



An Coimisinéir Faisnéise
Information Commissioner



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

Supporting
the Right to
Information

Annual Report

2017

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Foreword

I hereby submit my fifth Annual Report as Information Commissioner to the Dáil and Seanad pursuant to section 47(2) of the Freedom of Information Act 2014.

This is the twentieth Annual Report of the Information Commissioner since the establishment of the Office in 1998.

A handwritten signature in black ink, which appears to read 'Peter Tyndall'.

Peter Tyndall
Information Commissioner
May 2018



Jacqui McCrum
Director General

Performance Summary

Our performance



502

We completed 502 cases in 2017



16%

Case completions increased by 16% over 2016



93%

Case completions increased by 93% since 2013, my first year in Office



63%

We completed 63% of cases within 4 months, a record high



37%

The four month closure rate has increased by 37% since 2013



98%

of all reviews were closed within 12 months - up from 66% in 2013

FOI usage



33,979

A total of 33,979 requests were made to public bodies in 2017



7,182

Public bodies carried forward 7,182 requests into 2018, up 19% on 2017



87%

of requests made to the health sector were for access to personal information



67%

FOI requests made to public bodies up by 67% since the introduction of the 2014 Act

Demand for our services



497

We accepted 497 applications for review in 2017, up 12% on 2016



86%

We accepted 86% of all applications as reviews - up from 74% in 2015



97%

of all applications to my Office were validated within ten working days



113

Our reviews concerned 113 public bodies - up from 77 bodies in 2013



91%

of reviews on hand at the end of 2017 were less than six months old

Public body compliance



47%

of reviews were deemed refused by public bodies at the original decision stage of the FOI request



44%

of reviews were deemed refused at the internal review stage



12

We issued 12 statutory notices to public bodies to require compliance – down from 17 in 2016



29%

of reviews were deemed refused at both stages – a record high

Chapter 1:
The year in review

Chapter 1: **The year in review**

Chapter 1: The year in review

Your right to information

Freedom of Information

The [FOI Act 2014](#) provides for a general right of access to records held by public bodies and also provides that records should be released unless they are found to be exempt. The Act gives people the right to have personal information about them held by public bodies corrected or updated and gives people the right to be given reasons for decisions taken by public bodies, where those decisions expressly affect them.

The primary role of the Office of the Information Commissioner is to conduct independent reviews of decisions made by public bodies on FOI requests, where members of the public are dissatisfied with responses to those requests. As Information Commissioner, I have a further role in reviewing and publishing commentaries on the practical operation of the Act.

The FOI Act applies to all bodies that conform to the definition of public body in Section 6(1) of the Act (unless they are specifically exempt or partially exempt under the provisions of Section 42 or Schedule 1 of the Act). Bodies such as Government Departments and Offices, local authorities, the Health Service Executive, voluntary hospitals, and universities are included. As new public bodies are established, they will automatically be subject to FOI unless they are specifically exempt by order made by the Minister.

Access to Information on the Environment (AIE)

The European Communities (Access to Information on the Environment) Regulations 2007 to 2014 provide an additional means of access for people who want environmental information. The right of access under the AIE Regulations applies to environmental information held by or for a public authority. The primary role of the Commissioner for Environmental Information is to review decisions taken by public authorities on requests for environmental information. Both access regimes are legally independent of each other, as are my roles of Information Commissioner and Commissioner for Environmental Information.

Re-use of public sector information

The European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015 (S.I. No. 525 of 2015) provide that the Information Commissioner is designated as the Appeal Commissioner. As such, my Office can review decisions taken by public bodies in relation to requests made under the Regulations to re-use public sector information, including decisions on fees and conditions imposed on re-use of such information.

Introduction

In my 2016 Annual Report, I was pleased to report on a significant increase both in the number of reviews completed by my Office over the previous year and in the percentage of reviews completed within four months, against a significant increase in demand for our services.

I am again pleased to report that in 2017 we recorded further significant achievements in throughput. While demand continued to rise, we nevertheless recorded a 16% increase in the number of reviews completed and increased the percentage of reviews completed within four months to an all-time high of 63%. Since 2013, when I first took up Office, the number of reviews completed has almost doubled, while the percentage of reviews completed within four months has increased by 37%. I report in more detail on our 2017 review achievements later in this chapter.

It is particularly pleasing to report that the throughput improvements were achieved at a time when my Office was midway through a significant change process. During the year, we continued to develop our systems and processes in accordance with our Strategic Plan, and made impressive progress on the rollout of our ICT systems. For example, a new document management system is now in place, and work is continuing on developing a new case management system for both Offices.

I was also pleased to be in a position to launch new websites for both Offices at the end of 2017. The new websites have a cleaner design and are easier to navigate and we have significantly improved the accessibility of both sites. The sites also provide a more streamlined on-line application process which, given the significant number of applications we receive this way, is likely to be welcomed by the public.

My Office continued its development and publication of guidance notes during 2017. They have been very well received and I understand that they have also become a valuable resource for equivalent Offices abroad. We will continue in our efforts to extend the supports we can provide both for public bodies and for users of the Act generally, by identifying further relevant topics that might benefit from the publication of guidance.

Apart from the publication of guidance notes, my Office has been examining ways of providing further support and assistance to public bodies with a view to enhancing the quality of decision making generally. In the course of our discussions with the Department of Public Expenditure and Reform in relation to our budgetary provision for 2018, we sought a specific allocation to develop and roll out an Outreach programme.

I am pleased to report that our submission was accepted and as I write this introduction, we are actively developing a plan of action for enhancing the level and nature of our engagement with public bodies for roll out later in 2018. I will also be considering possible topics for investigation pursuant to my powers under section 44 of the Act to address systemic issues of concern.

Freedom of Information legislation was first introduced in Ireland in 1998. To mark the 20th anniversary of this landmark legislation, I hosted a half-day conference in April 2018, reflecting on the impact of FOI in Ireland and its contribution to reform of the public service. The current Act was introduced in 2014. In Chapter 2, I report on a number of issues my Office has encountered in relation to the operation of the 2014 Act. I believe it is now opportune to look for a review of the Act. Later in this Report, I highlight some decisions of interest that my Office issued, while in Part II I report on my role as Commissioner for Environmental Information.

Peter Tyndall
Information Commissioner
Commissioner for Environmental Information

*Case completions increased by 93%
since 2013, my first year in Office*

Office developments in 2017

Progress on ICT systems

In 2017 we launched our new [OIC](#) and [OCEI](#) websites. The sites provide enhanced online services for both members of the public and other stakeholders. In developing the new websites, we were very aware that visitors expect to have a similar user experience in dealing with the public service as they would have in dealing with other services such as the retail sector. Consequently, we have focused on delivering websites that are secure, reliable and easy to use. Each site includes an online portal offering a fast and efficient facility to submit applications for review and appeals online. They also provide quick and secure facilities to transfer data and documents to us. An enhanced search facility is a key feature of each new website. They are a useful resource for both requesters and decision makers. We will continue to engage with our stakeholders to ensure that our online facilities continue to meet their needs.

Implementation of the remainder of our ICT renewal and improvement plan is ongoing. Significant work has been undertaken to ensure that we successfully harness new technologies to deliver better customer service and knowledge management. In 2017, we rolled out a new document management system to manage primarily non-case-related records. We also made significant progress in developing a new case management system. Both of these new systems will facilitate the digitalisation of services, where appropriate, and the automation of routine tasks that will support the delivery of a more effective and efficient service. We look forward to the completion of the extensive programme of work to upgrade our IT systems in 2018.

We accepted 86% of all applications as reviews - up from 74% in 2015

Guidance material

My Office continued to publish a series of [Guidance Notes](#) relating to the FOI Act in 2017. The Notes provide a commentary on the interpretation of various provisions of the FOI Act. They explain the approach my Office takes to the application of the provisions and provide examples from some of my decisions and those of my predecessors. The Notes also include references to relevant court judgments.

In particular, in 2017, my Office published Guidance Notes on the exemption for personal information ([section 37](#)) and the provision which applies where there is an enactment relating to non-disclosure of records ([section 41](#)).

Guidance Notes were also published on procedural provisions in the FOI Act. We published a Note on the application of [section 27](#) of the Act, which relates to fees and charges under FOI. We also published a Note on [section 38](#) of the Act which deals with the procedures to be followed in certain cases involving third parties. In 2016, representatives of Government Departments

had indicated that they would particularly welcome Guidance Notes on sections 27 and 38. I am pleased that these Notes have now been published.

I am aware that decision makers in FOI bodies find the Guidance Notes a useful resource. I very much hope that all users of FOI, including requesters, find the Guidance Notes of benefit. My Office will continue to develop its Guidance Notes and I hope that we will be publishing further Notes in 2018, including Notes on the provision concerning records that do not exist or cannot be found (section 15(1)(a)), the types of records that are excluded from the scope of the Act (section 42) and the consideration of the public interest test contained in many of the exemption provisions.

My Office also publishes Sample Questions for FOI bodies which set out questions that may be relevant when I am reviewing a decision made by a public body. The Sample Questions have been revised and updated in 2017. While they are primarily intended to be used by staff of my Office, I hope that publishing them may provide further assistance to FOI bodies in their decision making and in providing an indication of what my Office is likely to require during the course of a review.

from a public body

*“Thank you for all the work and time
you put into this review. Your assistance
and understanding is much appreciated.”*

Irish Human Rights and Equality Commission Act 2014

The Irish Human Rights and Equality Commission Act 2014 introduces a positive duty on public bodies to have due regard to human rights and equality issues. My Office has adopted a proactive approach to implementing this duty. We have set up a staff working group, which has held a workshop on human rights and equality, and met with the Irish Human Rights and Equality Commission. The working group is in the process of identifying all of my Office’s functions and assessing what human rights and equality issues arise in relation to those functions. It will also identify the policies and procedures which are in place to address those issues. It will then propose an action plan for implementing the duty, on foot of its findings. I am keen to ensure that the public sector duty becomes an integral part of how my Office works.

In that regard, my Office is committed to providing a service to all clients that respects their human rights and their right to equal treatment. This is equally applicable to how we interact with our own staff as it is essential in fostering a healthy work environment that promotes engagement, openness and dignity in the workplace. Our approach is underlined by our core organisational values of independence, customer focus and fairness, which are evident in both the culture of our Office and our internal policies and procedures. We have also been proactive in providing training to our staff on human rights and equality.

Statutory notices issued to public bodies

We issued 12 statutory notices to public bodies to require compliance – down from 17 in 2016

Notices issued under section 23 of the FOI Act

Where a public body decides to refuse a request, whether wholly or partly, it is obliged to give the requester a statement of the reasons for the refusal, including,

- any provisions of the FOI Act pursuant to which the request is refused,
- the findings on any material issues relevant to the decision, and
- particulars of any matter relating to the public interest taken into consideration for the purposes of the decision.

It is not sufficient for a body to simply paraphrase the words of the particular exemptions relied upon. A statement of reasons should show a connection, supported by a chain of reasoning, between the decision and the decision maker's findings on material issues.

Where my Office considers that the statement of reasons given is inadequate, I am obliged, under [section 23](#), to direct the head of the body to provide a statement containing any further information in relation to the above matters that is in the power or control of the head.

In 2017, we issued notices under section 23 to the heads of the following public bodies:

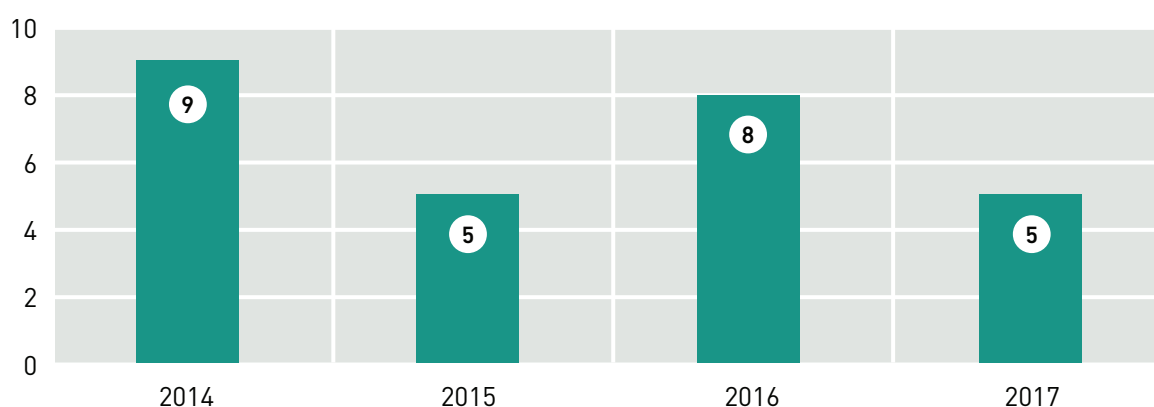
- Department of Social Protection
- HSE
- Dublin City Council
- Donegal County Council
- Defence Forces Ireland
- Bord Iascaigh Mhara
- University of Limerick

In each case, we considered that the original and/or internal review decisions fell short of the requirements of the FOI Act, and we sought a more detailed statement from the public body.

Notices issued under section 45 of the FOI Act

Under [section 45](#), I can require a public body to provide me with any information in its possession or control that I deem to be relevant for the purposes of a review. The vast majority of requests my Office makes for information relating to reviews are responded to within the time frames specified in such requests. However, regrettably I occasionally have to enforce my statutory powers under section 45 to elicit a response. It is important that public bodies comply with the time frames set out by my Office, as delays impact on our ability to comply with the requirement that we issue decisions as soon as may be and, in so far as practicable, within four months of receipt of applications for review.

During the year, my Office issued five notices under section 45; one each to the Department of Justice and Equality, Mercy University Hospital, National Maternity Hospital, Kildare County Council and the Irish Prison Service. I have provided more details on each case below.



Department of Justice and Equality

On 7 March 2017, the Department was asked to provide copies of the subject records relating to the review. The review could not proceed without the information sought. The Department failed to provide the information sought within the two-week timeframe given, despite a telephone and email reminder. On 28 March, we issued a notice under section 45 to the Secretary General of the Department and the relevant information was provided two days later.

Mercy University Hospital

My Office wrote to the Hospital on 2 November 2016 and invited it to make a submission on the basis of its proposal to charge the applicant a search and retrieval fee for access to records. In accordance with our documented and published review procedures, a two week deadline for responding was set.

Having regard to the issues arising in the review, we considered that it was not possible to proceed in the absence of a response to our request. As no reply was received, we issued a section 45 notice to the Chief Executive Officer of the Hospital on 25 January 2017, requiring the information to be provided within seven days. This deadline passed without a reply. However, on 6 February 2017, the Hospital informed this Office that it had decided not to charge a fee.

National Maternity Hospital

On 11 September 2017, the investigating officer wrote to the Hospital and requested information concerning the searches undertaken by it to locate the records sought by the applicant. The Hospital was asked to reply by 25 September 2017 and was also advised of the provisions of section 45 of the FOI Act. On the day a response was due the Hospital contacted my Office and said that it was not yet in a position to respond, primarily due to the absence of a staff member on annual leave. Despite some additional communications, the relevant information was not provided. We eventually issued a section 45 notice to the Master of the Hospital on 6 October 2017. The Master was requested to provide the relevant information by 13 October 2017.

