



Office of the Information Commissioner
Oifig an Choimisinéara Faisnéise

open
administration
access
access
administration

2002 Annual Report

*Helping to achieve a public service that
is open, fair and accountable*



Office of the Information Commissioner
Oifig an Choimisinéara Faisnéise

oscailte
riarachán
rochtain
riarachán

Tuarascáil Bhliantúil 2002

*Cabhrú chun serbhís atá oscailte,
cothrom agus freagrach a bhaint amach*

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Foreword



I hereby submit my fifth Annual Report to the Dáil and Seanad pursuant to the provisions of section 40(1)(c) of the Freedom of Information Act, 1997.

Kevin Murphy

Information Commissioner

May 2003

A decorative graphic on the left side of the page consists of several overlapping rectangular blocks in gold, dark blue, and light blue, separated by white borders. A large, white, stylized number '1' is centered within the gold blocks.

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Chapter One *Introduction*



Chapter 1

Introduction

At the time of compiling this Annual Report, the Freedom of Information (FOI) Act has been in operation for almost five years. Over this period, FOI has established itself as an essential part of public administration in Ireland. In the overall scheme of public service modernisation and renewal, FOI is perhaps the measure which has registered most forcibly with the general public. Starting in a relatively modest way in April 1998, with about 65 public bodies covered by the FOI Act and about 3,700 requests made in the first nine months of operation, FOI now extends to cover almost 400 public bodies and generated almost 17,200 requests during 2002. Whereas most public bodies of significance have by now become subject to FOI - the only substantial omission is that of An Garda Síochána - I understand some additional bodies will be taken within the remit of the Act during 2003. By any reckoning, FOI amounts to a major success story and great credit is due to the vast majority of public bodies which operate the Act, despite some costs, conscientiously and in good faith.

It is important to remind ourselves that FOI in Ireland emerged from two separate, but related, impulses. On a broad level, there was the impetus to open to scrutiny the operation of government and of public administration generally; in this, Ireland was doing no more than adopting what was becoming the norm for modern democracies world-wide. On a more specific level, however, FOI in Ireland developed in response to widespread public unease as to failings in transparency and accountability within government. Many of the specific instances of such unease have been, or are currently, the subject of enquiry by tribunals established by the Oireachtas. It was accepted across all political parties and within society generally that there was a need to provide mechanisms which would ensure transparency and accountability in government. The Taoiseach of the day

commented: "The Government must go about its work without excess or extravagance and as transparently as if it were working behind a pane of glass. The same holds for national policy." The FOI Act emerged as one of the major mechanisms to ensure this transparency and accountability.

This, of course is my last Annual Report as I retire from the office of Information Commissioner on 1 June 2003. When I was asked by the then Government of the day to take on the post in addition to my duties as Ombudsman, I did not fully appreciate how complex and time-consuming the work would be or, indeed, how great would be the demand for access to records. Setting up a new office is always a challenge especially when one is charged with making legally binding decisions. I am satisfied that, despite some residual problems arising from the accumulation of arrears in the initial period, the Office is now doing an excellent job. It has a very competent and committed staff led by Fintan Butler and Liam Kelly, the Senior Investigators and I would like to record my appreciation of their support. It would be remiss of me not to mention the exceptional contribution made by Pat Whelan, the Director General during the set up of the Office and by Gerry Smyth who, as the first Senior Investigator, set the high standard to which we aspire in our decisions. Gerry has since left the Office on promotion and the sole member of staff remaining from our initial intake is Roisín Connolly, Investigator, who merits special mention.

Chapter 1 Introduction

Freedom of Information does carry an administrative cost; this is in terms of staff resources expended in dealing with requests (including searching for and copying records), with internal reviews and in dealing with my own Office. There are also the opportunity costs which arise, that is, what public bodies might have done had they not to spend time on FOI matters. In fairness, public bodies rarely complain about the costs of FOI as they have come to recognise the important role it plays in supporting democratic government. At the same time, it would be wrong to overstate the extent of the burden created by FOI. While a small number of Departments have relatively high levels of FOI requests, as is the case with the Department of Education and Science and the Department of Health and Children, such high usage has specific causes. The Department of Education and Science received 1,938 requests in 2002 and the Department of Health and Children received 997 requests; in both cases the high level of requests appears to relate to personal records sought by former residents of industrial schools and other institutions. On the other hand, a very large public body such as the Revenue Commissioners, which employs over 6,500 staff and whose activities bear on almost all of us, received only 251 requests during 2002. There is a substantial number of public bodies which receive very low numbers of FOI requests. For example, as set out in Chapter Five, there are 90 public bodies each of which received fewer than three FOI requests in the course of 2002.

One important issue which does arise due to the passage of time is the need for public bodies to ensure that their FOI decision makers are properly briefed and trained in FOI matters. With the passage of time, staff move on in any organisation; experienced FOI staff may not always be replaced with staff who have been given adequate training and induction. Given the central importance of FOI to the promotion of transparent and accountable government, I believe it is essential that public bodies give priority to ensuring their FOI decision makers are properly equipped to operate the FOI Act. Under section 15(5) of the FOI Act, the Department of Finance has a responsibility to ensure that appropriate measures are taken by public bodies in the area of staff training and organisational arrangements to ensure compliance with the Act. I am sure that the Central Policy Unit of the Department of Finance is conscious of this issue and will continue with its efforts to ensure public bodies are properly equipped to operate the FOI Act.

In Chapter Two of this report I outline the extent to which FOI has been used over the year and give details of how my Office dealt with appeals over the period. Chapter Three presents brief analyses of issues which arose during the year and which should be of interest to requesters and decision makers alike. Chapter Four summarises some issues of interest arising from review decisions taken by my Office during 2002. In Chapter Five I set out statistical details relating to FOI usage during the year including details of review applications to my Office.

Finally, I would like to thank my Director General, Pat Whelan, and Liz Dolan, Anne Moran and Fintan Butler for their work in the preparation of this Annual Report.

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Chapter Two *The Year in* *Review*

Chapter 2

The Year in Review

Usage of the Freedom of Information Act

Collation of Statistics

This year, as in previous years, the statistics used in this report on the number and types of requests made under the FOI Act have been supplied to my Office by liaison groups for the various sectors and by some Government Departments. Further details regarding the sources for these statistics can be found in Chapter Five in which the statistics, based on the returns available, have been collated in the form of tables. It has been the experience of my staff in obtaining and collating these statistics over the past few years that the quality and timeliness of the responses have varied; while some sectors have managed to produce the relevant statistics efficiently and comprehensively, the necessary information has not been obtained from all of the public bodies. For whatever reason, FOI usage figures for bodies including the Defence Forces and St Vincent's University Hospital were not supplied to my Office for inclusion in this year's report. The work involved in the compilation of the statistics is not particularly complex; however, the process may have become somewhat more unwieldy and time consuming due to the increase in the number of public bodies prescribed under the FOI Act and by the diversity of the sectors now covered.

Given the importance of having accurate and up to date information about the usage of the Act, I believe that proper arrangements should be put in place to ensure the collection, collation and publication of the relevant statistics. When I became aware in February 2003 of proposals to amend the Act, I suggested in a submission to the Department of Finance that consideration might be given to placing a statutory obligation on public bodies to provide statistics in relation to FOI usage to the Minister for Finance. I suggested an obligation might be placed on the Minister for Finance to collect, collate and publish those statistics within two months of the end of each calendar year. In the meantime, I have no option but to proceed with a review of FOI activity in 2002 based on the statistics available to me at this time.



Chapter 2 The Year in Review

Level of Requests to Public Bodies

During 2002 some 17,196 requests were made to public bodies under the Freedom of Information Act. This amounts to an increase of 1,768 (11.46%) on 2001 and 3,491 (25.47%) on 2000. In my view, this increased level of usage is accounted for both by the greater number of public bodies coming within the remit of the Act and by the increasing awareness of members of the public of their rights under the Act.

The table below shows the ten public bodies subject to the most requests during 2002.

Some public bodies such as the Department of Justice, Equality and Law Reform saw a levelling-off of activity between 2001 and 2002, while requests, particularly those for personal information, to the Department of Health and Children, the Southern Health Board and the North Eastern Health Board, increased significantly.

The Department of Education and Science continues to experience the largest number of requests of all public bodies. It appears that the majority of these requests come from former residents of industrial and reformatory schools who are seeking access to information about their stay in such institutions. The Department of Health and Children attributes the significant increase (74%) in requests it received in 2002 mainly to the number of individuals seeking records held about child care services, including records relating to placements in orphanages or other long-term care facilities. In Chapter Three I make further reference to the management and retrieval of this type of information in that Department.

Table A	2000	2001	2002
Department of Education and Science	1,225	1,725	1,938
Department of Health and Children	448	574	997
Department of Social and Family Affairs*	645	553	670
Department of Justice, Equality and Law Reform	683	683	660
Southern Health Board	419	396	569
Western Health Board	506	501	565
Department of Agriculture and Food*	426	340	417
North Eastern Health Board	175	265	416
Dublin City Council	324	381	380
Department of the Environment and Local Government*	341	303	368

* Those were among the Departments which underwent changes in name and/or areas of responsibility from June 2002: figures covering the period before and after this restructuring have been amalgamated in this table but are shown separately in Chapter 5

Chapter 2 The Year in Review

Type of Requester

As can be seen from Table 3, Chapter 5, the majority (69%) of FOI requests are made by members of the general public while journalists, business, staff of public bodies and members of the Oireachtas make up the other categories of requester. I note that 2002 saw a drop in the percentage level of requests made by journalists which represented 12% of requests in 2002 compared with 20% in 2001 and 19% in 2000.

Release Rates

During 2002, 46% of requests dealt with by public bodies were granted in full and a further 21% were part-granted. This means that, allowing for the 3% of requests transferred and 11% withdrawn or handled outside of FOI, 19% of requests were refused in 2002 as against 15% in 2001 and 17% in 2000.

As was the experience in previous years, there are divergences apparent between the different public bodies in their rates of release. Table 5, Chapter 5 shows that the local authorities (63%), health boards (62%), third-level institutions (54%) and the voluntary hospitals/mental health agencies/voluntary bodies (66%) are more inclined to grant full release than the Civil Service or other bodies listed in Table 11, Chapter 5 which grant full release in only 29% and 36% of cases respectively. This continues a pattern identified in last year's Report. Whatever the underlying reasons for these higher levels of refusal of access, it is only fair to point out that Government Departments and Offices receive a lower proportion of requests for personal information (52% of requests in 2002) than do health boards (76% of requests in 2002).

It is interesting to note, however, that while only 24% of the requests made to local authorities related to personal information, they had a high level (63%) of requests granted in full during 2002.

Applications to my Office for Review

Where a requester is not satisfied with the decision of the public body on his/her Freedom of Information request he/she may apply to my Office for a review of that decision. In most circumstances, this review will constitute the third analysis and decision in that case. The decision which follows my review is legally binding and can only be appealed to the High Court on a point of law.

The number of applications for review to my Office totalled 687 in 2002. This represented an increase of 196 (40%) on the previous year and an increase of 142 (26%) on 2000. There has been little change, however, in the proportion of cases being appealed to my Office as a percentage of the total number of requests received by public bodies; the figure for 2002 is 4% while the figure was 3.2% in 2001 and 4% in 2000. Indeed, as a percentage of all internal review requests made to public bodies, applications for review to my Office remain at the 2001 level of 39%.

My Office decided to accept 585 applications during the year, of which 506 were received during 2002. The remaining 79 cases accepted in 2002 were among the 101 applications under consideration for admissibility at the end of 2001. At the end of 2002, a decision on admissibility for review had still to be made in the case of 47 applications received towards the end of the year.



Chapter 2 *The year in review*

Reviews of Decisions

During the year I reviewed 534 decisions of public bodies. In terms of reviews processed by my Office, this represented an increase of 20% over the case completion rate for 2001. At the start of the year my Office had a total of 551 reviews on hand and a further 585 were accepted during 2002. The total of reviews on hands at the end of 2002 was 602 giving a year-on-year increase of 9%.

While I am satisfied with the overall performance in deciding review cases, the extent of the backlog of cases lodged before April 2002 is still of concern. An analysis of the impact of the revised arrangements introduced from April 2002 on the time taken to deal with reviews, together with an outline of the criteria which I apply in determining the order in which the backlog of older cases is being processed, are given later in this Chapter.

Outcomes of Reviews

Not all of the reviews completed resulted in the issuing of a formal decision: some were discontinued, some were withdrawn and a settlement was effected in others.

