

OFFICE OF THE INFORMATION COMMISSIONER

**A GUIDE TO STRUCTURE, ORGANISATION, FUNCTIONS,
POWERS, DUTIES, RECORDS & SERVICES PROVIDED**

Published in accordance with section 15 of the Freedom of Information Act, 1997
as amended by the Freedom of Information (Amendment) Act, 2003

Freedom of Information (FOI) Act

The FOI Act establishes certain statutory rights for each person:

- a right to access information held by public bodies;
- a right to have official information relating to oneself amended where it is incomplete, incorrect or misleading;
- a right to obtain reasons for decisions affecting oneself.

The FOI Act enables persons to gain access to official information to the greatest extent possible, consistent with the public interest and the right to privacy of individuals.

The Office of Information Commissioner (the Office) was established under the Freedom of Information (FOI) Act, 1997 to provide for an independent review of decisions made by public bodies on requests for access to records and to enable the operation of the FOI Act generally to be kept under review. The FOI Act, 1997 was amended by the Freedom of Information (Amendment) Act, 2003. All references to the FOI Act should be taken to include both the original Act of 1997 and the Amendment Act of 2003.

Office of Information Commissioner

The Office, under the direction of the Information Commissioner (the Commissioner) is itself a public body for the purposes of the FOI Act, so its records may, subject to certain exceptions, be accessed by way of an FOI request.

This guidance manual has been prepared and published in accordance with the requirements of sections 15 of the FOI Act. Its purpose is to facilitate access to official information held by the Office. It outlines:

1. the structure and functions of the Office;
2. details of the services provided;
3. information on the types of records held; and
4. information on how to make a request to the Office under the FOI Act
5. information on how to apply for review of a decision by the Commissioner
6. fee structures .

This guidance manual is available on the website of the Information Commissioner at **www.oic.gov.ie**. A printed version is available, free of charge, from the Office.

Functions of the Commissioner

The main functions of the Commissioner are:

- to review (on application) decisions made by public bodies in relation to FOI requests and to affirm, vary or annul these decisions; if the decision is annulled the Commissioner may make a new decision;
- to keep the operation of the Act under review with a view to ensuring maximum compliance (this can involve investigation of the operation of the FOI Act, both generally and in relation to particular bodies);
- to foster an attitude of openness among public bodies by encouraging the voluntary publication by them of information on their activities which goes beyond what they are obliged to publish under the FOI Act;
- to prepare and publish commentaries on the practical operation of the FOI Act.

Review of FOI Decisions

Decisions Subject to Review

The Commissioner may review the following decisions made under the FOI Act:

1. A decision to refuse to provide all records requested;
2. A decision to refuse to provide a complete record;
3. A decision to refuse to provide the record in the format sought;
4. A decision to defer granting of access to the record;
5. A decision to refuse to correct personal information;
6. A decision under section 18 whereby reasons must be given for actions of public bodies which materially affect a person;
7. A decision to charge a fee or seek a deposit before information is released;
8. A decision to release records in the public interest when the records contain information that is personal, was given in confidence to the public body or is commercially sensitive;
9. A decision to extend the time limit within which a request for access must be decided.

In most cases, the Commissioner cannot accept an application for a review if the requester has not availed of the internal review mechanism operated by the body itself. However, where the initial decision was taken by the **head** of the public body, an application for review of that decision should be made directly to the Commissioner without going through the internal review stage. Similarly, the decisions described at 7, 8 and 9 above and some deferral decisions encompassed at 4 above should be directed to the Commissioner without going through the internal review stage.

The Commissioner may not review decisions on FOI requests made to the Office or to the Office of the Ombudsman (the positions of Ombudsman and of Commissioner are held by

the same person). Subject to the provisions of the FOI Act, such decisions may be appealed directly to the High Court.

The Commissioner may not review a decision in a case where a ministerial certificate under section 25 of the FOI Act is in force. Section 25 is a provision whereby a Minister of the Government may, by certificate, declare a record to be exempt from the scope of the FOI Act on the grounds that it "is of sufficient sensitivity or seriousness to justify his or her doing so"

The Commissioner may not review a decision in a case where a certificate under section 20 of the FOI Act is in force. Section 20 is a provision whereby a Secretary General of a Department of State may issue a certificate stating that a record contains "matter relating to the deliberative processes of a Department of State".