However, on the day a response was due the Hospital's legal representatives contacted my Office and requested an extension. While this was granted, as the Hospital's legal representatives had only just received instructions, it was put to the Hospital that it did not appear to be taking its statutory responsibilities under FOI seriously. It was also pointed out to the Hospital that its failure to respond to requests from this Office impacted on our ability to meet statutory time-frames for conducting reviews. A reply was eventually received from the Hospital on 19 October 2017, four weeks beyond the initial deadline date.

Kildare County Council

My Office accepted an application for review on the basis of a deemed refusal by the Council of the applicant's FOI request, under section 19 of the FOI Act. On 5 December 2016, we wrote to the Council and asked it to issue a letter to the requester setting out its effective position in respect of the records sought. The Council failed to issue the letter within the two week timeframe given and it failed to act on further reminders to do so.

On 18 January 2017, we issued a section 45 notice to the Chief Executive of the Council, requiring the information to be provided within seven days. A reply was issued to the applicant on 1 February 2017, more than six weeks after the original deadline for responding.

Irish Prison Service

On 16 January 2017, the investigating officer wrote to the Irish Prison Service (IPS) and requested details concerning the searches undertaken by it to locate the records sought by the applicant. A response was due by 30 January. Despite a number of reminders, the IPS failed to provide the details requested. On 15 February 2017, my Office issued a notice under section 45 to the Director General of the IPS. A response to the search request was received on 30 March 2017, two months after the original deadline for responding.

Key FOI statistics for the year

I have included below some key details on FOI usage in 2017. A more detailed breakdown is provided in Chapter 4.

I wish to acknowledge the work undertaken by the lead agencies that collect statistics for inclusion in my Annual Report. In the main, the relevant information is provided to my Office in a timely fashion, but unfortunately there are some exceptions.

In my 2015 Annual Report, I reported that the Department of Transport, Tourism and Sport was very late in submitting its return of FOI statistics for that year. The Department was also late in 2016, as was TUSLA. While figures were eventually provided for 2016, my Office nevertheless wrote to both bodies at that time and reminded them of their responsibility to make timely returns on FOI statistics, without which, my Office explained, it would not be possible to accurately state the level of FOI activity during the year. It is frustrating then to record yet another year where both the Department of Transport, Tourism and Sport and TUSLA were unable to provide statistics by the separate deadlines set by both my Office and the Central Policy Unit (CPU).

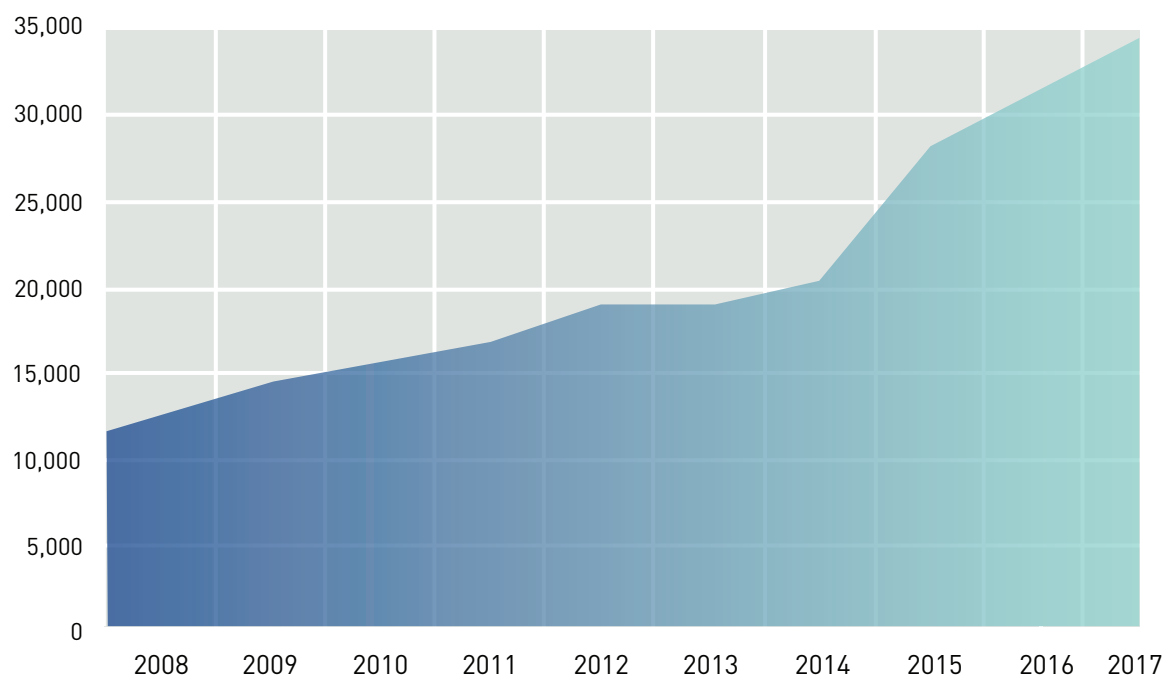
In a response for clarification as to the reasons for the delay, TUSLA explained that since its establishment in 2014, it has focused on establishing itself as the national Agency dedicated to supporting children and families, and to place the Agency on a sustainable footing. It said that during this time there has been a necessary reliance on the HSE to provide some of the Agency's corporate supports through a Memorandum of Understanding. It said that as the form and content of this arrangement was not providing TUSLA with the requisite corporate supports to meet its FOI statutory requirements, it commenced a process during 2017, in a number of key functional areas, to build the Agency's internal corporate capacity. It said that this involves a significant programme of work to review and implement an operating model that is fit for purpose to deliver on the statutory requirements of FOI.

The Department of Transport, Tourism and Sport also provided a response. It stated that in light of the significant and ongoing rise in FOI requests in recent years, it is looking to better utilise IT systems to assist in the provision of timely statistical returns and expects to move to the 'Build To Share' platform in 2018.

I welcome the commitment given by both bodies to take measures to avoid a repeat of the delays in providing timely statistical returns.

*33,979 requests were made to public
bodies in 2017*

Number of FOI requests to public bodies 2008 – 2017



The total number of requests received by bodies in 2017 is 33,979, representing an increase of 11% on 2016. The marked increase in usage annually since 2014 is a clear reflection of the impact that the 2014 Act has had. As can be seen here, the total annual usage figure has almost tripled over the last nine years and the increase in activity since 2014 (the last full year to which the 1997/2003 Acts only applied) has risen by 67%.

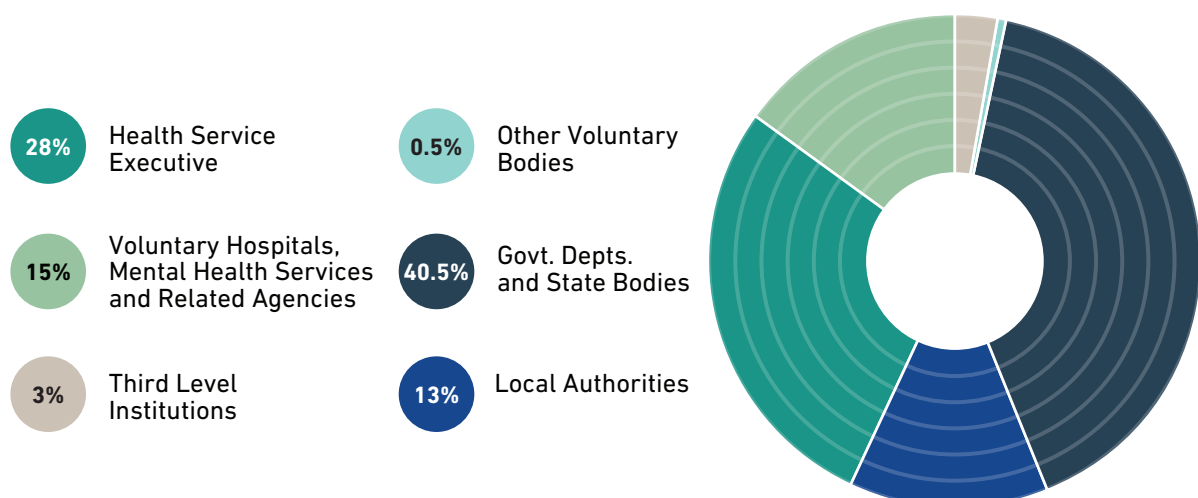
Clearly, such increased demand gives rise to certain challenges for public bodies. In Chapter 2, I comment on the apparent failure of some bodies to match the increased demand with a corresponding increase in the allocation of resources to the processing of FOI requests. Indeed, I note that the total number of requests carried forward to 2018 by all public bodies now stands at 7,182, representing an increase of 19% on 2017.

Top ten bodies who received most requests during 2017

Placing	Public body	2017
1	Health Service Executive	9,601
	HSE South area	3,438
	HSE West area	3,194
	HSE Dublin Mid-Leinster area	1,198
	HSE Dublin North East area	1,088
	HSE National	683
2	Department of Employment Affairs and Social Protection	2,443
3	TUSLA - Child and Family Agency	1,012
4	Tallaght Hospital	890
5	Department of Justice and Equality	796
6	St James's Hospital	787
7	Irish Prison Service	744
8	Dublin City Council	661
9	Department of Education and Skills	548
10	An Garda Síochána	542

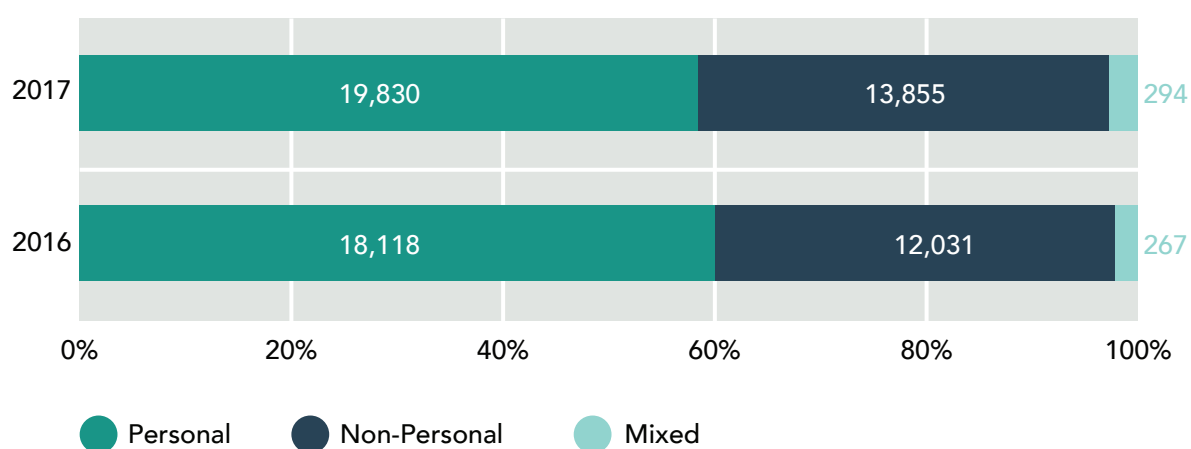
*FOI requests made to public bodies
up by 67% since the introduction of
the 2014 Act*

Sectoral breakdown of FOI requests to public bodies



- Most Government Departments recorded increases in the number of FOI requests made in 2017, averaging 12%. A small number of bodies recorded decreases in FOI activity.
- Requests to the Department of Business, Enterprise and Innovation rose from 163 in 2016 to 253 in 2017, representing a 55% increase.
- The Department of the Taoiseach, Department of Defence and Department of Justice and Equality increased by 25%, 29% and 36%, respectively.
- Both the Department of Communications, Climate Action and Environment and the Department of Foreign Affairs and Trade recorded increases of 22%.
- Total requests to all local authorities increased on average by 12%. However, Dublin City, Laois County and Kildare County Councils recorded annual increases of 29%, 55% and 58%, respectively.
- RTÉ recorded an increase of 32% over the figure for 2016.
- The Road Safety Authority increased from 33 requests received in 2016 to 123 in 2017.
- Transport Infrastructure Ireland increased from 42 requests received in 2016 to 110 in 2017.
- Social Welfare Appeals Office recorded a decrease of 28% in requests received during the year.
- The Voluntary Hospital sector, as a whole, recorded an increase of just under 7% during the year. However, requests to St. James's Hospital increased by 34% and the National Maternity Hospital recorded an increase of 42% during the year.
- TUSLA recorded an increase of 22% over the figure for 2016.

Type of request to public bodies



The breakdown of requests under this heading has remained fairly static over the past few years.

87% of requests made to the health sector were for access to personal information

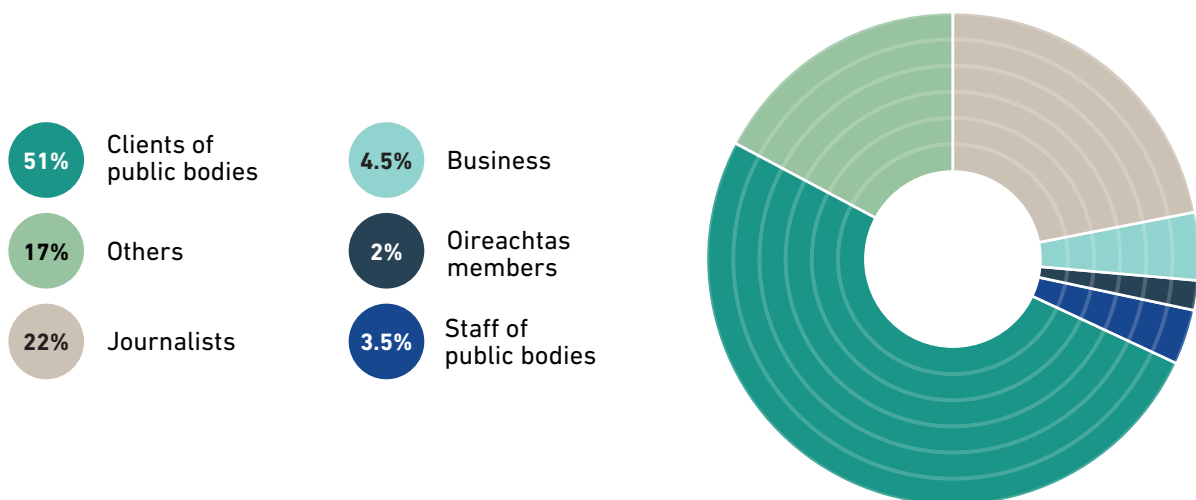
Unsurprisingly, the health sector received the largest number of requests for personal information, at 87%. Of all requests received during the year by TUSLA, 92% were for access to personal information.

The figure for receipt of requests for access to non-personal information in local authorities is 81%.

