to review the decision and that person shall—

(a) affirm, vary or annul the decision, and

(b) where appropriate, require the public authority to make available environmental information to the applicant,

in accordance with these Regulations."

13. Article 12 provides for appeal to the Commissioner. Sub-para. (3) provides for the scope of jurisdiction:

"(3) Where—

(a) a decision of a public authority has been affirmed, in whole or in part, under article 11, or

(b) a person other than the applicant, including a third party, would be incriminated by the disclosure of the environmental information concerned,

the applicant, the person other than the applicant or third party may appeal to the Commissioner against the decision of the public authority concerned."

14. Domestic caselaw relevant to answering the questions includes:

(i) *Murphy v. The Law Society* [2010] IEHC 175, [2010] 5 JIC 1002, (Kearns P.);

(ii) *Kelly v. Information Commissioner* [2014] IEHC 479, [2014] 10 JIC 0701 (O'Malley J.);

(iii) *National Asset Management Agency v. Commissioner for Environmental Information* [2015] IESC 51, [2015] 4 I.R. 626, [2015] 2 I.L.R.M. 165, [2015] 6 JIC 2301 (O'Donnell J.);

(iv) *Minch v. Commissioner for Environmental Information* [2017] IECA 223, [2017] 7 JIC 2807 (Hogan J.);

(v) *Right to Know v. Commissioner for Environmental Information* [2020] IEHC 228, [2020] 2 JIC 2808 (Meenan J.);

(vi) *Redmond & Anor v. Commissioner for Environmental Information* [2020] IECA 83 [2021] 3 I.R. 695, [2020] 4 JIC 0306 (Collins J.);

(vii) *Right to Know v. An Taoiseach* [2020] IEHC 228, [2020] 2 JIC 2808 (Meenan J.);

(viii) *Eco Advocacy CLG v. An Bord Pleanála* [2021] IEHC 610, [2021] 10 JIC 0406;

(ix) *Grange v. Information Commissioner* [2022] IECA 153 (Haughton J.);

(x) *Right to Know v. An Taoiseach* [2023] IECA 68 (Faherty J.); and
(xi) *Coillte Cuideachta Ghniomhaiochta Ainmnithe v. Commissioner for Environmental Information (No. 1)* [2023] IEHC 640.

15. In terms of academic material, in a paper on the German AIE legislation (known as UIG) available at https://fragdenstaat.de/dokumente/7701-anhang-a-rechtsgutachten-20200923_konvertiert/, (Umweltforschungsplan des Bundesministeriums für Umwelt, Naturschutz, Bau und Reaktorsicherheit Forschungskennzahl [3716 17 103 0] UBA-FB-00 [trägt die UBA-Bibliothek ein] Evaluation des Umweltinformationsgesetzes (UIG) Analyse der Anwendung der Regelungen des UIG und Erschließung von Optimierungspotentialen für einen ungehinderten und einfachen Zugang zu Umweltinformationen Anhang A: Rechtsgutachten von Univ.-Prof. Dr. Dr. h.c. Thomas Schomerus RiOVG, Leuphana Universität Lüneburg für das Unabhängiges Institut für Umweltfragen (UfU) e.V., Greifswalder Straße 4, 10405 Berlin unter Mitarbeit von Karl Stracke, Unabhängiges Institut für Umweltfragen e.V.Berlin, Lüneburg, Januar 2020 Im Auftrag des Umweltbundesamtes), the learned authors refer to both views on the question.

Facts

16. A requester (probably singular but possibly plural) engaged in a sustained exercise of writing to Coillte by way of a very large number of probably anonymised or pseudonymised requests in identical or near identical format between 13th March and 30th May, 2022 seeking access to information on the environment. No physical addresses were provided. The names are generally inspired by film characters played by prominent actors, with a focus on American cinema from the 1980s onwards.

17. Earlier requests from requesters using some of the names used by the requesters in these proceedings had been processed in the normal way by the appellant because, at that juncture, they appeared to be typical or one-off requests. It is only when the significant numbers of anonymous / pseudonymous requests of similar style, type and phraseology and approach began to be received by the appellant from 10th March, 2022 onwards that this issue became apparent. It was at that point that the appellant became aware of what appears to be an organised campaign and took steps to verify the identity of requesters.

18. Between 10th March, 2022 and 7th June, 2022, the appellant received 130 verified and anonymised / pseudonymised requests. This equates to just over 2 voluminous AIE requests received per working day during March to May 2022 (62 working days) with a further 1 received in June, 2022. Since 7th June, 2022 the appellant has received no new anonymised / pseudonymised requests. This pattern makes it likely in the view of the appellant and the referring court that these requests all originate from a single source and / or form part of a co-ordinated campaign because they all abruptly ceased at the same time.

19. The impacts on the appellant's operations were serious. In addition to significant expenditure of management time and resources, the appellant increased the AIE Team from 0.5 staff FTE (full-time equivalent) to 3.5 staff FTE.