Formal Decisions

During 2002, I issued 226 formal decisions which account for 42% of all cases reviewed. In 166 (73%) of these cases, I affirmed the decision of the public body and I varied the decision in the remainder. This compares with 167 (76%) decisions affirmed in 2001 and 91 (68%) in 2000. This would imply that in cases where a formal decision was necessary, the approach to decision-making within public bodies has been correct generally and this outcome has remained relatively constant over the past three years.

Settlements

The FOI Act provides that at any stage during a review, I may try to effect a settlement between the parties on the records to be released. In some cases, requesters may agree to narrow the focus of the review by agreeing to exclude records which will add little or no value to the information they seek. In others, it might be agreed that additional records outside the scope of the original request be released without the need for me to arrive at a formal decision in the case. I would encourage public bodies, in the course of dealing with requests, to engage directly with requesters with a view to achieving settlements in those cases where a full granting of the request is unlikely.

Chapter 2 The Year in Review

During 2002, 131 cases were settled. This amounts to 25% of all reviews completed in 2002 compared with 16% (72) in 2001 and 13% (31) in 2000.

I welcome this significant increase in the number of settlements negotiated by my Office with the co-operation of requesters and public bodies involved. In suitable cases, I believe that exploring the potential for settlement represents an efficient use of resources - especially in the context of the need to operate, as far as possible, within the time frame envisaged by the FOI Act. This is something which I examine further below.

Settlements agreed by the parties following discussions with staff of my Office during the past year included:

- A case in which the Department of Agriculture and Food provided a requester with a copy of a report dating from 1921;
- A case in which the Department of Defence agreed to provide a summary of a record which met the requester's requirements without damaging the Department's negotiating position;
- A case in which the Irish Film Board provided the requester with the substance of a complaint made to it without disclosing the identity of the complainant;
- A case in which the Southern Health Board agreed to give records to the requester's solicitor for the purpose of representing and advising their client and referring her to a psychiatrist. The agreement was subject to an undertaking by the solicitors that they would not furnish any record or reveal the content of any record to their client without the prior authorisation of the psychiatrist.

Withdrawn/Discontinued

In 2002, 157 or 29% of cases were withdrawn by the applicants, usually following discussions with members of my staff. This pattern is broadly similar to previous years - 135 withdrawals (30%) in 2001 and 57 (24%) in 2000. The number of cases discontinued accounted for under 4% in 2002 compared with 4% and 6% in the previous two years.

Subject Matter of Reviews

The subject matter of the reviews accepted by my Office has remained broadly unchanged since the commencement of the Act.

The vast majority of appeals arise from the refusal of access to records. As a percentage of all reviews for 2000, 2001 and 2002, they totalled 88%, 86.8% and 86.8% respectively. Appeals by third parties, objecting to release of information about them or supplied by them, totalled 7%, 7% and 4.8% of all reviews over the same period. Reviews relating to amendment of records increased slightly from 1% in 2000, to 3.4% in 2001 and 4.1% in 2002. Reviews of decisions under section 18 (statement of reasons) accounted for 3% in 2000, 2.6% in 2001 and 3.8% in 2002. Reviews of decisions to charge a fee continued to represent a very small percentage of applications received ranging from 1% to 0.5% over the period.



Chapter 2 The Year in Review

Time Taken to Complete Reviews

Section 34(3)(b) of the FOI Act provides that I shall make a decision on a review, as soon as may be and so far as practicable, not later than three months after receipt of the application.

My Office completed 534 reviews in 2002. Of these 534 cases, 45 were cases received in 1999, 106 were received in 2000 and 119 were received in 2001. The remaining 264 reviews completed involved cases received in 2002. Of the 264 reviews received in 2002 and completed in that year, 165 were completed within three months. Seventy eight of the cases received in 2002 were closed outside of the three month deadline. It was necessary to change the deadline for completion in 21 cases (this happens where the case is suspended in the hope of arriving at a settlement between the parties involved and is provided for in section 34(7) of the FOI Act) and of that number, 10 cases were closed within the amended deadline; a further 11 cases were not closed within their amended deadline.

As a result of the revised arrangements which I put in place from 1 April 2002 and which I discuss below, the number of cases completed within the time scale specified in the FOI Act has improved greatly over that achieved in 2001.

Operation of the Post-April 2002 Arrangements

Due to the large influx of cases in the years following the commencement of the legislation in 1998, significant arrears developed which, in turn, led to delays in deciding reviews. The arrears arose partly due to the complexity of some cases and delays in authorising and filling additional posts to cope with the backlog. Early in 2002, with all the additional posts filled and mindful of the need to operate as far as practicable within the three month time frame specified in the Act, I decided that all review applications received from 1 April 2002 would be dealt with on a current basis and would not be added to the existing waiting list of cases. Arrangements for dealing with the cases lodged before April 2002 are set out below.

To ensure that every effort was made to achieve this objective, I notified all public bodies of the need to keep within specified time-frames in relation to the supply of documentation on the FOI request, the actual records requested and any submissions or statement of reasons that the public bodies might wish to make concerning the request. In essence it was my intention that, at the latest, all relevant material would be received from the public body within 8 weeks of receiving the appeal.

In notifying the public bodies of the review deadlines, I advised that strict adherence was required by all parties if the wishes of the Oireachtas were to be met in this regard. By the same token, it was recognised that any deviation from any or all of these deadlines would have an immediate effect on the overall time-frame for completion of the review: such deviation could be caused by a number of factors such as annual/sick leave in the case of the person dealing with the review in the public body, insufficient resources devoted to FOI in the public

Chapter 2 The Year in Review

body, late delivery of records/ submissions due to conflicting priorities, the complexity of the case, the amount of records or number of parties to the review, unavailability of the requester, late submission from the requester and so on.

I constantly monitor how many of these cases are being dealt with within the time limit specified in the Act.

I found that since 1 April 2002 a total of 241 applications for review, which under the Act would have been due to be completed before end-December, were accepted in my Office. Of the 241 cases accepted between 1 April and 30 September 2002, 128 (53%) were completed within the three month time frame. Of the balance, 38 (16%) were completed within four months and the remainder have either been closed in the interim or are still under consideration. A further 30 cases accepted after 30 September 2002 were closed before the end of the year even though their three month deadline dates fell in the calendar year 2003.

This performance is somewhat similar to that experienced in Queensland where, of a total of 316 applications received in 2001-2002, some 50% were finalised within three months, 66% within six months and 80% within 12 months.

The factors which contribute to "overruns" in the time taken to deal with cases include delays in obtaining information or submissions from public bodies, the complexity of cases, procedural difficulties, (both internal and external) and extended settlement negotiations.

While further improvements in the processing of cases by public bodies and within my own Office may help to reduce case turnaround times, I am concerned that the expectations of requesters that their appeals will be dealt with within three months is often unrealistic and could lead to

unnecessary disenchantment with regard to the operation of the Act.

With this in mind, I wrote to the Department of Finance when I became aware of proposals to amend the Act to suggest, among other things, that the time-frame be extended to four months (as existed for the first three years of the operation of the Act). In making this suggestion, I envisage that the current "internal" deadlines and arrangements with public bodies will remain in place and that reviews will continue to be completed in as short a time as possible.

Cases received before 1 April 2002

Cases already on hands on 1 April 2002 continue to be processed alongside the current cases. With present staffing levels and on the assumption that there is no increase in the number of applications for review received in my Office, I envisage that the older cases should be cleared within three years. In determining the order in which these older cases will be dealt with, I apply the following criteria :

1. In the interests of procedural fairness, priority will be given to cases on the basis of age, i.e. older cases will generally be dealt with before more recent cases.
2. Cases will not be dealt with solely by reference to age. In some circumstances, more recent cases may be dealt with before older cases. The circumstances where this may arise include:
 - where it is more efficient to deal with a particular older case along with a current case (for example, a current case is very similar to an older case and the same issues arise in both);



Chapter 2 The Year in Review

- where it is more efficient to deal with a particular group of cases together because they involve related issues;
- where, for staff development purposes, a particular case or category of case is allocated to a particular member of my staff;
- where the applicant seeks priority for a specific pressing reason; however, as most applicants will be anxious, understandably, to have their cases expedited this ground will apply in exceptional circumstances only;
- where I form the view that a particular case should be expedited, for example, in order to give general guidance to public bodies on the processing of a particular request or category of request.

The relevant provisions include the issue of a notification under section 37 to the head of the public body requiring the production of information and/or records and the facility to proceed to a decision without further reference to a public body where it has failed to respond within the timeframe specified.

Similarly, section 35 of the Act provides that, where I consider a statement of reasons to be inadequate I “ shall direct the head concerned to furnish a statement in writing containing any further information in relation to those matters that is in the power or control of the head” . Such a statement must be provided within three weeks of it being sought.

In last year's Annual Report, I stated my intention to publish details of the public bodies on whom it was necessary to serve notices under sections 35 and 37 and these are set out in the table opposite.

Statutory Notices

I am pleased to say that the majority of public bodies have co-operated fully with the revised arrangements in relation to speedy co-operation in the provision of records and statements of reasons. I very much appreciate this high level of co-operation particularly in a context where many public bodies are operating in difficult circumstances and subject to many pressures.

I signalled in last year's Annual Report, and communicated to all public bodies, my intention to have recourse to specific provisions of the Act if requirements in relation to the furnishing of records and information necessary to carry out reviews are not met.

Chapter 2 The Year in Review**Table B****Instances where section 35 and section 37 notices issued to public bodies in 2002**

Public Body	Section 37 notices issued	Section 35 notices issued
Fingal County Council	5	2
Westmeath County Council	2	1
Department of Education and Science	3	0
Dublin City Council	1	0
Northern Area Health Board	1	0
Total	12	3

Format of Decisions

In the first two or three years of my Office's existence, many of the decisions tended to be lengthy and detailed. I consciously chose this format because I felt it was important that the Office should establish its authority by producing a range of well researched and well presented decisions dealing in an effective and comprehensive way with the major issues arising in the early years under the FOI Act. I presented these "long form" decisions with a clear eye to providing guidance to FOI decision makers and practitioners, including the staff of my own Office. However, some people may have felt that these decisions were too long, too complex and too demanding. With this in mind, and because of the solid foundation that the earlier decisions have laid, I have in recent times relied almost entirely on the simpler, more accessible, letter decision. This format also allows decisions to be given more quickly. Many of the letter decisions have precedent value and some can also be complex in developing positions on issues not previously considered. For this reason, a significant number of letter decisions were added to my Office's website (www.oic.ie) during 2002 so that, in addition to all of the "long form" decisions, there are now over 50 letter decisions accessible by reference to the relevant section of the Act or otherwise. I hope that public bodies and FOI users find this resource useful.

General Queries Dealt with by My Office

There were 137 written enquiries and 1,047 enquiries by telephone to the Office in 2002 which were dealt with under the category of general query. These do not relate to any particular review and typically involve requests for information about my Office or about the operation of the Act as well as matters outside of my remit as Information Commissioner.

Appeals to the High Court

A party to a review, or any other person who is affected by my decision, may appeal to the High Court on a point of law. In 2002, nine such appeals were initiated, bringing to 10 the total number of appeals pending. At the time of compiling this Report, one of these appeals has been heard and judgment is awaited, one is at hearing while the other eight are awaiting a hearing in the High Court. Included in those eight cases is an appeal initiated as far back as August 2001 in which significant delays have been experienced in obtaining a date for a hearing.



Chapter 2 The Year in Review

New Bodies Within the Remit of the Act

During 2002, 50 additional public bodies were brought within the ambit of the Act, bringing the total number of bodies covered to almost four hundred.

In June 2002, the Minister for Finance prescribed 18 bodies within the cultural, social and economic sectors including the Irish Film Board, the Legal Aid Board, the National Disability Authority and the National Economic and Social Council.

In November 2002, the Minister extended the scope of the Act to a further 32 bodies including An Bord Iascaigh Mhara, the Central and Regional Fisheries Boards, Bord Fáilte Éireann, Teagasc, the National Roads Authority, the Dublin Transportation Office and various other semi-state bodies and advisory agencies.

All of the bodies added in 2002 are listed at Appendix I and a list of all bodies covered is available on my Office's website (www.oic.ie).