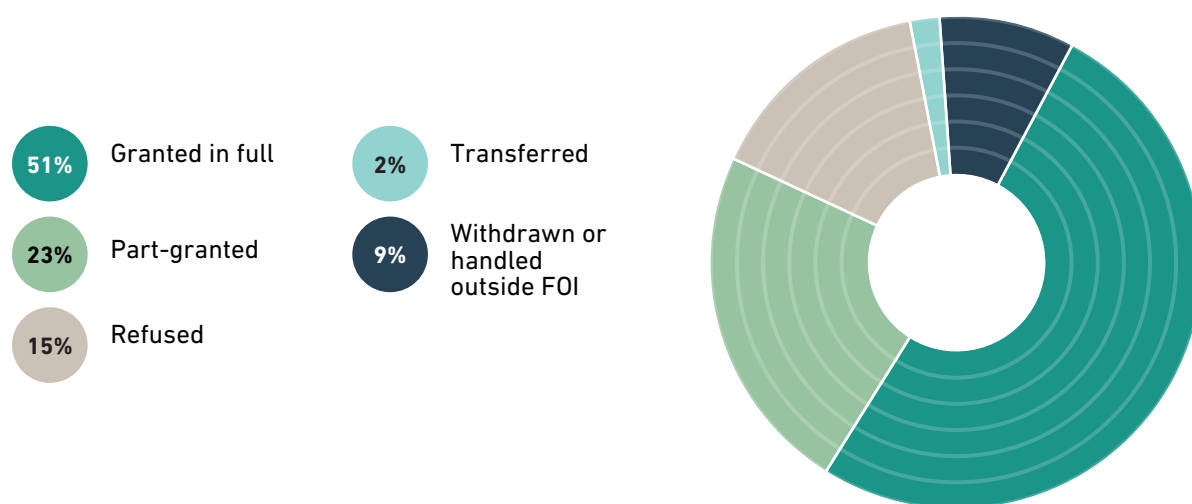
56% of all requests made to Government Departments and State bodies during the year were for access to non-personal information.

Category of requester to public bodies

The 'requester' and 'release rate' charts are almost identical to those of last year.



Release rates by public bodies

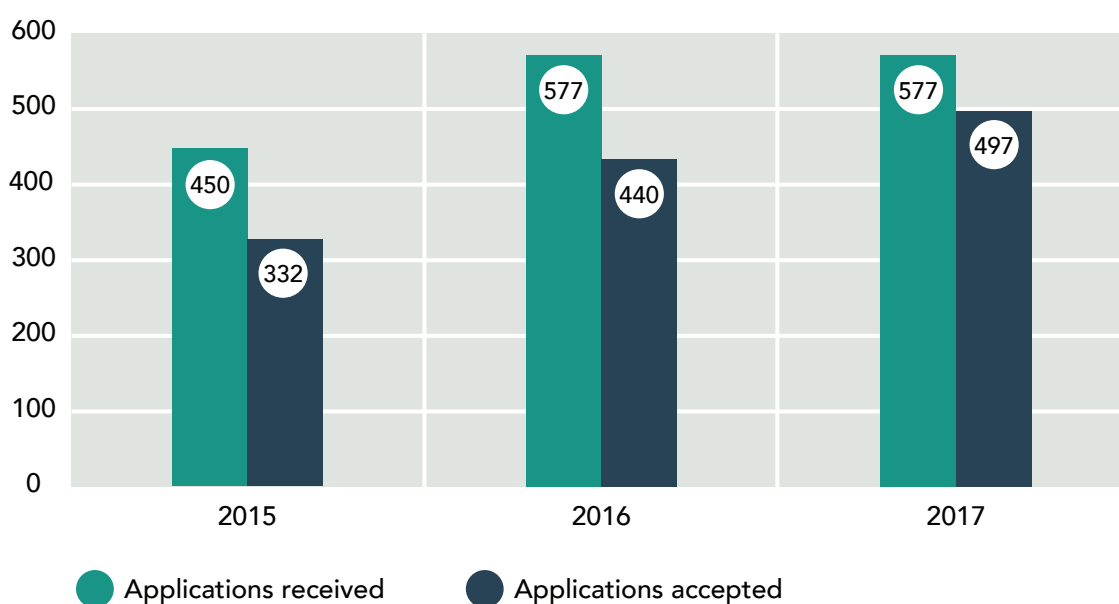


Public bodies carried forward 7,182 requests into 2018, up 19% on 2017

Office of the Information Commissioner caseload

An application for review can be made to my Office by a requester who is not satisfied with a decision of a public body on an FOI request. Decisions made by my Office following a review are legally binding and can be appealed to the High Court only on a point of law.

Applications to OIC 2015 – 2017



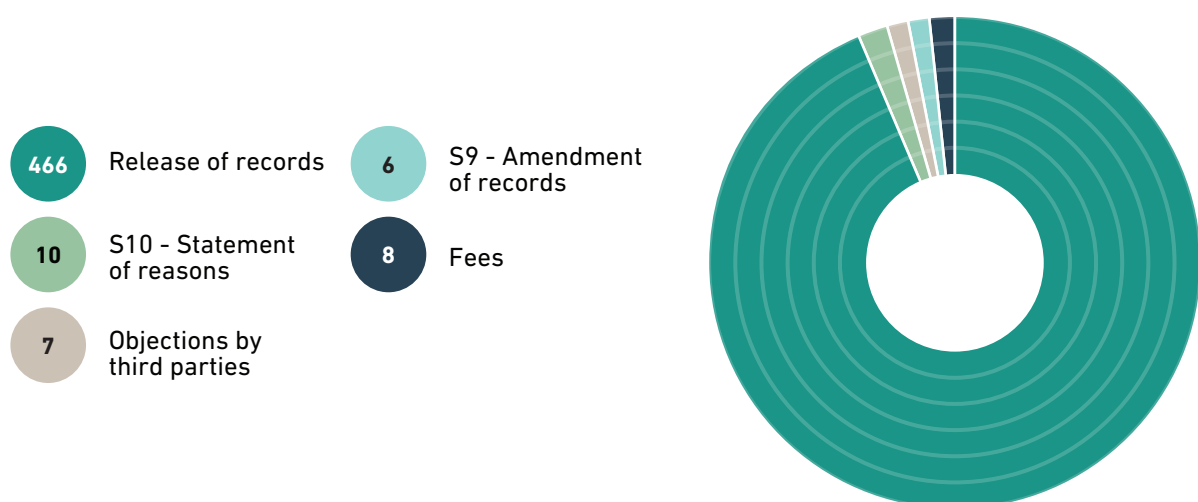
My Office business plan for 2017 set an objective of validating and accepting applications for review within ten working days. I am pleased to record here that 97% of all applications processed in 2017 met that objective.

I have mentioned in previous reports how the number of applications accepted each year is lower than the total number received, due to factors such as the making of premature applications. However, I note that the annual percentage of applications accepted as reviews by my Office, when compared to the number received, has shown a marked increase in the last three years. The percentage of applications accepted as reviews in 2015 was 74%, while in 2017 that figure increased to 86%.

While it is difficult to be definitive about the reasons for the increase in accepted applications, it does appear that awareness of the FOI process in general is steadily improving.

We accepted 497 applications for review in 2017, up 12% on 2016

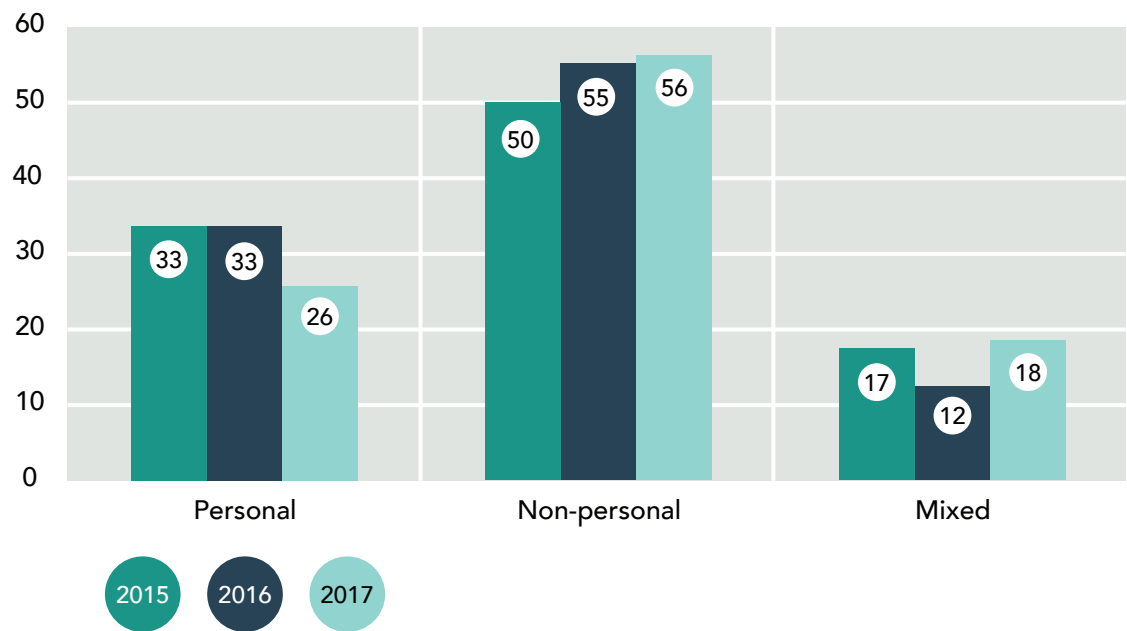
Subject matter of review applications accepted by OIC



Of the 497 applications accepted by my Office in 2017, almost 94% were concerned with refusals by the bodies to grant access (in part, or in full) to some or all of the records sought. This is the highest percentage figure recorded by my Office over the past ten years under that heading. With the exception of 'Fees', the remaining headings are at record lows.

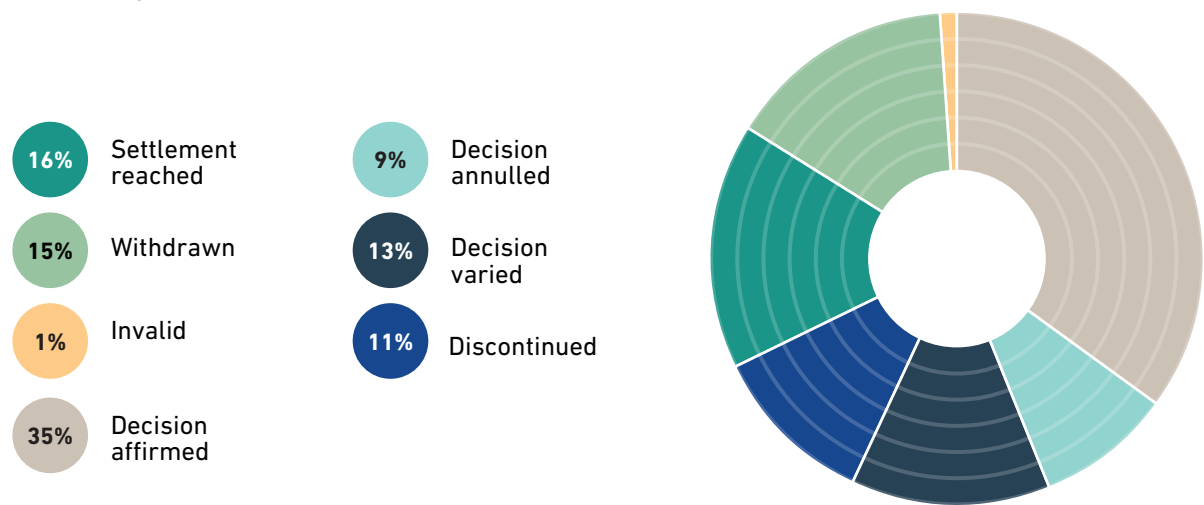
Percentage of applications accepted by OIC by type 2015 – 2017

An application recorded by 'type' indicates whether the applicant is seeking access to records which are of a personal or non-personal nature, or a mix of both. Records from the past ten years show very little variation in the percentage figures related to type.



Outcome of reviews by OIC in 2017

My Office reviewed 502 decisions of public bodies in 2017. This is 16% more than the number reviewed in 2016, 55% more than the total for 2015 and 93% more than the total for 2013, when I first took up Office.



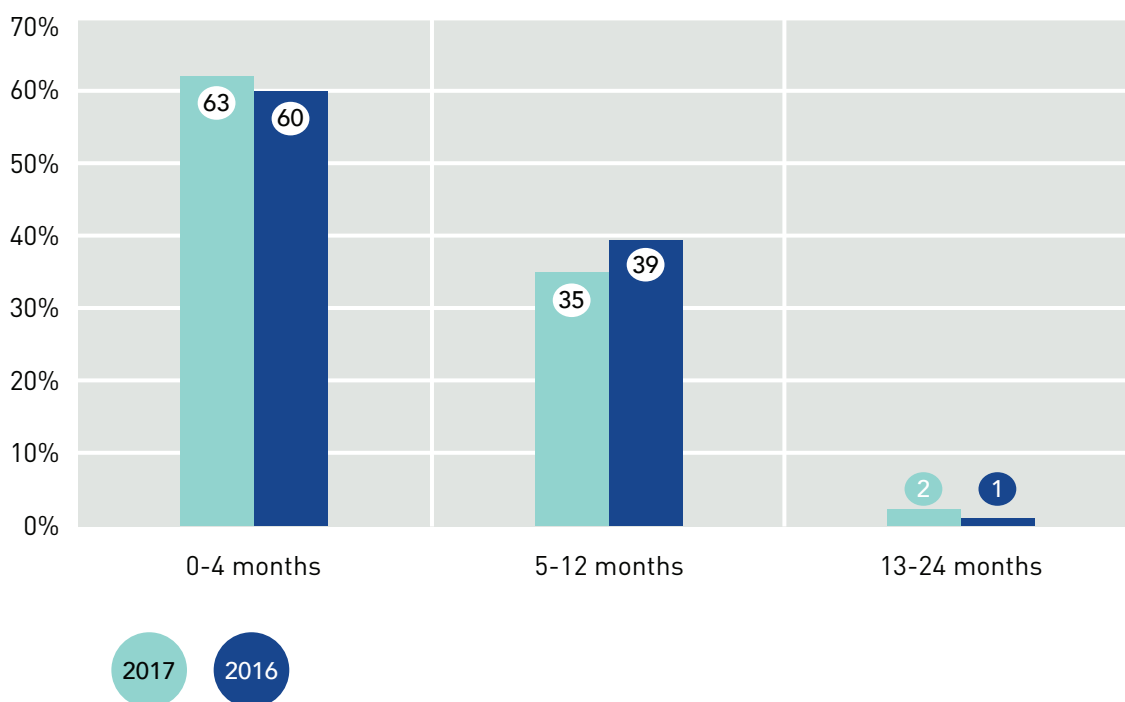
Our reviews concerned 113 public bodies - up from 77 bodies in 2013

Settlements and withdrawals

Settled and withdrawn applications often follow as a result of the intervention of my Office, where, for example, a more detailed explanation of a decision is given to the applicant by the public body, or additional records are released or part granted, and the review does not proceed to a formal decision.

Age profile of cases closed by OIC

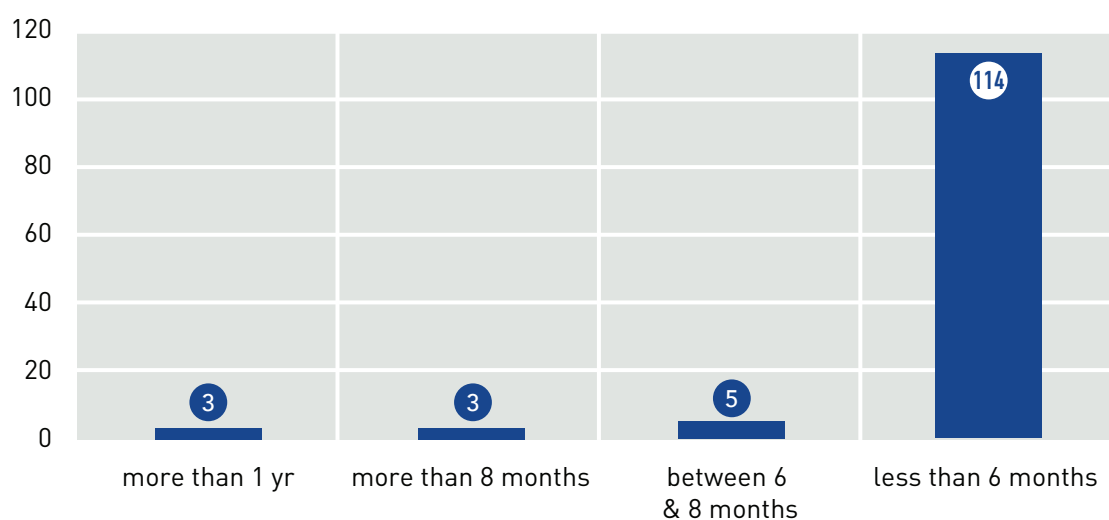
This table shows how long it took my Office to complete reviews.