The Commissioner may refuse to grant an application for review where the application is considered to be frivolous or vexatious or where the application relates to a matter which is the subject of another review.

The Commissioner's decision on a review is binding on the parties concerned. Such a decision may, on a point of law only, be appealed to the High Court and, subsequently, to the Supreme Court.

Applications for Review

A person seeking a review of a decision must apply to the Commissioner within specified time limits. Normally, an application for review should be made to the Commissioner within six months of the decision having been notified to the person. The Commissioner has discretion to extend this time limit - for as long as she may determine - where she feels there are reasonable grounds for so doing.

Generally, a two week time limit applies where:

- the decision to be reviewed relates to the extension of the time limit applicable to the public body for its own processing of an FOI request;
- the decision to be reviewed is one where a body has considered, in the public interest, releasing a record which contains information which is personal information, or which was given in confidence to the public body, or which is commercially sensitive, and it has consulted an interested third party about its proposed decision.

The Commissioner has discretion to extend the two week period in either case where she is of the opinion that there are reasonable grounds to do so.

Where an application for review is made, the Commissioner must provide the body in question with a copy of that application.

Where the Commissioner decides to accept an application for review, the applicant, the public body concerned, and any other relevant person will be informed and invited to make submissions on the matter for consideration in the course of the review.

An application for review may be withdrawn at any stage up to the notification of the

decision on the review.

Having received an application for review of a decision, the Commissioner may, where she forms a view that the body concerned has not given adequate reasons for its decision, direct that body to give fuller information on the decision to both the requester and to herself.

The FOI Act specifies that, in so far as practicable, the Commissioner should make a decision on a review application within four months of its receipt. The Commissioner will notify the parties to a review application of the decision and of the reasons underpinning the decision. The Commissioner provides details in the Annual Report of the number of applications for review which have not had decisions issued within the preferred time limit.

The Commissioner may refer any question of law arising in the course of a review to the High Court for determination and may postpone the making of a decision following the review until such time as she considers convenient after the determination of the High Court.

Subject to the requirements of the FOI Act, the Commissioner decides her own procedures for the conduct of a review. The FOI Act also authorises the Commissioner to try to effect a settlement between the parties as an alternative to a formal decision. Where the parties agree to such an approach, the Commissioner may, with the consent of the parties, suspend the review and, where a settlement is reached, discontinue the review.

Records Held in the Office

The range of records held in the Office fall within the following broad categories (some overlap may occur)

Internal Administration Records

- Personnel Records
- Accounts Records
- Assets Register
- Civil/Public Service Guidelines and Circulars
- Published Media Coverage, including Press Cuttings
- Speeches and Presentations by the Commissioner / Staff of the Office
- Contacts with public bodies including the names of liaison officers for each body

covered by the FOI Act

- Notes and Minutes of Management Meetings and associated documentation.
- Records relating to publication of Reports e.g. the Annual Report, including records relating to translation, tendering, designing and printing.
- Management of the Website of the Commissioner
- Management of Case Reviews
- Statistics on Case Reviews
- FOI Requests for access to records held by the Office
- Applications for review of FOI decisions outside the jurisdiction of the Commissioner

- Data Protection Act Requests for access to records held by Office
- General Enquiries and Correspondence

Policy

- Contacts with the Department of Finance
- Contacts with Oireachtas Committees
- Decisions/Correspondence with equivalent offices in other jurisdictions

Legislation and Related Matters

- Discussions with the Department of Finance regarding the operation of the FOI Act
- Discussions with Public Bodies concerning the operation of the FOI Acts
- Section 15 and Section 16 Manuals of Public Bodies covered by the FOI Act

Staff Instructions/Guidelines

- Procedures for handling Applications for Review and Enquiries
- Liaison Arrangements with Public Bodies

Reviews/Investigations by the Commissioner

- Communications with the Applicant, the Public Body and any relevant Third Parties
- Records relating to FOI decisions being reviewed by the Commissioner
- Submissions from Concerned Parties in connection with a Review / Investigation
- Legal advice provided to the Office
- Decisions of the Information Commissioner
- Other records relating to reviews and investigations, including settlement details, case closure details, investigations, analysis, comment by officials of the Office

