

DRAFT

**Code of Practice for Freedom of
Information
for Public Bodies**

**June 2014
FOI Central Policy Unit
Department of Public Expenditure and Reform**

Contents

CONTEXT	2
PREFACE	4
OVERVIEW	5
SECTION 1 ROLE AND RESPONSIBILITIES OF THE FOI CENTRAL POLICY UNIT.....	6
SECTION 2 STRUCTURES AND ARRANGEMENTS IN PUBLIC BODIES FOR SUPPORTING FOI	9
SECTION 3 FOI PUBLIC SERVICE NETWORKS	14
SECTION 4 FOI TRAINING	16
SECTION 5 RECORDS MANAGEMENT	19
SECTION 6 PROACTIVE PUBLICATION OF OFFICIAL INFORMATION	21
SECTION 7 KEY ISSUES IN PROCESSING OF REQUESTS	27
SECTION 8 ENSURING THE ACT WORKS EFFECTIVELY	34
SECTION 9 ENGAGEMENT WITH THE OFFICE OF THE INFORMATION COMMISSIONER.....	36
SECTION 10 FOI STATISTICS.....	38

CONTEXT

Fennelly J.¹ cited the long title of the Act of 1997 and found that:-

“the clear intention is that, subject to certain specific and defined exceptions, the rights so conferred on members of the public and their exercise should be as extensive as possible, this viewed, in the context of and in a way to positively further the aims, principles and policies underpinning this statute, subject and subject only to necessary restrictions. It is on any view, a piece of legislation independent in existence, forceful in its aim and liberal in outlook and philosophy.”

Freedom of Information (FOI) has since its introduction in 1998 made a major contribution to facilitating access to official information for citizens. It has contributed to a shift towards greater openness and transparency in the conduct of the official activities and in Ireland’s administrative and political culture. It has also led to greater accountability in the conduct of public affairs.

FOI is subject to significant challenges. The number, nature and complexity of requests continues to grow. Requests can often relate to sensitive matters. Technology has enabled the creation of electronic records and that has generated challenging issues in terms of record management and extraction of information in response to requests. Requests are made and responses are sought in new formats, and there are legal complexities in the interaction with other legislation such as the Data Protection Acts and other access to information regimes.

The overriding challenge faced by public bodies in delivering the required level of service is staffing constraints, which will remain a key feature of the environment for FOI in the medium-term.

There is an essential requirement both to enhance the overall efficiency of Ireland’s FOI regime and to secure a sustained improvement in the performance by public bodies of their responsibilities under FOI.

The Government, in approving the policy approach for restoration and extension of FOI, requested the development of a Code of Practice for FOI to meet these objectives as well as to achieve greater consistency and uniformity of approach by public bodies in their processing FOI requests than is currently evidenced.

The development of the Code and the contribution of both internal and external experts to that process provide excellent scope:-

- to address existing challenges in implementing FOI;
- to strengthen the framework and organisational arrangements for FOI in public bodies;
- to better support the implementation of FOI and to minimise the administrative burden; and
- to better co-ordinate, deepen and widen the expertise and capacity of public bodies in regard to FOI.

¹ Supreme Court case of *Sheedy v. The Information Commissioner* [2005] 2 I.R. 272

PREFACE

This Code of Practice is being drawn up and published by the Minister for Public Expenditure and Reform under section 48 of the FOI Act 2013.

Section 48 also provides that:-

- the Minister may develop and issue guidelines under the Code; and
- public officials shall have regard to the Code and any guidelines made under it in the performance of any function under the FOI legislation.

OVERVIEW

The purpose of the Code is to support the achievement of the objectives of the FOI Act to enable members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy to information in the possession of public bodies.

The main objectives of the Code are to:-

- Promote best practice in public bodies in relation to the operation of FOI;
- Guide and inform the performance of public bodies in relation to their responsibilities under the FOI Act;
- Ensure FOI requests are dealt with by public bodies as efficiently as possible to minimise the administrative burden of FOI;
- Secure appropriate consistency and standardisation of approach by public bodies in responding to FOI requests; and
- Provide a framework for appropriate oversight and accountability of the performance of public bodies through monitoring of compliance with the Code.

SECTION 1 ROLE AND RESPONSIBILITIES OF THE FOI CENTRAL POLICY UNIT

A strong, expert and authoritative leadership role by the FOI Central Policy Unit (CPU) in the Department of Public Expenditure and Reform is critical to the effective and efficient operation of FOI in public bodies.

The mandate of the CPU must be to develop FOI policy and to guide, inform and advise public bodies on key FOI policy issues across the public service.

The CPU is responsible in consultation with public bodies and working with the FOI networks for ensuring that the policy and legislative framework for FOI supports the effective operation of FOI in public bodies.

Guidance

- 1.1 CPU manuals, guidance and website are important tools in the successful implementation of FOI and must be kept up to date.
- 1.2 The CPU should maintain the FOI website foi.gov.ie, ensuring that it is up-to-date and contains comprehensive and detailed guidance for the public and public bodies on FOI in Ireland.
- 1.3 The CPU should, in consultation with the FOI Networks, ensure the continued availability of detailed guidance for public bodies on the operation of the Act. This will be particularly important for the new public bodies coming under FOI and support for such bodies should be prioritised by the CPU and the Networks.
- 1.4 The CPU must update and maintain existing manuals on 'Processing an FOI Request' and 'Exemptions and Consultation Procedures' as well as guidance notes in view of: legislative changes, the use of new technologies by requesters, demands for requests to be released electronically in new formats, the growing complexity of requests and the linkages between FOI and data protection. These may be used to support those undertaking training and subsequently in dealing with requests.
- 1.5 The CPU must keep its guidance on how to handle FOI requests for personal information up to date to ensure there is consistency between FOI and Data Protection legislation and leave no ambiguity for the decision-makers as to the nature of records that may be released and what steps should be taken. It also needs to provide guidance in relation to what constitutes a new record when a request relates to data held electronically in for example, databases and email archives.
- 1.6 The CPU should modernise and simplify the standard 'model' letters which were developed at the outset of the introduction of FOI legislation in Ireland to assist FOI bodies in responding to requests. There is a need to ensure plain language is used in such letters and that in responding to requests the relevant section of the FOI Act being

relied on by decision-makers is referenced. The rights of appeal² must also be fully explained. However, it should be remembered that these letters are provided to assist FOI bodies. They can and indeed may require to be tailored by individual bodies in reaction to specific situations. While the use of these standard formats enhances the level on consistency in responses they do not purport to have a statutory underpinning.

Policy development and advice

- 1.7 CPU support should be targeted primarily on specific policy issues that cut-across all public bodies rather than in advising on specific cases to public bodies reflecting any weaknesses in capacity in FOI in any public body, unless the case raises a significant policy issue that is relevant for all public bodies.
- 1.8 The CPU needs to develop deeper understanding, expertise and policy dealing with 'new' types of requests, promoting of proactive publication policies, and guidance in such areas as records management.
- 1.9 The CPU has a key role in providing evidence based policy advice to the Minister. It must ensure policy making is informed by experience of the implementation of the Act as well as the full administrative cost of FOI.

Dissemination

- 1.10 The CPU should, in consultation with the FOI Networks and public bodies as appropriate, continue to liaise on an ongoing basis with the Office of the Attorney General to obtain and disseminate to all public bodies legal advice on key legal issues relating to the operation of the Act, as well as the Office of the Information Commissioner (OIC) and High Court decisions.

Cost of FOI

- 1.11 The CPU must oversee and ensure a system is in place which will allow the timely and accurate collection of statistics by all relevant bodies.
- 1.12 It must ensure the statistical base has the necessary indicators which will allow it to measure accurately, for example, year on year the growth in and nature of requests, the time spent on processing them, the full cost of processing requests, the number of voluminous requests, the fees charged.
- 1.13 The CPU must ensure that the charging structure in place is clear and that it promotes consistent charging across the system. In performing these roles, the CPU must liaise closely with participants in the FOI networks to ensure that the work of the CPU in this area is strongly informed by practical experience of the legislation.

Networks

- 1.14 The CPU has a leadership role in relation to the networks.

Communications & Training

² e.g. the two layers of appeal; estimated search and retrieval fees may be appealed at no cost internally or further to the OIC if dissatisfied with the decision on estimated costs, etc.