Promoting Public Awareness and Good Practice

In 2002 my staff and I continued to meet with public bodies and other groups, particularly where we had been asked to make presentations at conferences, seminars and training courses. While the commitment to deciding review cases within the required time frame currently does not allow us to be involved in the promotional area as much as I would wish, this is an important element of the work of the Office. It affords us an opportunity to promote awareness of the concept of FOI and to outline the views of the Office on many of the broad "best practice" issues raised in this Report.

Presentations made by my staff and I included those to the 24th International Conference of Data Protection and Privacy Commissioners held in Cardiff, the Freedom of Information Annual Conference in Dublin Castle, to some of the health boards and local authorities, Comhairle, and to some student and community groups. Members of my staff also contributed to a conference organised by the School of Law, Trinity College, Dublin on the theme of "Freedom of Information: Easing the Problems of Practical Implementation". In addition, staff members contributed regularly to training courses for FOI decision makers run by the Centre for Management and Organisation Development (CMOD) in the Department of Finance.

Chapter 2 *The Year in Review*

Section 25 Certificates

A Minister of the Government, where he or she is satisfied that a record is exempt either by virtue of section 23 (relating to law enforcement or public safety) or section 24 (relating to security, defence and international relations) and, where the Minister is satisfied that the record is of sufficient sensitivity or seriousness to justify doing so, may, by issuing a certificate under section 25(1), declare such a record to be exempt from the application of the FOI Act. Any Minister who issues such a certificate must furnish me with a yearly report detailing the number of certificates issued by him or her in the year and the provisions of section 23 or 24 of the FOI Act which applied to the exempt record(s). In turn, I am obliged under section 40(1)(b) of the FOI Act to append a copy of any such report to my Annual Report of the year in which the certificate(s) issued.

In 2002, two such certificates were issued by the Minister for Justice, Equality and Law Reform. In Appendix II, I attach a copy of the report issued by the Minister in respect of these certificates which replaced certificates previously issued which had expired. No such certificates were issued by any other Minister in 2002.

Staffing

During 2002, my Office retained its complement of twelve Investigators and two Senior Investigators. Dan Kelleher left the Support Unit on promotion; I wish him well in his future career.

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Chapter Three *Issues Arising*

Chapter 3

Issues Arising

Considering the Public Interest

A striking feature of the FOI Act is the extent to which decisions are required to take account of the public interest. The Long Title, which is generally seen as the equivalent of a purposes clause in the Act, provides that access to information is to be given "to the greatest extent possible consistent with the public interest and the right to privacy". Several of the exemptions in the Act - sections 20, 21, 26, 27, 28, 30 and 31 - are themselves subject to a public interest override. In practice, this means that in the majority of cases where a request falls to be refused on the basis of a particular exemption, there is a requirement to consider whether that exemption should be set aside in the public interest. In this regard, the FOI Act is a radical piece of legislation: it recognises that the rights and legitimate interests of individuals, of corporate bodies and of the public sector itself are separate from, and subservient to, the public interest.

While it is relatively easy to come up with specific examples of what serves the public interest - Promoting Open Government, Promoting Democratic Involvement of the Public, Protecting Personal Rights, Supporting Parents and Families, Supporting Law and Order and Promoting Good Health - it is actually quite difficult to define what we mean by the term "public interest". The FOI Act does not define the term and in this it is in line with most, if not all, FOI Acts from other jurisdictions. The Queensland FOI Act of 1992, on which the Irish Act draws to a considerable extent, does not define the public interest but it does give some guidance. Section 5 of the Queensland Act specifically recognises "that in a free and democratic society... the public interest is served by promoting open discussion of public affairs and enhancing government's accountability...".

However, this represents only one facet of the public interest.

It is as if there is an assumption that we all know what the term means and that it is unnecessary to define it. While I do not propose to suggest a definition of the public interest, I do want to draw attention to the fact that it is far from being an easy concept or even one we can all agree upon. In very general terms, I take it that the public interest is that which supports and promotes the good of society as a whole (as opposed to what serves the interests of individual members of society or of sectional interest groups). In this sense, I take it that the term "public interest" broadly equates with the term "the common good" as used (but not defined) in the Constitution. As public servants, we are very conscious of our role in serving the common good. But if we are completely honest, we sometimes identify the common good with the good of our particular organisation or of our particular profession or employee group. The common good may also, at times, be defined by reference to the views of the majority; although vociferous minorities may equally claim the high moral ground. We need to be careful when considering the public interest that we do not let our own notion of the common good take precedence. A proper approach requires us to set down the various public interests in favour of disclosure and non-disclosure and to take a balanced view on which should prevail.

For my own part, I have adopted a pragmatic approach to public interest issues and generally take my decisions on a case by case basis, taking careful account of the public interest arguments advanced by the various parties in their submissions. I think it is fair to say that, from my review decisions so far, certain principles do emerge in relation to the public interest; some of these are set out above as examples of positive



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public interests. Overall, I am sure that this is an area in which all of our thinking will develop with time. Decision makers must continue to be aware that the public interest is, in some senses, an intangible and evolving principle and not something which is served by the adoption of a formulaic approach to FOI decision making.

Personal Safety

I referred in my Annual Report for 2001 to certain situations where the release of records under FOI may give rise to fears that the personal safety of an individual or individuals might be compromised. I mentioned that this was an issue which I was considering further. Following discussions within my Office during 2002 I drew up a discussion document on the matter which I provided to the Department of Finance (in the context of possible amendments to the FOI Act and in the context of its role, through the Central Policy Unit, in providing guidance and training on FOI practice). I have since published this discussion document on my Office website (www.oic.ie).

My initial consideration of this issue related to the release of psychiatric records and to fears that in certain rare cases access to records might prompt a violent reaction from the requester directed against a family member or, indeed, a medical professional. The fear of damage to property in such cases might also occasionally be an issue. Arising from discussions within my Office, and based on my experience of a number of reviews conducted during 2002, I appreciate that personal safety concerns, or fears regarding damage to property, may also arise in a number of other situations. In the case of housing records of local authorities, and particularly in the context of investigating anti-social behaviour, there might be a risk to officials involved in the investigation or to family, friends or neighbours who have

given information (or complained) to local authority staff or to the Gardaí. In the case of records relating to the investigation of social welfare fraud or tax evasion there might also, occasionally, be a perceived risk that release of records would put identifiable officials or informants at risk. In the case of psychiatric records, and where there is a well-founded fear that release might prompt a violent reaction, I believe section 28(3) will generally provide a firm basis for refusing a request. However, section 28(3) applies only in relation to medical, psychiatric and social work records; it does not apply to the other risk scenarios identified above. In my published discussion document I suggest that section 23 may be relevant in some of these other risk scenarios. I would urge interested readers to consult the discussion document itself for the details of this suggestion.

I have an open mind at this stage regarding the usefulness of having a specific "personal safety" provision in the FOI Act. These cases present a dilemma in that both fair procedure and the FOI Act itself require that a requester be given the reasons for any refusal or part-refusal of a request; on the other hand, informing a requester that a refusal is based on a fear that he or she might inflict violence on people, or cause damage to property, creates difficulties. This is because the requester will be put on notice that some people are in fear of him/her and this knowledge, in itself, might prompt a negative reaction. Finding a solution to this dilemma will require considerable further thought.

At the time of writing, the Freedom of Information (Amendment) Bill 2003 is before the Oireachtas and I note that section 16 of the Bill provides for the amendment of section 23 to provide explicit protection for a record which, if released, could reasonably be expected to endanger the life or safety of any person.

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Outline Action Plan On FOI Compliance

In July 2001, I published a report of an investigation I had carried out into the practices and procedures adopted by public bodies for the purposes of compliance with the FOI Act (Compliance Report). The full text of the report is on my Office website (www.oic.ie). In carrying out my investigation, I did not consider it either practicable or necessary to examine the practices of all public bodies. Instead, I chose 12 public bodies spread across the civil service, local authorities and health boards, concentrating in particular on those bodies which have received the largest number of requests since the commencement of the Act.

For the most part, the recommendations were not directed at decision makers or internal review officers. Rather, some required action by FOI officers while others required action by senior management of the particular public body which would reaffirm its commitment to the principles underlying the FOI Act. At the same time, most of these recommendations were also relevant to other public bodies. The principal recommendations related to organisational issues, training, quality control, the use of exemptions, fees, records management and the management of, and promotion of access to, information.

Report of the Sub-Group of the Inter-Departmental Working Group

In October 2001, the Freedom of Information Interdepartmental Working Group (IDWG) established a Sub-Group to review my report and to produce an Outline Action Plan addressing the issues raised in the report. This Outline Action Plan was published in September 2002.

The Sub-Group's approach was to examine my recommendations and the potential responses to them from the perspective of assisting public bodies to comply with the Act. In addition, as some of my recommendations required follow-up by individual bodies, it was agreed that a best practice model would be drawn up to offer guidance on the critical aspects of FOI management and practice.

In response to issues raised in my report, the Sub-Group put forward comprehensive outline action plans to address a range of issues, including: organisational matters, training, quality control, the use of exemptions, fees, records management and managing information. The full report is available on the website of the Central Policy Unit of the Department of Finance (www.foi.gov.ie).

Best Practice Model

The Sub-Group drafted a "Best Practice" model for public bodies to follow. This model incorporated suggestions on processing requests, providing advice, customer service, statistics, managing and developing staff in the FOI area and managing tasks and resources.

By addressing the key issues in terms of pragmatic strategies to deal with the day-to-day practicalities of FOI, the report integrates the process into the day-to-day realities of the working life of public servants. I very much welcome this report and view it as a significant contribution in terms of bedding down FOI into the culture and structure of public bodies.



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During 2003, I hope to follow up on these two reports to ascertain how public bodies have put into practice the recommendations contained in them and to identify those organisations which have successfully adopted the "Best Practice" model.

FOI And Data Protection Law

At the time of writing, the Data Protection (Amendment) Bill, 2002 is before the Oireachtas. This Bill will give effect in national law to the provisions of Directive 95/46/EC "on the protection of individuals with regard to the processing of personal data and on the free movement of such data". The Bill, which I expect will have become law by the time this Annual Report is published, does have some implications for the operation of FOI in Ireland.

Data Protection (DP) and FOI look at information from two different perspectives. The essential principle of DP is the protection of individual privacy and the putting in place of safeguards where personal data is collected, processed or transferred to other bodies and/or other countries. Safeguards include the right to have incorrectly recorded information corrected. It applies to all agencies or organisations (including individual service providers such as family doctors) and not just to public bodies. It is essentially driven, in Ireland's case, by our EU membership and by other international convention obligations. The essential principle of FOI, on the other hand, is that there should be access to records held by or under the control of public bodies "to the greatest extent possible consistent with the public interest and the right to privacy." It applies, therefore, only to public bodies as defined in the FOI Act but it encompasses records containing personal and non-personal (i.e. official) information. It is driven by a desire to make

government more open, transparent and accountable and by a desire to strengthen the democratic right to freedom of expression which is automatically restricted once access to information is restricted.

All of the public bodies subject to FOI are also subject to the DP legislation. For all practical purposes the two regimes have not, hitherto, impacted on one another to any significant extent. However, with the enactment of the Data Protection (Amendment) Bill, 2002 this will change. Under the new regime, which the Bill implements, DP extends not just to electronically-stored personal data but also to certain manual data which is recorded as part of a relevant filing system. As the DP legislation provides, amongst other matters, for a right of access by a data subject to personal data held in relation to him/her; and as the personal data in question will now include manual (non-electronic) data; this means that public bodies holding personal data on clients, whether electronically or manually, will now be subject to two separate access regimes in the case of personal data (which is the DP term) or personal information (which is the FOI term).

It is important to note that whereas the separate access regimes cover, in general terms, the same type of personal data or personal information (for example, one's hospital records), the regimes differ in a number of important respects. Access under DP applies only in the case of living persons whereas access under FOI may include access to the records of a deceased person. The definitions of "personal data" and "personal information" differ in a number of respects; for example, under FOI details of an employee of a public body (such as name, position, terms of employment and anything recorded by the employee in the course of and for the purpose of his or her duties) do not constitute personal

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information; whereas under DP the equivalent details about a public body employee do constitute personal data. Under FOI there are specific arrangements providing access for parents or guardians to the personal information of minors or persons unable to act; under DP no such specific arrangements apply. Finally, and perhaps of most interest, is the fact that under FOI it is possible for a third party to be given access to another person's personal information - notwithstanding the breach of privacy involved - on the basis of public interest considerations; under DP public interest considerations are not a factor in deciding an access request. In addition to these substantive differences, there are also some procedural differences between the regimes. The most important of these, perhaps, relates to the time limits within which requests must be decided (within four weeks under FOI and within 40 days under DP).