20. The appellant formed the view, reasonably so in the opinion of the referring court, that the requests the subject matter of these proceedings are not designed to elicit environmental information and appear to be a part of a wider campaign engaged in by persons unknown for questionable motives. The campaign has very significant implications for the appellant's operations and has the effect of diverting time and resources away from genuine requests for environmental information with attendant delays and frustration for genuine applicants looking to utilise the machinery provided by the AIE Regulations in order to access information on the environment.

21. The Department of Agriculture, Food and the Marine (DAFM) also received a huge spike in requests in 2022, in circumstances where the same apparently pseudonymous name was used as was the case with Coillte. The evidence shows that DAFM received an annual average of about 167 requests for access to information on the environment in the 3-year period 2019 to 2021 inclusive ranging from 69 in 2019 to 290 in 2021. Typically, 50-70% of these requests related to forestry matters. During that 3-year period there was a total of 23 referrals to the Office of the Commissioner of Environmental Information (OCEI) of which 18 related to forestry matters. The number of AIE requests increased to 32,297 in 2022 of which 30,630 related to forestry matters. Some 105 of the latter were referred to the OCEI. Many of the requests were made in the names of film characters (similar to the experience of the appellant) and of Hazel Wood and Willy Wonka, a fictional character in Roald Dahl's novel, *Charlie and the Chocolate Factory* (1964), definitively portrayed by Gene Wilder in the 1971 film version.

22. The evidence from the Department, which the referring court accepts, establishes that a trend emerged whereby DAFM received numerous requests from one of these names for a period of time which was then replaced by a new name but asking for very similar information. Anonymous AIE requests and / or the use of pseudonyms by requesters is a source of concern for DAFM as experience has shown that anonymity can be utilised by some requesters to intentionally abuse the AIE process to taunt DAFM staff and cause operational disruption. This is apparent from an AIE

request received from a requester calling themselves Willy Wonka. Mr Wonka made 745 individual requests between 29th September, 2022 and 4th October, 2022 - a period that covers 4 working days. These requests were made by email only and contained abusive and disparaging remarks about DAFM staff members. As DAFM was considering his requests "Willy Wonka" withdrew them on 12th October, 2022 offering the observation "Boo Hoo", only to resubmit them again on 17th October, 2022 with all the attendant administration implications for the DAFM. It became clear at this point that this requester had little or no legitimate interest in the information they were purporting to seek and instead appeared to be more interested in using the AIE process to undermine DAFM operations and frustrate DAFM staff.

23. Generally, Coillte replied to these requests by seeking a (current) address from the applicants, and confirmation that the names were the applicants' actual (legal) names. The referring court finds as a fact that in the circumstances, Coillte formed the reasonable view that there was a *prima facie* question over the genuineness of information regarding his or her identity provided by the applicants. The referring court further finds that given the quantity of requests made, the public authority concerned acted reasonably for the purposes of determining whether the requests were manifestly unreasonable by reference to the volume, nature and frequency of other requests made by the same applicant,

24. Coillte therefore sought confirmation as to the applicant's actual name and/or a current physical address. The referring court finds on the facts and in the absence of contrary evidence that this exercise was for the purpose of verifying the identity of the applicant, and not for the purpose of determining the interest of the applicant. There is no evidence to the effect that the provision of the actual name and/or current physical address of an applicant could indirectly create the potential for inference or speculation on the part of the public authority or otherwise as to the interest if any of the applicant referred to in Article 3(1) of the Directive. However one could not rule out the potential for inference or speculation as a theoretical possibility.

25. None of this information was provided. Accordingly, Coillte regarded each of the requests as incomplete and invalid, none of the purported requesters received the information sought within the one-month timeframe set out in domestic law.

26. In total Coillte received 97 apparently anonymised / pseudonymised AIE requests, all of which were rejected as invalid.

27. The requesters then issued a request to Coillte to carry out an internal review. Again Coillte sought contact details and asked the requesters to "confirm that the name given by you in your application is your actual legal name" or to "provide [Coillte] with your actual name" and to "state your current address". Coillte advised the requesters that it was not asking them to state why they were making the request but was "simply asking...for confirmation of your name and address" and that "unless and until [Coillte] receive[d] the information sought above, your request will not be processed". These requests were again ignored so the applications for internal reviews were in effect rejected as invalid.

28. Of the various rejections, 81 were appealed to the Commissioner between 13th June and 4th July, 2022. The Commissioner addressed on the first 58 cases received *en bloc*, with a further 23 cases currently remaining to be decided upon.

29. The Commissioner sought further submissions in relation to the appeals from both Coillte and the requesters. Coillte made a submission on 29th July, 2022 on foot of a number of questions posed by the Commissioner but, despite a request to that effect, was not provided with sight of the submissions made by the requesters.

30. The outcome was an omnibus decision on 29th August, 2022 which is identified by the Commissioner as "Case Number OCE-124853-T4T4P0, [PLUS 57 OTHER CASES]". The Commissioner decided that he did have jurisdiction to consider the appeal and that Coillte was not justified in treating the requests as invalid under article 6(1)(c) of the AIE Regulations.