Since 2013, while the number of applications received has increased by 72%, the percentage of reviews completed within four months has increased from 26% to 63%. In that same period, the percentage of cases closed within twelve months has increased from 66% to 98%.

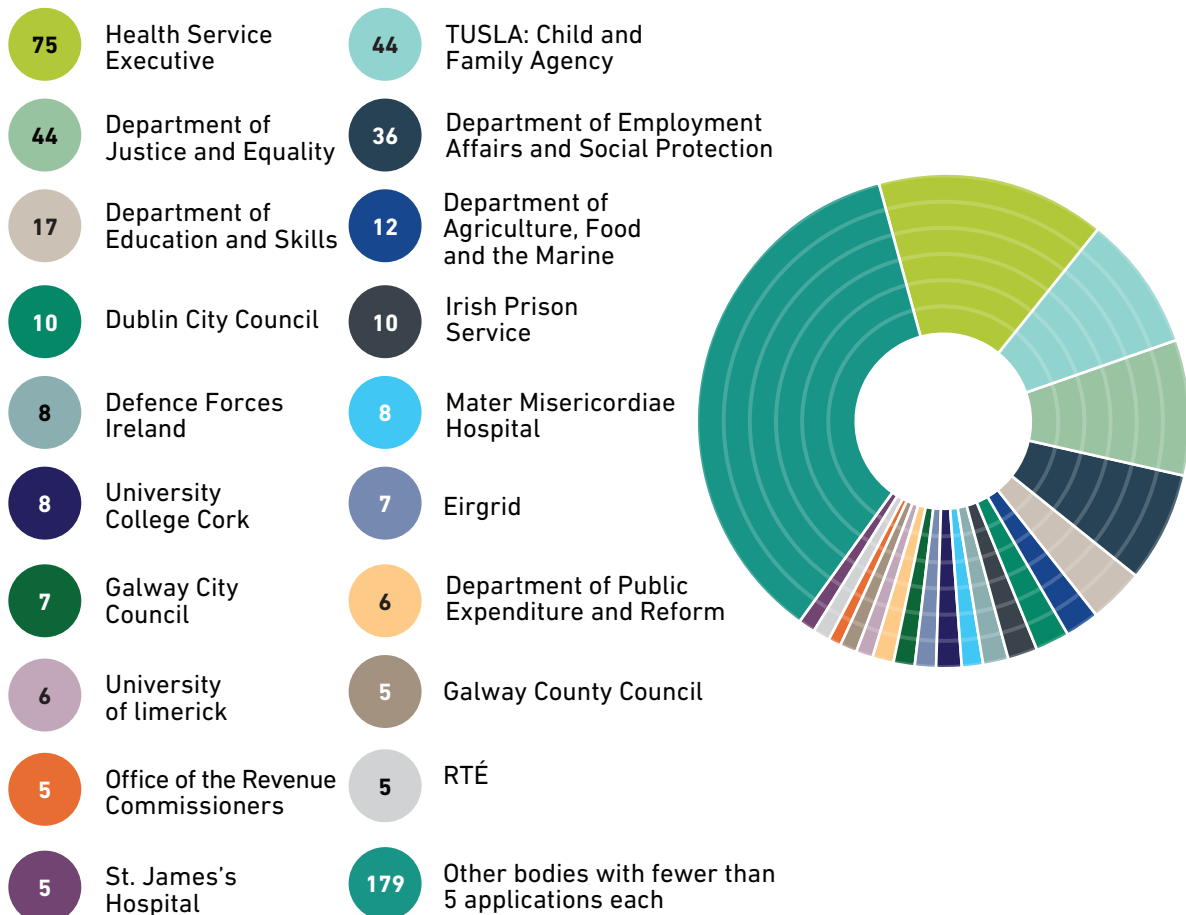
Age profile of cases on hand in OIC at end 2017

91% of reviews on hand at the end of 2017 were less than six months old



I am pleased to report that a specific initiative introduced by my Office, aimed at prioritising the completion of older cases has been successful. It is inevitable that with the increase in the number of applications accepted by my Office, a few will take longer to conclude due to any number of factors which may need to be considered during the course of the review. These include matters related to legal proceedings, new issues coming to light during the review, or a change in the status of records. For example, decisions of my Office on two reviews which are older than eight months are dependent on the outcome of an appeal to the High Court on another decision. At the end of 2017, 91% of all reviews on hand were less than six months old.

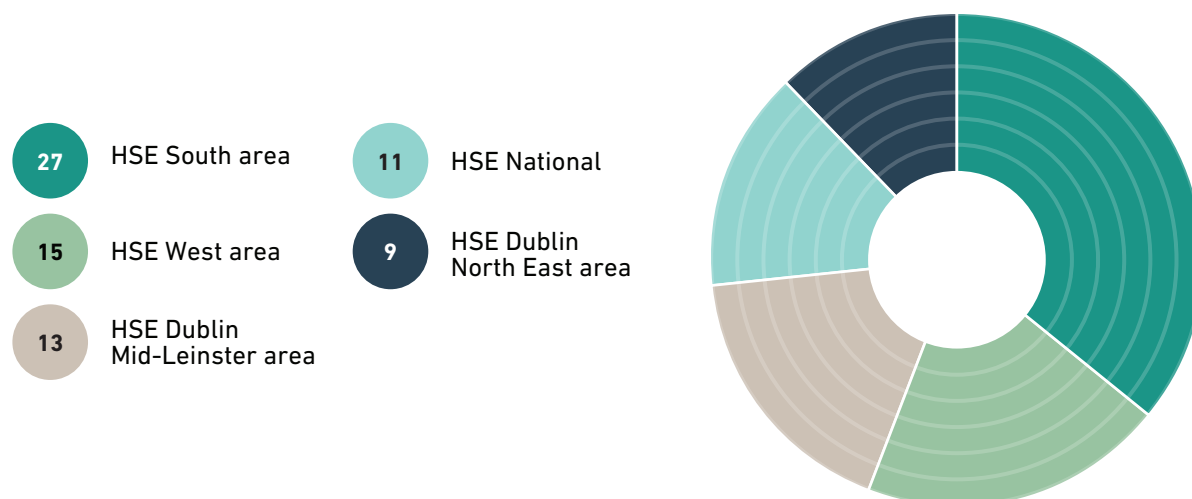
Breakdown by public body of applications for review accepted by OIC



In 2013, my Office accepted applications for review in respect of a total of 77 public bodies. In 2017, my Office accepted applications for review in respect of 113 public bodies.

We completed 502 cases in 2017

Breakdown of HSE cases accepted by OIC



We completed 63% of cases within 4 months, a record high

Deemed refusals

The FOI Act imposes statutory time limits on public bodies for processing an FOI request. Specifically, a decision on an original request should issue to the requester within four weeks and a decision on a request for an internal review should issue within three weeks.

Where a public body fails to issue a timely decision either on the original request (first stage) or on internal review (second stage), the requester is entitled to treat the body's failure as a 'deemed refusal' of the request. Following a deemed refusal at the internal review stage, a requester is entitled to apply to my Office for a review.

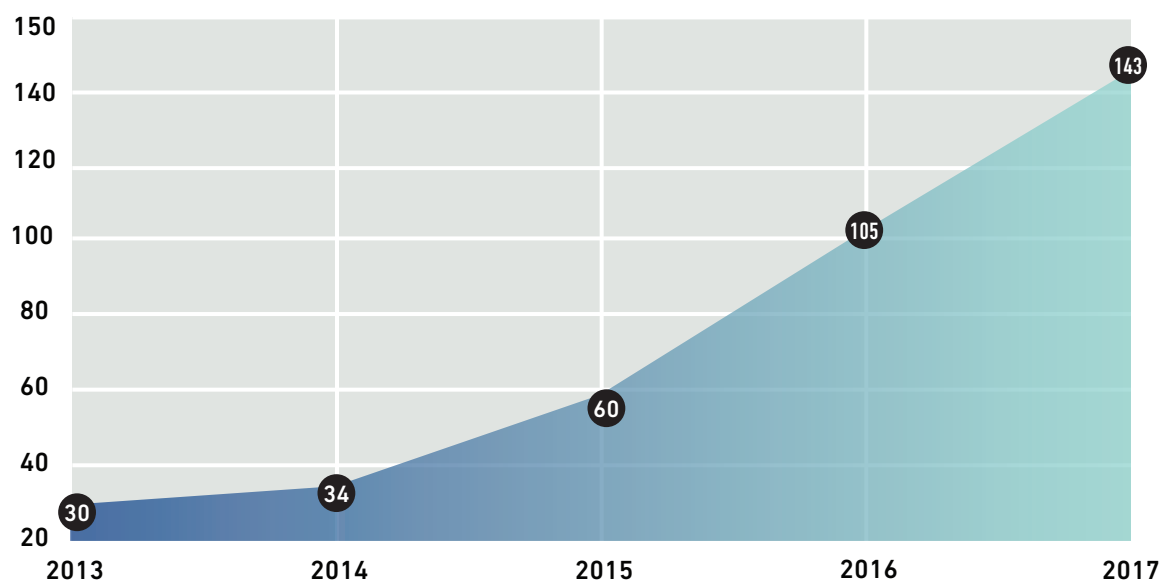
29% of reviews were deemed refused at both stages – a record high

In my 2016 Report, I noted that it was the worst year on record in terms of the number of deemed refusals by public bodies. It is with some dismay, therefore, that I must report on the fact that matters have gone from bad to worse. In 2017, 143 (29%) of all applications accepted by my Office were recorded as deemed refused at both stages of the FOI request (in 2013, that figure was 13%).

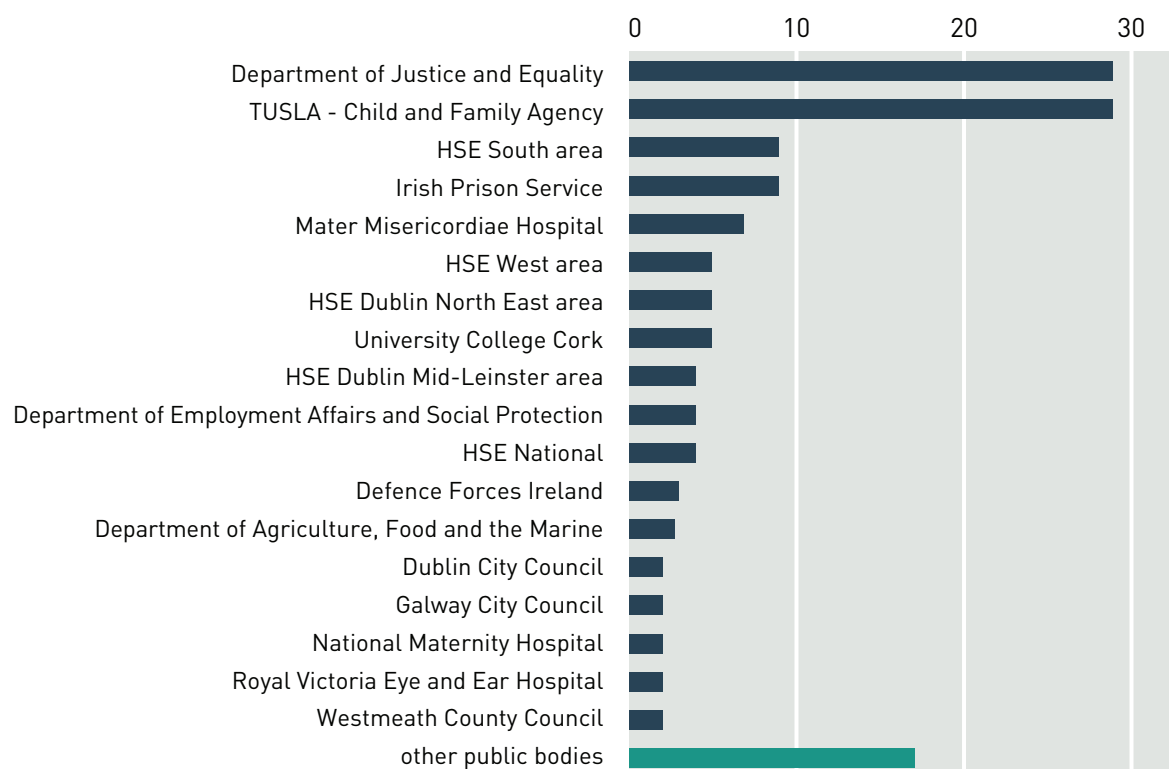
This is an extraordinary number of cases where the public body failed to issue a timely decision at either stage of the decision making process. While I accept that in many of these cases the public body eventually issued a late decision, it is clear evidence that many public bodies are not properly resourcing the FOI function.

The charts that follow show how many requests were deemed refused in the year at both stages, or at each stage, of the request. As with last year, the worst offenders for 2017 were TUSLA and the Department of Justice and Equality.

Deemed refusals at both stages 2013 – 2017



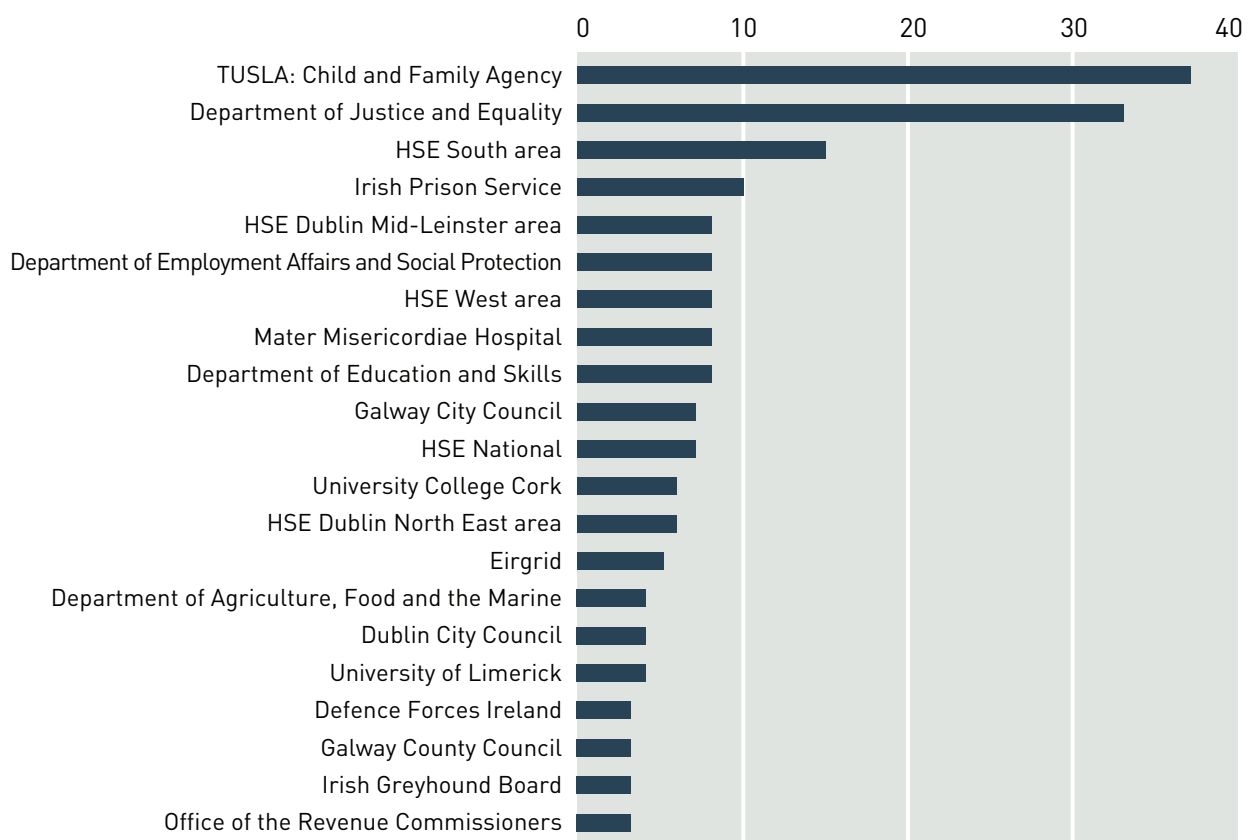
Deemed refusal at both stages by public body – 2017



See Chapter 4, table 19 for further details on deemed refusals.