I appreciate that for public bodies, which will now be subject to these two separate access regimes, this overlap between FOI and DP will create additional administrative burdens. I am aware that some public bodies have been anticipating the advent of the new DP regime and have been considering how best to rationalise the processing of access requests. One issue to arise is the extent to which a public body which has refused, or only partly granted, a request under one regime should be expected to advise the requester of the existence of the other regime. To some extent, this has been anticipated by section 7(7) of the FOI Act in a situation where the actual request is made other than under FOI (for example, under DP). In this situation, section 7(7) provides that where it is not, or may not, be possible to give access other than under FOI then the public body "shall, if appropriate" inform the requester about FOI and shall also "assist, or offer to assist, the person in the preparation of such a request". An equivalent provision does not

operate in a situation where the request is made under FOI, where FOI access is not possible but where DP access may be possible. In terms of what constitutes good practice, I would suggest that where a request is refused or part refused under one regime, and where on initial assessment there seems some likelihood of getting access under the other regime, then the public body should advise the requester of the option to seek access under the other regime.

The question arises as to whether a public body, which has refused access under one regime and does not believe there is a significant likelihood of access under the other regime, should nevertheless advise the requester of the option to avail of the other regime. I appreciate there may be differing views on this question. On the one hand, it may be seen as misleading and raising false hopes to suggest the requester use the other regime. On the other hand, it is the case that until a request has actually been made, and decided, it is not possible to be definitive about the outcome of that request. On balance, I feel public bodies should take a common-sense approach to this issue and that it might not be reasonable to expect public bodies to invite requests which they believe are unlikely to succeed.

My Office has already drawn the attention of the relevant sponsoring Departments (Finance and Justice, Equality and Law Reform) to these issues. The Data Protection (Amendment) Bill, 2002 contains a provision that the Information Commissioner and the Data Protection Commissioner "shall, in the performance of their functions, co-operate with and provide assistance to each other". I am sure that the Data Protection Commissioner and myself will seek to ensure, to whatever extent is possible, that any conflicts between the two access regimes are kept to a minimum.



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Section 32 Review

Section 32(1) of the FOI Act exempts records to which non-disclosure or secrecy provisions of other enactments apply. Examples of such enactments are some sections of the Adoption Acts 1952 to 1991 and the Central Bank Act 1989. Enactments excluded from the application of section 32(1) are listed in the Third Schedule to the FOI Act. Section 32(2) of the FOI Act provides for a review of the operation of these provisions by a joint committee of both Houses of the Oireachtas. In the course of the work of such a committee, Ministers of the Government are obliged to furnish reports to the Oireachtas and to my Office on the non-disclosure provisions of legislation within their areas of responsibility. The first such reports were furnished during 1999 and, in November of that year, I reported in accordance with section 32(5) to the Joint Oireachtas Committee on Finance and the Public Service giving my opinion and conclusions on those reports. Subsequently, in July 2000, members of my staff attended a meeting of the sub-committee set up by the Joint Committee to review the issues arising from the reports and from the section 32 provisions.

It is my understanding that the Joint Committee had not concluded its deliberations on this matter prior to the dissolution of the Dáil in April 2002. I draw attention to this since it is clearly envisaged by section 32 that, having regard to the provisions, purposes and spirit of the FOI Act, non-disclosure provisions in legislation should be reviewed, amended or repealed where necessary. I would hope that this important issue will be pursued and advanced during 2003.

Records Management

I have referred in previous Annual Reports to the importance of good record management policies and practices within public bodies. I note that the National Archives Advisory Council in its Annual Report for 2000 (published in 2002) is concerned that the Minister for Finance has not made regulations, under either the FOI Act or under the National Archives Act, for the management and maintenance of records held by public bodies. I must say that this is a concern which I share. Both from an FOI point of view, and from a longer-term archival and historical research point of view, I think it is very important that public bodies have clear guidance and requirements in the area of record management.

I expressed the view in last year's Annual Report that it is proper to highlight those bodies which have undertaken improvements in record management. I am aware that the National Retention Policy for Local Authority Records was launched during 2002 and I look forward to seeing progress towards its adoption and implementation in the local authorities.

Problems (such as missing or mislaid files and difficulties in retrieving information) arising from poor record management often come to light during the course of a particular review by my Office. Because of this, my Office is well placed to identify instances where the particular deficiency is not merely a "once-off" occurrence but arises from fundamental flaws in the policy and practices governing the creation, storage and retention of records.

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Defence Forces

During 2002, I found that the Defence Forces appeared to be having difficulty in locating the whereabouts of records concerning applications to join the army. My review of the record management practices of the Defence Forces in a particular case revealed that, from the 1980s up to the present, it appeared that in at least some of the Commands/Brigades of the Defence Forces there has not been any policy in place regarding the maintenance of records relating to unsuccessful candidates for positions.

Furthermore, in respect of those recruitment records that cannot now be located, there appeared to be no record of their destruction, or any information available as to what might have happened to these potentially sensitive records. Following the completion of my review I considered whether I should, under section 36(3) of the FOI Act, carry out an investigation of the practices and procedures of the Defence Forces in relation to record management in this area. I am pleased to report that when my Office contacted the Defence Forces in this regard, it emerged that they had already recognised the deficiencies in their record management practices and had initiated steps to formulate a standard record management policy. This process subsequently included a meeting with staff of my Office. I understand that this work will be concluded shortly and should result in the implementation of a comprehensive record management policy covering all of the Defence Forces' records.

Department of Health and Children

In addition to its ongoing implementation of a records management strategy for current and archive files generally, the Department of Health and Children commenced in July 2002 a project named "Access to Institutional and Related Records" (AIRR) to index the records which it holds concerning people who, as children, were in the care of the State. Apparently, a large number of child care policy files and service provision files held in the Department's archives include, or may include, records which mention individuals who were in orphanages or other institutions or who were fostered, boarded out or hired out. I think it is regrettable that action in relation to these records was not taken before 2002. As I understand it, the Department knew of the existence of these files for some years and it would also have been aware that other public bodies, especially the Department of Education and Science, were experiencing a significant demand for personal records from individuals who had been in the care of the State.

The Department says that the current focus of this project is to identify records containing personal information for release to the individuals who have made requests under the FOI Act for access to any records held about them. From enquiries made to the Department by my Office, it appears that work on this project is at a relatively early stage. It will be some considerable time before all of the relevant records have been identified, indexed and stored in a manner which will facilitate the efficient location and retrieval of the information if an individual's personal information is requested.



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It is my hope and expectation that the project will be completed in a thorough and timely fashion and that the result will prove a valuable and accessible resource for those seeking information about their past as well as ensuring that proper searches for records can be carried out by decision makers in response to requests under the FOI Act.

The Department has undertaken, where it has failed to locate the records sought, to contact requesters who have sought information about their time in State care if further records come to light as a result of the AIRR project. I intend to deal on a case by case basis with applications for reviews of decisions where this type of information has been refused, having regard to my evaluation of the adequacy of the searches carried out by the Department in the context of section 10 (1)(a) of the Act. This provision allows a public body to refuse access to records where records do not exist or cannot be found after all reasonable steps to ascertain their whereabouts have been taken.

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4

Chapter Four *Letter Decisions*



Chapter 4

Letter Decisions

Index of Topics Covered

Personal Information/Privacy issues

Case Nos.	020311, 020248, 99146	Personal information of public servants
Case Nos.	99403, 020452, 020436, 000391	Personal information of individuals
Case No.	99397	Personal information about a child; joint personal information and the public interest

Functions and Negotiations of Public bodies

Case No.	99454	Whether release of records could reasonably be expected to have a significant adverse effect on the management of a public body or disclose positions, procedures, or criteria used for the purposes of negotiations
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International Relations of the State

Case Nos.	99279, 020295	Whether release of records could reasonably be expected to affect adversely international relations of the State
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RTÉ

Case No.	020336	Whether records of certain functions of RTÉ are covered by the FOI Act
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This chapter, drawing on material contained in a small number of letter decisions issued during 2002, is intended to highlight points of interest to public bodies and FOI users alike. The full text of these and other decisions of interest, with the parties' identifying details removed where necessary, is available on the Office website (www.oic.ie).

Personal Information of Public Servants

In my Annual Report for 2001, I made reference to the question of whether information about a public servant can be defined as "personal information" about that individual for the purposes of the FOI Act. This is an issue which has arisen again in several of the cases under review in 2002.

For the purpose of the FOI Act, personal information is information about an identifiable individual (a) that would, in the ordinary course of events, be known only to the individual or his/her family or friends, or (b) that is held by a public body on the understanding that it would be treated by it as confidential. However, personal information does not include, in a case where the individual is a member of staff of the public body, anything written or recorded by him/her in the performance of his/her functions.

In **Case No. 020311**, the requester sought from the Department of Finance access to records relating to the scheme of performance related awards for posts at Assistant Secretary level including details of the objectives of the Assistant Secretaries of six specified Government Departments. The Department refused access to

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the records in accordance with section 28(1) of the FOI Act on the grounds that their release would involve the disclosure of personal information about the officials concerned. The requester argued that the information should be released in the public interest to facilitate the general public in holding senior civil servants accountable.

I found that the records sought could be described as “personnel records” in that they related to “the competence or ability of the individual in his or her capacity as a member of the staff of a public body ... or an evaluation of the performance of his or her functions ...”. I considered that public servants, as with all employees, are entitled to a degree of privacy in relation to the evaluation of their work performance, competence or ability. I found that this type of information is held by public bodies on the understanding that it would be treated by them as confidential. In upholding the Department’s decision to refuse access, I found that the objectives of the various Assistant Secretaries constitute personal information about the individuals concerned. It was necessary, however, to consider whether, on balance, the public interest that the request be granted outweighed the public interest that the right to privacy of the individuals concerned should be upheld. In applying this public interest test, I recognised the desirability, on the one hand, of there being greater accountability in, and scrutiny of, public decision making (something which I fully support); on the other hand, I also recognised that giving access to records which were created as part of a formal and internal accountability process might have the effect of undermining that process as well as constituting an invasion of privacy.

Among the factors which I identified as diminishing the public interest in favour of release in this case were (i) the release by the Department of Finance of the guidelines on the operation of the scheme, (ii) the publication by Government Departments of Statements of Strategy and their overall objectives and (iii) the existence of the Committee for Performance Awards which is charged with ensuring that overall guidelines are adhered to and that there is a consistency in the approach adopted in different Departments. I recognised the clear constitutional and legal position in Ireland that it is Ministers, and not individual civil servants, who are required to be publicly accountable. I upheld the Department’s decision to refuse access in this case.

Consideration of information relating to public sector employees was also the subject matter of **Case No. 020248** which arose out of a request for access to the contract of employment of a journalist employed with RTÉ. The contract of employment detailed the specific salary of the individual and his conditions of employment, which were similar to those of most RTÉ journalists. RTÉ refused access to the contract under section 28(1) of the FOI Act but provided the requester with a copy of a standard contract for journalists and the salary scale applicable to the position held by the person, the subject of the request.

While I directed that access be given to most of the contract, I found that details of the specific salary of a public sector employee, who holds a position to which a published salary scale applies, should not be released. I considered that the specific salary, as opposed to the salary scale, is not excluded from the definition of personal information by paragraph (l) in that definition which is contained at section 2 of the Act. Paragraph (l) provides that, in the case of an



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employee of a public body “ information relating to the office or position or its functions or the terms upon and subject to which the individual holds ... that office ... or position” does not come within the definition of “ personal information” . In this case, I considered that the fact that the salary scale has been made known sufficiently addresses the public interest in openness and accountability in the use of public funds.

One of the issues which I dealt with in **Case No 99146** was whether the names of members of An Garda Síochána, which appeared in records held by the Southern Health Board in connection with an investigation in a childcare case, constituted personal information about individual Gardaí. My finding was that the identity of a Garda as the Garda who was involved in particular matters in the course of his or her official duties was not personal information about that Garda within the meaning of the FOI Act. I considered it relevant that An Garda Síochána is the national police force and its officers are public servants. It is important to note that in the context of the investigation to which the records related, I was satisfied that the identities of the Gardaí was not subject to a duty of confidence nor could it lead to the revelation of the identity of a person who had provided information in confidence to a public body in relation to the enforcement of the criminal law [section 46(1)(f)(i)]. With the exception of two records, about which I concluded that particular information about the Gardaí concerned did constitute personal information about them, I found that the names of the members of An Garda Síochána were not exempt and I directed their release.