Procedural history

31. The matter comes before the referring court as an appeal on a point of law under art. 13(1) of the 2007 regulations and by originating notice of motion in accordance with Order 84C r. 2(1) RSC.

32. The proceedings were initiated on 27th October, 2022. A hearing date of 14th November, 2023 was fixed. The matter was heard on that date and judgment was reserved. Judgment was delivered by the referring court on 22nd November, 2023 to the effect that the court would in principle refer certain questions to the CJEU.

33. On 11th December, 2023, Ireland and the Attorney General were added as notice parties and Right to Know CLG was added as an *amicus curiae* on its own application, the existing parties being relatively neutral on that issue, on the basis of usual *amicus* terms under *Eco Advocacy CLG v. An Bord Pleanála* [2021] IEHC 265, [2021] 10 JIC 0406 including generally seeking to minimise costs. The State was permitted to file an affidavit prior to finalisation of the order for reference and

was afforded time for submissions on the questions referred. On 22nd December, 2023, the State indicated that it would not be filing a further affidavit.

34. The parties all delivered written submissions on the proposed questions. While the referring court was initially minded to refer a question regarding the correctness of certain reservations in domestic caselaw regarding the right of a domestic court or tribunal to refer issues notwithstanding a domestic judgment of a higher court, in fact it was apparent from the respondent's submission on the questions that it was not particularly making an issue of the right to refer the questions notwithstanding a judgment of an appellate court. Thus the proposed question on that issue does not currently appear necessary. However the question can be revisited in a future case or at a future time should anyone seek to make an issue of it. In that regard the referring court can record its endorsement of the *amicus curiae*'s submission regarding any contrary domestic rule of *stare decisis*:

> "... a national court is required to disapply such a rule.
>
> This is based on a long line of consistent Court of Justice case law which confirms that the discretion to refer questions to the Court of Justice under Article 267 TFEU is autonomous and cannot be constrained or qualified by national rules such as stare decisis. For example in Case 166/73 [*Rheinmühlen-Düsseldorf v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*] the Court of Justice held:
>
> '4. It follows that national Courts have the widest discretion in referring matters to the Court of Justice if they consider that a case pending before them raises questions involving interpretation, or consideration of the validity of provisions, of provisions of Community Law necessitating a decision on their part.
>
> It follows from these factors that a rule of national law whereby a court is bound on points of law by rulings of a superior court cannot deprive the inferior courts of their power to refer to the Court questions of interpretation of Community law involving such rulings.
>
> It would be otherwise if the questions put by the inferior court were substantially the same as questions already put by the superior court.
>
> On the other hand the inferior court must be free, if it considers that the ruling on law made by the superior court could lead it to give a judgment contrary to Community law, to refer to the Court questions which concern it.
>
> If inferior courts were bound without being able to refer matters to the Court, the jurisdiction of the latter to give preliminary rulings and the application of Community law at all levels of the judicial systems of Member States would be compromised.
>
> 5. The reply must therefore be that the existence of a rule of domestic law whereby a court is bound on points of law by the ruling of the court superior to it cannot of itself take away the power provided by Article [267 [ex 177]] of referring cases to the Court.'
>
> A further example is Case C-416/10*, Križan*:
>
> 'A rule of national law, pursuant to which legal rulings of a higher court bind another national court, cannot take away from the latter court the discretion to refer to the Court of Justice questions of interpretation of the points of European Union law concerned by such legal rulings. That court must be free, if it considers that a higher court's legal ruling could lead it to deliver a judgment contrary to European Union law, to refer to the Court of Justice questions which concern it.'"

35. In the foregoing circumstances, the referring court is staying the proceedings and referring the questions below to the Court of Justice for a preliminary ruling.

The first question

36. The first question is:

> **Does the word "request" in Article 6(1) of Directive 2003/4 read in the light of Article 4(1) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998 mean only a request that is valid by reference to the Directive and by reference to the transposing domestic law of the member state concerned?**

37. The appellant's proposed answer is that the question should be answered in the affirmative. The Directive clearly envisages that, in circumstances where the scheme of the Directive did not define the requirements for a valid request, it was to be left to the Member States to identify the relevant requirements. This is made express in Recital 15: "Member States should determine the practical arrangements under which such information is effectively made available" and Article 3(5)(c) of the Directive. The requirement in Article 6(1) of the AIE Regulations for applicants to provide a name and address is entirely consistent with Article 3(5)(c) of the Directive. The requirement for a name and address imposes no cognisable burden on *bona fide* applicants and is entirely consistent with the requirement to determine the practical arrangements for the effective exercise of the right of access to environmental information.

38. The respondent's proposed answer is that having regard to the objectives of the Aarhus Convention, Directive 2003/4 and the regulations which give effect to them in Irish law, the concept

of "request" in Articles 3 to 6 of Directive 2003/4 cannot be interpreted in such a way to undermine the wide right of access to environmental information and the right of access to justice in respect of such access provided for under the Directive.