Public body - deemed refusal at 1st stage of FOI request

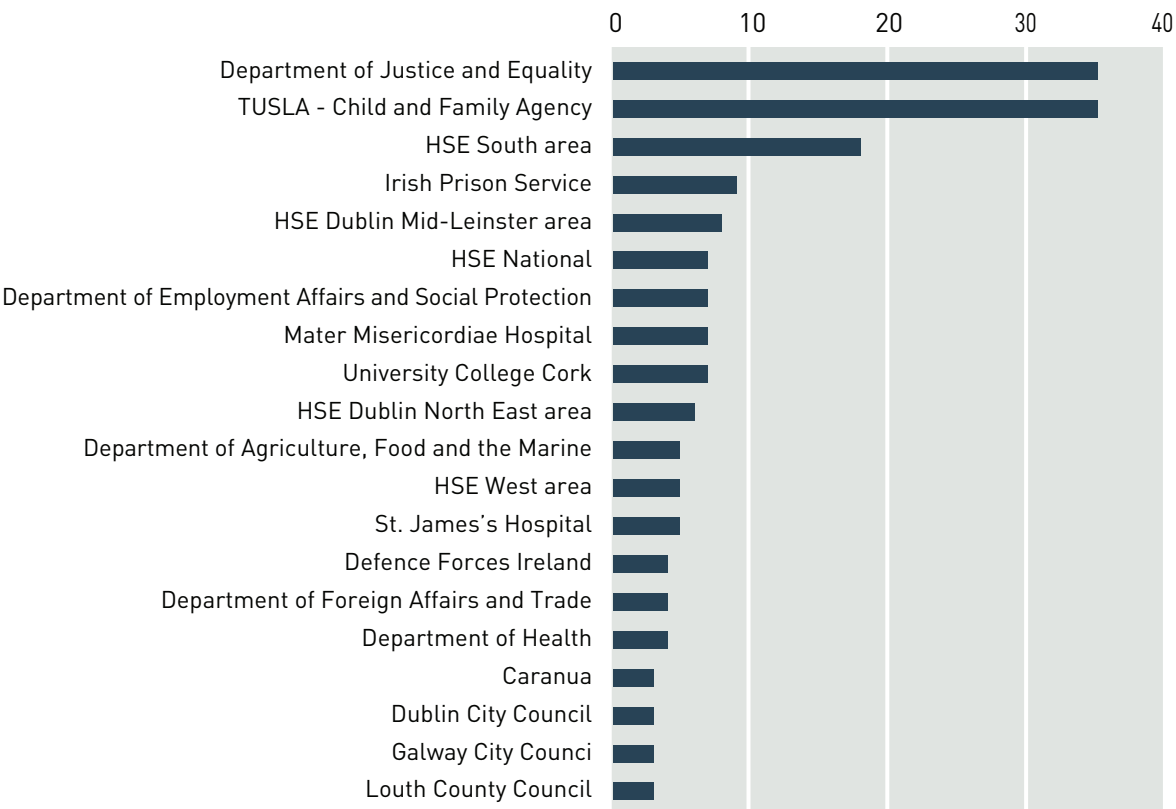
*47% of reviews were deemed refused
by public bodies at the original decision
stage of the FOI request*



- An additional 47 requests were deemed refused at the original decision stage by 41 other bodies, each of which had fewer than 3 refusals.
- The total number of applications deemed refused by the public body at the original decision stage of the FOI request is 236, or 47% of reviews accepted by my Office.

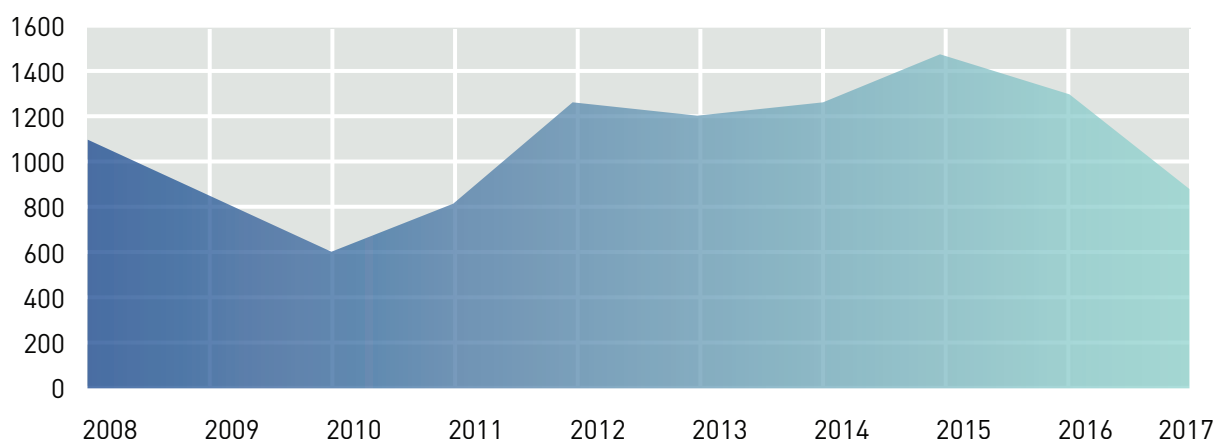
Public body - deemed refusal at 2nd stage of FOI request

44% of reviews were deemed refused
at the internal review stage



- An additional 43 requests were deemed refused at the internal review stage by 35 other bodies, each of which had fewer than 3 refusals.
- Similar to the first stage, 221 (44%) of reviews accepted by my Office were deemed refused by a public body at the internal review stage.

General enquiries to OIC



General enquiries concern various forms of communication, mostly from members of the public. The nature of those enquiries range from questions on the practicalities of the FOI Act to straightforward information about what to do next, or which public body might be able to assist. 2017 saw a fall in the number of enquiries received: 43% of enquiries were by telephone and 39% were via email.

Statutory Certificates issued by Ministers

Section 34 of the FOI Act

Where a Minister of the Government is satisfied that a record is an exempt record, either by virtue of [section 32](#) (Law enforcement and public safety), or [section 33](#) (Security, defence and international relations) and the record is of sufficient sensitivity or seriousness to justify his or her doing so, that Minister may declare the record to be exempt from the application of the FOI Act by issuing a certificate under [section 34\(1\)](#) of the Act.

Each year, Ministers must provide my Office with a report on the number of certificates issued and the provisions of section 32 or section 33 of the FOI Act that applied to the exempt record(s). I must append a copy of any such report to my Annual Report for the year in question.

Section 34(13) of the FOI Act provides that

“Subject to subsections (9) and (10), a certificate shall remain in force for a period of 2 years after the date on which it is signed by the Minister of the Government concerned and shall then expire, but a Minister of the Government may, at any time, issue a certificate under this section in respect of a record in relation to which a certificate had previously been issued ...”

My Office has been notified of the following certificates renewed or issued under section 34 in 2017.

- Three certificates were signed by the Minister for Justice and Equality in 2017 and will fall for review in 2019. A further six certificates which were signed in 2016 will fall for review in 2018.
- Three certificates were signed by the Minister for Foreign Affairs and Trade in 2017; these will fall for review in 2019.

Copies of the notifications from the Department of Justice and Equality and the Department of Foreign Affairs and Trade are attached at [Appendix I](#) to this Report.

Review under section 34(7)

In January 2018, I was notified by the Department of the Taoiseach that pursuant to section 34(7) of the FOI Act, the Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation carried out a review of the operation of subsection 34(1) of the Act.

The Department stated that fifteen certificates were reviewed, nine of which were issued by the Minister for Justice and Equality and six by the Minister for Foreign Affairs and Trade. The Department concluded that the Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation are satisfied that it is not necessary to request revocation of any of the 15 certificates reviewed.

A copy of the notification is attached at [Appendix II](#) to this Report.

Acknowledgment

I want to thank all the staff of the Offices of the Information Commissioner and the Commissioner for Environmental Information for their hard work and commitment in 2017. In particular, I thank my Senior Investigators, Elizabeth Dolan and Stephen Rafferty for their support, and Edmund McDaid and Lisa Underwood for their assistance in compiling this Report. I also want to acknowledge the essential work of the Information Communications Technology, Corporate Services, and Quality Stakeholder Engagement and Communications Units, who provide the shared services of the Office.

My thanks also to the Director General of the Office, Jacqui McCrum, for her commitment and support during 2017.

*98% of all reviews were closed within
12 months - up from 66% in 2013*

Chapter 2: Issues arising

Chapter 2: Issues arising

This Chapter highlights issues which arose during the year concerning the operation of the FOI Act.

Issues discussed include:

- Review of FOI Act 2014
- Resourcing of the administration of FOI
- Definition of Public Bodies
- Compliance with Section 8 - Publication Schemes
- Section 41 - non-disclosure provisions

I also set out a brief summary of court activity during the year, and conclude the chapter with a note on my role as Appeal Commissioner under the European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015.

Review of FOI Act 2014

I believe it is generally accepted that post-legislative scrutiny has many benefits. At the very least, such scrutiny serves to allow for the examination of whether the new legislation has met the intended policy objectives, and if it has done so in the most effective and efficient manner.

2017 represented the third full year of the operation of the 2014 Act. Given the complexity of the Act and the significant amendments introduced, I believe it is now opportune to pause and consider if it has achieved its intended purpose and if it is operating efficiently and effectively.

As the long title explains, the purpose of the Act is 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 FOI bodies. The 2014 Act introduced two measures that have generally had a significant and positive impact on access rights and the operation of the FOI regime in Ireland.

Firstly, FOI legislation was extended to all public bodies with the effect that a significant number of additional bodies were brought within the regime for the first time. Secondly, the requirement to pay up-front fees for making FOI requests was removed and the fees for availing of the relevant appeal and review mechanisms were significantly reduced.

Both measures had an almost immediate impact on levels of FOI usage and since then usage has steadily increased. For example, between 2014 and 2017, the number of requests made to FOI bodies has increased by 67%, while my Office recorded a 62% increase in the number of applications for review received during the same period. I also note that the proportion of requests made by journalists increased from 12% in 2014 to 22% in 2017. Indeed, it seems to me that hardly a day goes by without a mention of how FOI has played a part in the investigation or development of a news story.

Overall, it is clear that the increased reach of FOI and the elimination and/or reduction of associated fees has enhanced access rights and that the 2014 Act is generally working well. However, this does not mean that there is no room for improvement. One of the biggest challenges we now face is ensuring that the FOI regime is adequately resourced to meet the increased demand whilst maintaining a high quality of decision making. It is also the case that my Office has identified what might best be described as teething issues relating to some of the amendments introduced in the 2014 Act. I comment on a number of these issues below. My Office has also engaged in discussions with the Central Policy Unit of the Department of Public Expenditure and Reform on the various issues and on the question of whether a more formal review of the Act is now required.

from an applicant

*"I received the decision in the post yesterday,...
thank you so much for all your much
appreciated assistance."*

Resourcing of the administration of FOI

In my 2016 Annual Report, I noted that the increase in FOI usage levels did not appear to have been matched by a corresponding increase in the allocation of resources by public bodies to the processing of FOI requests. I expressed my concern at this emerging trend and urged public bodies to make every effort to ensure that the resources afforded to the processing of requests are sufficient to deal with the demand levels.

Unfortunately, with the exception of a small number of bodies, the overall trend continued in 2017. This is evidenced by my comments in Chapter 1 on issues such as the increased level of requests on hand at the end of the year and the ever-increasing number of deemed refusals recorded by my Office, whereby a public body fails to engage with the requester at one or both stages of an FOI request. At the extreme end of that engagement spectrum, my Office has on occasion recorded the failure of a public body to respond at both stages of the request and then, during the review, felt it necessary to issue a statutory notice to compel the body to comply with a request for relevant documentation.

I fully accept that most, if not all, public bodies are grappling with the challenge of meeting increased demand across the range of services they provide and that they often have to make difficult decisions in terms of prioritising the allocation of scarce resources. In my experience, many bodies tend to differentiate between what they regard as their core functions and other, secondary functions. However, as I have stated many times previously, the administration of the FOI Act is a statutory function which should be afforded as much weight as any other statutory function.

Unfortunately, this is not an issue that my Office, of itself, can readily rectify. However, we are available and willing to offer whatever assistance and support we can. As I outlined in Chapter 1, one of the more successful initiatives we introduced in recent years was the development and publication of a suite of guidance notes to support decision makers. I have also mentioned plans my Office has to develop our relationships with public bodies through an outreach programme. We will use the opportunities that the programme provides to ensure that the issue of the resourcing of the FOI function is considered by public bodies at the highest levels.

In addition, I would again draw the attention of public bodies to the comprehensive supports offered by the Central Policy Unit, both through its website and through its support of the various FOI liaison network groups.

Ultimately, the public bodies themselves must take responsibility for ensuring that they have sufficient resources to deal with the demand. I will be keeping this matter under close scrutiny during 2018.

Definition of Public Bodies

Prior to the introduction of the 2014 Act, there was absolute certainty around which public bodies were subject to the FOI legislation as the bodies in question were expressly specified as such.

The 2014 Act saw a departure from the previous practice of specifying the various bodies. Instead, bodies are now deemed to be public bodies for the purposes of the Act if they come within one or more of the categories described in section 6(1). Some of those categories are immediately obvious (e.g. a Department of State) while others are not so obvious (e.g. an entity that is directly or indirectly controlled by a public body).

Where a dispute arises between my Office and an entity as to whether or not it is a public body for the purposes of the Act, the dispute must be submitted to the Minister for Public Expenditure and Reform for a binding determination, under section 6(7).

