



Decision of the Information Commissioner in his capacity as Appeal Commissioner on an appeal made under Regulation 10 of the European Communities (Re-Use of Public Sector Information) Regulations 2005 (as amended by the European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015 (the PSI Regulations)

Case RPSI/19/05

Date of decision: 16 June 2020

Appellant: Mr Conor Ryan, RTE, Donnybrook, Dublin 4

Public Sector Body: Monaghan County Council (the Council)

Issue: Whether the Council's decision to refuse the appellant's request for access to a machine-readable listing of all purchase orders over €20,000 from March 2012 to April 2019 was in compliance with the PSI Regulations

Summary of Commissioner's Decision: In accordance with Regulation 12(2) of the PSI Regulations, the Information Commissioner reviewed the decision of the Council on the appellant's request. The Commissioner varied the Council's decision to refuse the request. He found that the Council was not justified in refusing the request for re-use of those records that it held in machine-readable format under Regulations 3 and 5(5)(b). Accordingly, the Commissioner directed the Council to grant the appellant's request for re-use in respect of these records. He also found that the Council was justified in refusing the appellant's request for re-use of those records that it did not hold in machine-readable format under Regulation 5(5)(b).

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal this decision to the High Court on a point of law from the decision, as set out in Regulation 15 of the PSI Regulations. Such an appeal must be initiated not later than eight weeks after notice of this decision was given to the person bringing the appeal.

Background to review

On 4 March 2019, the appellant sought access to a machine-readable list of the Council's purchase orders in excess of €20,000 from 2012 to 2019, for the purposes of re-use. He requested information under the following headings: SupplID, SupplID (Text), Invoice No, Trans No, Order No, Period, Cur, Amount, TT/Contract description, PM, Amount and Pay Date.

On 20 March 2019, the Council refused the request on the basis of Regulation 5(5)(b). It also stated that it was refusing the request on the grounds that the information was available on its website, but did not otherwise refer to any relevant provision in the PSI Regulations in the context of this comment.

The appellant appealed the Council's decision to this Office on 11 April 2019.

As Information Commissioner, I am the designated Appeal Commissioner under the PSI Regulations. Regulation 12 provides that, on receipt of a valid request for an appeal under the PSI Regulations, I must carry out a review. Following this review, I may decide to affirm, vary or annul the decision under review.

Regulation 10(1)(a) of the PSI Regulations provides a right of appeal against a decision by a public sector body to refuse to allow a requester to re-use a document.

In the course of my review, I have considered the Council's refusal to release the records sought for re-use, the obligation to release the records sought in an open and machine-readable format as required by Regulation 5(5)(a) and the limitation of the PSI Regulations under Regulation 5(5)(b).

I have also had regard to submissions made to my Office by the parties, as well as the Department of Finance Circular 32/2005, and the Department of Public Expenditure and Reform Circulars 16/2015 and 12/2016. I have examined the records at issue.

Preliminary Matters

The Council does not appear to have any information relating to the Reuse of Public Information (RPSI) on its website (www.monaghan.ie). I would like to draw the Council's attention, and that of public sector bodies generally, to the [guidance](#) published by the Central Policy Unit of the Department of Public Expenditure and Reform. This guidance sets out what steps each public sector body should take in respect of the PSI Regulations, which includes publishing a PSI statement on its website. I would expect the Council to update its website to reflect this.

Scope of review

As noted above, the appellant sought records for re-use containing information under a number of headings. The reports routinely published online by the Council solely contain information under the following headings: Supplier, Amount and Description. I am satisfied

that there is a right of access to the reports as published. Accordingly, it is the Council's refusal to allow re-use of the information in the published reports, which is under review in this case.

Relevant provisions of the PSI Regulations

As I previously stated in my decision in Vizlegal and the Patents Office (RPSI/16/02), a right of access to a document is an essential precursor to the right to re-use such a document. Rights of access to documents are generally defined by national legislation, and not by the PSI Regulations.

In the current case, public bodies have been obliged to publish details of purchase orders greater than €20,000 since 2012 under the Public Service Reform Plan. Local authorities such as the Council were informed of this obligation by Circular Fin 07/2012 from the Department of Environment, Community and Local Government. The Council meets this requirement by publishing a quarterly list showing the relevant Supplier, Amount and Description for each purchase order on its [website](#). Its quarterly reports are published in pdf format, and are not machine-readable.

Regulation 2(1) defines re-use as "the use by an individual or legal entity of the document for commercial or non-commercial purposes other than the initial purpose within the public task for which the document was produced".

Regulation 5(5)(a) of the PSI Regulations provides that, where a public sector body makes a document available for re-use it is obliged to make the document available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with its metadata, in compliance with formal open standards.

Regulations 5(5)(b)(i) and (ii) provide that nothing in the PSI Regulations requires a public sector body to create or adapt any document in order to comply with a request, or to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

Regulation 3(1) exempts certain documents from the scope of the PSI Regulations.

Analysis and Findings

The Council relied on Regulations 5(5)(b)(i) and (ii) to refuse to allow re-use of the documents concerned. The Council also stated that it was refusing the request on the grounds that the information being sought was already available on its own website.

Regulations 5(5)(b)(i) and (ii)

As noted above, Regulations 5(5)(b)(i) and (ii) state that a public sector body is not required to create or adapt any document in order to comply with a request, or to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation. I have set out the provisions of Regulations 5(5)(b)(i) and (ii) above.