39. The State's proposed answer is that the obligation on Member States and public authorities to make available environmental information only exists "in accordance with the provisions of this Directive" (Article 3(1) of the Directive). As has been observed, the right of access to environmental information "applies only to the extent that the information requested satisfies the requirements for public access laid down by that directive…" (Case C-279/12 *Fish Legal and Shirley v Information Commissioner* at §39, C-619/19 *Land Baden Wurtenberg v JD* at §29 and §30. The provisions of the Directive obviously include Article 3(5)(c), which requires Member States to ensure that "the practical arrangements are defined for ensuring that the right of access to environmental information can be effectively exercised". That is reflected in Recital 15 which requires Member States to "determine the practical arrangements under which information is effectively made available". It follows that a request for environmental information must be made in accordance with the Directive and any relevant national transposing legislation setting out the "practical arrangements" envisaged by Article 3(5)(c). It is noted that the Commissioner has not directly addressed the question posed by the Court but, instead, has suggested that the concept of "request" cannot "be interpreted in such a way to undermine the wide right of access to environmental information and the right of access to justice in respect of such access provided for under the Directive". This submission is not understood. A conclusion that a request must be made in accordance with the minimal procedural requirements of the Directive and national implementing legislation could not be seen to undermine the right of access to environmental information or the right of access to justice. Instead, an acknowledgement that a request must be made in accordance with the requirements of the Directive and national implementing legislation gives effect to the Directive and ensures that only those requests which fall within the scope of the Directive are required to be considered by public authorities.

40. The *amicus curiae's* proposed answer is a qualified yes. The word request means a request that is valid by reference to the Directive. However, it is impermissible for a Member State to impose additional validity requirements, for example by requiring that the applicant provide an actual (legal) name or a (current) address in every case. While it may be the case that for practical purposes, some or all of this information is required to facilitate making available environmental information, it is not required for a valid request to be made.

41. The referring court's proposed answer is Yes. The term "request" can only mean a valid request. The validity of a request depends on compliance both with the Directive and with valid transposing legislation.

42. The relevance of the question is that domestic law (article 6 of the 2007 regulations as set out above) prescribes certain formal requirements for a request including a statement of name and address. As the requests do not comply with the 2007 regulations on their normal interpretation based in domestic law, the requests are invalid for failure to state valid names and addresses within the meaning of domestic law (that is real names and physical addresses) unless a conforming interpretation is required or, if that is not possible, unless the court is required to disapply those regulations.

The second question

43. The second question is:

> **Does the word "applicant" in Article 2(5) of Directive 2003/4 read in the light of inter alia Article 4(1)(b) and/or Article 6(1) and/or (2) and/or Articles 2(5) and 4(1) and (3)(b) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998 mean a natural or legal person identified by their actual name and/or a current physical address, as opposed to an anonymous or pseudonymous person and/or an applicant whose contact details are identified by email only?**

44. The appellant's proposed answer is that the question should be answered on the basis that the term "applicant" means a natural or legal person identified by their actual name and/or a current physical address. The concept of a "request" does not appear as a defined term in the AIE Directive, nor are there any requirements set out in the Directive as to the format of a request. Instead, Article 3(1) of the Directive simply states that "Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest". Significantly, however, an applicant is defined in the Directive as "any natural or legal person requesting environmental information" (see also Recital 8 of the Directive) and the only exceptions to the requirement to provide environmental information to an applicant, at their request, are contained in Article 4 of the Directive. The fact that under Article 6 of the AIE Regulations a public authority was entitled to seek the name of that natural and legal person or ensure that a

request was not being submitted by someone, or something, other than a natural or legal person, in the name of a fictional person or someone using a pseudonym or *nom de plume*, is fully consistent with the requirements of Article 3(1) of the Directive and the principle of subsidiarity in Article 3(1) of the Directive. If the Directive purported to extend the right of access to pseudonymous individuals or to unincorporated associations, it would have said so and/or dispensed with the reference to "natural or legal persons". This is particularly the case where, as identified by the referring court, the 2007 regulations and the Directive envisage that the ultimate resolution of disputes in relation to the proceedings will be *via* court proceedings, participation in which must be on the basis of the provision of an actual name and a physical address. On this basis, it is inconceivable that the legislative scheme envisaged that an applicant could be entitled to request information and seek an internal review using a pseudonym, in circumstances where they would then have to participate with their actual name and address in relation to any Court proceedings.

45. The respondent's proposed answer is that neither the provisions of the Directive nor the provisions of the Convention impose any requirement that a natural or legal person must provide, and/or be identified, by their actual name and a current physical address in order to make a request for access to environmental information.