Commissioner's other functions and duties under the FOI Act

- Reports on the operation of the FOI Act (section 36)
- Annual Reports (section 40).
- Records relating to Ministerial Certificates (section 25)
- Records relating to non-disclosure of records (section 32)

Information Published by the Office

The FOI Act is intended to allow access to information held by public bodies which is not routinely available by other means subject to certain exemptions, procedures and time limits. The following information about the activities and functions of the Office is available without the need to use the FOI Act:

Annual Reports

The Commissioner submits a report to the Oireachtas each year in relation to the Office's activities during the previous year. Annual Reports are available from:

- the Office at 18 Lower Leeson Street, Dublin 2.
- the website at www.oic.gov.ie
- the Government Publications Sales Office, Molesworth Street, Dublin 2.

FOI Reference Manual

- Guide to the Rules, Procedures, Practices, Guidelines and Interpretation Used by the Office of the Information Commissioner (as prescribed by section 16 of the FOI Act)

Other Publications

The Commissioner also publishes reports on the operation of the FOI Act.

To date the following reports have been published:

- A Study of Section 15 & 16 Manuals published by public bodies
- The Freedom of Information Act - Compliance by Public Bodies
- Commentary of the Information Commissioner on the FOI Act
- Report on Non-Disclosure Provisions of the FOI Act to the Joint Oireachtas Committee on Finance and the Public Service (section 32) .
- Information leaflet on the FOI Act and the Role of the Information Commissioner

The above publications are all available free of charge from the Office or on the website at www.oic.gov.ie

Website

The website also contains additional information about the Office. This includes:

- Information about the Commissioner and her role
- Information on the Office including its compliance with the Irish Language Scheme, the Disability Act 2005 and the Re-Use of Public Sector Information.
- Full text of the FOI Acts of 1997 and 2003 and Regulations made thereunder
- Lists of all Public Bodies within the scope of the FOI Act
- How to make an FOI request to the Office
- How to make an application to the Commissioner for review of an FOI decision of a public body.
- All significant decisions of the Commissioner
- All High Court and Supreme Court Judgments on appeals of decisions of the Commissioner.
- Speeches and Presentations of the Commissioner and staff of the Office
- Guide to the FOI Act.

FOI Requests to the Office

Under the FOI Act, any person is entitled to apply for access to information which is not otherwise publicly available. In general, a person has a right of:

1. Access to records held by the Office
2. Correction of personal information, relating to oneself, held by the Office, where such information is inaccurate, incomplete or misleading
3. Access to reasons for decisions made by the Office which directly affect oneself.

The FOI Act does not cover all records held by the Office. The FOI Act does not apply to records related to reviews under section 34 or investigations under section 36 other than records created before the commencement of the review or investigation concerned, or a record relating to the general administration of the Office. Other records - e.g. those relating to the administration of the Office such as personnel matters or general contacts with public bodies - may be available under the FOI Act (subject to the standard exemptions)

FOI requests relating to records of the Office should be made to:

Phyllis Flynn
FOI Liaison Officer
Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

Telephone: (01) 6395619 Fax: (01) 6395676 E-mail: foi@oic.gov.ie

Requests should be made in writing and should specify that they are being made under the FOI Act. The form in which the records are sought - e.g. photocopies / computer disk - should be stated in the request. To allow identification of the records sought, requesters should describe the records in as much detail as possible. If possible, a contact number which can be used during office hours should be provided for the purpose of clarifying the details of an FOI request. The staff of the Office will assist in the formulation of an FOI request, if necessary.

The Office will acknowledge a request under the FOI Act within two weeks. This will include notification that, in the event that the requester is not satisfied with the FOI decision issued, of the right to request an internal review of the decision. The decision will issue within four weeks.