- 1.15 The CPU is responsible for developing a national framework for FOI awareness, FOI training and communication on FOI.
- 1.16 The CPU should play a central role in standard-setting and quality assurance for FOI training provision (see Section 4).
- 1.17 The CPU has a role in communicating to the public the responsibilities that exist in relation to promoting Open Government in tandem with the proactive release of information. It also has a role in participating in international networks (e.g. OECD) to ensure that Ireland stays abreast of international best practice and communicates developments and progress made in Ireland.

SECTION 2 STRUCTURES AND ARRANGEMENTS IN PUBLIC BODIES FOR SUPPORTING FOI

FOI is a core function of the work of public bodies. It ensures that the role, functions and activities of the body are carried out in a truly open and transparent manner. It plays a critical role in maintaining and enhancing public trust and confidence in the individual FOI body and contributes to the overall restoration of trust and confidence in Government. Therefore, it is important that in addition to the FOI Central Policy Unit (CPU), a strong framework must be in place within each public body to support the effective implementation of the FOI Act.

The structures put in place in each public body are pivotal to the effective performance of the public body's in relation to delivering on their commitment to quality in meeting their obligations under FOI as well as minimising the administrative burden of FOI.

Role and responsibilities of the MAC / Management Board

- 2.1 It is incumbent on the Management Board / MAC to ensure the necessary structures are in place to support the implementation of FOI in their organisations and that there is effective governance of these structures.
- 2.2 It is the responsibility of senior management within each body subject to FOI to promote the objectives of FOI in the context of the performance of the organisation's functions and obligations to the public.
- 2.3 The Board must oversee and support the efficient and effective implementation of FOI in accordance with the objectives of the Act and the guidance set out in this Code.
- 2.4 The Board must ensure and satisfy itself that there is appropriate governance and organisational structures are in place for dealing with FOI internally, i.e. assignment of operational responsibility to an FOI officer, decision makers, and internal reviewers at appropriate levels and that these officers have the requisite training to enable them to undertake these roles competently.
- 2.5 The Board of each public body should ensure that there is an adequate FOI tracking system (whether excel, database or other) in place in public bodies to enable monitoring of progress as well as policy and guidance on records management to support the efficient implementation of FOI.
- 2.6 The Board must promote awareness that FOI is part of the core work and overall objectives of the organisation and as such its delivery by the FOI Unit and decision-makers throughout the organisation must be balanced with delivery of other functions.
- 2.7 The Board should review annually the capacity and capability of the FOI system of the public body to confirm that the body can meet its obligations under the FOI legislation.

Role and responsibilities of the FOI Officer

While delivery of the Board's leadership role in relation to the delivery of FOI as described above is critical, the FOI officer, as the gatekeeper for the public body's FOI requests and conduit both to the requester and decision-maker, is the linchpin of a public body's capability in relation to FOI.

Expertise and Support

- 2.8 The FOI officer must be given appropriate administrative support in line with the size of the organisation and the volume of requests. He/she should be or be capable of becoming a recognised expert within the organisation on how the legislation applies to the information and records of the public body and have sufficient expertise and experience in dealing with FOI requests.
- 2.9 The FOI officer should have leadership skills and sufficient seniority and capability to raise significant issues with senior line managers and the Board, for example, the handling of specific FOI requests or the systems or capacity of the body to meet its requirements under FOI. He/she should report directly to senior management at least on a bi-annual basis on the performance of the organisation's responsibilities under FOI as set out in guidelines under this Code, including its responsibilities in relation to its publication scheme.
- 2.10 Any other roles and responsibilities performed by the FOI officer should not encroach on their ability to meet the requirements of his or her role as an FOI officer set down in this Code.

Internal Guidance

- 2.11 The FOI officer is a focal point for advice and guidance within his/her public body; and should have an ability to provide guidance on exemptions, applying the public interest test, application and explanation of search and retrieval fees, redaction of data, handling of non-traditional requests etc. The FOI officer should be the first port of call for Decision-makers when seeking advice. If the FOI officer cannot answer the question, then the issue may be raised with the CPU by the FOI officer (or the Decision-maker if the query is very complex/technical). Alternatively, if time permits, the issue may be discussed at a relevant Network meeting and in such cases anonymity of the requester/third party in the recording of the minutes should be maintained.
- 2.12 The FOI officer has a key role in maintaining standards in delivery of FOI through ensuring that there are awareness raising, basic and advanced training courses on FOI provided at appropriate intervals, with support from CPU and external providers as appropriate; as well as keeping abreast of developments and disseminating lessons learned as gleaned from the networks and key decisions of the OIC and case law.
- 2.13 He/she should maintain up to date information on relevant precedents for similar requests received in his or her public body particularly in relation to exemptions sought and including those subsequently confirmed or overturned by decisions of the Information Commissioner and disseminate these amongst decision-makers.

2.14 The FOI networks provide an excellent means of sharing learning and expertise and assist in developing common approaches. The FOI officer should participate in relevant FOI networks to realise such benefits and transfer learning to the body.

2.15 The FOI officer is in a pivotal position to inform and contribute to the public body's policy on records management and on the publication (routine or otherwise) of documents and information relating to that body.

Engagement with requesters

2.16 The FOI officer should engage with the requester if he/she is of the opinion that the FOI request is not valid or is not for the public body and work with the requester to clarify the request and/or advise that the request will be transferred to the appropriate public body.

2.17 The FOI officer should develop a strong awareness and knowledge of other access regimes and in particular Data Protection Acts 1998-2003, Re-Use of Public Sector Information Regulations and EC Access to Information on the Environment Regulations so as to be in a position to advise the requester if there is a possibility of obtaining access under alternative mechanisms.

Service standards

2.18 The FOI officer, supported by FOI Network and CPU, plays a central role in the implementation of FOI and must ensure the public body is guided by good practice overall and displays a commitment to quality in responding to requests.

2.19 The FOI officer should advise line management and / or the Board of any steps which s/he believes are necessary to help achieve overall compliance with statutory deadlines for processing FOI requests in order to ensure efficient and timely responses to requests.

2.20 He/she also has a role in supporting the evidence-base for policy-making and should ensure FOI statistics for its public body (and the bodies under its remit as appropriate) are collected and made available on a timely basis.

Contact point / relationships

2.21 The FOI officer is the first point of contact with the public, the CPU and the Office of the Information Commissioner and must liaise effectively and maintain good relationships with these and with all interested parties (decision-makers, internal reviewers, CPU and the OIC).

2.22 The FOI officer should ensure the Public body has a standardised email address and a phone number so that people know they can contact the body to enquire about how to make an FOI application and target their request.

Role and responsibilities of Decision-makers

Build knowledge/expertise

2.23 Decision-makers must have received at least basic training (or have a level of experience of dealing with FOI requests equivalent to have undertaken basic FOI training) and advanced training where appropriate to provide them with a solid

understanding of the process and the legislative requirements to enable them to handle requests effectively and apply exemptions and public interest or harm tests, as appropriate and in manner which will minimise the prospect that their decision-making will be overturned on appeal.

2.24 Decision-makers should ensure they have good knowledge of the legislation and any new guidance in relation to processing of requests.

2.25 In addition to the legislation and the provisions contained in this Code, Decision-makers should be aware of what guidance is available both within its own Public body or available centrally from the CPU or the OIC. The Decision-maker should review any guidance which is of relevance to the request.

Engagement with requesters

2.26 The Decision-maker should work proactively with requesters to help them refine requests to ensure requests are appropriately focused and targeted, are not voluminous, do not give rise to excessive administrative demands on public bodies, and that there is clear understanding on the part of the body as to what information is being sought. The Decision-maker should also have the ability to explain search and retrieval fee estimates and appeals mechanisms that are in place to requesters.

2.27 The Decision-maker should ensure early consideration and decisions are made in relation to identifying an estimate of the cost to search and retrieve records and whether a deposit should be charged so as to advise the requester on a timely basis.

Service delivery / standards

2.28 Decision-makers should ensure they adhere to deadlines and engage with requesters and consult third parties as necessary in a timely manner.

2.29 Decision-makers should work collaboratively and co-operatively with FOI officers in dealing with requests and in particular provide responses, estimates of costs and other assistance as necessary on requests that are co-ordinated by FOI officers.