46. The State's proposed answer is that Article 3(1) of the Directive defines the right of access to environmental information by reference to requests for such access to environmental information made by "an applicant". Article 2(5) of the Directive defines an applicant as "any natural or legal person requesting environmental information". Similarly the "public" is defined by Article 2(6) as "one or more natural or legal persons, and in accordance with national legislation or practice, their associations, organisations or groups". Those Articles are reflected in Recital 8 to the Directive which states that "it is necessary to ensure that any natural and legal person has a right of access to environmental information held by or for public authorities without his having to state an interest". As the Directive only provides for a right of access to environmental information for natural or legal persons, it follows that a request must be made by a natural or legal person. This in turn implies a requirement to provide an actual name and/or physical address so as to enable the public authority to confirm that the request is made by a natural or legal person. The Directive does not operate to permit the submission of anonymous or pseudonymous requests. This conclusion is reinforced by the fact that Article 6 of the Directive provides for a right of access to justice, including access to a review procedure before a court of all or other independent and impartial body established by law in which the acts or omissions of the public authority concerned can be reviewed and whose decision may become final. Article 6(2) also provides for access to legal recourse for "third parties incriminated by the disclosure of information". The rights pursuant to Article 6 could not be vindicated where requests for access to environmental information are made on an anonymous or pseudonymous basis.

47. The *amicus curiae's* proposed answer is that the word applicant includes anonymous or pseudonymous persons and persons whose contact details are identified by email only. Article 2(5) of Directive 2003/4 defines "applicant" as "any natural or legal person requesting environmental information." Since no reference is made to national law in the definition it must be given an autonomous EU-law definition. It is clear from the Directive that environmental information may be made available in many different forms and in a variety of manners. The Directive uses the neutral term "made available" and not words such as sent, posted, transmitted etc. Therefore information can be made available in a variety of ways, many of which do not require identifying the applicant or the need for their physical address or indeed even an email address. For example, environmental information may be made available to an applicant in the offices of a public authority (either by way of inspection or collection), online through a website or a download, by email, through an agent, to a PO box etc. There may be good reason for an applicant to remain anonymous or pseudonymous. For example, they may be a whistleblower, a journalist, a client of a lawyer or someone who fears penalisation, persecution or harassment for exercising their Aarhus Convention rights and ought to be protected per Article 3(8) of the Aarhus Convention.

48. The referring court's proposed answer is Yes. The conferral of rights on natural and legal persons by the directive inherently involves the consequence that the applicant must furnish an actual name and/or physical address to establish an entitlement to be treated as an applicant. Furthermore the fact that disputes under the 2007 regulations will come before a court, as has happened in the main proceedings, renders it necessary that the interested parties should be identifiable by the minimum information required to participate in proceedings. The absence of that information here has led to the unsatisfactory position of having no alternative but to name John or Jane Doe as pseudonymous notice parties.

49. The relevance of the question is that if the answer is Yes, the appeal should be allowed because the requester(s) failed to furnish information as to their real names and physical addresses.

The third question

50. The third question is:

If the answer to the second question is No, does Article 3(1) and/or (5)(c) of Directive 2003/4 read in the light of Article 4(1) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998 have the effect of precluding national legislation that requires an applicant to furnish his or her actual name and/or current physical address in order to make a request?

51. The appellant's proposed answer is that the question should be answered in the negative. Strictly speaking, the Directive does not require the provision of a name and address from applicants requesting environmental information. Rather, it requires that the applicant be a natural or legal person and leaves the practical measures for the implementation of the Directive to the Member State. Ireland has exercised that discretion in a manner that is consistent with the Directive in requiring the provision of a name and address. Neither Article 3(1) nor 5(c) of the Directive in any way trench on that analysis. The right of access is not dependent on having an interest, but it is dependent on being a qualified and/or identifiable applicant. The concepts of having an interest and being a qualified and/or identifiable applicant are distinct, and the AIE Regulations correctly seek evidence to substantiate the latter while correctly disavowing any interest in the former. The requirement to provide a name and address is not a barrier to effective access – in these proceedings, it is clear that it in fact operates as a positive tool to facilitate access by giving public authorities the ability to identify manifestly unreasonable requests and therefore facilitate quick and efficient access for genuine and qualified applicants. Article 4(1) of the Aarhus Convention does not add anything to the analysis. It specifically identifies that information on the environment has to be made available "within the framework of national legislation" and repeats the stipulation (already reflected and present in both the Directive and the AIE Regulations) that it is not necessary to state an interest.

52. The respondent's proposed answer is Yes, the relevant provisions of the Convention and the Directive – which provide for a wide right of access to environmental information and, in recital (15) of the Directive make it clear that practical arrangements for access shall guarantee that the information is effectively and easily accessible and progressively becomes available – preclude national legislation that requires, or is interpreted as requiring, an applicant to furnish his, her or its actual name and current physical address in order to make a request.

53. The State's proposed answer is that the Directive does have the effect that an applicant is required to furnish an actual name and/or physical address. As also set out above, Member States are required by Article 3(5)(c) to put in place "practical arrangements under which environmental information" is made available. In this respect, the Directive does not identify all the practical arrangements which are to be put in place by Member States, nor does it contain the detailed procedural rules for the implementation of the rights which are the subject of the Directive. Consequently, it is for the Member States to determine those rules, subject to the principles of equivalence and effectiveness (see, for example, Case C-255/00 *Grundig Italiana SpA* at §33). Member States are therefore entitled to put in place national procedural rules to ensure that the right of access to environmental information (and all associated rights) is only exercised by a natural or legal person. That includes a requirement that a person provide their name and address to the public authority which is directly related to the question of whether a natural or legal person has made the request for environmental information. The requirement to provide a name and address gives effect to the requirement of the Directive that a request be made by a natural or legal person within the meaning of Article 2.