Requests involving the Personal Information of other Individuals

In several cases during the year, I considered whether the release by public bodies of personal information about the requester might also disclose personal information relating to individuals other than the requester. The type of record which I discuss here would generally contain information of a far less sensitive or inherently private nature than, for example, medical records or family type records of the kind discussed below under the heading of “ Personal Information about a Child” .

Records containing details of companies operating Revenue approved employee share schemes were withheld by the Revenue Commissioners in **Case No. 99403**. One of the issues which fell to be determined in my review was whether disclosure of the fact that a particular company may have 100% employee participation in its scheme would indirectly identify each employee as a shareholder. I took the view that, in such circumstances, the fact that a particular employee holds shares in the company is not information that would, in the normal course of events, be known only to the individual or his/her family or friends. In relation to whether the information is held by the Revenue on the understanding that it would be treated as confidential, it was not clear to me that employees can reasonably expect that the fact that they hold shares in the company in which they are employed is information that should remain confidential in all circumstances, particularly as it is open to the companies to publish details of such schemes, including details of the level of take up.

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I decided that, even if I were to accept that disclosure of the fact that an individual had shares in a company, where there was 100% participation in the share scheme, could result in the disclosure of personal information about identifiable individuals, the public interest in granting access would, on balance, outweigh the right to privacy of those individuals. It seemed to me that any effect on privacy would be minimal because it is a condition of the schemes in question that they be made available to all employees. On the other hand, the loss of revenue arising from such schemes falls on taxpayers generally and there is a public interest in the public being made aware of the extent and level of take up of such schemes. I decided to direct the release of the records in this case.

In **Case Number 020452**, the Health and Safety Authority refused access to the names of signatories to two forms sent to the Authority. The forms in question were standard forms provided by the Authority to facilitate notification by building firms to the Authority of a construction site and notification of the occurrence of an accident. The Authority decided that the names of the individuals from the two firms concerned, who had signed the forms, constituted personal information about them. The Authority released all of the other records sought by the requester.

In my review, I concluded that the signatory of one of the forms was an employee of the company. I found that under the Safety, Health and Welfare at Work (Construction) Regulations, 1995, the form he signed must be completed by the Project Supervisor and publicly displayed at the construction site. I was therefore satisfied that information relating to his employment was known to a broader constituency than his family and friends and that release of his name in this context did not constitute disclosure of personal information about him.

In the case of the other signatory who was a director of a company, his name and position was required by law to be placed on the public record. I was satisfied that the information was not, therefore, within the definition of personal information in the Act and was not exempt under section 28(1). However, I also made the point in my decision that even if this signatory had not been a director, and his signature was considered to be personal information, the public interest in ensuring that such forms are signed by properly authorised persons might still have required disclosure.



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I made a similar finding in relation to the name of a director of a private limited company in **Case No.020436** which also involved a request to the Health and Safety Authority. However, I indicated that a different conclusion might be justified where the name and position was not required to be published and was provided to a public body in confidence in the course of an investigation.

I found it necessary in **Case No.000391** to distinguish between a request under the Act for “official” information and a request for personal information. Following the awarding of a contract to a private company, an individual made a number of FOI requests to the Department of Arts, Heritage, Gaeltacht and the Islands for records relating to the awarding of the contract. Subsequently, the private company made an FOI request to the Department for copies of the FOI requests made by the named individual. Following notification to him under section 29 of the FOI Act, the Department decided to grant access to copies of the individual's FOI requests including his address. The individual applied to my Office for a review of the decision of the Department.

As the identity of the individual had already been revealed, the only issue I considered was whether the contents of and correspondence relating to the individual's FOI request constituted personal information as defined in section 2 of the Act. I did not accept that details of his FOI requests was information about the individual which would, in the ordinary course of events, be known only to the individual himself, his family members or his friends. I found that while, in some circumstances, the contents of a request for “official” information might also contain information which would meet the definition of personal information at section 2(1)(a) of the Act, it did not apply to the information about the requester in this instance apart from his address.

Furthermore, I found that there was no understanding on the part of the Department that details of the request would be treated by it as confidential. Thus, the mutual understanding of confidentiality necessary for section 2(1)(b) to apply did not exist. In summary, my finding was that release of the records, with the exception of the requester's address, would not involve the disclosure of his personal information.

Personal Information about a Child

A number of the cases considered by me in 2002 involved parents seeking access to records relating to their children. In some cases, the records sought were created in the context of a health board's involvement with families arising from concerns for the welfare of children. Such records often contain information of an extremely private and sensitive nature. Especially in cases where there is disharmony between parents or a potential for conflict of interest between a child and a parent, I believe that great caution must be exercised in considering whether access to these records should be granted under the Act.

In **Case No.99397** the requester sought access to a number of records concerning allegations of sexual abuse made about him and records of a health board's subsequent handling of the case. The Board granted access to certain records and refused access to others, relying on several grounds, including the exemption under section 28(1) of the FOI Act - that release of the information would disclose personal information about a person other than the requester. The records contained information about the requester's daughter (a minor) closely intertwined with personal information about his estranged wife (his daughter's mother) and personal information relating to the requester intertwined with personal information about his daughter and

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his estranged wife. I concluded that the personal information relating to the requester was so inextricably linked to that of the other two individuals that it was not realistic to contemplate providing him with edited versions of the records. Indeed, I considered that material released on the basis of such an approach would be misleading.

The Freedom of Information Act, 1997 (Section 28(6) Regulations, 1999 (S.I. 47 of 1999), and Guidelines published by the Minister for Finance under these regulations, provide that a request for records relating to personal information about a minor may be granted where the requester is the minor's parent or guardian and where, having regard to all the circumstances, to release the records to the parent/guardian would be in the minor's best interests. While they had the potential to authorise the release to the requester of information relating solely to his daughter, or relating jointly to him and to his daughter, I considered that the Regulations did not authorise the release of records containing the joint personal information of his daughter and any other person (in this case her mother). In applying the Regulations, the question which I had to address was whether release of the records served the best interests of the child. I expressed the view that, especially where the child may be in a vulnerable position, the interests of the child must be regarded as separate from those of the parent or parents. I believe that the right to privacy of the child, even *vis à vis* a parent, must be regarded as separate from the interests of the parent or parents and that this right to privacy is very strong.

In this case, the requester argued that it was in the best interests of the child that what he believed were false and malicious accusations be exposed. I took the view that it is not my function as Information Commissioner to investigate the allegations made or to decide on the truth or

accuracy of the information provided in this case. The Child Care Act, 1991 places responsibility on health boards to ensure that in matters relating to children the welfare of children is paramount. I agreed with the Board's argument that breaching a relationship of trust with young children could undermine the performance of its child protection functions. I found that the relatively high test, to establish that release of these records was in the best interests of the child, had not been met in this instance.

Access to records relating to the requester's daughter and her mother might also have been given on the basis that the public interest in release would outweigh the public interest that the right to privacy be upheld [section 28(5)(a)]. The requester in this case made very detailed submissions about where the balance of the public interest might lie; some of his concerns were not directly related to the question of whether he was entitled to have access to records under the FOI Act but related primarily to his dissatisfaction with various bodies including the Health Board, the Gardai and the courts. I did not accept his contention that, by reason of the alleged behaviour of his estranged wife, the privacy rights of that individual and of her daughter had been removed. When examining the requester's argument that there was a strong public interest in disclosing what he saw as defective management and procedures on the part of the Health Board, I drew a distinction between information relevant to the Board's performance and records of what the family members said to the Board's social workers. I considered that, given their content, the records at issue did not provide a sufficient basis to form a view as to the manner in which the Board managed the child protection service generally or in this specific case.



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In weighing up the relative strengths of the opposing public interests, I attempted to measure whether the release of the records would actually benefit the requester through adding significantly to his understanding of the Board's acts or decisions in relation to his family. I noted that the requester was aware of the nature of the allegations made against him and of the process and outcome of the investigation. I concluded that release of the records would not greatly clarify his concerns or advance his understanding of how the Board had carried out its role.

In essence my findings were that, in the context of FOI, the protection of an individual's privacy is also a public interest and not a matter of protecting private rights; in the absence of a positive public interest which would outweigh the degree of invasion of privacy of the child and of her mother, there was no basis for releasing the records. Accordingly, I found the records to be exempt under section 28(1).

Functions and Negotiations of Public Bodies

Section 21(1)(b) of the FOI Act allows a public body to refuse requests where access to the records concerned "could reasonably be expected to have a significant adverse effect on the performance by the body of its functions relating to management (including industrial relations and management of its staff)". Section 21(1)(c) provides for the refusal of access to records where their release could reasonably be expected to "disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or a public body". Both exemptions are subject to a public interest test.

In **Case No. 99454**, the Sunday Tribune newspaper sought the findings and recommendations of the Hay Report in which consultants appointed by the Minister for Finance evaluated the Chief Executive positions of commercial State bodies and suggested rates of pay based on comparisons with the private sector. The Department of Finance released some material from the Report but withheld elements which would indicate the recommended salary range for any post or its position relative to other Chief Executive posts. It claimed that section 21(1)(b) applied as the release of the information would be detrimental to the overall role played by the Department of Finance in the process of determining the pay of Chief Executives. The Department of Finance contended that if the full range of salary bands were disclosed, Chief Executives of similar-sized companies would be likely to use the information to argue for a higher placement on the scale of job sizes. It claimed that section 21(1)(c) applied because the recommendations set out the parameters by which the Department of Finance and the relevant Ministers (under whose aegis the various semi-state bodies operate) make decisions in relation to the pay of Chief Executives; such disclosure would divulge the negotiating positions of Departments and seriously impede their future work in setting the salaries of the Chief Executives of semi-state bodies.

The version of the Report released disclosed that the salary ranges recommended by the Hay Group were set from 80% to 100% of the median market rate for comparable jobs in the private sector. Although, at the time of my review, the Report was already three and a half years old, the Department said that it continues to use its parameters in the pay determination process.

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In considering this case, I was not satisfied that the Department's expectation of harm was reasonable. I noted that remuneration and other information about top-level public servants, including Chief Executives of commercial State bodies, is now published regularly in the annual reports of the bodies themselves. I did not accept the likelihood of Chief Executives being in a position to know the remuneration of other Chief Executives would have a significant adverse effect on the performance by the Department of Finance of some of its management functions.

I noted that, to the extent to which the Department can now justify differences in relative pay by reference to an evaluation by an expert group, it was now in a much stronger position *vis à vis* dissatisfied Chief Executives. I concluded, therefore, that section 21(1)(b) did not apply.

I found that section 21(1)(c) did not apply either because the negotiating position of the Minister for Finance and the other relevant Ministers was already known, i.e. the parameters set by the Hay Report in respect of that job, and any improvement on the appropriate range of pay would have to be justified by reference to new factors or considerations. I also noted that, in any event, the Department had already made known most of the factual information about the jobs through the release of the edited version of the Hay Report and I could not see how the release of the findings and recommendations would reveal any further information relevant to the negotiating positions of the relevant Departments.

I stated in my decision that even if I had considered either 21(1)(b) or (c) to apply, I would have found that the public interest in favour of release would outweigh the public interest factors identified by the Department as militating against release. In my view, the need for openness and accountability in relation to the decision making process of the Department of Finance was particularly strong in this case. The public has a strong interest in being informed of the basis upon which the pay of Chief Executives is determined as well as in knowing whether the rates of pay are, on the one hand, sufficient to attract high quality candidates and, on the other, not excessive given that the jobs are in the public sector.

I also considered that there is a significant public interest in openness about the Report itself, commissioned from a private firm of consultants, to ensure that the public obtained value for the money spent on it.

I observed that the Department might not welcome public scrutiny of the findings and recommendations of the Hay Report insofar as it might result in challenges to their validity. However, my conclusion was that if the findings and recommendations are not adequately supported, or are not robust enough to withstand public scrutiny, I could not see how protecting them from such scrutiny could serve the public interest. My decision directed the Department to release the records sought.



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International Relations of the State

Section 24 of the FOI Act provides that a public body may refuse access to a record if it considers that access could reasonably be expected to affect adversely the security of the State, the defence of the State, the international relations of the State or matters relating to Northern Ireland. There is no public interest test to be applied under section 24. In addition, there is provision for a Ministerial certificate under Section 25 in the case of particularly sensitive records. It is my view that a public body claiming the section 24 exemption must identify the potential adverse effect on one of the interests covered by the exemption and, having identified the adverse effect and how it might occur, consider the reasonableness of any expectation of that adverse effect occurring.