2.30 In complex or difficult cases the Decision-maker should liaise closely with the FOI Officer to identify relevant precedents relating to similar requests received by the body or should refer to decisions made by the Information Commissioner.

2.31 In cases where a request involves non-personal records provided by other public bodies which may appear in the media once released, it is advisable to contact other public bodies to advise them that records are being released so that they may be prepared for any press queries arising. It is also advisable for FOI decision-makers to contact decision-makers in other Departments on related requests for advice and to ensure consistency in approach.

2.32 The Decision-maker should ensure that all records including electronic records that may be relevant to the request are identified and that all staff engaged in the search and retrieval process have a clear understanding of the records that should be extracted for review.

2.33 The Decision-maker shall prepare a schedule of records identified (section 7.22 refers).

Role and responsibilities of Internal Reviewers

2.34 Where an internal review is received, internal reviewers should review decisions made by FOI Decision-makers; and following the review may affirm, vary, or annul the decision in relation to the matter as he/she considers appropriate.

2.35 Internal reviewers must consider cases afresh (de novo) in terms of evaluating the evidence and in terms of any new arguments put forward by the requester, and must adhere to deadlines. The review process is completely independent of the original decision.

2.36 The Internal reviewer must co-operate with the FOI officer, as appropriate, in processing the appeal.

2.37 It is advisable that reviewers should be from a different functional area from the decision-maker and, as required in the Act, be at a more senior level in the organisation.

2.38 There is an onus on reviewers to ensure they have adequate training on FOI and that they keep abreast of developments such as legislative changes, OIC decisions, case law etc.

SECTION 3 FOI PUBLIC SERVICE NETWORKS

FOI networks must provide a robust support infrastructure for FOI and facilitate a consistent approach to the application of FOI across government departments and the wider public sector.

While a number of the networks continue to meet and play a valuable role in sustaining best practice in FOI decision-making and administration, other networks no longer function due in part to resource and time constraints (details of the various Networks in place, their purpose and how they are run will be made available on www.foi.gov.ie).

All networks need to refresh and renew so as to provide the support needed for FOI decision-makers, ensure continuous improvement in FOI structures and procedures and enable best practice to be applied across FOI bodies to the benefit of the public. Public bodies which are coming under FOI for the first time should join the networks to benefit from the support and policy advice given by the networks and the CPU.

The FOI Networks should lead the development of an operational environment for FOI which secures high-quality decision making.

The operational role of the networks is complementary but distinct from the legislative and policy role of the CPU.

A strong leadership role must be provided by the CPU in driving this agenda forward.

Role

- 3.1 The networks should seek to secure an appropriate consistency and uniformity of approach to operational FOI issues;
- 3.2 The networks are responsible for co-ordinating the response to FOI issues that may affect a number or all public bodies participating in any particular network;
- 3.3 The networks should ensure that policy and legislative developments are fully informed by operational realities; and
- 3.4 The FOI Networks should promote FOI awareness and best practice and compliance by FOI bodies with the obligations and responsibilities of public bodies under the Act.

Expertise and knowledge sharing

- 3.5 The networks must act as a key focal point for ensuring a cohesive and integrated approach to FOI in all public bodies, facilitating the exchange of knowledge, information and expertise and leading to on-going and progressive learning for all involved.
- 3.6 Networks should examine complex issues and cases and also consider cases from other jurisdictions. They must play their role in developing, supporting and promoting best practice in terms of the operation of the Act.

- 3.7 Networks must operate effectively to provide open and expert forums for the communication, discussion and resolution of issues relating to the operation of FOI in FOI bodies. This would include practical matters such as sharing ideas in relation to handling of non-traditional requests, linkages with other enactments and resolving difficulties imposed as a result, best practice in publishing disclosure logs and information routinely requested etc.

Advice and Guidance

- 3.8 The FOI Networks should provide a forum for providing advice and guidance to FOI officers on a range of matters including legal advices from the Office of the Attorney General, OIC findings and High Court decisions as well as sharing experience and lessons learned on an on-going basis.

Informing policy development

- 3.9 The Networks should develop and maintain a close working relationship with the CPU in order to ensure that policy development and consideration of legislative change is fully informed by a strong knowledge of what is happening on the ground and that the FOI work of public bodies is strongly guided by the knowledge, perspectives and objectives of the centre.
- 3.10 The CPU can derive very substantial benefit from obtaining feedback on operational matters from the chairs of the other networks which can in turn feed into policy-making and guidance on cross-cutting issues as appropriate. The CPU can develop policy approaches as well as promote best practice in record management, publication policy and so on.

Guidance / Training role

- 3.11 While the CPU and the networks have distinct roles, their work should complement each other in that the networks are in a position to provide local support and practical guidance in the first instance thus assisting in addressing local sectoral specific issues with common approaches and solutions.
- 3.12 The networks also have a role in determining specific sectoral training requirements and should cluster together in relation to the provision of training as appropriate. They can play a vital and inexpensive role in developing and sustaining best practice in decision-making for their sectors.

Participation in other Networks

- 3.13 The chairs of the various FOI networks should attend the Public Service Users' Network, once re-established, to benefit from shared experiences and learning of other networks as well as to be updated from the CPU on FOI policy developments, new legal advices, guidance, decisions etc.
- 3.14 The CPU should chair the Public Service Users Network, as well as providing secretarial support to it, and is responsible for steering the agenda of the network forward.

SECTION 4 FOI TRAINING

The fundamental prerequisite to achieving an excellent FOI regime is appropriate training for all personnel involved in dealing with FOI which equips public bodies to fulfil properly their roles and responsibilities under the legislation.

A single training framework for FOI should be developed and adopted across all public bodies.

Advanced training reflecting differences in the needs of different public bodies should be accommodated within this overall framework.

Single Training Framework

4.1 The FOI CPU should prepare proposals for agreement with the FOI Networks on the development of a single training framework for FOI in public bodies setting out for example:-

- the specific content / duration of courses;
- required standard of training and experience / qualifications of trainers;
- recommended delivery model; and
- arrangements for quality assurance of FOI training.

4.2 When such a framework is agreed all FOI training should conform to it.

4.3 The framework should be kept under review.

4.4 The framework for FOI training must accommodate the participation of FOI experts from public bodies in FOI training for public bodies.

Training requirements

Courses

4.5 The training framework should encompass the following:-

- Introductory/basic/awareness course
- advanced course
- Refresher course/Seminars
- Train the trainers course
- Web-based training

Basic

4.6 Basic FOI training would be expected at a minimum to cover the following:-

- an overview of the legislation, the FOI Code of Practice and set out key instructions for participants addressing the processing of requests, the handling of fees, the preparation of decisions, the use of exemptions, timelines, how to handle appeals and submissions to OIC etc.;
- the key principles of FOI and the public interest in providing information the role of FOI officers as their organisation's leaders on FOI;
- formatting of records or files (i.e. pdfs, spread sheets etc.), redacting records;

- use practical case studies and checklists;
- awareness of notable OIC and High Court decisions;
- awareness of Data Protection legislation and the AIE regulations, Re-use of Public Sector Information Regulations;
- use of tracking systems and recording of FOI statistics; and
- key guidance and resources available.

Advanced

4.7 Advanced training should include:-

- the proper application of the public interest test and harm tests;
- dealing with commercially sensitive/confidential requests, Cabinet records, etc.;
- dealing with personal information requests (deceased records, next of kin issues, amendment of records etc.);
- dealing with requests seeking information/records in non-traditional format, redacting, any notification requirements; and
- linkages with Data Protection, Re-use of Public Sector Information and Access to Information on the Environment Regulations.