Right to Internal Review of a Decision

The FOI Act provides for a right to internal review of decisions of public bodies. An internal review may be requested where an FOI request has been refused or partially granted or where access has been deferred. An internal review can also be requested where the form of access or the level of fees charged is disputed. *Refusal of an FOI request is deemed to have occurred where a decision has not issued within four weeks of receipt of the FOI request.*

Requests for internal review of decisions of the Office should be made, in writing, to:

Phyllis Flynn
FOI Liaison Officer
Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

Telephone: (01) 6395619 Fax: (01) 6395676 E-mail: foi@oic.gov.ie

who will ensure that the review is carried out by an official at a higher level than the official who made the original FOI decision. Such a request should be made within four weeks of the original decision. The decision following internal review must issue within three weeks of its receipt.

Review by the Commissioner

In the normal course, decisions of public bodies following internal review are open to review by the Commissioner. However, decisions of the Office following internal review are **not** open to review by the Commissioner. In such circumstances, and subject to the provisions of the FOI Act, such decisions may be appealed to the High Court on a point of law within four weeks of the notification of the result of the internal review.

The rules governing an appeal to the High Court are set out in the Rules of the Superior Courts (No. 3) (Freedom of Information Act, 1997) 1998 (SI No. 325 of 1998) as amended by the Rules of the Superior Courts (Order 130 (Amendment) Rules), 2004 (SI No. 471 of 2004).

The rules governing an appeal to the Supreme Court are set out in the Rules of the Superior Courts (SI No. 15 of 1986).

Fees

The FOI Act provides for both application fees and search/retrieval/copying fees.

Application Fees

Type of FOI Request	Original Request	Request for Internal Review	Application for Review by Commissioner
Access to a record	€15	€75	€150
Access to a record by a medical card holder / dependant of a medical card holder	€10	€25	€50
Third party appealing a decision of a public body to release their information on public interest grounds	No Fee	No Fee	€50
Access to Personal Information relating to the Requester (including where requester seeks records of (a) his/her child, or b) a deceased spouse or relative)	No Fee	No Fee	No Fee
Appeal of decision to charge a fee	No Fee	No Fee	No Fee
Amendment to records (Section 17 of FOI Act)	No Fee	No Fee	No Fee
Statement of reasons (Section 18 of FOI Act)	No Fee	No Fee	No Fee

Search/Retrieval/Copying Fees

The fees are based on rates prescribed by the Minister for Finance.

Search and retrieval/copying fees are not charged where:

- release of the records requested would be of particular assistance to any individual or group seeking to understand an issue of national importance.
- the cost of collecting the fee is greater than the fee itself.

Search/Retrieval Fee: €20.95 per hour

Copying Fee:

Photocopies	€0.04 per page
Floppy Disk	€0.51 each
CD ROM	€10.16 each
X-ray	€6.35 each

The number of hours of search and retrieval time which can be charged is limited to the number of hours it would take to find the records in a well-organised filing system. The charge is imposed only for the physical act of searching. If the search and retrieval fee is likely to exceed €50.79, a deposit of at least 20% must be sought by the public body. The requester should be notified of the imposition of a search/retrieval fee within 2 weeks of the FOI request. They should also be provided with an estimate of the number of hours searching expected. The body will not begin searching until the deposit is paid. The requester may contact the body to see how the deposit could either be reduced or eliminated e.g. by making their request more specific and thereby reducing the number of records which would need to be searched. If the request is refused, the deposit will be refunded.

What can the requester appeal?

The requester can appeal the deposit sought and the amount of the total fee charged. However, only the fee will be considered. The records, which are the subject of the FOI request, will not be examined where a deposit or final fee is appealed.

Structure of the Office

Commissioner:	Emily O'Reilly
Director General:	Pat Whelan
Senior Investigator:	Fintan Butler
Investigators:	Melanie Campbell, Elizabeth Dolan, Alison McCulloch, Marie O'Brien, Desmond O'Neill
Senior Investigator:	Seán Garvey
Investigators:	Ciara Burns, Anne Moran, David Nutley, Colin Stokes, Cathal Duffy.
Higher Executive Officer:	Phyllis Flynn
Executive Officers:	Frank Forde Elizabeth Martin
Clerical Officers:	David Stone Roseanne Browne

The corporate services functions of the Office - human resources, finance, administration and information technology - are supported by the Office of the Ombudsman.

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