Case No. 99279 illustrates how the fact that a public body might have considerable expertise in a particular field does not relieve it of its obligation to justify its refusal of access to a record under section 24(1). The Sunday Times newspaper requested the Department of Foreign Affairs to grant access to records relating to the Government's decision to participate in the Partnership for Peace (PfP). Among the exemptions claimed for some of the records withheld by the Department was section 24(1). The factual parts of some of the records at issue set out the arguments for and against Irish participation in PfP and the Department argued that its release could reasonably be expected to result in such effects on international relations as a loss of confidence, a weakening of reciprocal bonds or a diminution in the level of trust. I concluded that, insofar as the factual elements of the records were concerned, the Department had not explained how their release could result in any of the "harms" that it had identified. However, I accepted, as a general proposition,

that official acknowledgement of even a commonly known fact could, in certain circumstances, have an adverse effect on international relations. I found that in the case of a record, which included comments that the Department viewed as critical of Ireland's non-participation in PfP, there was nothing to indicate that these comments, (which had apparently been made to an Irish Vice-Consul at a conference), had been made in confidence. Furthermore, in finding that the section 24 exemption did not apply to some of the records, I noted that, even if it could be assumed that the individuals making the comments were capable of influencing international relations, there was no basis for considering their criticism to be sensitive or embarrassing in nature, given that Ireland had since joined the PfP.

In this case I reiterated the point, made in other decisions, that I do not accept that the mere fact that information in a record, which is sought under the FOI Act, may be misinterpreted by someone is a sufficient basis for refusing to grant access.

In relation to certain other records which contained reports of high level talks between the Taoiseach and representatives of other States and parts of records which included candid and descriptive discussions of the positions of other countries within the European Union, I accepted the Department's argument that the international community expects communications of this nature to remain confidential. I accepted that the release of these records could adversely affect international relations.

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Case No. 020295 also involved records the release of which, it was claimed by the Department of Enterprise, Trade and Employment, could reasonably be expected to affect adversely the international relations of the State. The two items of correspondence at issue were among records requested in relation to the tender process for the acquisition of helicopters for the Air Corps. They comprised a letter from the Tánaiste to the Secretary of Commerce in the US and a letter from the US Ambassador to the Tánaiste. The Department argued that disclosure of the correspondence would allow for inferences to be drawn and comparisons to be made as to the nature of the relationships between the parties involved. It argued against the release of such correspondence on the grounds that the US could not be confident that future confidential correspondence would be protected from disclosure and that such loss of confidence would have a cumulative effect on the nature and content of future diplomatic communications between the two States.

I considered that this amounted to a claim for the exemption of all diplomatic correspondence as a class; such inferences and comparisons could, in my view, be made in respect of most correspondence between two parties regardless of the subject matter of the correspondence. I considered that, as section 24 is a harm-based exemption, an examination of the contents of the two records at issue was necessary. I found that the contents of the records could not be considered to be sensitive and that the Department had not shown that there were real and substantial grounds for expecting that the disclosure of the two records could affect adversely the international relations of the State. My finding was that the Department was not justified in deciding to refuse access to the records and I directed their release.

RTÉ - Functions covered by the FOI Act

The FOI Act applies to certain specified functions of RTÉ as set out in the Freedom of Information Act, 1997 (Prescribed Bodies) (No. 2) Regulations, 2000 (S.I. No 115 of 2000). In those regulations, Schedule 2 sets out the functions which fall within the remit of the Act; Schedule 3 sets out the functions which do not fall within the Act's remit. In short, the functions covered by the FOI Act are management, administration, finance, commercial, communications and the making of contracts for services. Schedule 3 is concerned with programming functions.

In **Case No. 020336** what I had to consider was which schedule of functions covered records of the amount of time allocated by RTÉ to each political party during the General Election campaign of 2002. Access to the data requested was refused by RTÉ on the basis that they related to the editorial process and were not covered by the FOI Act. RTÉ's position was that the information was to assist it in its editorial processes and in its work towards balanced programming across its range of output. The records at issue comprised a set of data compiled from a "Contributor Tracking" information technology programme as well as a set gathered by researchers employed to monitor all radio and television outputs for the General Election campaign.



Chapter 4 Letter Decisions

I concluded that the data at issue were created and held by RTÉ in the context of its management function of ensuring impartiality in the broadcasting of news and current affairs and were, therefore, covered by the provisions of the FOI Act. While the data concerned represented information on which the process of editorial decision making may have relied, or by which it may have been influenced, I took the view that the data were created for the purpose of ensuring balanced programming in accordance with RTÉ's legal obligations. I drew a distinction between the "process of making editorial decisions", which would include records of discussion at editorial meetings and records of decisions taken, and the data or information on which such process relied. In reaching this conclusion, I attached some significance to the fact that the General Election Steering Group, which used the data in question in its decision making, was chaired by the Director General of RTÉ.

Having found that the records came within the scope of the FOI Act, I gave consideration to whether or not they would be exempt from release under any of its provisions. I did not find that any of the exemptions applied and I decided that the records should be released to the requester.

(This decision has been appealed to the High Court by RTÉ. At the time of compiling this Report, the High Court has not heard the appeal.)



5

Chapter Five *Statistics*



Chapter 5

Statistics

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(Note: Figures for the above tables supplied by the Civil Service User's Network, the National FOI Liaison Group for Health Boards, the Local Authorities FOI Liaison Group, the Department of Health and Children, the National Federation of Voluntary Bodies and the Liaison Group for the Higher Education Sector and collated by the Office of the Information Commissioner.)

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PART I PUBLIC BODIES

1 OVERVIEW OF FOI REQUESTS DEALT WITH BY PUBLIC BODIES - 2002

Requests on hand - 01/01/2002			2,841 ⁽¹⁾	
Requests received in 2002				
Personal	8,850			
Non-personal	7,936			
Mixed	410			
Total			17,196	
Total requests on hand during year			20,037	
Requests dealt with			16,026	
Requests on hand - 31/12/2002			4,011	

(1) The figure of 2,976 requests on hand 31/12/2001, as published in last year's Annual Report, was incorrect due to errors made by a small number of bodies when calculating their "requests dealt with" figure for 2001. These errors only came to light subsequent to the publication of last year's Annual Report. Furthermore, a number of public bodies did not provide figures for FOI usage for 2002. The requests reported by those bodies as being on hand at 31/12/2001 were therefore removed from the closing balance of cases on hand at 31/12/2001. Taking account of both these factors gives a revised opening balance of 2,841 requests on hand.

2 FOI REQUESTS DEALT WITH BY PUBLIC BODIES AND SUBSEQUENTLY APPEALED - 2002

	Number	Percentage
FOI requests dealt with by public bodies	16,026	100%
Internal reviews received by public bodies	1,755	11%
Applications accepted by the Commissioner	585 ⁽²⁾	4%

(2) Includes 79 applications, carried over from 2001, that were accepted for review in 2002. 687 applications were made to the Commissioner in 2002 - see Table 12 for details.



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Part I - Public Bodies

3 FOI REQUESTS RECEIVED, ANALYSED BY REQUESTER TYPE - 2002

Requesters	Number	Percentage
Journalists	2,103	12%
Business	1,839	11%
Oireachtas Members	148	1%
Staff of Public Body	1,178	7%
Others	11,928	69%
Total received - 2002	17,196	100%

4 OVERVIEW OF REQUESTS DEALT WITH BY PUBLIC BODIES - 2002

	Number	Percentage
Requests granted	7,391	46%
Requests part-granted	3,386	21%
Requests refused	3,015	19%
Requests transferred to appropriate body	486	3%
Requests withdrawn or handled outside FOI	1,748	11%
Total dealt with - 2002	16,026	100%

5 ANALYSIS OF REQUESTS DEALT WITH BY PUBLIC SERVICE SECTOR - 2002

	Percentage granted	Percentage part-granted	Percentage refused	Percentage transferred	Percentage withdrawn or handled outside of FOI	Total
Civil Service Departments	29%	27%	25%	5%	14%	100%
Local Authorities	63%	11.5%	17%	1.5%	7%	100%
Health Boards	62%	19%	13%	2%	4%	100%
Voluntary Hospitals, Mental Health Services and related agencies	66%	14%	11%	1%	8%	100%
Third Level Institutions	54%	19%	10%	0%	17%	100%
Other Bodies	36%	27%	16%	1%	20%	100%

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Part I - Public Bodies

6 FOI REQUESTS RECEIVED BY CIVIL SERVICE DEPARTMENTS - 2002

Public Body	Personal	Non-personal	Mixed	Total
Department of Education and Science	1,651	274	13	1,938
Department of Health and Children	621	376	0	997
Department of Justice, Equality and Law Reform	343	295	22	660
Department of Social and Family Affairs from 19/6/02 ⁽³⁾	320	45	0	365
Department of Finance	27	297	2	326
Department of Social, Community and Family Affairs to 18/6/02 ⁽³⁾	265	40	0	305
Department of Agriculture and Food from 19/6/02 ⁽³⁾	139	127	1	267
Office of the Revenue Commissioners	118	133	0	251
Department of the Environment and Local Government from 19/6/02 ⁽⁴⁾	23	195	2	220
Department of Enterprise, Trade and Employment	13	186	6	205
Department of Communications, Marine and Natural Resources from 19/6/02 ⁽³⁾	14	173	0	187
Department of Agriculture, Food and Rural Development to 18/6/02 ⁽³⁾	80	70	0	150
Department of the Environment and Local Government to 18/6/02 ⁽⁴⁾	11	137	0	148
Department of Arts, Heritage, Gaeltacht and the Islands to 18/6/02 ⁽³⁾	6	133	2	141
Department of the Taoiseach	9	131	1	141
Department of Defence	36	95	0	131
Department of Foreign Affairs	15	115	0	130
Department of Transport from 19/6/2002 ⁽³⁾	0	128	0	128
Department of Arts, Sport and Tourism from 19/6/02 ⁽³⁾	1	105	0	106
Department of the Marine and Natural Resources to 18/6/02 ⁽³⁾	10	91	0	101
Office of Public Works	0	90	0	90
Department of Public Enterprise to 18/6/02 ⁽³⁾	1	72	0	73
Civil Service Commission	52	12	7	71
Office of the Houses of the Oireachtas	41	10	0	51
Department of Community, Rural and Gaeltacht Affairs from 19/6/02 ⁽³⁾	3	47	0	50
Department of Tourism, Sport and Recreation to 18/6/02 ⁽³⁾	0	50	0	50
Office of the Chief Medical Officer for the Civil Service	40	0	0	40
Local Appointments Commission	19	8	11	38
Land Registry and Registry of Deeds	24	3	0	27
Central Statistics Office	8	15	0	23
Office of the Attorney General	4	18	0	22
Office of the Director of Public Prosecutions	1	16	0	17
Office of the Ombudsman	0	11	0	11
Office of the Chief State Solicitor	5	4	0	9
Office of the Director of Consumer Affairs	3	6	0	9
Office of the Registrar of Friendly Societies	1	5	0	6
Office of the Director of Corporate Enforcement	0	4	0	4
Office of the Information Commissioner	2	1	0	3
Office of the Appeals Commissioner for the Tax Acts	0	3	0	3
Office of the Commissioner of Valuation and Boundary Survey of Ireland	0	3	0	3
Office of the Comptroller and Auditor General	0	2	0	2
Total Received - 2002⁽⁵⁾	3,906	3,526	67	7,499

(3) A number of Government Departments underwent changes in titles and responsibilities from 19 June 2002. Where this occurred, separate figures have been given for those Departments, to show requests received up to 18/6/02 and requests received from 19/6/02.

(4) Although the title of the Department of Environment and Local Government did not change on 19 June 2002, its responsibilities were amended; hence separate figures for requests received up to 18/6/02 and requests received from 19/6/02.

(5) The Defence Forces did not supply figures for FOI activity in 2002.