Supporting the training courses

- 4.8 The updated CPU manuals should be further developed and adapted in-house in the FOI bodies with assistance/guidance of the CPU to tailor them to the specific issues that arise in the public bodies given the nature of their functions as the business of no two bodies is identical.
- 4.9 The CPU should update its training course slides and make them available for use by FOI officers and Decision-makers. This would be in addition to the guidance already available and guidance to be developed in the future by the OIC. Such guidance could form the backbone of any basic training course to be delivered by bodies or indeed decision-makers could review the slides themselves to refresh themselves.
- 4.10 The training system should be linked to developments in related areas including for example, records management, ICT developments.
- 4.11 Decision-makers should use decisions of the Information Commissioner and case law as useful reference points which should in turn form a body of precedents. Guidance notes published by the OIC should also be used to assist decision-making.
- 4.12 The CPU should develop and provide an IT based helpdesk service (an extranet) which would enable FOI officers to log relevant queries relating to significant issues to which CPU would respond and to which all FOI officers would have access to share learning. The IT based helpdesk service should be the first port of call for FOI Officers if consistent implementation of the FOI Act is to be achieved. It should however be supported by the phone help facility and the Network meetings as appropriate. Guidance will be developed on use of the IT based helpdesk, once in place.

4.13 An electronic newsletter issued on a regular basis by the CPU would also help underpin the FOI training by ensuring the widest possible sharing of relevant up-to-date information on FOI issues.

4.14 The CPU should ensure that bodies coming within FOI for the first time are fully linked into the FOI training model.

4.15 In view of their expertise and experience in FOI, the CPU should make proposals for how the networks can support the development of the FOI training model.

Delivery of Training for existing bodies

4.16 FOI training should be included within any shared service model for learning and development put in place for the civil service.

Delivery of Training for new bodies:

4.17 Relevant line Departments, the CPU and the Office of the Information Commissioner (OIC) should work together to ensure senior management (and Board members if relevant) of public bodies subject to FOI for the first time are properly briefed on, for example, the obligations under the Act and the principles it aims to achieve, of the structures (FOI Officer, decision-makers, internal reviewers) that will need to be put in place as well as the need for a tracking system, a system to ensure good records management, a need to draw up and implement a publication scheme and that staff training will be required.

4.18 Over time, these bodies will need to develop their own guidance on specific issues arising for them from FOI.

Standards in training provision

4.19 In order to ensure quality assurance and high standards in external training provision, the CPU should in accordance with procurement rules tender for and establish a panel of qualified service providers which it is satisfied can meet FOI training needs thus ensuring consistency in standards, approach and core messages.

Resourcing

4.20 FOI officers and the CPU have a key role to play in ensuring the provision of training. Senior Management must be cognisant that there will be resource implications – the FOI Officer may be required to be a full time post in some organisations and time will need to be made for FOI which must be seen as part of the core work.

SECTION 5 RECORDS MANAGEMENT

5.1 The Department of Public Expenditure and Reform should review and update existing guidelines on records management. The guidance could set out:

- the range of activities from prescribing record formats and document/forms design, through the development and operation of record-keeping systems by:
 - analysis of organisational functions to determine where records should be captured;
 - developing records classification schema; and
 - monitoring records capture and record-keeping activities.
- the processes required for the systematic and efficient control of records creation/receipt, classification, maintenance/storage, destruction and transfer to registry. This should include the formulation and implementation of records retention and disposal schedules and the provision of a record retrieval service.
- the processes required for management of electronic information (including what must be stored as records in relation to emails) and its integration with hardcopy information.
- where archival laws are in place, activities related to the transfer of records of permanent value to archival custody for release to the public (what records must be kept and in what state of preparedness for the archives).

5.2 Records management poses a very significant challenge for public bodies, not least due to the advent and adoption of new information and communication technologies. In particular there is a lack of clarity and knowledge deficits relating to the management of electronic records.

5.3 While records management relates to a broader set of corporate responsibilities than FOI, in order to facilitate the smoother operation of FOI in public bodies, there is a compelling need for sound record management practices and systems.

5.4 The requirements outlined below in relation to records management should be read in conjunction with existing legislation on record keeping under the National Archives Act(s).

Role of the Centre in Records Management

5.5 The Department of Public Expenditure and Reform will examine the case for regulations for the proper management and preservation of records in the care of a Department of State³ as permitted under the National Archives Act, 1986 and advise the Minister accordingly.

³ The National Archives Act does not extend to the full range of bodies that are currently subject to the Freedom of Information Acts, 1997 and 2003.

5.6 Such Regulations could, for example, provide for:-

- the allocation of corporate and operational responsibility within public bodies for the discharge of records management and record-keeping responsibilities;
- following consideration of ISO standards, the adoption by public bodies of recognised standards on records management if appropriate and requiring of compliance by public bodies;
- the formulation of records management and record-keeping guidelines and procedures at organisational level that would seek to integrate technology use and the creation of electronic information into record-keeping systems where required to be captured;
- the formulation of current and relevant records classification schemes within public bodies;
- the development of records retention and disposal schedules; and
- monitoring and demonstrating compliance with standards, guidance and procedures.

Role of public bodies in records management

5.7 The Management Board in each public body should assign management responsibility for records management to a senior member of staff with, or capable of, developing appropriate knowledge and skills to achieve the aims of good records management.

5.8 The Board should ensure awareness of records management guidelines and practices are included in induction and ongoing training of all personnel.

5.9 Each public body should have an overall records management policy statement in place on how it manages its records. This statement should be endorsed by the Management Board who must ensure it is adhered to by all performance.

5.10 The statement should provide a mandate for the performance of all records/information management functions as well as setting out the body's commitment to create/classify, manage, store, destroy and transfer records for archival purposes.

5.11 Each public body should have detailed records management guidelines in place which conform with the guidelines published centrally but would be tailored to the specific functions of the organisation and the nature of records held.

Use of personal mobile phone/ emails

5.12 Each public body should have guidelines/policy in place on the use of personal mobiles and personal email addresses for work purposes insofar as FOI requests are concerned.

SECTION 6 PROACTIVE PUBLICATION OF OFFICIAL INFORMATION

A much more proactive approach to the publication of official information by public bodies would be expected to reduce the volume of FOI requests by pre-empting requests that would otherwise arise. Greater publication of official data and information will in any event be further mandated by the revised EU Directive on the Re-use of Public Sector Information. It is also consistent with the Government's commitment to participate in the multilateral Open Government Partnership and in particular its open data objectives.

The adoption of a practice of routine publication of information which might otherwise be the subject of a FOI request will free up staff capacity of public bodies from dealing with FOI requests

Under the FOI Act, FOI bodies must prepare and publish a 'publication scheme'⁴ in accordance with the "Model Scheme" provided for in the legislation or an amended version that the Minister may prescribe, following consultation with the Information Commissioner, for particular bodies to use as a basis for their own schemes. The Act sets out in broad terms what the publication scheme should contain at a minimum. It provides that the Commissioner may examine and report in her annual report as to whether bodies are in compliance with this requirement.

Routine Publication of Records

- 6.1 Public bodies should publish as wide a range of information as possible on a routine basis outside of FOI and in open and accessible formats. The FOI Act allows for the publication or giving access to records (including exempt records) outside of FOI provided such publication or giving of access is not prohibited by law.
- 6.2 In publishing information, FOI bodies should have regard to the principles of openness, transparency and accountability as set out in section 11 of the FOI Act.
- 6.3 Information which is consistently the subject of FOI requests and whose release is not otherwise restricted should be published proactively, at regular intervals. Such information might include, for example, Ministerial diaries, Ministers' and special advisors' travel and subsistence costs and expenses, certain details in relation to procurement, information relating to public consultations, etc.
- 6.4 Payable Orders in excess of €20,000 (or such lower amount as may be determined) should be published on a quarterly basis.
- 6.5 A systematic management process or policy in relation to proactive publication should be developed based on the monitoring or tracking of the nature of FOI requests received over regular intervals.

⁴ Publication schemes are regarded as good practice in FOI in other jurisdictions as a means of disseminating information relating to functions and activities of public bodies.

6.6 Information should be regularly and automatically published in relation to public procurement competitions as follows:

- Name of winning contractor/organisation;
- Value of the contract;
- What the contract is intended to achieve/will deliver; and
- Duration of contract and expected completion date.

Publication Schemes

6.7 Publication schemes should be readily accessible and prominently published in the FOI part of the website. Schemes should be crisp and clear setting out the nature of the information the organisation publishes. The information/documents in question would be published throughout the website of the organisation.

