New FOI Act

19 November 2014
Processing FOI Requests under the FOIA 2014

Catherine Allen, Partner
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So What’s New?

Processing FOI requests – what’s new?

FOI Bodies

Fees and Charges

Definitions

Access to Records
FOI Bodies

- Existing FOI Bodies
- New FOI Bodies
- Prescribed Bodies
Some New Definitions

- effective date
- electronic device
- network and information security
- personal information
- record
- service provider
Section 11(3): FOI bodies to have regard to:

- Achieving greater openness and transparency
- Strengthening accountability and improve quality of decision-making
- Informing scrutiny, discussion, comment and review by the public
Access to Records - what’s new?

Section 11(7): No right of access to an exempt record:

Where the exemption is mandatory

Where public interest favours refusal
Access to Records - what’s new?

Section 12(7): Advise requester of other options:

- Re-use of Public Sector Information Regulations
- Access to Information on the Environment Regulations
Access to Records - what’s new?

Section 17: Data in more than one record held on an electronic device

FOI body shall take reasonable steps to search for and extract the records

Using any facility that existed on date of request

And was in use in the ordinary course

If reasonable steps result in creation of new record

Record deemed to have been created on date of receipt of FOI request
Fees and Charges

Section 27

SI No. 484 of 2014

Fees

- First instance fees removed
- €30/€10 Internal review fee
- €50/€15 OIC review fee

Search and retrieval charges
- €20 per hour

Copying charges
- €0.04 per sheet
- €10.00 per CD-ROM
- €6.00 per X-ray

Usually no charge for personal information

First 5 hours free

€100 minimum, €500 maximum, €700 ceiling

Min. 20% deposit
The New FOI Act: What You Need To Know
New Exemptions and Grounds for Non-Disclosure

Niall Michel, Partner, nmichel@mhc.ie
Introduction

• Highlight new exemptions and grounds for non-disclosure

• Note section 9 and 10 applications can be refused on certain grounds, too

• Note deferral of access also possible (section 16)

• 3 main places in Act set out grounds for non-disclosure/refusal:
  • Section 15 (Administrative)
  • Sections 28 – 41 (Exemptions)
  • Section 42 (Exclusions)
“Administrative Grounds” for Non-Disclosure

• Earlier administrative grounds for refusal added to, consolidated and enhanced. Now include:
  • Burdensome for body/functional area
  • Information already in public domain
  • Publication of record within 6 weeks
  • Records already released and available to requester/associates
“Administrative Grounds” for Non-Disclosure

- Record is available for inspection/purchase/removal
Exemptions and Exclusions

- Act contains two types of “exemptions”:
  - Those set out in Part 4, sections 28-42
  - Those set out in section 42
- Section 42 sets out new records to which the Act “does not apply” at all
- Now includes records held (and/or created) by
  - Gardai
  - CAB
  - Defence Forces
  - Tribunals; Commissions of Investigation
  - Central Bank
New Exemptions

- Set out in Part 4 – Sections 28 to 41

- Section 28 – Meetings of the Government
  - Part of section discretionary now, not mandatory
  - Records available after 5, not 10, years
  - Purer, narrower, definition of “Government”
New Exemptions

• Section 29 – Deliberations of FOI Bodies

  • Refuse only where contrary to public interest to grant

  • Could be contrary to public interest if requester becomes aware of significant decision

  • No more certification by Secretaries-General

  • (Note possible to defer access)
New Exemptions

- Sections 33 and 40 – Security, defence, international relations; financial and economic interests

- Section 35 – Information obtained in confidence
  
  • Anomaly cleared up regarding non-exempt records prepared by staff reflecting confidentially-provided information
New Exemptions – A Complementary Note

• Bear in mind

  • Section 11(3) and 8(5): prompts re public interest

  • Section 11(7): extent of right of access to (i) mandatorily

    and (ii) discretionarily-exempt records
Conclusion

- 3 main areas of non-disclosure
  - Administrative
  - Exemption
  - Exclusion
New FOI obligations: The Code of Practice and Publication Schemes

Lisa Joyce, Senior Associate
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New FOI obligations: The Code of Practice

- S. 48 - Code of practice and guidelines
  - Statutory Aim
  - FOI bodies must have regard to Code
  - Draft Code
New FOI obligations: The Code of Practice

- Draft Code of Practice for FOI for Public Bodies
  - 5 main objectives
    1. Promote best practice
    2. Guide and inform FOI bodies
    3. Ensure efficiency and minimise FOI burden
    4. Consistency and standardisation
    5. Oversight and accountability by monitoring Code compliance
New FOI obligations: The Code of Practice

- Draft Code of Practice - Content
  1. Role & responsibility of CPU
  2. Internal Structures of FOI bodies
  3. FOI Networks
  4. Records Management
  5. Proactive Publication of Official Information
  6. Key Issues in Processing of Requests
  7. Ensuring the Act Works Effectively
  8. Engagement with the Office of the Information Commissioner
  9. FOI Statistics
New FOI obligations: The Code of Practice

### Department of Finance FOI requests log 2014

New here? You may consider subscribing to our RSS feed or for updates via email.

Obtained under the new FOI Act, the Department of Finance FOI request log for 2014 (to October).

**FOI-112-2014 - FOI request log from 1 Jan - 23 Oct : Sheet 1**

<table>
<thead>
<tr>
<th>Reference No.</th>
<th>Brief Description</th>
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<tbody>
<tr>
<td>FOI/001/2014</td>
<td>All correspondence between the European Commission and the Department over Ireland’s exit from the EU-IMF bailout</td>
</tr>
<tr>
<td>FOI/002/2014</td>
<td>Domestic levy</td>
</tr>
<tr>
<td>FOI/003/2014</td>
<td>Taxation of non-resident and “tax exiles”</td>
</tr>
<tr>
<td>FOI/004/2014</td>
<td>All correspondence, both internal within the Department of Finance and external correspondence with outside departments/agencies/companies etc., regarding Limerick City of Culture and all documentation held in the Department of Finance regarding Limerick City of Culture</td>
</tr>
<tr>
<td>FOI/005/2014</td>
<td>Taxation of temporary non-residents</td>
</tr>
<tr>
<td>FOI/006/2014</td>
<td>Copies of all correspondence to and from the Dept. of Finance, including correspondence to and from the Minister, correspondence about the City of Culture initiative since its inception; its bestowal upon Limerick; correspondence on budget allocations and plans; correspondence on other plans for the City of Culture and any other correspondence that is in relation to the City of</td>
</tr>
</tbody>
</table>
New FOI obligations: Publication Schemes

• S. 8 – Publication of information about FOI bodies

• FOI bodies must
  • prepare and publish a publication scheme
  • publish information in accordance with its publication scheme, and
  • review and update its publication scheme at least every 3 years
New FOI obligations: Publication Schemes

- S. 8 – Publication of information about FOI bodies
  - Public Interest Factors – s. 8(5)
    - Allowing public access to information held by the FOI body
    - Publishing reasons for decisions of the FOI body
    - Publishing information of relevance or interest to the general public in relation to its activities and functions generally.
Q&A

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