Chapter 5 - Statistics

Part I - Public Bodies

7 FOI REQUESTS RECEIVED BY LOCAL AUTHORITIES⁽⁶⁾ - 2002

Local Authority	Personal	Non-personal	Mixed	Total
Carlow	3	21	0	24
Cavan	1	28	0	29
Clare	11	77	6	94
Cork City Council	26	67	0	93
Cork County Council	29	107	1	137
Donegal	31	101	0	132
Dublin City Council	151	226	3	380
Dún Laoghaire - Rathdown	15	161	23	199
Fingal	30	93	10	133
Galway City Council	24	64	1	89
Galway County Council	24	93	5	122
Kerry	16	52	7	75
Kildare	12	64	0	76
Kilkenny	37	58	0	95
Laois	11	55	1	67
Leitrim	9	18	4	31
Limerick City Council	15	38	0	53
Limerick County Council	5	65	0	70
Longford	4	17	0	21
Louth	22	72	0	94
Mayo	15	74	0	89
Meath	4	89	0	93
Monaghan	2	23	0	25
Offaly	7	20	0	27
Roscommon	15	26	1	42
Sligo	15	56	0	71
South Dublin	85	28	0	113
Tipperary NR	18	21	3	42
Tipperary SR	3	44	2	49
Waterford City Council	8	29	0	37
Waterford County Council	4	27	0	31
Westmeath	13	26	0	39
Wexford	10	67	1	78
Wicklow	17	91	3	111
Total Received - 2002	692	2,098	71	2,861

(6) Figures include, where appropriate, FOI requests received by Town Councils.

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Part I - Public Bodies

8 FOI REQUESTS RECEIVED BY HEALTH BOARDS - 2002

Health Board	Personal	Non-personal	Mixed	Total
East Coast Area	58	72	0	130
Eastern Regional Health Authority Corporate	5	39	0	44
Midland	184	50	0	234
Mid-Western	259	32	0	291
Northern Area	100	124	0	224
North Eastern	356	60	0	416
North Western	313	30	8	351
Southern	473	90	6	569
South Eastern	221	58	18	297
South Western	82	100	0	182
Western	473	87	5	565
Total Received - 2002	2,524	742	37	3,303



Chapter 5 - Statistics

Part I - Public Bodies

9 FOI REQUESTS RECEIVED BY VOLUNTARY HOSPITALS, MENTAL HEALTH SERVICES AND RELATED AGENCIES - 2002

Public Body	Personal	Non-personal	Mixed	Total
Mater Misericordiae Hospital	114	76	0	190
St. James's Hospital Board	93	43	1	137
Beaumont Hospital Board	67	69	0	136
Tallaght Hospital (Adelaide and Meath Hospital, Incorporating the National Children's Hospital)	60	54	0	114
The Rotunda Hospital	77	0	24	101
Our Lady's Hospital for Sick Children, Crumlin	61	17	1	79
National Maternity Hospital, Holles Street	49	24	0	73
The Children's Hospital, Temple Street	51	18	0	69
South Infirmary - Victoria Hospital Ltd, Cork	67	0	0	67
Irish Wheelchair Association	34	10	18	62
Coombe Women's Hospital	27	20	3	50
The Royal Victoria Eye and Ear Hospital	49	0	0	49
Brothers of Charity	69	0	0	69
Hospitaller Order of St. John of God	44	2	0	46
Mercy Hospital, Cork	20	1	0	21
St. Luke's Hospital, Rathgar	11	8	0	19
St. John's Hospital, Limerick	18	0	0	18
Cappagh National Orthopaedic Hospital, Dublin	8	8	0	16
Sunbeam House Services	15	0	0	15
St. Michael's Hospital, Dún Laoghaire	8	5	0	13
St. Vincent's Hospital, Fairview	12	1	0	13
Central Remedial Clinic	9	2	0	11
Sisters of Charity	9	1	0	10
The City of Dublin Skin and Cancer Hospital, Hume Street	5	4	1	10
Daughters of Charity	9	0	0	9
St. Michael's House, Ballymun	6	0	2	8
COPE Foundation	7	0	0	7
Dublin Dental Hospital Board	4	2	0	6
Western Care Association	6	0	0	6
St. Mary's Hospital, Baldoye	4	0	0	4
Our Lady's Hospice, Harold's Cross	0	3	0	3
Stewarts Hospital, Palmerstown	3	0	0	3
St. Francis Hospice, Raheny	2	1	0	3
Others ⁽⁷⁾	10	4	1	15
Total Received - 2002⁽⁸⁾	1,028	373	51	1,452

(7) This category consists of 25 public bodies where the total number of requests was less than 3 in each case.

(8) St. Vincent's University Hospital did not supply figures for FOI activity in 2002.

Chapter 5 - Statistics

Part I - Public Bodies

10 FOI REQUESTS RECEIVED BY THIRD LEVEL EDUCATION BODIES - 2002

Third Level Education Body	Personal	Non-personal	Mixed	Total
University College Dublin, National University of Ireland, Dublin	67	63	9	139
Dublin Institute of Technology	65	63	0	128
University College Cork	44	43	2	89
National University of Ireland, Galway	42	19	0	61
Dublin University (Trinity College)	27	18	2	47
Dublin City University	20	25	0	45
University of Limerick	16	27	1	44
National University of Ireland, Maynooth	8	32	0	40
Waterford Institute of Technology	28	9	0	37
Institute of Technology, Tralee	12	18	0	30
Athlone Institute of Technology	17	10	0	27
Institute of Technology, Sligo	9	7	10	26
Dundalk Institute of Technology	2	20	0	22
Galway-Mayo Institute of Technology	14	6	0	20
Cork Institute of Technology	14	4	0	18
Mary Immaculate College, Limerick	14	3	0	17
Institute of Technology, Carlow	4	10	3	17
Letterkenny Institute of Technology	8	7	0	15
St. Patrick's College, Drumcondra	11	3	0	14
Limerick Institute of Technology	5	6	0	11
Institute of Technology, Tallaght	4	7	0	11
Higher Education Authority	0	9	0	9
Institute of Technology, Blanchardstown	0	6	0	6
Tipperary Institute	3	2	0	5
Dún Laoghaire Institute of Art, Design and Technology	2	2	1	5
Others ⁽⁹⁾	3	4	1	8
Total Received - 2002	439	423	29	891

(9) This category consists of 7 public bodies where the total number of requests was less than 3 in each case.



Chapter 5 - Statistics

Part I - Public Bodies

11 FOI REQUESTS RECEIVED BY OTHER BODIES⁽¹⁰⁾ - 2002

Public Body	Personal	Non-personal	Mixed	Total
Health and Safety Authority	12	104	133	249
RTÉ	4	143	0	147
FÁS	37	38	7	82
Courts Service	57	22	0	79
Social Welfare Appeals Office	57	2	0	59
An Bord Pleanála	2	57	0	59
Environmental Protection Agency	6	37	0	43
Shannon Free Airport Development Ltd	4	35	0	39
Arts Council	0	37	2	39
Enterprise Ireland	5	26	1	32
Irish Medicines Board	1	31	0	32
Comhairle na nOspidéal	0	30	0	30
Blood Transfusion Services Board	13	14	1	28
Commission for Electricity Regulation	1	18	0	19
IDA Ireland	3	14	0	17
Board of National Library of Ireland	0	15	0	15
Legal Aid Board	11	2	0	13
Board of National Museum of Ireland	3	9	0	12
Údarás na Gaeltachta	0	12	0	12
Irish Sports Council	0	9	2	11
Probation and Welfare Service	10	0	0	10
FORFÁS	2	8	0	10
Comhairle	5	3	1	9
TG4	3	6	0	9
Competition Authority	0	9	0	9
National Disability Authority	3	5	0	8
National Gallery of Ireland	0	8	0	8
National Archives	5	3	0	8
Pensions Board	3	5	0	8
Companies Registration Office	0	5	1	6
Bord Fáilte Éireann	0	6	0	6
Film Censor's Office	0	6	0	6
National Standards Authority of Ireland	0	5	0	5
Agency for Personal Service Overseas	2	3	0	5
Government Information Services	0	3	1	4
Teagasc	3	1	0	4
Irish Film Board	0	3	1	4
Combat Poverty Agency	1	3	0	4
Labour Relations Commission	2	1	0	3
Horse Racing Ireland	0	0	3	3
Equality Authority	0	2	1	3
Censorship of Publications Board	0	3	0	3
Southern Regional Fisheries Board	1	2	0	3
Others ⁽¹¹⁾	5	29	1	35
Total Received - 2002⁽¹²⁾	261	774	155	1,190

(10) This table contains figures for FOI usage, compiled by the Department of Enterprise, Trade and Employment, for a number of agencies under the auspices of various Government Departments and for bodies in sectors such as the Broadcasting & Cultural Sector; the Regulatory Sector; the Social Services Sector; the Enterprise Sector and the Environment Sector.

(11) This category consists of 58 public bodies where the total number of requests was less than 3 in each case.

(12) Broadcasting Commission of Ireland, Commission for Communications Regulation and Ordnance Survey Ireland did not supply figures for FOI activity in 2002.

PART II OFFICE OF THE INFORMATION COMMISSIONER

12 ANALYSIS OF REVIEW APPLICATIONS RECEIVED - 2002

Applications for review on hand - 1/1/2002	101			
Applications for review received in 2002	687			
Total applications for review on hand in 2002			788	
Invalid applications	102			
Applications withdrawn	54			
Applications accepted for review in 2002	585			
Total applications for review considered in 2002			741	
Applications for review on hand - 31/12/2002			47	

13 ANALYSIS OF REVIEW CASES - 2002

Reviews on hand - 1/1/2002	551			
Applications accepted for review in 2002	585			
Total reviews on hand in 2002			1,136	
Reviews completed			534	
Reviews on hand - 31/12/2002			602	



Chapter 5 - Statistics

Part II - Office of The Information Commissioner

**14 APPLICATIONS FOR REVIEW ACCEPTED BY THE INFORMATION COMMISSIONER,
ANALYSED BY PUBLIC BODY - 2002**

Body	Number of Reviews accepted in 2002
Department of Education and Science	102
Department of Justice, Equality and Law Reform	44
Southern Health Board	24
RTÉ	20
South Eastern Health Board	20
Dublin City Council	20
Department of the Environment and Local Government	15
Office of the Revenue Commissioners	14
Department of Agriculture, Food and Rural Development to 18/6/02 ⁽¹³⁾	11
Fingal County Council	11
Department of Agriculture and Food from 19/6/02 ⁽¹³⁾	9
Department of Health and Children	8
Dún Laoghaire - Rathdown County Council	8
Northern Area Health Board	7
FÁS	7
Department of the Marine and Natural Resources to 18/6/02 ⁽¹³⁾	7
Department of Finance	7
Commission for Communications Regulation	7
East Coast Area Health Board	6
Department of Communications, Marine and Natural Resources from 19/6/02 ⁽¹³⁾	6
North Western Health Board	6
Defence Forces	6
National Library of Ireland	6
Donegal County Council	5
Galway County Council	5
Department of the Taoiseach	5
Department of Public Enterprise to 18/6/02 ⁽¹³⁾	5
Department of Arts, Heritage, Gaeltacht and the Islands to 18/6/02 ⁽¹³⁾	5
Mid-Western Health Board	5
Kildare County Council	5
North Eastern Health Board	5
Office of the Civil Service and Local Appointments Commissioners	4
Office of Public Works	4
Department of Defence	4
Office of the Director of Consumer Affairs	4
St. Vincent's University Hospital	4
Department of Social, Community and Family Affairs to 18/6/02 ⁽¹³⁾	4
Western Health Board	4
Department of Enterprise, Trade and Employment	4
Department of Foreign Affairs	4
Cork City Council	4
Department of Social and Family Affairs from 19/6/02 ⁽¹³⁾	4
Mater Misericordiae Hospital	4
Others ⁽¹⁴⁾	126
Total Accepted - 2002	585

(13) A number of Government Departments underwent changes in titles and responsibilities from 19 June 2002. Where this occurred, separate figures have been given for those Departments, to show applications accepted up to 18/6/02 and applications accepted from 19/6/02.