6.8 Each public body's publication scheme should provide for the publication of extensive information on its nature, role, responsibilities and activities including the following. The information to be published as part of each FOI body's publication scheme must at a minimum include the following under each information heading (in cases where a particular item is not applicable to a particular FOI Body a short note should be provided explaining the reasons):-

Basic information on the FOI body:

- details of the legislative (or other) basis underpinning the establishment of the FOI body, registration details and copies of Memoranda and Articles of Association where applicable etc.;
- the structure of the FOI body in terms of Divisional/functional areas by way of an organisation chart (at least as far as AP level or equivalent);
- internal policies and any operational and/or governance arrangements/procedures in place;
- accountability arrangements including reports to regulators, internal and external Auditors;
- information that is sought on a regular basis – that would not be exempt under FOI; Such information should be published proactively, at regular intervals and might include, for example, Ministerial diaries, Ministers' and special advisors' travel and subsistence costs and expenses;
- where charges are payable for publications prepared for sale on a commercial basis and sold through a retail outlet e.g., bookshop, museum or research journal, details of the cost and where the publication may be purchased;
- details of the FOI bodies Disclosure log in relation to non-personal requests (see further details below);

- Where applicable details of board membership, vacancies and method of appointment; and
- contact points, addresses and locations.

Functions and Services Provided:

- Mission Statements, Corporate Plans etc.;
- details of the nature, role, responsibilities and activities of the FOI body;
- details of services provided by the body including how such services may be accessed and/or applied for;
- Details of any fees or charges for availing of services; and
- strategy and policy for delivering functions and services.

Decision Making Procedures:

- Circulars/guidance/procedures/rules for the purposes of decisions, determinations or recommendations under or for the purposes of any enactment relating to any scheme implemented (e.g. involving grants) with respect to rights, obligations, sanctions etc. to which the public is or may be entitled; or services provided including how such services may be accessed;
- Customer Codes or Charters where applicable; and
- any rights of review or appeal in respect of decisions made by the body.

Financial Information:

- Financial Statements including annual accounts and any regular update statements;
- Details of spending on capital projects (where applicable);
- details of expenditures over an agreed threshold;
- Board Member remuneration (where applicable);
- Expenses policies and procedures; and
- Pay and grading structure.

Procurement:

- Procurement policies and procedures;

- Details of current tender competitions; and
- Information in relation to completed public procurement competitions as follows:
 - information about the procurement of goods and services;
 - Name of winning contractor/organisation;
 - Value of the contract;
 - What the contract is intended to achieve/will deliver; and
 - Duration of contract and expected completion date.

Performance:

- Annual reports;
- Performance indicators and performance against them;
- Evaluation reports; and
- Internal Audit/C&AG or other external reports and reviews.

Publication schemes prepared under section 8 should be readily accessible and prominently published in the FOI part of the website. Schemes should set out the nature of the information the organisation publishes grouped under readily understandable headings. The information published through this scheme should, wherever possible, be available on the FOI Body's website or through links to other freely accessible websites. There must be an alternative arrangement for people who do not want to, or cannot, access the information either online or by inspection at the Body's premises.

6.9 Consistent with the legislative requirement, a written copy of the publication scheme should be maintained in the head office of each organisation.

6.10 The publication schemes should be reviewed periodically to ensure they are up-to-date. Publication schemes should be revised if appropriate following any revisions of the above guidelines by the Minister or where the Minister prepares model publication schemes for particular bodies or classes of bodies to ensure the schemes are in conformity.

6.11 All FOI bodies must confirm in writing to the relevant Government Minister within 6 months of section 8 of the Act commencing that they are in compliance with section 8 and have published the publication scheme and information in that regard.

6.12 Information/records published under the publication scheme should be reviewed and kept up to date as appropriate.

Disclosure Logs

6.13 Disclosure logs in relation to non-personal requests should be published on a regular basis (e.g. quarterly). This requirement to publish details only applies to non-personal

requests **under no circumstances should any details of personal requests ever be published**, whether they are received from individuals themselves or on their behalf as provided for in the legislation. This does not prevent the publication of summary information in relation to the number of such requests (including the number of parts of each request) received for statistical purposes.

6.14 The log should provide summary information of accepted/valid requests:-

- Date of request;
- Name of the requester (other than when the request applies exclusively to the requester's personal information);
- The request (categories of records sought) or link to actual request letter;
- Decision made: whether it was granted in whole or in part, or refused; and
- Date of release.

6.15 Notification of requesters: The standard letters of acknowledgement to requesters should be used as an opportunity to apprise requesters that their requests (including the name of the requester) will be placed on disclosure logs and that non-personal records released will be published. The letter should make it clear that the disclosure log policy does not apply to requests for personal information.

6.16 When undertaking third party consultations on the release of information subject to an FOI request, the third party should also be apprised of the possibility of the record being made available through a disclosure log and published if released under the request.

6.17 An organisation should publish the non-personal records it releases (in whole or in part) in response to the requests it has received. There is a need to ensure that:

- privacy rights are not infringed;
- persons are not subject to commercial disadvantage through the inadvertent release of records;
- exempt information is not published erroneously;
- publication of material on websites is operated on an equitable basis i.e. it would not be appropriate to single out any particular users of the Act for selective publication;
- The Office of the Attorney General has made it clear that in publishing material released under FOI, a public body should allow a requisite time to elapse before publication to allow for the possibility of a review or court appeal (see also CPU guidance note number 21 - Guidelines in relation to the Display of FOI Requests on Websites); and
- records, if any, released under FOI and published should be provided in open accessible formats where possible.

- 6.18 All FOI bodies should provide a link to its disclosure log to the CPU who will make such links accessible centrally.

Good practice in web publication

- 6.19 Information should be readily found on websites, for example, by enabling search functions and having an alphabetical directory as well as tree structures.
- 6.20 Guidance on the format, layout, style etc. of how information should be published is a matter for the ICT Unit or Communications Unit of individual FOI bodies.
- 6.21 The profile of FOI should be raised on the website of each FOI Body with FOI being easily found on the home page. FOI bodies must ensure that they clearly set out on their website in FOI area details on accessing information including instructions on how to make an FOI request, how such requests will be processed and what procedures are available to requesters if they are unhappy with response.
- 6.22 FOI bodies must ensure that information may be made available to people who cannot access the internet. This may be achieved by offering to print out information from the website following a request.
- 6.23 There should be standardised email addresses for FOI officers in each public body and standardised contact formats (e.g. foi@taoiseach.gov.ie) instead of using personal email addresses as is the practice in some public bodies. The phone numbers of FOI officers/Unit should also be made available.

SECTION 7 KEY ISSUES IN PROCESSING OF REQUESTS

Notwithstanding the modernisation of the legislation, FOI legislation is complex and dealing with FOI requests can be challenging requiring FOI Officers, Decision-makers and Internal Reviewers to determine new and finely balanced issues relating to the release of records.

Only a very small number of cases are usually appealed to the Information Commissioner (i.e. less than 2%). Of the 258 FOI reviews completed by the OIC in 2013, 40% were affirmed, 25% were withdrawn, 11% were annulled, 7% were varied with the remainder of the appeals settled or discontinued. While these returns indicate by and large that initial decisions were good, there is significant scope for improving the processing of FOI requests, by for example adhering to timelines for responding to requests, greater transparency on the basis for and consistency in the charging of search and retrieval fees, more information on rights of appeal, greater consistency in the application of exemptions with documented evidence of the consideration of the actual injury likely to arise from release, or of the balancing of the public interest test in the disclosure.

Dialogue and communications between public bodies and requesters could be improved and public bodies should be encouraged to engage with requesters to help them refine their requests. Provision of contact details should be standardised and letters of reply need to be simplified in terms of the language used, improved in terms of the information provided and updated.

It is also essential to achieve greater consistency on the handling of multifaceted requests and voluminous requests to reduce the administrative burden of FOI.

General handling of requests

Comprehensive and detailed manuals for decision-makers on all aspects of processing FOI requests are maintained by the FOI CPU and include information on appeal procedures, and on applying exemptions and third party consultation procedures.

These manuals are currently available at www.foi.gov.ie and will be appended to this Code once updated.

The guidance provided in this section is additional to that covered in the manuals and is intended to cover new developments pending updating of the manuals.

On receipt of request by FOI Officer

Validity

7.1 The FOI officer should check to see if request is **valid**, i.e.

- the request is made under the FOI Act;
- the records sought are likely to be within the remit of the Public body;
- the request is not considered voluminous⁵; and

⁵ If the request is considered voluminous, see procedures set out in Section 8.