In its decision, the Council stated that to produce the data in the format requested by the appellant would “require excessive work to recreate historical records, revisit the exclusions and reproduce in an alternative format”.

In submissions to this Office, the Council stated that a staff member exports a report from its financial management system on a quarterly basis, which contains details of all purchase orders for the relevant time period. It stated that the report is in Excel format, and is manually edited to remove purchase orders that do not fall to be published under the Circular. The Circular itself states that the Department of Public Expenditure and Reform interpreted the direction to publish purchase orders to refer solely to payments for goods and services, thereby excluding any other payments. The Circular also states that purchase orders which would be “precluded from publication under FOI legislation” are not required to be published. The Circular does not elaborate on these points.

In any event, my understanding is that the Excel spreadsheet is manually reviewed and edited by a staff member to remove any purchase orders that are not required to be published in line with the Circular. The Council said that this process normally takes about two to three hours per quarter to complete, depending on the number of purchase orders involved. I note that the appellant has sought reports for the period 2012-2019.

The Council also stated that when the edited list is finalised, the Excel spreadsheet is then converted to pdf format, and published on its website. The Council said that while some of the edited Excel sheets were retained, up until 2018 this had not been done as a matter of course, as it there had been “no reason” to do so.

From the above, it is clear that the Council holds some machine-readable versions of the purchase orders lists published on its website (i.e all lists since 2018, and some before 2018). However, its position is that the majority of the published documents are in (non-machine readable) pdf format and they would have to be re-created to grant the appellant’s request. It stated that this process would involve manual intervention and would require more than simply exporting a report from its financial management system.

As set out above, there is an obligation on public sector bodies to allow the re-use of documents held by them in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with its metadata, in compliance with formal open standards. On the other hand, there are limits to the steps a public sector body is required to take in order to grant a request.

In the circumstances, I am satisfied that the steps required to recreate the published records in machine-readable format would involve creating new records and/or disproportionate effort, going beyond a simple operation. I am also satisfied that the Council is not required to convert numerous pdf files to machine-readable versions (even if this were possible) or to re-create historical records in a different format in order to satisfy a request under the Regulations. Accordingly, I find that the Council’s refusal to grant the appellant’s request in relation to the lists solely held in pdf format on the basis of Regulations 5(5)(b)(i) and (ii) was justified.

Machine-Readable versions of published lists

However, the Council has also indicated that it holds machine-readable versions of the published lists since 2018, as well as some which were created before then. I am satisfied that these records are within the scope of the appellant's request and that little to no effort would be required to provide them to the appellant for the purposes of re-use. I therefore find that Regulations 5(5)(b)(i) and (ii) do not apply to these documents. Accordingly, I find that the Council's refusal to allow the re-use of records held in machine-readable format relating to the appellant's request does not comply with the PSI Regulations. I direct the Council to provide these records to the appellant for the purposes of re-use.

Publicly Available – Section 15 of the FOI Act 2014

I note that the Council also refused the appellant's request on the basis that the information concerned was publicly available. This appears to be a reference to Regulation 3(1)(c)(iii), which, among other things, provides that the Regulations do not apply to documents, access to which could be excluded by virtue of "the Freedom of Information Act 2014, other than section 15(2) of that Act" [emphasis added].

Section 15 of the FOI Act provides for the refusal of FOI request on administrative grounds. Section 15(2) provides that an FOI request may be refused where the record at issue is available for inspection by members of the public upon payment or free of charge, or is available for purchase or removal free of charge by members of the public, under an enactment or otherwise.

It is clear from the facts of this case that a version of the records sought for re-use is already available on the Council's website. It is also clear to me from Regulation 3(1)(c)(iii) that the PSI regulations apply to documents that are available for inspection or purchase or otherwise, and that this covers records published online by a public sector body. Based on the wording and clear intention of the Regulations, I find that the Council's refusal to allow re-use of the document sought on the basis that the information is already publicly available is not in accordance with the PSI Regulations.

Publishing documents in non machine-readable format

I see no reason why the Council could not publish future lists of purchase orders in machine-readable format. This would have the advantage of being in line with government policy in terms of promoting innovation and transparency through the publication of Irish Public Sector data in open, free and reusable formats where possible (see <https://data.gov.ie/>). It would also remove the administrative burden on the Council of having to process further PSI requests for the type of records sought for re-use in this case.

Decision

In accordance with Regulation 12(2) of the PSI Regulations, I have reviewed the decision of the Council on the appellant's request and I vary the decision of the Council to refuse the request for re-use. I find that the Council was not justified in refusing the appellant's request for re-use of any machine-readable records it holds containing lists of purchase

orders from 2012 – 2019 on the basis of Regulations 3 and 5(5)(b)(i) and (ii) and I direct the Council to provide these records to the appellant.

I find that the Council's decision to refuse the appellant's request for re-use of machine-readable records within the scope of his request which it does not hold, was justified under Regulations 5(5)(b)(i) and (ii).

Right of Appeal

A party to this appeal or any other person affected by this decision may appeal this decision to the High Court on a point of law from the decision, as set out in Regulation 15 of the PSI Regulations. Such an appeal must be initiated not later than eight weeks after notice of this decision was given to the person bringing the appeal.

Peter Tyndall
Information Commissioner