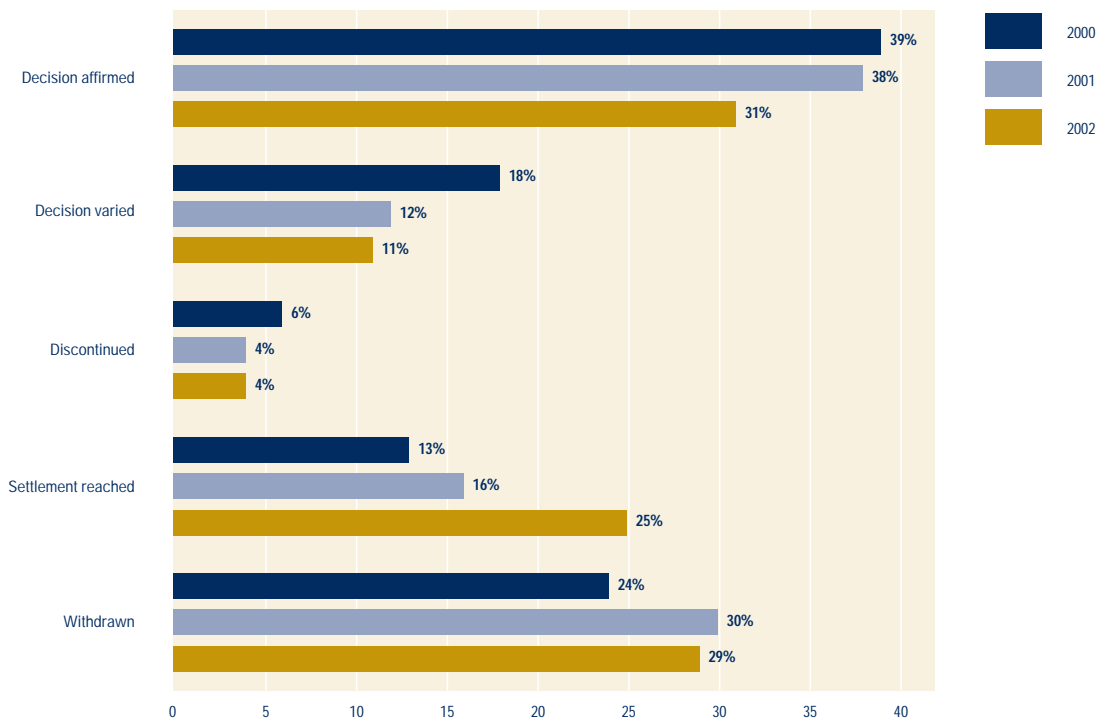
(14) This category consists of 80 public bodies where the total number of applications was less than 4 in each case.

Chapter 5 - Statistics

Part II - Office of The Information Commissioner

15 OUTCOME OF COMPLETED REVIEWS - THREE YEAR COMPARISON

	2000	Percentage	2001	Percentage	2002	Percentage
Decision affirmed	91	39%	167	38%	166	31%
Decision varied	43	18%	51	12%	60	11%
Discontinued	15	6%	20	4%	20	4%
Settlement reached	31	13%	72	16%	131	25%
Withdrawn	57	24%	135	30%	157	29%
Reviews completed	237	100%	445	100%	534	100%



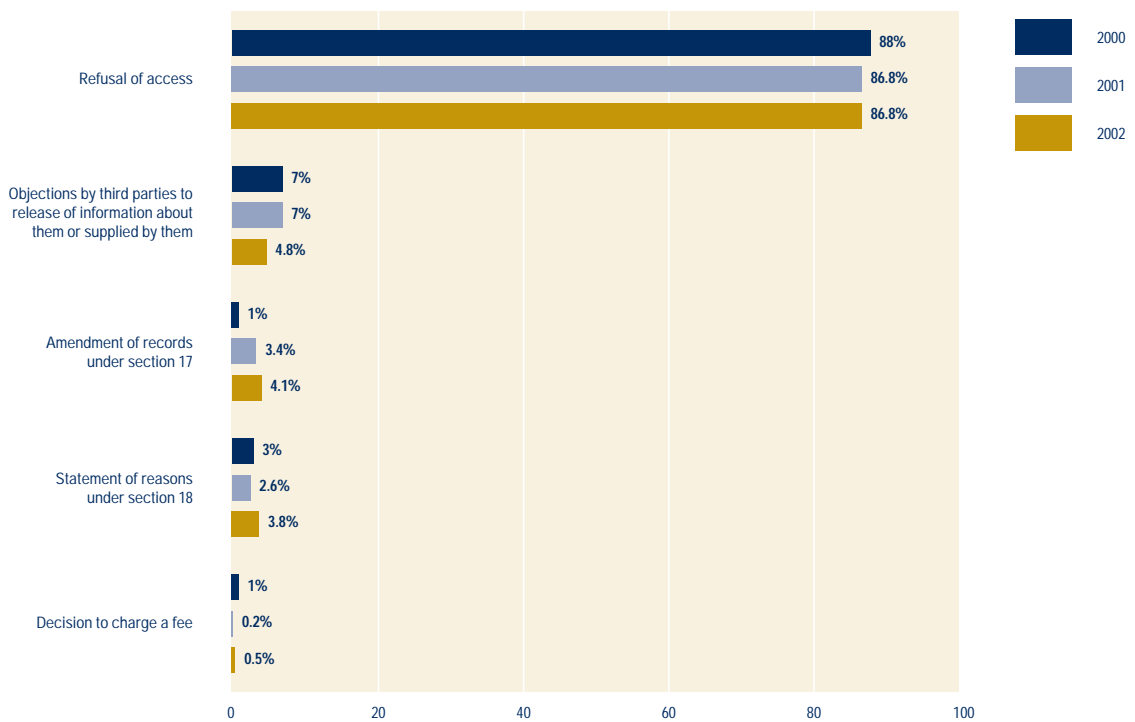


Chapter 5 - Statistics

Part II - Office of The Information Commissioner

16 SUBJECT MATTER OF REVIEW APPLICATIONS ACCEPTED - THREE YEAR COMPARISON

	2000	Percentage	2001	Percentage	2002	Percentage
Refusal of access	370	88%	336	86.8%	508	86.8%
Objections by third parties to release of information about them or supplied by them	31	7%	27	7%	28	4.8%
Amendment of records under section 17	5	1%	13	3.4%	24	4.1%
Statement of reasons under section 18	11	3%	10	2.6%	22	3.8%
Decision to charge a fee	5	1%	1	0.2%	3	0.5%
Applications Accepted	422	100%	387	100%	585	100%

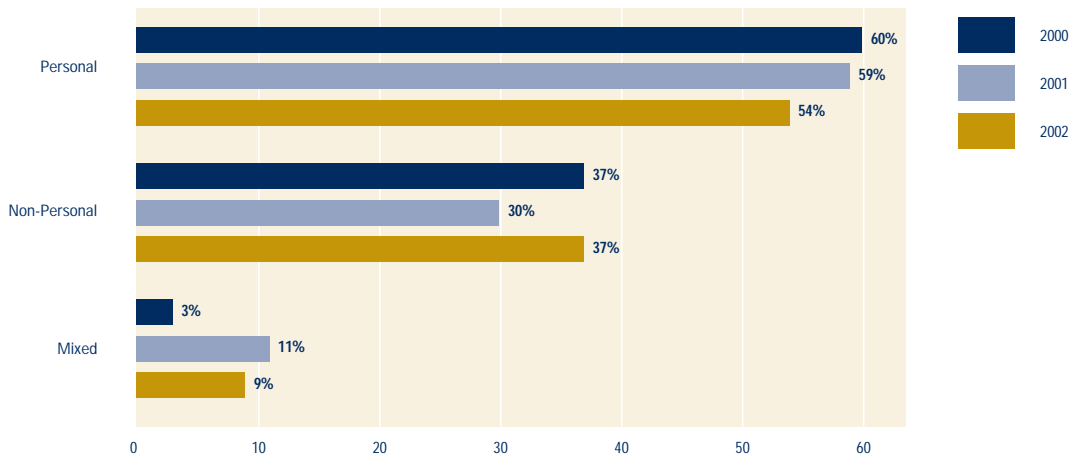


Chapter 5 - Statistics

Part II - Office of The Information Commissioner

17 APPLICATIONS ACCEPTED BY TYPE - THREE YEAR COMPARISON

	2000	Percentage	2001	Percentage	2002	Percentage
Personal	252	60%	228	59%	313	54%
Non - Personal	157	37%	118	30%	217	37%
Mixed	13	3%	41	11%	55	9%
Applications Accepted	422	100%	387	100%	585	100%





Staff List

Director General

Pat Whelan

Senior Investigators

Fintan Butler

Liam Kelly

Investigators

Ciara Burns

Melanie Campbell

Roisin Connolly

Liz Dolan

Cathal Duffy

Larry Dunne

Sarah Kember

(temporary assignment from the
Office of the Ombudsmen, New Zealand)

Anne Moran

David Nutley

Desmond O'Neill

Stephen Rafferty

Colin Stokes

Aimée Tallon

Support Unit

Mary Byrne

Chris Cogan

Evelyn Heron

Sarah Lynch

Elizabeth Martin

Stephanie O'Connell





Appendices



Appendix I List of Bodies Prescribed in 2002

Bodies which came within the scope of the Act on 1 June 2002

National Concert Hall

Chester Beatty Library

Irish Museum of Modern Art

Irish Film Board

Bord na Leabhar Gaeilge

Legal Aid Board

Victim Support

National Disability Authority

National Consultative Committee on Racism and Interculturalism

National Committee for Development Education

Agency for Personal Services Overseas

National Economic and Social Council

National Economic and Social Forum

National Centre for Partnership and Performance

National Statistics Board

Information Society Commission

Campus and Stadium Ireland Development Limited

Commission for Aviation Regulation

Others (see note below)

Mater Misericordiae Hospital Limited

Children's University Hospital Limited

Our Lady's Hospice Limited.

Note: The inclusion of the latter three bodies in S.I. 359 of 2002 ensures that records of the Mater Misericordiae Hospital Limited, Children's University Hospital Limited and Our Lady's Hospice Limited can continue to be sought under the FOI Act following the incorporation of these bodies as limited companies.

Appendix I List of Bodies Prescribed in 2002

Bodies which came within the scope of the Act with effect from 1 November 2002

An Bord Iascaigh Mhara	Cólucht Groighe Náisiúnta na hÉireann Teoranta (The Irish National Stud Company Limited)
The Central Fisheries Board	
The Northern Regional Fisheries Board	Area Development Management Limited
The North Western Regional Fisheries Board	National Drugs Strategy Team
The Eastern Regional Fisheries Board	The Western Development Commission
The Shannon Regional Fisheries Board	The Dublin Transportation Office
The Southern Regional Fisheries Board	An tÚdarás um Bóithre Náisiúnta (The National Roads Authority)
The South Western Regional Fisheries Board	
The Western Regional Fisheries Board	The Railway Procurement Agency (An Ghníomhaireacht um Fháil Iarnród)
Foras na Mara (the Marine Institute)	
Digital Media Development Limited	National Development Plan - Community Support Framework Evaluation Unit
Bord Fáilte Éireann	
C.E.R.T. Limited	National Development Plan - Community Support Framework Information Office
Horse Racing Ireland (Rásaíocht Capall Éireann)	National Development Plan - Community Support Framework Information Technology Unit
Bord na gCon	
The Housing Finance Agency	European Regional Development Fund Financial Control Unit
The Rent Tribunal	
An Bord Bia (The Irish Food Board)	
An Bord Glas (The Horticultural Development Board)	
The National Milk Agency	
Teagasc (The Agriculture and Food Development Authority)	



Appendix II Report of Ministerial Certificates Issued Under Section 25

DEPARTMENT OF JUSTICE,
EQUALITY and LAW REFORM
72-76 St. Stephen's Green
Dublin 2
Lo-Call: 1890 221 227
Telefón/Telephone: (01) 602 8202
Riamphoist/e-mail:
info@justice.ie



AN ROINN DLÍ agus CIRT,
COMHONANNAIS agus
ATHCHÓIRTHE DLÍ
72-76 Faiche Stiabhna
Baile Átha Cliath 2
Facaímh/Fax: (01) 661 5461

Information Commissioner
Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

Section 25 Ministerial Certificates

In accordance with the provisions of Section 25(11) of the Freedom of Information Act, 1997 I wish to notify you that the former Minister for Justice, Equality and Law Reform issued two Certificates for the year ending 31/12/2002. These certificates replace the certificates previously issued, in respect of the records requested, which expired during 2002.

Details of the Certificates are as follows:

(1) Provisions of the Act by reference to which the records requested are exempt records:

Section 24(1)(c)	International relations of the State
Section 24(1)(d)	Matters relating to Northern Ireland
Date of signature: 21/02/2002	Date of expiration: 21/02/2004

(2) Provisions of the Act by reference to which the records requested are exempt records:

Section 24(1)(a)	Security of the State
Date of signature: 27/03/2002	Date of expiration: 27/03/2004

Yours sincerely

Brendan Foy
Freedom of Information Officer
Department of Justice, Equality and Law Reform

15 January, 2003



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