- the request contains sufficient particulars in relation to the information concerned to enable the records sought to be identified by taking reasonable steps.

Acknowledgement

7.2 If in the FOI officer's view the request is valid, the FOI officer should issue a standard acknowledgement of the request giving timescales for the decision, information on who will process it, the deadline for issue of the response and that a review may be sought if no response is received by that date. The request is then sent to the relevant section for processing.

Searching and retrieving records and fees

7.3 When the Decision-maker receives the file, he/she must as a first step assess whether any search and retrieval fees will apply. Where search and retrieval fees apply, he/she must advise the requester on the level of search and retrieval fees, how they are calculated and how much of a deposit (if any) is required within two weeks of receipt of the request (if not earlier). The Decision-maker should offer the opportunity to the requester to refine the request with the aim of reducing or eliminating the search and retrieval fees and offer to assist them in this process if required.

7.4 If search and retrieval fees apply and a deposit has been sought and received, the decision-maker, who must be appropriately trained and have access to guidance on FOI, must be cognisant of and comply with timelines in processing the request (noting that the clock stops from the date the deposit is sought until it is received). Work should begin as soon as possible after receiving the request in searching for and retrieving relevant records.

7.5 The activities that can be charged under search and retrieval are limited to those that a public body can reasonably expect to incur in:-

- Determining whether it holds the information requested;
- locating the information or documents containing the information;
- retrieving such information or documents;
- extracting the information from the document or other information source containing both it and other material not relevant to the request; and
- scheduling the relevant records to prepare them for consideration.

The decision making process and the cost of redacting relevant but exempt information may not be taken into consideration.

7.6 Final Search and Retrieval and copying costs should be recalculated at decision time to reflect the number of actual records being released. Any deposit already paid is offset against the full cost.

7.7 Where search and retrieval and copying charges to be levied are estimated to be below the minimum threshold level to be prescribed in Regulations (€100), no search and retrieval and copying charges will be levied thus providing uncharged search, retrieval and charging time for the requester and promoting focussed requests. Where search and retrieval and copying costs are estimated to be above this level but below an upper limiting cap to be prescribed in Regulations (€700), no free time is given and the full

search and retrieval and copying cost must be charged subject to a maximum level to be prescribed in Regulations (€500).

- 7.8 Where the search and retrieval and copying charges to be levied are estimated to be over the upper limiting cap to be prescribed in Regulations (€700), the requester will be advised of this by the Decision-maker and invited to refine his/her request to bring the cost below the cap. If the requester refuses to refine the request in this manner – i.e. bringing the estimated cost below the upper limiting cap, the public body may refuse to process the request. If the public body chooses to process the request, the €500 max charge will **not** apply and the requester will be required to pay the full cost of the search and retrieval charges. In any such cases a deposit must be sought and received in advance of any further processing of the request.

Processing the request

Third-party consultation

- 7.9 If **third-party consultation** is required, the decision-maker must advise the requester and invoke the additional three week period for making the response. The decision-maker must adhere to the timelines for carrying out third-party consultation. The public interest in releasing the information must be considered.

Public interest

- 7.10 A Public Interest Test provided for in sections 29, 30, 32, 35, 36, 37, 39 and 40 of the legislation. This requires the decision-maker, in examining the records deemed relevant to the request, to take the public interest into account, inter alia, the need to achieve openness, transparency and accountability in decision-making, the right of the people to be aware of and participate in the decision-making process which affects them and the public interest and safety generally.
- 7.11 When a public interest test is applied to requests for information, details as to the examination of the public interest, how the test was applied and all relevant factors taken into account should be provided in the letter of response.
- 7.12 FOI CPU should following consultations with the FOI Network develop guidance on the application of public interest tests in considering the release of records falling under the exemptions in the Bill.

Sensitive information

- 7.13 If the decision-maker considers that any or all of the information sought should not be released in full or in part, the decision-maker should review guidance available on the exemptions in the Act and apply them as appropriate.
- 7.14 Given the sensitivity of Cabinet records or records relating to international communications, it is essential that exemptions where applied are applied consistently (see below). In the case of any request which may give rise to the release of Cabinet records, there must be prior consultation with the Cabinet Secretariat in the Department of the Taoiseach.

7.15 If the decision-maker decides to release information which he/she considers may be politically sensitive, he/she should bring this to the attention of more senior management and the press officer as early in the process as possible.

Providing the response

Decision letter

7.16 The Decision letter sets out the procedure with regard to the right to appeal via internal review and the right of appeal to the Office of the Information Commissioner.

7.17 In responding to the requester, the Decision-maker (or the FOI officer if co-ordinating the response) should set out clearly:-

- the decision using simple language avoiding legal jargon;
- the number and nature of records considered;
- the specific factors taken into account (including in the public interest) in making the decision;
- the actual search and retrieval cost (deducting any deposit paid) and on receipt, the records and response should issue. A breakdown of the search and retrieval fees must be provided (hourly charges and an explanation of costs); and
- a schedule should be attached providing details of those records being released in full, of those to which partial access is being given and of those being refused and setting out the reasons why access is not been granted in full or in part and referencing relevant sections of the Act where refusals are made.

Electronic service

7.18 The FOI Act sets out at 17(1)(c) that access to records may be given to requesters in searchable electronic form where records are available in that form subject to section 17(2) which sets out circumstances where a head should not give access in such form. Requesters should be able to submit an FOI request online to the relevant FOI body, and where practicable and provided records are available electronically, receive any information ultimately released electronically in a searchable and re-usable form, if that is their preference. Where personal information is requested online, the requester must provide proof of identification and satisfy the decision-maker of his/her identity.

7.19 Section 17(4) of the Bill sets out the responsibility of FOI bodies in relation to requests relating to data contained in more than one record held electronically by the body (e.g. a database or an archive of emails). Bodies are required to take reasonable steps to search for and extract such data using the search and extraction facility it has available and uses in the ordinary course of its functions. Bodies are not required to develop new programmes/code to interrogate databases. The Act provides for access to records which are in existence and does not require the creation of new records. However in order to provide access to the extracted data from electronic records or parts of records, for convenience bodies may reproduce the relevant data in a new record and in such cases the record shall be deemed to have been created on the date of receipt of the request.

7.20 Where requests comprise 'data dumps', such requests should be examined and the information provided in searchable electronic form provided the request is not deemed voluminous and the information is considered appropriate for release.

7.21 Where possible, the public body should facilitate the requester in making any payments electronically in respect of the requests and in the provision of any refunds by the public body (it is accepted that requesters may refuse to supply bank details or may have no bank account).

7.22 Best practice would suggest that all official emails should be sent through official email accounts, which may be accessed remotely from anywhere with an organisation's IT unit. In this way, there is full traceability of official documents/correspondence. Where private email addresses are used for exceptional reasons for work purposes to communicate official information, such information should be treated as a record for FOI purposes.

Assistance to requesters with a disability

7.23 In addition to assisting the requester in identifying the records required (refining the request) the body is obliged to assist persons with a disability in exercising their rights under the Act. (See CPU Guidance Note No. 17 Assistance to Persons with a Disability in exercising FOI rights⁶).

Requests for personal information

In the normal course, search and retrieval and copying charges are not imposed. Further details are available in the legislation and in the manuals and guidance available under this Code.

Amendment of records

7.24 Guidance is available in the Decision-makers manual in relation to processing requests for amendment of records detailing the level of proof required etc.

Requests for medical records

7.25 Where medical records are sought, as a first step the requester must provide proof of identification and satisfy the decision-maker of his/her identity as the person to whom the records relate; or provide proof on relationship, i.e. next of kin.

7.26 Where medical records are considered appropriate for release but the Decision-maker is concerned that release of the records would impose a health risk to the requester, he/she should consult with a clinical medical person where available to the organisation or ask the requester to nominate a clinical medical person to whom the records may be released to enable the medic to make the decision.

