Recent Developments in FOI & AIE

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Welcome

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Recent decisions of the Information Commissioner

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Number of FOI requests to public bodies 2006-2015
Applications to OIC 2013 – 2015

- 2013: Applications Received - 334, Applications Accepted - 260
- 2014: Applications Received - 355, Applications Accepted - 252
- 2015: Applications Received - 450, Applications Accepted - 332

• Increase in no. of OIC requests for further information under section 23
  • Notices issued to 10 FOI bodies requiring more comprehensive reasons for decisions
• 5 statutory notices issued by OIC under section 45 to furnish relevant information/attend before OIC
• OIC has published procedures manual and guidance notes – see OIC website

Outcome of reviews by OIC in 2015

- Decision affirmed 34%
- Decision annulled 12%
- Decision varied 18%
- Discontinued 3%
- Settlement reached 21%
- Withdrawn 12%

- Increase in deemed refusals under section 19
  - 60 (18%) deemed refusals at both stages
    - highest ever – focus for OIC in 2016
  - 114 (34%) deemed refusals at 1st stage
  - 97 (29%) deemed refusals at 2nd stage

Age profile of cases closed by OIC

2015 Annual Report: Some Issues Arising

- The Central Bank as a partially included agency
- Access to records held by Irish Water
- Access to records of deceased persons by next-of-kin
- Procedural comments of note:
  - Case No. 150155: Mr X and Meath County Council
  - Cases No. 150098 and 150105: The Department of Justice and Equality
Recent Decisions

• 206 decisions in 2015 and 98 to date in 2016

• General OIC comments of note
  • Section 13(4) – reasons for request to be disregarded
  • Section 15(1)(a) – evidence in “search” cases
  • Section 15(1)(c) – NB – offer to assist
  • Section 18 – partial access
  • De novo review - facts at date of decision
  • Statutory presumptions – section 22(12)
  • Public interest test – Rotunda, sections 6(6) and 11(3)
Section 9 Decision

• Case 160011: Mr X and the Office of the Revenue Commissioners (6 May 2016)

• Application to amend opinion in record that Revenue had always helped the requester in every way that it could
Section 15(1) Decision

- **Case 150433: KP Limited, c/o Solicitors and Dublin City Council (13 May 2016)**

- Request related to pyrite being found in the stone-fill used in the construction of a Ballymun housing scheme

- Covered all records from discovery of pyrite in 2007 to completion of phased work programmes in 2014
Section 17 Decision

• *Case 160006: Mr X and the HSE (4 May 2016)*
  
  • Request for access to applicant’s medical records
  
  • Sought “unencoded” transcript of records
Section 31(1) Decision

• Case 150068: X and the National Sports Campus Development Authority (2 November 2015)
  • Refusal of access to records which were the subject of an Order for Discovery
Section 36 Decision

• Case 150303 : Mr X and the Employment Appeals Tribunal (20 May 2016)
  • Refusal of access to record containing the identities of limited company respondents
Section 37 Decisions

- **Case 150034: Mr Q and RTÉ (17 December 2015)**
  - Records showing the amount of damages paid by RTÉ arising from legal complaints from January 2010 – February 2014

- **Case 140320: Mr X and the Health Service Executive (18 March 2015)**
  - Access to deceased records by next-of-kin
Thank you

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Recent court decisions on FOI

Niall Michel
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LK v Information Commissioner

- Contempt of Court exemption in section 22(1)(b) (now 31(1)(b))
- Issues
- Decision
McKellen v Information Commissioner

• Contempt of Court and Commercial Sensitivity under sections 22(1)(b) and 27(1)(b) (now 31(1)(b) and 36(1)(b))

• Issues

• Decision
Min. Health v Information Commissioner

- Records “held” or controlled under sections 6(1), 2(5) and 6(9)
  (now 11(1), 2(5) and 11(9))

- Issues

- Decision
Westwood v Information Commissioner

- Records “held” or controlled under sections 6(1), 2(5) and 6(9) (now 11(1), 2(5) and 11(9)), and Commercial Sensitivity under section 27(1)(b) (now 37(1)(b))

- Issues

- Decision
Kelly v Information Commissioner

- Appeal on point of law to High Court from decision of Information Commissioner under section 42(1) (now 24(1)) - following a review, and in relation to a review

- Issues

- Decision
Nowak v DP Commissioner

- Section 26 / DP Act appeal on point of law to Circuit Court from decisions of Data Protection Commissioner on complaints under section 10 – determination that complaint “frivolous or vexatious”

- Decision
Oates v District Judge Browne & Anor.

- Public bodies covered by FOI – Partially-Included Agencies – section 6(2)(a) and Schedule 1, Part 1

- Decision
Access to Information on the Environment

Catherine Allen
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Some statistics:
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Fees for AIE requests:

- Article 15(1)
- Court of Justice decision: *East Sussex County Council v Information Commissioner* (case C-71/14)
- Department of the Environment, Community and Local Government position
Recent Court Decisions:

- **NAMA v Commissioner for Environmental Information** [2015] IESC 51
- **Minch v Commissioner for Environmental Information** [2016] IEHC 91
- **Redmond v Commissioner for Environmental Information** – ongoing judicial review
Recent Commissioner Decisions:

- Decisions on validity of requests:
  - Wind Noise Info and Wexford County Council – CEI/14/0017
  - MK and Environmental Protection Agency – CEI/13/0007 and CEI/13/0017
Recent Commissioner Decisions:

• Decisions on definition of “environmental information”:
  • *Redmond and Coillte Teoranta* – CEI/14/0011 (ongoing judicial review)
  • *Sheridan and An Garda Síochána* – CEI/13/0013
  • *Duncan v Sustainable Energy Authority of Ireland* – CEI/13/0005
  • *Cassidy v Coillte Teoranta* – CEI/13/0008
Recent Commissioner Decisions:

• Decision on definition of “public authority”:
  
  • *Fahy and Irish Fish Producers’ Organisation Limited* – CEI/15/0011
Recent Commissioner Decisions:

• Decision on the exceptions to disclosure:
  • *Marine Terminals Limited and Dublin City Council* – CEI/14/0013
  • *An Taisce and Bord na Móna* – CEI/14/0002
  • *McKenna and ESB Networks* – CEI/13/0010
  • *Lowes and Department of Agriculture, Food and the Marine* – CEI/14/0007
  • *Cassidy and Coillte Teoranta* – CEI/13/0008
Recent Commissioner Decisions:

- Decision on emissions into the environment:
  - *Marine Terminals Limited and Dublin City Council* – CEI/14/0013
  - *Friends of the Irish Environment and the Department of Agriculture, Food and the Marine* – CEI/13/0001
Q&A
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