In my 2016 Annual Report I explained that the Central Policy Unit had to amend a previously published Dispute Resolution Policy and Procedure for processing such referrals to the Minister to take account of the fact that section 6(7) does not provide for binding determinations in cases where my Office agrees that the entity is not a public body and the dispute is between the entity and a requester. I made the point that this leaves my Office in a position of having to make determinations on whether or not certain entities are public bodies, with no corresponding right of appeal except, perhaps, through the Courts.

In light of the further experiences of my Office on the matter, it appears that section 6(7) is also potentially problematic even where a binding determination should appropriately be sought. If a body wishes to challenge such a determination, this would most likely happen by way of a judicial review of my Office's refusal to accept an application for review based on such a determination.

It is important to bear in mind that it is entirely a matter for the Oireachtas to determine which bodies should be subject to the FOI regime. As such, it seems to me that a practical solution could be to amend section 6(7) so that the Minister can make a binding determination in all cases where the issue of whether or not an entity is a public body for the purposes of the Act is in dispute, and to provide for a right of appeal to the Courts arising from the Minister's determination.

There are other potential solutions. Combining current and previous practices, the Minister could expressly specify entities as public bodies and also allow for the inclusion of entities not so prescribed where they come within one or more of the categories in section 6(1). Alternatively, it might be open to the Minister to put the matter beyond doubt by prescribing certain entities as public bodies where disputes arise. Section 7 empowers the Minister to declare, by order, an entity to be a prescribed body for the purposes of the Act.

During 2017, my Office received a number of cases where the question arose of whether or not the entity was a public body.

In one case, a request was refused by the Office of the Secretary General to the President on the ground that it was not a public body for the purposes of section 6(1) of the Act. As my Office disagreed, we sought a binding determination by the Minister on the matter.

The Minister held that the Office of the Secretary General to the President is a public body under section 6(1)(b) (an entity established by or under any enactment, other than the Companies Acts).

In an interesting twist on the question of whether or not an entity is a public body, my Office dealt with another case where the question arose as to whether a particular body that had processed a request in accordance with the provisions of the Act was, in fact, a public body. The body in question was the Royal Institute of the Architects of Ireland (RIAI). The RIAI believed that it was a public body, at least in so far as certain statutory functions had been previously assigned to it.

My Office had cause to examine whether the RIAI was a public body for the purposes of the Act and took the view that it was not, as it did not appear to come within any of the paragraphs (a) to (h) of section 6(1).

While the RIAI did not dispute our view, my Office referred the matter to the Central Policy Unit for a binding determination by the Minister. However, the Central Policy Unit argued that the Ministerial power at section 6(7) of the Act is premised on the existence of a dispute between my Office and an entity, and as the RIAI was not disputing the finding of my Office, it would not submit the matter to the Minister. It argued that a Ministerial determination in those circumstances would be *ultra vires*.

In another case, my Office found that Galway University Foundation CLG was not a public body as it did not come within any of the paragraphs (a) to (h) of section 6(1).

Issues of the interpretation and application of section 6 apart, it seems to me that a bigger issue to be considered is whether the Act should be amended to ensure that information relating to all public services is potentially available under the Act, regardless of what entities provide those services.

I have previously referred to issues associated with the out-sourcing of the delivery of public services to private entities and noted that many services are provided by independent or private bodies on behalf of the State and its agencies. I would argue that entities to which certain public functions are outsourced (such as refuse collection) should be subject to the same levels of transparency and accountability in respect of the delivery of those public services as public bodies.

*97% of all applications to my Office were
validated within ten working days*

Compliance with Section 8 - Publication Schemes

Under section 8 of the Act, public bodies are required to make certain information publicly available via a publication scheme. The scheme must conform with any model publication scheme, or be in accordance with any guidelines on such schemes, published by the Minister for Public Expenditure and Reform. It must also include all of the information set out in section 8(2).

The Minister has published both a model scheme and specific guidance on the publication of such schemes. In preparing, reviewing or revising a publication scheme, the public body must have regard to the public interest,

- in allowing public access to information held by the body,
- in the publication of reasons for decisions made by the body, and
- in publishing information of relevance or interest to the general public in relation to its activities and functions generally.

The requirement to publish such schemes is a very welcome and positive measure in terms of enhancing accountability and transparency of public bodies. It also has the potential to reduce the administrative burden arising from processing FOI requests by the proactive, advance publication of information of general public interest.

Under section 8, public bodies are required to review and, where necessary, revise the material published under a publication scheme at least annually. They are also required to review and update the publication scheme itself every three years.

The Act provides that I may examine and report in my Annual Report on the extent to which I consider public bodies to be in compliance with the requirements relating to publication schemes. Given the increased demands on the services of my Office over the last few years, we have not examined the level of compliance by public bodies with those requirements. However, we intend to give attention to publication schemes as part of our outreach programme for 2018.

Section 41 - non-disclosure provisions

Section 41 of the Act provides for the mandatory refusal of access to records whose disclosure is prohibited, or whose non-disclosure is authorised, by other enactments. A similar provision was contained in the FOI Acts 1997 & 2003. The section subordinates the access provisions of the FOI Act to all non-disclosure provisions in statutes except for those cited in the Third Schedule.

The Act provides for the review by a Joint Committee of both Houses of the Oireachtas of the operation of any enactments that authorise or require the non-disclosure of records to determine whether they should be amended or repealed, or be added to the Third Schedule.

All Government Ministers must furnish to the Joint Committee a report on the provisions of any enactments within their respective areas of governance that authorise or require the non-disclosure of records specifying whether they consider any of the provisions should be amended

or repealed, or be added to the Third Schedule. Each Minister is required to lay the report before the Oireachtas and to furnish my Office with a copy. I am entitled to furnish my opinion to the Joint Committee in relation to those reports.

Under section 41(6), the first such report must be furnished within 30 days after the fifth anniversary of the day on which the last report was furnished under the FOI Acts 1997 & 2003 and subsequent reports must be furnished every five years thereafter.

In accordance with the provisions of the FOI Acts 1997 & 2003, reports were to be furnished and considered by the Joint Committee in 1999, 2004, 2009 and 2014. Unfortunately, this did not happen.

My Office first reported to the relevant Joint Committee in 1999. In essence, the review process is completed when the Joint Committee provides a report of the results of the review to each House of the Oireachtas. However, I understand that the dissolution of Dáil Éireann and its Committees in May 2002 occurred before the Joint Committee could report to the Houses.

My predecessor, Emily O'Reilly, subsequently presented her opinions and conclusions relating to the 2004 reports to the Joint Committee in 2005, following which the Joint Committee presented its report to the Oireachtas. The next round of reports fell due in 2009. However, my Office did not receive all of the reports until 2012. Emily presented her opinions and conclusions relating to those reports in June 2013.

When the next round of reports fell due in 2014, the report of the Joint Committee's deliberations of the third round of reports remained outstanding. The Joint Committee has not, to date, presented a report of those deliberations to the Oireachtas. I should say that no reports that fell due in 2014 were ever submitted to my Office.

The next round of reports fall due in 2019. At this stage, it seems to me that neither the Joint Committee's deliberations of the third round of reports, nor the reports that fell due in 2014, are likely to be reflective of the current position relating to the many legislative provisions that prohibit, or authorise the non-disclosure of, records. As such, a practical way of bringing the process back on track for future reporting requirements may be to ensure that all Ministers submit their next reports to the Joint Committee by May 2019, following which I will be happy to present my opinions and conclusions relating to those reports. I intend to pursue this matter with the Department of Public Expenditure and Reform during 2018.

Appeals to the Courts

A party to a review, or any other person who is affected by a decision of my Office, may appeal to the High Court on a point of law. A decision of the High Court can be appealed to the Court of Appeal.

Five appeals of decisions of my Office were made to the High Court in 2017. Three decisions were appealed by the applicant, one by the relevant public body, and one by an affected third party. All five appeals are ongoing or are listed for hearing or mention in 2018.

Two appeals of decisions were made to the Court of Appeal during the year, one by the applicant and one by the relevant public body.

One written High Court judgment and one Supreme Court judgment were delivered in 2017. Both are summarised below and can be accessed on our Office website at www.oic.ie. One appeal to the High Court that had been made in 2016 was withdrawn by the applicant in 2017.

The Minister for Communications, Energy and Natural Resources v the Information Commissioner [2015 No. 394 MCA]

Background and issue

The High Court delivered its judgment on 6 April 2017. The case concerned the question of access to a concession agreement between the Department of Communications, Energy and Natural Resources and a private company, enet. Under the agreement, enet manages a network of fibre optic cables which is State-owned and which enables telephone and broadband services.

In my decision, I directed release of the agreement. I concluded that the release of the agreement would not involve a breach of a duty of confidence between the parties. I accepted that it contained commercially sensitive information for the purposes of section 36(1)(b), but concluded that on balance, the public interest would be better served by releasing the agreement. In making this finding, I took into account that enet was the successful bidder in a tender process for the use of a State-owned asset which generates revenue.

The Department appealed my decision to the High Court. The issues before the Court were whether I had been correct in finding that, under section 22(12)(b), the Department's decision to refuse the request was presumed not to have been justified unless it satisfied me otherwise, and whether I had erred in the way in which I had applied the exemptions set out in sections 35 (confidentiality) and 36 (commercial sensitivity).

Conclusions of the Court

The Court upheld my decision. It concluded that there was no error in my applying the presumption under section 22(12)(b). It found that this section applies to all information in the possession of public and other bodies subject to the FOI Act. It agreed that section 35(2) applied and therefore consideration of section 35(1) was immaterial. On section 36, the Court said that I had explicitly engaged with the arguments advanced in support of non-disclosure and discounted them in turn. It found that the balancing exercise under section 36(3) was one uniquely within my remit. It found that my decision could not be said to be irrational or contrary to reason and common sense or erroneous.

Note: the Department has since appealed the High Court's judgment to the Court of Appeal.

Kelly v Information Commissioner [2017] IESC 64

Background and issue

A judgment of the High Court in 2014 found that the Court had no jurisdiction to entertain an appeal of the discontinuance by the then Information Commissioner of seven of the applicant's review applications on the ground that they were vexatious. It found that the statutory appeal process is intended to relate to points of law arising from substantive decisions following a review and not to a decision as to whether to carry out a review or to discontinue one that has commenced.

The applicant appealed that decision to the Court of Appeal. The Court issued its judgment in November 2015, wherein it dismissed the applicant's appeal. It found that the High Court was correct in finding that no appeal lay from a discontinuance of a review by the Commissioner and that the mode of challenging the discontinuance was by way of judicial review.

In 2016, the applicant was granted leave to appeal to the Supreme Court on two certified questions, namely:

- Did an appeal lie to the High Court under section 42(1) of the Freedom of Information Act 1997 in respect of the decision of the then Commissioner to discontinue the review pursuant to section 34(9)(a)(i) of the FOI Act?
- Does a similar issue arise under the Freedom of Information Act 2014?

Conclusions of the Court

In its judgment, which was delivered in June 2017, the Supreme Court held that the correct interpretation of the relevant provision does not permit an appeal to the High Court under section 42(1) of the Freedom of Information Act 1997, from a discontinuance by the Commissioner under section 34(9)(a)(i) of the Act. The Court also held that the same conclusion follows in respect of the equivalent provisions of the 2014 Act.

The Court determined that a person aggrieved by such a decision of the Commissioner is not without recourse to legal remedy, as the judicial review procedure is available. It held that the fact that leave may have to be obtained and that the remedy is discretionary creates no injustice where a decision is made under section 34(9)(a) of the 1997 Act.

Re-use of public sector information

European Communities (Re-use of Public Sector Information) Regulations 2005

Under the PSI Regulations, an individual or a legal entity may make a request to a public sector body to release documents for re-use. The Regulations provide that, on receipt of a request in respect of a document held by it to which the PSI Regulations apply, a public sector body must allow the re-use of the document in accordance with the conditions and time limits provided for by the Regulations.

Where possible and appropriate, documents made available for re-use must be provided in open and machine-readable format.

Under Regulation 10 of the Regulations, decisions of public sector bodies can be appealed to my Office, which can review the following decisions:

- A refusal to allow the re-use of a document
- A refusal to grant the exclusive re-use of a document
- A decision to impose a fee for the re-use of a document, which the requester believes does not comply with the Regulations
- A decision to impose conditions on the re-use of a document

No appeals were made to my Office under the PSI Regulations in 2017.

Chapter 3: **Decisions**

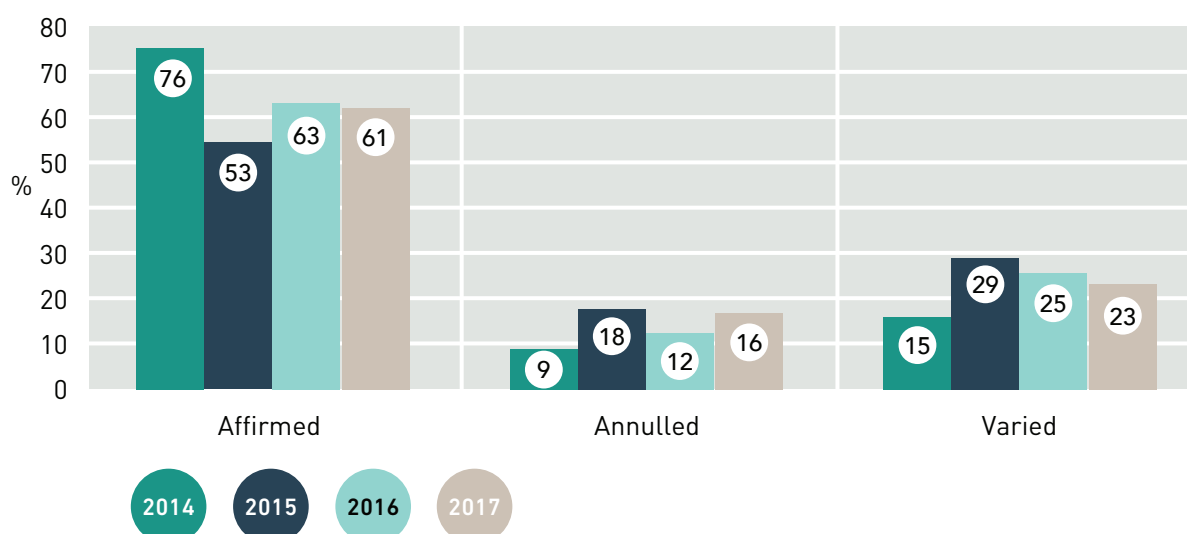
Chapter 3: Decisions

Formal decisions

My Office reviewed 502 cases in 2017 and issued formal decisions on 288 of those reviews, representing 57% of all reviews completed during the year. The remaining 214 reviews were closed by way of discontinuance, settlement or withdrawal.

*Case completions increased
by 16% over 2016*

The table below provides a percentage comparison of the outcomes of all reviews completed by way of formal decision (affirmed, varied or annulled) in 2017. See Table 15, Chapter 4 for a three year comparison of the outcome of all reviews completed in the year.



Decisions of interest

The following cases represent a sample of cases my Office reviewed during the year that were concluded by way of a formal decision. The full text of all formal decisions issued during 2017 is available at www.oic.ie.

Dublin City Council directed to release details of hotels/B&Bs providing emergency accommodation to homeless people - Case 160313

The Council released details of its total annual expenditure on hotels/B&Bs providing emergency accommodation to homeless people but refused to disclose the identities of the accommodation providers or the individual amounts paid. Among other things, it argued that the accommodation providers would withdraw their services if the information was released.