54. The *amicus curiae's* proposed answer is that Directive 2003/4 precludes national legislation that requires an applicant to furnish his or her actual name and/or current physical address in order to make a request. The detailed reasons set out above under the second question also apply to this question.

55. The referring court's proposed answer is that this question does not arise because the answer to the second question is Yes, but if it does arise the answer is No. In accordance with the principle of national procedural autonomy, there is nothing inherently contrary to the aims of the Directive in a member state opting to transpose it in a manner that envisages the provision by requesters of their names and addresses so as to verify that they are the natural or legal persons on whom rights of applicants are conferred (as opposed to, for example, requests produced by artificial intelligence or by unincorporated bodies).

56. The relevance of the question is that the requests did not comply with national legislation in its ordinary meaning. If the national legislation in its ordinary meaning is not preluded by EU law then the requests must be rejected as invalid.

The fourth question

57. The fourth question is:

If the answer to the second question is No, and the answer to the third question in general is Yes, does Directive 2003/4 read in the light of Article 4 of the Convention

on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998 have the effect that where a public authority forms the reasonable view that there is a *prima facie* question over the genuineness of information regarding his or her identity provided by an applicant, the public authority is precluded from seeking confirmation as to the applicant's actual name and/or a current physical address, for the purpose of verifying the identity of the applicant, and not for the purpose of determining the interest of the applicant, even if the provision of the actual name and/or current physical address of an applicant could indirectly create the potential for inference or speculation on the part of the public authority or otherwise as to the interest if any of the applicant referred to in Article 3(1) of the Directive?

58. The appellant's proposed answer is that the limitation in the Directive that confines applicants to a natural or legal person (as opposed to a pseudonym, an AI-generated request or an unincorporated association) and the latitude accorded to Member States to provide for the practical mechanisms to determine the implementation of the Directive, transposed by *inter alia* Article 6(1)(c) of the AIE Regulations in Ireland, necessarily connotes a jurisdiction vested in the public authority to make reasonable enquiries in the event that there is a *prima facie* question over the genuineness of the identity-information submitted by an applicant for environmental information. If this was not the case, then applicants could provide clearly inaccurate information (e.g. Willy Wonka c/o The Chocolate Factory) but which nominally complied with the practical mechanisms provided by a Member State in order to transpose Article 3(1) of the Directive. It would be destructive of the purpose of the Directive if public authorities, uniquely in the context of the Directive, were precluded from making basic and reasonable enquiries, where these *prima facie* suggested themselves to be appropriate, in order to establish the veracity of identifying information submitted. The two issues are conceptually distinct, and the Directive is unequivocal that under no circumstances is an applicant required to state or have any or any particular interest in the information requested. That position has been restated in *Flachglas Torgau* (§31) and *Fish Legal* (§36) and even if, counterintuitively, a public authority used information relating to identity to speculate as to the interest of the applicant, any such speculation would be necessarily irrelevant to processing of the request and could, in no circumstances, provide a basis for a refusal of the request.

59. The respondent's proposed answer is that in circumstances where the Directive seeks to ensure a wide right of access for the public to environmental information, expressly provides that an applicant may make a request without stating an interest and does not make provision for the verification of the identity of requesters, it must be interpreted as precluding any measures of Member State law which would serve to undermine the right of access (for example, by imposing additional requirements and obligations on applicants requesting access which could deter or dissuade applicants from making such requests). In the event that a public authority has reasonable concerns regarding possible misuse or abuse of the regime for access to environmental information, such concerns are properly addressed within the context of the exceptions available under Article 4 of the Directive, including in particular Article 4(1)(b).

60. The State's proposed answer is that the question as framed may conflate aspects of the Directive which are not relevant to each other. The Directive creates a right of access to environmental information which can be exercised by natural and legal persons. There is nothing in the Directive which precludes a public authority from confirming that a request is made by a natural or legal person. The entitlement to verify that a request complies with the requirements of the Directive is an inherent feature of the legal regime established by the Directive. To find otherwise would be to suggest that the requests for environmental information should be processed otherwise than in accordance with the Directive and that the right of access to environmental information extends beyond that which has been established by the Directive. Further, it prevents abuse of the right of access to information and permits public authorities to refuse requests where they are manifestly made by fictional characters (e.g. Willy Wonka). The legal regime established by the Directive includes the principle that a request for environmental information can be made without a person having to state an interest (see Recital 8 and Article 3(1), Case C-204/*09 Flachglas Torgau* at §31, *Fish Legal* at §36). That a request can be made without having to state an interest does not preclude a public authority being entitled to verify the identity of the requester. The identity of a requester and whether they have an interest in the request are entirely separate things. While the former goes to the question of whether they meet the criteria in the Directive to make a request, the latter is irrelevant to the entitlement to make a request and to the manner in which a request would be processed by a public authority. Whether the disclosure of an identity or physical address would permit speculation as to the interest of the requester is also irrelevant as this is not a factor which can be considered by the public authority in the consideration of a request for environmental information. It is noted that the Commissioner suggests that permitting public authorities to verify