Records relating to deceased persons

7.27 Existing policy and practice will be reviewed regarding release of records relating to deceased persons to ensure clear guidance is available clarifying:-

- Who is the next of kin;
- Whether all the next of kin have the same rights;
- How to proceed if some next of kin want records released and others do not;

⁶ <http://www.finance.gov.ie/viewdoc.asp?fn=/documents/foi/cpunot17.htm>

- How to proceed if the personal information had been given in confidence – whether it should be released to next of kin or exempted; and
- Standards of what is required as proof of being next of kin (e.g. death cert, marriage cert, birth certs of children, etc.).

7.28 Existing policy / practice will be reviewed in relation to the steps to take where there is a dispute between next of kin in the case of records relating to deceased persons or where a child or elderly parent is involved and guidance will be developed as appropriate.

Relationship between FOI and Data Protection (DP)

7.29 Rights conferred under Data Protection Acts shall not prejudice rights conferred by Freedom of Information. There are a number of differences⁷ between the FOI and DP processes which make it difficult to operate under both but the Data Protection Commissioner and the Freedom of Information Commissioner cooperate and provide assistance to each other in the performance of their respective functions. In addition clarity is needed regarding collateral information about third parties or provided by third parties or joint personal information in terms of when one should consult in relation to such information (DP provides that no third party information should be provided whereas under FOI it is permitted). In consultation with the relevant regulators and FOI officers, the CPU Notice 23 will be updated/revised to provide greater clarity on:-

- whether requests should be processed under FOI or under Data Protection;
- how to handle third party information;
- when personal information should be released outside the FOI and DP Acts as practices differ in different bodies in the health sector; and
- whether exemptions be considered notwithstanding records are being released outside the Acts.

Rotunda Judgement implications for exempt records⁸

7.30 In considering whether personal records should be released, the underlying presumption should be that the Act creates a general right of access to records and that the exemptions provide for exceptions to this general right. In applying these exceptions to the general right, the presumption should be that the right of access would be set aside only where one of the exemptions very clearly supports a refusal of access. This is in line with the Long Title and also the need to have regard to the principles of openness, transparency and accountability as set out in section 11(3) of the Act.

Requests relating to Cabinet records

7.31 CPU notice 25 sets out clear procedures in relation to handling of requests where Cabinet records are being considered for release and this notice must be followed. In particular where the release of any material contained in a Government Memorandum is under consideration, prior consultation with the Government Secretariat is mandatory.

⁷ e.g. timeframes for response differ; there are different appeals processes and agencies; a review of medical records by medical professional is required in the case of DP but is not required under FOI.

⁸ Following the Supreme Court judgment of July 2011 in *Rotunda Hospital and the Information Commissioner* there is uncertainty regarding the process for establishing that a record is an exempt record and thus not to be released under the Act.

7.32 Once the five year exemption period for the release of substantive material contained in Cabinet records has expired, the question of release only arises in circumstances that the relevant material does not fall under any of the other exemptions available in the legislation subject to whatever public interest tests apply to those exemptions. CPU notice 25 sets out examples of records that might attract such exemptions.

7.33 Under no circumstances should elements of records be released which reveal the content of Cabinet discussions or from which Cabinet discussions may be inferred.

7.34 The CPU notice sets out procedures to be followed including notification of the Government Secretariat in the Department of the Taoiseach, and provision of details of records held and proposed for release, to give an opportunity to provide observations.

7.35 The relevant notice will be updated to take account of the new Bill, i.e. reduction in the restriction from 10 years to 5 years, restoration of the definition of Government etc.

Requests relating to International relations records

7.36 Detailed guidance is provided in CPU notice 18 in relation to handling of FOI requests that might impact on international relations which provides among other things that “Where a deciding officer is unsure whether an adverse effect ... might arise or if a record is within subsection (2), consideration should be given to consulting the Department of Foreign Affairs, in relation to external relations matters.....”.

7.37 Guidance is provided on what to take into account in considering the request as well as steps to take to ensure interactions with public bodies in other countries are not prejudiced by FOI.

7.38 Where material can be published and made available routinely, this should be done.

7.39 An appendix to the notice sets out the main provisions of the regulations on public access to the European Parliament, the Council and the Commission and provides detailed guidance on the approach to take in relation to records relating to these.

7.40 The notice will be updated to take account of the amendments proposed in the new Bill.

FOI used as a precursor to orders of discovery

7.41 The High Court Judgement of O’Neill J. on 04/04/01 envisages ‘a rational and harmonious co-existence between the two regimes of disclosure’. There are exemptions in the Act which may be used if there is a concern that release of records would prejudice court proceedings.

SECTION 8 ENSURING THE ACT WORKS EFFECTIVELY

It is widely recognised that the processing of FOI requests can impose a formidable administrative burden on public bodies. At times large and complex applications are received from categories of applicants who use the FOI Act as the main means to obtain information (e.g. law firms that use the FOI Act as a form of discovery, journalists, the media and researchers) and, regardless of the intentions or bona fides of the requester, such requests may be oppressive in terms of the resources and time demanded by compliance. Inherent in the policy is the idea of proportionality. It is important that there is an appropriate balance between the benefits to the public of providing the information sought against the time and resources that would be needed to provide it and the benefits to the public of the provision of other services. For this reason, FOI requests may be refused in certain circumstances on administrative grounds. As with all decisions, there is a right to appeal.

The record does not exist or cannot be found

8.1 If the records sought either do not exist or the records cannot be found upon the taking of reasonable steps, the request may be refused.

Information otherwise available outside FOI

8.2 If the information was provided in the past under FOI or outside of FOI (if it would be usual practice to provide such information), then the Decision-maker should advise the requester that the information may be provided outside of FOI if the requester agrees, with the appropriate reproduction fees applying, if necessary.

8.3 If the information may be available free of charge under the Re-use of Public Sector Information Directive or under the Access to Information on the Environment Regulations, the Decision-maker may advise the requester of the potential to retrieve the information through these alternative mechanisms.

8.4 If it is the case that the information sought is already in the public domain (or will be within 6 weeks of receiving the request), the request may be refused.

Voluminous Requests

8.5 A request should be treated as **voluminous** under the legislation if it would give rise to an administrative burden on the public body to the extent that it would disrupt the work of a specific functional area. This includes requests comprised of more than one part involving different (unrelated/distinct/discrete/separate) matters the combined effect of which would be to give rise to an administrative burden on the public body to the extent that it would disrupt the overall work of the public body.

8.6 Where in the Decision-maker's view the request is voluminous, the Decision-maker should contact the requester and assist them in the refinement of his/her request so as to enable identification of the information sought.

8.7 If the requester does not refine the request after assistance has been given, the request may be refused and the requester must be advised of the right to seek an internal review of that decision.

8.8 The FOI officer may seek the advice of relevant Decision-makers on whether the request is voluminous if he/she has any doubts.

Request unclear or frivolous or vexatious

8.9 If in the decision-maker's opinion the request does not contain sufficient particulars in relation to the information concerned to enable the records sought to be identified by taking reasonable steps, the Decision-maker must give the requester an opportunity to clarify the request. If the requester fails to do so, the request may be refused.

8.10 If in the Decision-maker's opinion the request is frivolous or vexatious or forms a pattern of manifestly unreasonable requests from the same requester or from different requesters acting in concert, the request may be refused.

A deposit has not been paid

8.11 Requests for non-personal information may be refused where a deposit has not been paid in respect of search, retrieval and copying of records.

Search and Retrieval charges

8.12 As set out in chapter 7, where the search and retrieval charges to be charged would exceed the upper limiting cap to be prescribed by Order, the public body should ask the requester to refine his/her request. If the requester fails to do so, the request may be refused.

SECTION 9 ENGAGEMENT WITH THE OFFICE OF THE INFORMATION COMMISSIONER

Engagement between public bodies and the OIC

Strong communications and positive and constructive engagement between public bodies (FOI officers and the CPU) and the OIC is absolutely essential to enable FOI to work effectively.

A number of important steps could be taken by public bodies to enhance the efficiency of the appeals undertaken by the Information Commissioner. This would include timely provision of files/records, compliance with the required time-frames etc. The submissions should set out the case for the decision made by a public body and justify use of exemptions and schedules of records should be provided.

Future role of the OIC

The OIC should consider identifying the public bodies which perform well, i.e. demonstrate a good understanding of the Act through effective use of exemptions, consideration of public interest and harm test factors, provision of well-argued cases and timely and good decisions which stand up under review. The OIC should showcase these on its website to promote good practice across the public sector.