A number of hotels submitted that they would lose business to competitors if it was known that they accommodated homeless people on behalf of the Council. A number also stated that they would stop providing emergency accommodation if the information sought became public. This differed from a previous case concerning Galway City Council where no hotels/B&Bs made submissions objecting to the release of similar records.

In my decision, I accepted that there was a possibility that disclosure could have some effect on the supply of accommodation to the Council as well as on the commercial interests of the third parties. I also accepted that the information was commercially sensitive.

On the other hand, I noted that there is a strong public interest in the enhancement of openness and transparency of public bodies and that such openness is a significant aid to ensuring effective oversight of public expenditure, in ensuring that the public obtains value for money and in preventing corruption, waste and misuse of public funds.

I concluded that, on balance, the public interest would be better served by the disclosure of the information at issue. This was due in part to the substantial public monies involved. It had been reported that in 2016 alone, €38.9 million was spent by the Council on such accommodation.

[Note: Dublin City Council has appealed this decision to the High Court]

A request revisiting matters the subject of a previous settlement agreement deemed vexatious - Cases 160563 and 170088

The request in Case 160563 referred to matters of dispute the applicant previously had with the relevant public body and sought various records relating to the applicant. The body refused the request on a number of grounds including under section 15(1)(g), namely that the request was frivolous or vexatious.

The body said that the applicant had entered into a settlement agreement with the body to resolve the matters of dispute, and that the FOI request concerned matters covered by the agreement. I accepted that the matters of dispute had apparently concluded on foot of the agreement.

I take the view that a relevant factor in considering whether a request can be deemed to be frivolous or vexatious is the purpose for which the request was made. One such purpose, according to the applicant, was to ensure that the body can be held accountable for its actions. I accepted that this was a legitimate purpose. Otherwise, though, it appeared to me that the applicant was seeking to revisit the matters of dispute and thus to accomplish an objective unrelated to the access process. I also considered the request to be excessively broad and burdensome. I found the request to be one to which section 15(1)(g) applies.

The request in Case 170088 involved the same parties and was for records relating to a particular procurement competition. The body maintained that this request also concerned the matters the subject of the settlement agreement. However, it did not give any other reasons to explain why it considered the request to be frivolous or vexatious. For example, it did not argue that the request was intended to revisit the matters of dispute and/or to accomplish an objective unrelated to the access process. I found the body not to have justified its reliance on section 15(1)(g). I annulled the decision and remitted it for fresh consideration.

*The four month closure rate has
increased by 37% since 2013*

Public bodies are not generally required to process information held in hard copy records to grant a request - Case 170106

The applicant sought information relating to breech vaginal deliveries in a named hospital. The HSE provided certain limited information and refused access to the remaining information under section 15(1)(a) on the ground that it did not hold the records sought.

The Act does not require public bodies to create records if none exist, apart from a specific requirement to extract records or existing information held on electronic devices in certain circumstances. I established that the information was not held electronically and could not be retrieved by extracting information from a database.

I was also satisfied that the HSE did not collate the requested information, and that no stand-alone records containing those details existed. While the applicant argued that the information could easily be ascertained by examining medical charts, I found that this would essentially require processing the contents of medical files to create a record that did not previously exist. I did not accept that the Oireachtas intended FOI bodies to do this. I found that the HSE was justified in refusing the request.

I noted that there will be occasions where directing the release of parts of records may be appropriate in other cases. I noted, for example, that it may be appropriate to extract particular matter sought from the minutes of a meeting of a public body. In such a case, the body should be in a position to readily identify the information sought, as a stand-alone piece of information. I found that a reasonable and proportionate approach should be taken, based on specific circumstances and the context in which the request falls to be considered.

Information about the performance of hospital consultants not required to be released in the public interest - Case 160509

The applicant sought information from Beaumont Hospital about how consultants were complying with the public/private aspect of their contracts, including identifying information (the consultants' names, specialties and sub-specialties). The Hospital granted information about compliance levels of individual consultants, but refused to release the identifying information.

Under the Act, a public servant's name is not considered to be personal information. However, the definition provides that personal information includes information relating to the employment or employment history of public servants and information relating to public servants in personnel records. A personnel record is defined as a record relating wholly or mainly to the competence or ability of the public servant, or his or her employment history, or an evaluation of his or her work performance.

In this case the request concerned the performance of the hospital consultants as public servants. In that context, I found all of the identifying information to be personal information about the consultants in question.

In my consideration of whether the public interest in granting the request would, on balance, outweigh the privacy rights of the consultants, I accepted that there was a public interest in disclosing information about how the Hospital carries out functions such as monitoring consultants' compliance with their contracts. However, I found that this public interest had been served to some extent by the information already released.

I noted that the FOI Act is concerned with enhancing transparency and accountability in respect of the activities of FOI bodies generally, rather than in respect of the performance of identifiable public servants. I found that granting access to information about the performance of individual consultants would result in a significant invasion of their privacy rights. It would also give an insight into their private (i.e. non public funded) work. I found that directing release of the identifying information was not warranted in the public interest.

Release of data sets could result in an unwarranted benefit to parties - Case 160529

The Catchment Flood Risk Assessment Management (CFRAM) project is a core component of the National Flood Policy that was adopted by Government in 2004. The CFRAM project commenced in 2011. Further to six national studies, including river surveys, detailed flood maps will be produced and flood risk management measures identified, assessed, and prioritised.

The review in this case concerned the refusal of the Office of Public Works (the OPW) to grant a request for certain river survey data collected under the CFRAM project. The data was gathered to produce detailed flood maps and to prioritise appropriate flood risk management measures. The OPW relied on a number of exemptions to refuse the request including section 40(1)(d) which provides for refusal where release of the records sought could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons.

At the time of my decision, the CFRAM data sets had been restricted but the OPW was considering making them publicly available under licensing arrangements. Complete flood data in Northern Ireland (fifteen times less data than that gathered under the CFRAM project) is available under similar arrangements for a cost of over £45,000. I accepted that the licensed full value of the CFRAM data would be substantial. I also accepted that release of the requested data could reasonably be expected to result in an unwarranted benefit to the applicants and others, and would deprive the State/OPW of licensing revenue. I found section 40(1)(d) to apply.

I found that the requested information would not enable any significant insight into how the OPW carries out functions such as deciding on funding prioritisations. I did not consider there to be a significant public interest in its release. However, I accepted that there was a public interest in protecting information that could reasonably be expected to result in an unwarranted benefit to various parties. I directed that the data sets be withheld.

Release of correspondence between the Department of Social Protection and the Data Protection Commissioner relating to the Public Services Card not contrary to the public interest - Case 170255

The Department refused to release its correspondence with the Office of the Data Protection Commissioner (the DPC) relating to the Public Services Card (the PSC), on the ground that it related to an ongoing deliberative process and that release would be contrary to the public interest. It argued that the views expressed by the DPC would misinform the public about the PSC and erode public confidence in the PSC project and/or the Office of the DPC. However, it did not explain the reasoning used to arrive at this conclusion.

In any event, I take the view that the possibility of information being misunderstood is not a good reason to refuse access to records under FOI, and I noted that it would be open to the Department to put further information in the public domain, if that were necessary, to clarify matters.

The introduction of the PSC has not been without controversy and I took the view that release of the records would further the public interest in openness and transparency, and also enable public debate about the issues raised by the DPC. I found that the Department had not adequately demonstrated that the release of the records at issue would be contrary to the public interest.

Flawed decision to impose a fee for search and retrieval costs - Case 160284

My review in Case 160284 followed an earlier decision by my Office to annul a decision of the Department of Jobs, Enterprise and Innovation to refuse a voluminous request as it had not assisted, or offered to assist, the requester in amending the request. The Department subsequently engaged with the requester following which an amended request was submitted.

The Department decided to process the amended request notwithstanding that it was entitled to refuse the request on the ground that the estimated search and retrieval costs exceeded the overall prescribed limit of €700. It sought to impose a fee for the estimated search and retrieval costs.

The relevant provisions in the Act relating to charging search and retrieval fees are quite complex. They are also subject to strict requirements and time-frames which can prove challenging for public bodies to meet, given the complexity of the issues to be considered.

Where the estimated search and retrieval costs exceed or are likely to exceed the overall ceiling limit of €700, the public body must notify the requester of that fact and it must offer to assist the requester in amending the request in order to reduce the charge to an amount less than or equal to €700. It must also issue a notice, not later than two weeks after the receipt of the request, requiring the payment of a deposit in the event that the requester amends the request, or the body decides to process the request regardless of any amendment.

The Department was of the view that the assistance initially offered to amend the request satisfied consultation requirements in respect of the search and retrieval costs. However, both provisions are completely separate.

I found that the Department should have informed the requester that the search and retrieval costs in respect of the amended request were likely to exceed the overall ceiling limit and given him a further opportunity to amend his request. I also found that it should have done so within two weeks of receiving the amended request under section 15(4). I annulled the Department's decision to impose a fee for the estimated search and retrieval costs relating to the amended request.

Records of a particular investigation relating to the conduct of members of An Garda Síochána not subject to the Act - Case 160054

The applicant sought a review of the decision of An Garda Síochána (AGS) to refuse access to, among other things, an investigation file relating to the conduct of members of AGS. This was the first case in which my Office had to consider the extent to which records of AGS are subject to the Act.

Only the administrative records of AGS relating to human resources, or finance or procurement matters are subject to the Act. Records relating to the core functions of AGS, such as the investigation of criminal activity, are not included.

Generally, I consider records relating to staff discipline to be administrative records relating to human resources. However, in this case the records were distinguishable from those that might generally exist in relation to a disciplinary matter. They resulted from a complaint made by a member of the public to the Garda Síochána Ombudsman Commission (GSOC) that was referred to AGS for investigation. I found that the records were not "administrative records relating to human resources" within the meaning of Part 1(n) of the First Schedule.

While it did not affect my ultimate decision, I also found that the exclusion of certain GSOC records as set out in Part 1(y) of the First Schedule does not extend to such records where they are held by other public bodies, such as AGS.

The Commissioner has jurisdiction to review a decision of the Data Protection Commissioner to refuse a request for non-administrative records - Case 160447

The Office of the Data Protection Commissioner (the DPC) refused a request for access to records relating to lobbying of the Office on the ground that the records sought are not covered by the FOI Act as they do not relate to the general administration of the Office.

During the course of the review, the DPC argued that I had no jurisdiction to review its decision as the records sought concern matters for which the DPC is not a public body for the purposes of the Act.

Essentially, the DPC's argument was that none of the provisions of the Act apply where the records sought do not concern the general administration of the DPC, notwithstanding the fact that the position taken by the DPC was contrary to the legal advice that the Office of the Attorney General provided to the Central Policy Unit of the Department of Public Expenditure and Reform on the matter, and to my decision in [Case 150195](#) where I considered and rejected similar arguments made by the Central Bank of Ireland.

I found that as a public body, the DPC was required to make a decision in relation to an access request and in making that decision, it may look to the relevant provisions of the Act, including Part 1 of Schedule 1, in deciding whether or not to grant access, but it must otherwise adhere to the requirements of the Act, including in relation to the statutory rights of review.

I found that any decision to refuse access on internal review under section 21 of the FOI Act is in turn subject to review by my Office under section 22(1)(b) of the FOI Act. Accordingly, I found that I was entitled to review the DPC's decision to refuse the applicant's request. On the substantive matter, I found that the DPC was justified in refusing the request as the records did not relate to the general administration of its Office.

from an applicant

"I am happy that the matter has been settled since your intervention. I have received the report as originally requested."

Department of Justice and Equality directed to release contractual information relating to the operation of road safety cameras - Case 160427

The applicant sought access to a contract for the provision and operation of road safety cameras. The parties to the contract were the Department of Justice and Equality, An Garda Síochána and GoSafe. All three parties objected to the full release of the contract. I accepted that the contract

contained certain information that was commercially sensitive, under section 36(1)(b) of the FOI Act.

However, I found that the public interest in transparency and accountability in respect of a contract with a successful tenderer outweighed the public interest in refusing access to the information, except in relation to two schedules to the contract. I directed the Department to release the vast majority of the contract.

Local Government Management Agency directed to release records about a value-for-money report in the public interest - Case 170136

The Local Government Management Agency (the LGMA) commissioned PwC to conduct a value-for-money review of the insurance services provided by IPB Insurance to the local authorities. It did so on behalf of a steering group which oversaw the review.

The applicant sought access to the report and related records. The LGMA refused access to a number of records under a number of exemptions, including under section 35 on the basis of a non-disclosure agreement entered into between the LGMA, PwC and IPB Insurance, in relation to certain information which IPB Insurance provided for the purpose of the review.

The protection afforded to confidential information by section 35 does not apply where the record sought was prepared by a member of the staff of a public body or a service provider in the course of the performance of his or her functions, unless disclosure of the information concerned would constitute a breach of a duty of confidence that is provided for by an agreement or statute or otherwise by law, and is owed to a person other than a public body or a member of the staff of a public body or a service provider.

The LGMA argued that a duty of confidence was owed to IPB Insurance in this case. While it accepted that IPB Insurance is a service provider insofar as it provides services to the local authorities, it argued that the information which IPB provided to PwC in this context was furnished for a specific and limited purpose and does not relate to the services it otherwise provides under a contract for services.

I noted that according to the steering group's own terms of reference, it was agreed to conduct a value-for-money assessment of the insurance services provided by IPB Insurance to its members. The records under review were prepared by the steering group or PwC and their subject matter was the value-for-money review. In those circumstances, I was satisfied that they relate to the services which IPB Insurance provides.

IPB Insurance provides insurance services to the local authorities and education and training boards. In the circumstances, I found that IPB Insurance was a service provider under the FOI Act. As such, I found that the LGMA had not identified an entity other than a public body or service provider to whom a duty of confidence is owed under the non-disclosure agreement. I found that section 35 did not apply.

I accepted that the records contained commercially sensitive information under section 36(1)(b). However, I found that under section 36(3), the public interest in transparency and accountability

around the value for money obtained by FOI bodies outweighed the public interest in refusing access to the information. I directed the release of the records.

[Note: IPB Insurance has appealed this case to the High Court]

Tender details not identified as sensitive do not automatically fall for release - Case 160340

The applicant requested records relating to a particular contract awarded by Galway County Council. He argued that if bidders had not identified commercially sensitive or confidential information when tendering, as requested by the Request for Tenders (RfT), then the tenders could not be exempt under the confidentiality or commercial sensitivity exemptions (sections 35 and 36, respectively).

The RfT stated that when dealing with an FOI request, the Council would have regard to any explanations given by tenderers as to why particular details in their tender were commercially sensitive or confidential.

While I acknowledged that the relevant provision in the RfT was intended to assist public bodies when considering requests for tender submissions, I did not accept that the failure of a tenderer to identify confidential or commercially sensitive information in a tender submission, of itself, meant that the submission should be released on foot of an FOI request. I considered that such a proposition would be all the more unreasonable in the case of tenderers who were not successful and/or did not ultimately receive public monies.

I found that the public interest would not be better served by the release of additional information relating to the unsuccessful tenderers.

from an applicant

“Thanks for this and, to repeat, it has been a pleasure engaging with you on it. Thanks for the way you handled everything and best wishes”.