the identity of requesters would undermine the right of access to environmental information. There are three difficulties with that suggestion. First, it implies that public authorities are not entitled to confirm that a request is made in accordance with the legal regime established by the Directive. That is obviously incorrect. Second, there is no evidence to suggest that the right of access to environmental information has been or would be undermined by public authorities being permitted to verify that the requirements of the Directive are met. The basis of this assertion by the Commissioner is unclear. Third, and finally, the suggestion that concerns about the abuse of the legal regime established by the Directive can be addressed by the use of exceptions conflates the question of whether a request is made in accordance with the Directive and the application of exemptions to an individual request. These are distinct matters and while in some instances it may be appropriate for a public authority to invoke Article 4(1)(b), the existence of exemptions does not address the logically prior question of whether a request is made in accordance with the Directive.

61. The *amicus curiae's* proposed answer is that Directive 2003/4 has the effect that where a public authority forms a reasonable view that there is a *prima facie* question over the genuineness of information regarding his or her identity provided by an applicant it is nonetheless precluded from seeking confirmation of the applicant's actual name and/or a current physical address, for the purpose of verifying the identity of the applicant, and in fact the public authority is precluded from forming this view in the first place. Article 3(1) of Directive 2003/4 provides that environmental information must be made available to an applicant without the applicant having to state an interest. Therefore, the duty on a public authority to make available environmental information does not depend on who the applicant is or where they live or are established. Neither Directive 2003/4 nor the AIE Regulations give an express power to a public authority to request information from an applicant to verify their identity or address. There is no other basis under Directive 2003/4 for a public authority even to consider the genuineness of the information regarding the applicant's identity or residence let alone to seek confirmation of an actual name and/or address, particularly given that it is not necessary to provide this information in the first place.

62. The referring court's proposed answer is that this does not arise because the answer to the second question is Yes and to the third question is No, but if it does arise the answer is No. The general doctrine of abuse of rights applies here. Provision of false or incomplete information constitutes abuse of rights. Such an abuse, as here, can require the waste of public resources, delay to genuine requests for information, and may demoralise public officials, including junior officials, especially where accompanied by abuse of such officials as was the case in the requests to DAFM which were in the view of the referring court more likely than not to have been co-ordinated with the requests in the main proceedings. If a public authority has reasonable grounds to suspect such abuse it may request further information. The fact that such information could conceivably result in speculation as to the interest of the requester is irrelevant. If the public authority was precluded from making such inquiries, then the practical scope of the Directive would be expanded beyond what had been enacted by the European legislature, and the limitation of rights to natural and legal persons would lack meaning and enforceability.

63. The relevance of the question is that if the appellant was entitled to request further information then the failure of the requester(s) to furnish that information rendered the dismissal of the requests lawful.

The fifth question

64. The fifth question is:

> **If the answer to the second question is No, and the answer to the third question in general is Yes, does Article 4(1)(b) of the Directive read in the light of Article 4(3)(b) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998 have the effect that a public authority is precluded from seeking confirmation as to the applicant's actual name and/or a current physical address, for the purposes of determining whether a given request is manifestly unreasonable by reference to the volume, nature and frequency of other requests made by the same applicant, and not for the purpose of determining the interest of the applicant, even if the provision of the actual name and/or current physical address of an applicant could indirectly create the potential for inference or speculation on the part of the public authority or otherwise as to the interest if any of the applicant referred to in Article 3(1) of the Directive?**

65. The appellant's proposed answer is that the scheme of the Directive is clear. It allows for qualifying applicants to be refused environmental information if, in the view of the public authority the request is manifestly unreasonable (and any such view being subject to internal review, appeal to the Commissioner and, on appeal on a point of law, to judicial determination). It does not allow a qualifying applicant to be refused access to environmental information on the basis of the presence or absence of any interest in the environmental information sought. Information adduced in respect

of the identity of the applicant may legitimately be relevant to the question as to whether any issue of manifest unreasonableness arises. For example, if one individual had hypothetically submitted 3, 30, 300, 3,000 or 30,000 near-identical requests, each such factual scenario might give rise to differing, and legitimate, considerations as to whether Article 4(1)(b) of the Directive was engaged in respect of those requests, particularly if the requests might be coming from the same individual, but using different pseudonyms so as to disguise the unreasonable number/nature/complexity of the requests that they alone were submitting. The interest or the reason for those requests having been made is, however, completely irrelevant in each of those scenarios and is a matter that is outside the bounds of any decision for the purposes of Article 4(1)(b), and any speculation or inference that might be drawn could never form a proper basis for a conclusion of manifest unreasonableness or a refusal of access for the purposes of the Directive. It would be a remarkable conclusion if a public authority was denied a jurisdiction to make reasonable enquiries to establish the identity of an applicant (i.e. name and address) in cases where there was a *prima facie* question over the genuineness of the details supplied in that regard by the applicant, simply because of a concern that any such information might be used for purposes that were categorically prohibited by the Directive. Any decision to refuse a request for access to environmental information on the basis of speculation or inference as to interest would be swiftly and correctly set aside by the Commissioner or, if necessary, in an appeal on a point of law to the High Court.