The OIC might contribute where appropriate, to the development of guidance notes by the CPU. As is the case in these other jurisdictions, this could be achieved without compromising the independence of the Information Commissioner in decision-making on appeal cases.

In other jurisdictions, the OICs have a critical role in providing guidance to public bodies on the functioning of the Act. Serious consideration should be given by the OIC to adopting such a role as well as contributing, where appropriate, to the development of guidance notes by the CPU. As is the case in these other jurisdictions, this could be achieved without compromising the independence of the Information Commissioner in decision-making on appeal cases.

Guidance

- 9.1 The OIC should publish all decisions so that both requesters and FOI officers are aware of recurring issues that may arise in terms of the application of the Act. This would act as an important reference point for both parties and would serve as a means of developing the knowledge and understanding of public bodies of OIC decisions.
- 9.2 The OIC should take a more active role in providing guidance to public bodies to promote more effective and efficient implementation of the Act. This should include identification of public bodies which perform well in processing FOI requests and promoting their practices as good practice generally. Publication of guidance notes on the exemptions and OIC decisions made in that regard could prove useful.
- 9.3 The OIC should ‘name and shame’ public bodies in its annual reports where the initial decision-making is found to be consistently of poor quality.

- 9.4 The public bodies should provide the necessary statistics early each year to the OIC to enable it to publish the statistics relating to the implementation of the FOI Act on a timely basis.
- 9.5 Public bodies should comply with the required time-frames for the provision of files/records to the Information Commissioner. The submissions should set out the case for the decision made by a public body and justify use of exemptions. Schedules should be included with submissions listing records which were considered, as well as those which the decision-maker decided should be released or refused in whole or in part.

DRAFT

SECTION 10 FOI STATISTICS

Best practice

What should be monitored?

- 10.1 The FOI CPU will issue a guidance note on the statistical requirements for FOI and the systems which need to be put in place to meet these reporting requirements as efficiently as possible.
- 10.2 Monitoring activities should be proportionate to the volume of requests handled by a Public body but should include collecting information about:
- the number of requests received;
 - the proportion of requests answered within statutory timescales (there may also be value in monitoring the length of time it takes to respond to overdue requests);
 - the number of requests that have been refused and the reasons for the refusal;
 - the number of requests for which SRC fees were charged and what the charge was;
 - the numbers of reviews that have been carried out and the outcome of such reviews;
 - the number of cases that are appealed to the Information Commissioner and the outcome of such appeals; and
 - the time required and cost involved in processing FOI requests.
- 10.3 Public bodies should as a matter of routine publish and update their FOI monitoring data online.
- 10.4 Public bodies (particular those that are large, or geographically dispersed) should consider developing a tracking system to monitor the progress of current requests, ensure deadlines are met, and ensure consistent handling.

Review of request-handling information

- 10.5 Public bodies should review at least on an annual basis the information and statistics they collect on their performance in handling FOI requests reporting to their Management Board.
- 10.6 This exercise should be used to identify areas where performance or other efficiency improvements could be achieved, for example in meeting the statutory deadlines or identifying areas of work which are frequently the subject of requests.

END

Appendix 1

Details of Contents of FOI Guides, Manuals and CPU Notices

DRAFT

Freedom of Information – Decision Makers Manual

Part 1: Processing and FOI Request

Table of Contents

Chapter 1	Brief Overview and Checklist
Chapter 2	The Essentials
Chapter 3	Acknowledging Receipt of Request
Chapter 4	Transfer of Requests
Chapter 5	Extensions of Time Limit
Chapter 6	Administrative Reasons
Chapter 7	Deferral of Access
Chapter 8	Charges
Chapter 9	Summary of Time Limits
Chapter 10	Access to Parts of Records
Chapter 11	Forms of Access
Chapter 12	Notifying of the Decision & Preparing the Statement
Chapter 13	Amendment of Personal Information (Section 17)
Chapter 14	Reasons for Decisions (Section 18)

Appendix 1 – Sample Schedule of Records and Letter Templates

Schedule of Records - Summary of Decision Making

Letter 1 - Insufficient particulars been given by the requester / offer to assist

Letter 2 - Acknowledgement of FOI request

Letter 3 - Acknowledgement of FOI request - part held by others

Letter 4 - Notice of transfer of FOI Request for (Personal Information/Advice) to requester to withdraw request (Non-personal information) if the records are held by only one other body

Letter 5a - Advice letter if more than one body is involved

Letter 5b - Request for search

Letter 6 - Records cannot be located or do not exist

Letter 7 - Letter informing applicant of extension of time

Letter 8 - Letter requesting deposit

Letter 9a - Receipt for deposit recieved

Letter 9b - Receipt for final fee

Letter 10 - Required consultation with third party

Letter 11 - Letter to requester informing of third party involvement

Letter 12 - Advice to third party of decision / appeal rights

Letter 13 - Third party access granted

Letter 14a- Letter to applicant granting request

Letter 14b - Letter to applicant refusing request

Letter 14c - Letter to applicant part granting request

Letter 15a - Acknowledgement of receipt of appeal

Letter 15b - Sample advice of internal review - original decision affirmed

Letter 15c - Sample advice of internal review - original decision varied or annulled

Appendix 2 - Central Policy Unit Notices 1 to 21 inclusive

Freedom of Information – Decision Makers Manual

Part 2: Exemptions & Consultation Procedures

Table of Contents

Chapter 1	Brief Introduction to Exemptions
Chapter 2	Section 19 - Meetings of the Government
Chapter 3	Section 20 - Deliberations of Public Bodies
Chapter 4	Section 21 - Functions and Negotiations of Public Bodies
Chapter 5	Section 22 - Parliamentary, Court and certain other matters
Chapter 6	Section 23 - Law Enforcement and Public Safety
Chapter 7	Section 24 - Security, Defence and International Relations
Chapter 8	Section 25 - Ministerial Certificates
Chapter 9	Section 26 - Information obtained in Confidence
Chapter 10	Section 27 - Commercially Sensitive Information
Chapter 11	Section 28 - Personal Information
Chapter 12	Section 29 - Consultation Procedures
Chapter 13	Section 30 - Research and Natural Resources
Chapter 14	Section 31 - Economic and Financial Interests of the State and Public Bodies
Chapter 15	Section 32 - Enactments relating to Non-disclosure of Records

Short Guide

Freedom of Information Act 1997 Freedom of Information (Amendment) Act 2003

Chapter 1:	Introduction
Chapter 2:	Publication Requirements
Chapter 3:	Processing Requests
Chapter 4:	Exemptions
Chapter 5:	Restriction of Act
Chapter 6:	Review of Decisions
Chapter 7:	Charges
Chapter 8:	Training and Further Information

Central Policy Unit Notices 1 to 25 inclusive

Notice No. 01 Section 16 Manual

Notice No. 02 Central Policy Unit - Notice No. 2 Access to Personnel Records

Notice No. 03 Access to Personnel Records created prior to 31 December 1997

Notice No 04 Handling by public bodies of FOI fees which are potentially returnable

Notice No 05 Release of Information outside of the FOI Act

Notice No 06 FOI and Written Representations to Ministers

Notice No 07 Protections for civil servants against legal actions in respect of the contents of documents created in the course of official duties

Notice No 08 Information provided in confidence to a public body

Notice No. 09 FOI & Public Procurement

Notice No 10 Primary Responsibility for Certain Personnel Records

Notice No. 11 Charges

Notice No 12 Records of public bodies not currently subject to FOI

Notice No 13 Requests involving third parties - A step by step guide

Notice No 14 FOI requests for Board Papers held by Government Departments

Notice No 15 Sealed Chief Medical Officer (CMO) Medical Reports

Notice No. 16 Checklist

Notice No. 17 Assistance to Persons with a Disability in Exercising FOI Rights.

Notice No. 18 FOI and International Relations

Notice No. 19 Contempt of Court – Orders of Discovery

Notice No. 20 Informal Consultations between Public Bodies on Foot of FOI Requests

Notice No. 21 Guidelines in Relation to the Display of FOI Requests on Websites

Notice No. 22 Appeals to the High Court and Supreme Court

Notice No. 23 Data Protection and Freedom of Information in the Public Sector

Notice No. 25 Guidelines in relation to records of government meetings