66. The respondent's proposed answer is that it is not necessary to answer this question. If the question arises, the respondent submits that – if and insofar an assessment of whether a request is manifestly unreasonable within the meaning of Article 4(1)(b) of the Directive requires consideration of the name and address furnished by the applicant and/or the interest of the applicant in making the request – such assessment is undertaken at the stage of determining whether there are grounds for refusing a request under Article 4, rather than at the initial stage of determining whether there is a request within the meaning of Article 3(1) of the Directive.

67. The State's proposed answer is that as noted above, the Directive does not preclude public authorities from verifying the name and/or address of the requester for the purposes of confirming that the request complies with the requirements of the Directive. A public authority is also permitted to verify the name and/or address of a requester for the purpose of determining whether a request is manifestly unreasonable within the meaning of Article 4(1)(b) of the Directive. It is noted that it is common case between all parties that a public authority may seek to verify the identity of a requester for the purposes of determining whether Article 4(1)(b) can be invoked to refuse the request. As explained above, whether the verification of identity allows inference or speculation as to the interest of the requestor is irrelevant as this is not a factor to which the public authority is entitled to have regard in the consideration of the request for access to environmental information.

68. The *amicus curiae's* proposed answer is that Directive 2003/4 prohibits a public authority from seeking confirmation of an applicant's actual name and/or current physical address for the purpose of determining whether a request is manifestly unreasonable by reference to the volume, nature and frequency of other requests made by the same applicant. Directive 2003/4 seeks to ensure the widest possible systemic availability and dissemination to the public of environmental information. With that in mind Directive 2003/4 requires public authorities to organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular electronically and that environmental information progressively becomes available through the internet. As identified by Advocate General Fennelly, in light of this obligation, requests for environmental information should only concern points of detail or clarification. It should also be noted that Directive 2003/4 does not make reference to the volume, nature or frequency of requests in Article 4(1)(b) which permits a request to be refused if it is manifestly unreasonable. In fact, there is in principle no limit to the frequency or volume of information that an applicant may request, given that environmental information ought to be disseminated to the widest extent possible. Directive 2003/4 itself envisages voluminous and complex request and provides the possibility for those requests to be handled in an extended timeframe under Article 3(2)(b). There are other safeguards such as the possibility of refusing a request for materials in the course of completion or unfinished documents or data and where a request remains formulated in too general a manner after an applicant has been given the opportunity to make a more specific request.

69. The referring court's proposed answer is that this does not arise because the answer to the second question is Yes and to the third question is No, but if it does arise the answer is No. The general doctrine of abuse of rights applies here, and the points made by the referring court under the heading of the fourth question also apply. A public authority is entitled to refuse a manifestly unreasonable request, for example by reference to the volume of information sought. It necessarily follows that the public authority is entitled to seek sufficient information to determine whether the request is manifestly unreasonable or not, which may include the actual name and/or physical address of the applicant (see by analogy the judgment of 13 April 2005, *Verein für*

Konsumenteninformation v Commission of the European Communities, T-2/03, ECLI:EU:T:2005:125). The fact that such information could conceivably result in speculation as to the interest of the requester is irrelevant.

70. The relevance of the question is that if the appellant was entitled to request further information then the failure of the requester(s) to furnish that information rendered the dismissal of the requests lawful.

Order

71. For the foregoing reasons, it is ordered that:

(i) the title to the proceedings be amended by the deletion of "the European Communities (Access to Information on the Environment) Regulations 2007 to 2018" and the substitution of "the European Communities (Access to Information on the Environment) Regulations 2007 to 2014";

(ii) the questions set out in this judgment be referred to the CJEU pursuant to article 267 TFEU;

(iii) the substantive determination of the proceedings be adjourned pending the judgment of the CJEU, without prejudice to the determination of any appropriate procedural or interlocutory issues in the meantime;

(iv) the parties be required to comply with the directions regarding preparation of papers for transmission to the CJEU as set out in Guidance Notes attached to Practice Direction HC124, so that all papers are received by the List Registrar in electronic format within 21 days from the date of this judgment;

(v) the parties be required to comply with the directions to keep the referring court informed of progress of the reference as set out in para. 100(vii) of *Eco Advocacy CLG v. An Bord Pleanála* [2021] IEHC 265, [2021] 10 JIC 0406;

(vi) the matter be listed for mention on 19th February, 2024, to advise the referring court of progress; and

(vii) the costs of the proceedings to date not already disposed of be reserved until further order.