Chapter 4: Statistics

Chapter 4: Statistics

Section I – Public Bodies - 2017

Table 1: Overview of FOI requests dealt with by public bodies

Table 2: FOI requests dealt with by public bodies and subsequently appealed

Table 3: FOI requests received - by requester type

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Table 6: FOI requests received by civil service Departments/Offices

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Table 9: FOI requests received by voluntary hospitals, mental health services regulators and related agencies

Table 10: FOI requests received by third-level education institutions

Table 11: FOI requests received by other bodies

Figures for the above tables are supplied by the Department of Public Expenditure and Reform, the HSE, the Local Authorities FOI Liaison Group, the Department of Health, the National Federation of Voluntary Bodies and the Liaison Group for the Higher Education Sector, and collated by the Office of the Information Commissioner.

Section II – Office of the Information Commissioner - 2017

Table 12: Analysis of applications for review received

Table 13: Analysis of review cases

Table 14: Applications for review accepted in 2017

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Section I – Public Bodies - 2017

Table 1: Overview of FOI requests dealt with by public bodies

Requests on hand - 01/01/2017	6,018
Requests received in 2017	
Personal	19,830
Non-personal	13,855
Mixed	294
Total	33,979
Total requests on hand during year	39,997
Requests dealt with	32,815
Requests on hand - 31/12/2017	7,182

Table 2: FOI requests dealt with by public bodies and subsequently appealed

	Number	Percentage
FOI requests dealt with by public bodies	32,815	
Internal reviews received by public bodies	1,161	3.5%
Applications accepted by the Commissioner	497	1.5%

Table 3: FOI requests received - by requester type

Requester Type	Number	Percentage
Journalists	7,469	22%
Business	1,514	4.5%
Oireachtas Members	645	2%
Staff of public bodies	1,141	3.5%
Clients	17,454	51%
Others	5,756	17%
Total	33,979	

Table 4: Outcomes of FOI requests dealt with by public bodies

Request Type	Number	Percentage
Requests granted	16,704	51%
Requests part-granted	7,638	23%
Requests refused	4,826	15%
Requests transferred to appropriate body	649	2%
Requests withdrawn or handled outside FOI	2,998	9%
Total	32,815	

Table 5: Analysis of FOI requests dealt with by public service sector

	granted	part granted	refused	transferred	withdrawn or handled outside of FOI
Civil Service departments	30%	34%	22%	2%	12%
Local Authorities	46%	25%	20%	1%	8%
HSE	72%	15%	6%	2%	5%
Voluntary Hospitals, Mental Health Services Regulators and Related Agencies	76%	6%	7%	1%	10%
Third Level Institutions	54%	27%	10%	1%	8%
Other bodies	60%	25%	9%	1%	5%

Table 6: FOI requests received by civil service Departments/Offices

Civil Service Department/Office	Personal	Non-personal	Mixed	Total
Department of Employment Affairs and Social Protection	2,101	325	17	2,443
Department of Justice and Equality	402	394	0	796
Department of Education and Skills	152	386	10	548
Department of Finance	8	398	0	406
Department of Agriculture, Food and the Marine	168	223	0	391
Department of Housing, Planning and Local Government	5	345	1	351
Department of Health	7	344	0	351
Department of the Taoiseach	8	336	0	344
Department of Transport, Tourism and Sport	14	330	0	344
Office of the Revenue Commissioners	123	219	0	342
Department of Foreign Affairs and Trade	38	224	0	262
Department of Business, Enterprise and Innovation	55	197	1	253
Department of Public Expenditure and Reform	13	235	0	248
Department of Communications, Climate Action and Environment	3	192	0	195
Department of Culture, Heritage and the Gaeltacht	0	154	4	158
Department of Defence	26	128	1	155
Office of Public Works	9	122	0	131
Department of Children and Youth Affairs	1	87	0	88
Office of the Ombudsman	20	7	0	27
Standards in Public Office Commission	0	24	0	24
Department of Rural and Community Development	0	14	0	14
Commission for Public Service Appointments	0	4	3	7
Office of the Information Commissioner	1	2	0	3
Office of the Commissioner for Environmental Information	0	1	0	1
Total	3,154	4,691	37	7,882

Table 7: FOI requests received by local authorities

Local Authority	Personal	Non-personal	Mixed	Total
Dublin City Council	195	461	5	661
South Dublin County Council	76	129	0	205
Limerick City and County Council	44	153	0	197
Cork County Council	33	159	3	195
Fingal County Council	33	158	0	191
Meath County Council	14	162	0	176
Kildare County Council	30	139	3	172
Dún Laoghaire/Rathdown County Council	26	139	0	165
Cork City Council	44	116	1	161
Galway County Council	19	124	4	147
Wicklow County Council	26	116	0	142
Galway City Council	31	102	0	133
Mayo County Council	3	126	0	129
Kilkenny County Council	14	114	0	128
Wexford County Council	37	90	0	127
Louth County Council	24	95	2	121
Tipperary County Council	17	100	1	118
Donegal County Council	12	104	0	116
Roscommon County Council	6	109	1	116
Clare County Council	12	93	2	107
Longford County Council	5	98	0	103
Laois County Council	22	79	0	101
Leitrim County Council	6	93	0	99
Waterford City and County Council	19	80	0	99
Kerry County Council	12	82	0	94
Offaly County Council	13	65	0	78
Westmeath County Council	9	68	0	77
Monaghan County Council	6	69	0	75
Sligo County Council	0	72	0	72
Cavan County Council	6	61	0	67
Carlow County Council	4	55	0	59
Total	798	3,611	22	4,431
Regional Assemblies		2		2

**Table 8: FOI requests received by the HSE
(excluding certain agencies covered in Table 9)**

HSE area*	Personal	Non-Personal	Mixed	Total
HSE South	3,304	127	7	3,438
HSE West	2,907	284	3	3,194
HSE Dublin North East	1,103	92	3	1,198
HSE Dublin Mid-Leinster	1,010	78	0	1,088
HSE National	0	683	0	683
Total received	8,324	1,264	13	9,601

*Figures represent the regional structure of the HSE

Table 9: FOI requests received by voluntary hospitals, mental health services regulators and related agencies

Hospital/Service/Agency	Personal	Non-Personal	Mixed	Total
TUSLA - Child and Family Agency	931	80	1	1,012
Tallaght Hospital	879	11	0	890
St James's Hospital	755	32	0	787
Mater Misericordiae University Hospital	339	25	0	364
Beaumont Hospital	301	39	0	340
Our Lady's Hospital for Sick Children, Crumlin	299	33	0	332
Rotunda Hospital	280	32	2	314
St. Vincent's University Hospital, Merrion	230	50	2	282
St. John's Hospital, Limerick	256	11	0	267
National Maternity Hospital, Holles Street	227	29	0	256
Temple Street Children's University Hospital	184	23	0	207
South Infirmary / Victoria Hospital, Cork	123	10	0	133
Coombe Hospital	111	16	0	127
Cappagh Orthopaedic Hospital	89	29	0	118
Hospitaller Order of St. John of God	76	0	0	76
Mercy Hospital, Cork	57	10	0	67
Health Information & Quality Authority	8	42	0	50

Medical Council	23	25	2	50
National Rehabilitation Hospital, Dún Laoghaire	39	3	0	42
Royal Victoria Eye & Ear Hospital	39	0	0	39
Food Safety Authority of Ireland	0	37	0	37
St. Michael's Hospital, Dún Laoghaire	22	10	0	32
Central Remedial Clinic	29	2	0	31
Dublin Dental University Hospital	26	2	0	28
St. Vincent's Hospital, Fairview	23	5	0	28
National Treatment Purchase Fund	2	24	0	26
Mental Health Commission	5	18	0	23
Other Hospitals/Services/Agencies	71	38	0	109
Total	5,424	636	7	6,067

Table 10: FOI requests received by third-level education institutions

Third Level Education Body	Personal	Non-Personal	Mixed	Total
University College Dublin	60	81	0	141
National University of Ireland Galway	37	74	0	111
University of Limerick	15	84	4	103
Dublin City University	5	83	0	88
Trinity College Dublin, the University of Dublin	6	80	0	86
University College Cork	17	65	1	83
Dublin Institute of Technology	7	39	0	46
National University of Ireland Maynooth	5	34	0	39
Galway-Mayo Institute of Technology	6	23	0	29
Waterford Institute of Technology	2	23	1	26
Institute of Technology Sligo	5	18	2	25
Dundalk Institute of Technology	2	22	0	24
Other bodies	20	114	2	136
Total	187	740	10	937

Table 11: FOI requests received by other bodies

Public body	Personal	Non-Personal	Mixed	Total
Irish Prison Service	620	124	0	744
An Garda Síochána	181	360	1	542
Defence Forces Ireland	236	63	2	301
RTÉ	4	216	0	220
Houses of the Oireachtas Service	3	214	2	219
Health & Safety Authority	13	30	165	208
Social Welfare Appeals Office	175	4	0	179
Courts Service	76	93	0	169
Road Safety Authority	52	69	2	123
Transport Infrastructure Ireland	3	107	0	110
Central Bank of Ireland	6	91	1	98
Irish Water	6	82	0	88
National Transport Authority	3	85	0	88
National Treasury Management Agency	5	74	0	79
National Asset Management Agency	4	51	0	55
Environmental Protection Agency	1	48	1	50
ESB Networks DAC	8	42	0	50
Board of National Museum of Ireland	10	38	0	48
Garda Síochána Ombudsman Commission	30	14	0	44
Office of the Data Protection Commissioner	11	33	0	44
Arts Council	1	41	1	43
Fáilte Ireland	5	35	2	42
Charities Regulatory Authority	0	41	1	42
State Examinations Commission	10	31	0	41
Sport Ireland	3	38	0	41
Eirgrid	3	34	0	37
Central Statistics Office	9	27	0	36
Caranua	17	17	1	35
Inland Fisheries Ireland	5	29	0	34
An Bord Pleanála	3	29	2	34

IDA Ireland	0	33	0	33
Residential Tenancies Board	20	13	0	33
Property Registration Authority	28	5	0	33
Commission for Communications Regulation	15	15	1	31
International Protection Office	22	6	3	31
Enterprise Ireland	0	30	0	30
Other bodies (96 bodies with fewer than 30 requests each)	195	591	19	805
Total	1,783	2,853	204	4,840

Section II - Office of the Information Commissioner – 2017

Table 12: Analysis of applications for review received

Applications for review on hand - 01/01/2017	37
Applications for review received in 2017	577
Total applications for review on hand in 2017	614
Applications discontinued	5
Invalid applications	65
Applications settled	3
Applications withdrawn	27
Applications rejected	2
Applications accepted for review in 2017	497
Total applications for review considered in 2017	599
Applications for review on hand - 31/12/2017	15

Table 13: Analysis of review cases

Reviews on hand - 01/01/2017	130
Reviews accepted in 2017	497
Total reviews on hand in 2017	627
Reviews completed in 2017	502
Reviews carried forward to 2018	125

Table 14: Applications for review accepted in 2017

Health Service Executive		75
HSE South area	27	
HSE West area	15	
HSE Dublin Mid-Leinster area	13	
HSE National	11	
HSE Dublin North East area	9	
TUSLA: Child and Family Agency		44
Department of Justice and Equality		44
Department of Employment Affairs and Social Protection		36
Department of Education and Skills		17
Department of Agriculture, Food and the Marine		12
Dublin City Council		10
Irish Prison Service		10
Defence Forces Ireland		8
Mater Misericordiae Hospital		8
University College Cork		8
Eirgrid		7
Galway City Council		7
Department of Public Expenditure and Reform		6
University of Limerick		6
Galway County Council		5
Office of the Revenue Commissioners		5
RTÉ		5
St James's Hospital		5
Others (bodies with fewer than 5 applications each)		179
Total		497

Table 15: Outcome of completed reviews - 3-year comparison

	2017		2016		2015	
Decision affirmed	175	35%	179	42%	110	34%
Decision annulled	45	9%	36	8%	37	12%
Decision varied	68	13%	70	16%	59	18%
Discontinued	56	11%	14	3%	10	3%
Settlement reached	80	16%	88	20%	69	21%
Withdrawn	75	15%	46	11%	38	12%
Invalid	3	1%	-	-	-	-
Reviews completed	502		433		323	

Table 16: Subject matter of review applications accepted - 3-year comparison

	2017		2016		2015	
Refusal of access	466	94%	403	91%	299	90%
Objections by third parties to release information about them or supplied by them	7	1%	8	2%	15	5%
Amendment of records under section 9	6	1%	13	3%	4	1%
Statement of reasons under section 10	10	2%	12	3%	11	3%
Decision to charge a fee	8	2%	4	1%	3	1%
Total	497		440		332	

Table 17: Applications accepted by type - 3-year comparison

	2017		2016		2015	
Personal	129	26%	146	33%	109	33%
Non-personal	278	56%	242	55%	167	50%
Mixed	90	18%	52	12%	56	17%
Total	497		440		332	

Table 18: General enquiries

	Number of enquiries
2017	900
2016	1,307
2015	1,462
2014	1,274
2013	1,218
2012	1,262
2011	824
2010	622
2009	857
2008	1,100

Table 19: Deemed refusals due to non-reply by public bodies

Refusal of original and internal review decisions			
Public Body	2017	2016	2015
TUSLA: Child and Family Agency	29	20	7
Department of Justice and Equality	29	8	7
HSE South area	9	7	5
Irish Prison Service	9	6	-
Mater Misericordiae Hospital	7	1	-
HSE West area	5	6	7
HSE Dublin North East area	5	2	-
University College Cork	5	4	4
HSE Dublin Mid-Leinster area	4	1	7
Department of Employment Affairs and Social Protection	4	-	-
HSE National	4	6	4
Defence Forces Ireland	3	2	-
Department of Agriculture, Food and the Marine	3	2	1
Dublin City Council	2	2	-
Galway City Council	2	1	-
National Maternity Hospital	2	1	-
Royal Victoria Eye & Ear Hospital	2	-	-
Westmeath County Council	2	1	-
other bodies - 1 each	17		
Total 2017	143		

Part II

Commissioner for Environmental Information

Introduction

The Office of the Commissioner for Environmental Information (OCEI) was established under article 12 of the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 (the AIE Regulations). The AIE Regulations transpose Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (the AIE Directive). The AIE Directive implements the first pillar - access to information - of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).

My role as Commissioner for Environmental Information is to review decisions of public authorities on appeal by applicants who are not satisfied with outcomes of requests made under the AIE Regulations. When making a formal written decision on an appeal, I may either affirm, vary or annul the public authority's decision - in so far as that decision was the subject of the review. My decisions on appeals are final and binding on the affected parties, unless a further appeal is made to the High Court on a point of law. I made 35 formal decisions in 2017 which is more than in any other year since the establishment of the OCEI in 2007.

Although I am assisted by the staff of, and such other resources as may be available to, the Office of the Information Commissioner (OIC), the OCEI is an independent statutory appeals mechanism and is legally separate from the OIC. An additional investigator, recruited from an open Assistant Principal Officer competition run by the Public Appointments Service, was assigned to the OCEI at the end of 2017, bringing the number of OCEI investigators to three. The additional staffing at the OCEI in recent years has resulted in an increase of the number of cases closed by my Office and in improved turnaround times.

For further information on the operation of the AIE regime in Ireland, please visit my website at www.ocei.ie, which includes links to the previous Annual Reports of this Office, the OCEI Procedures Manual, the website of the Department of Communications, Climate Action and the Environment, and Directive 2003/4/EC. All of my decisions can be found on the OCEI website on the Decisions web page.

Key OCEI statistics in 2017

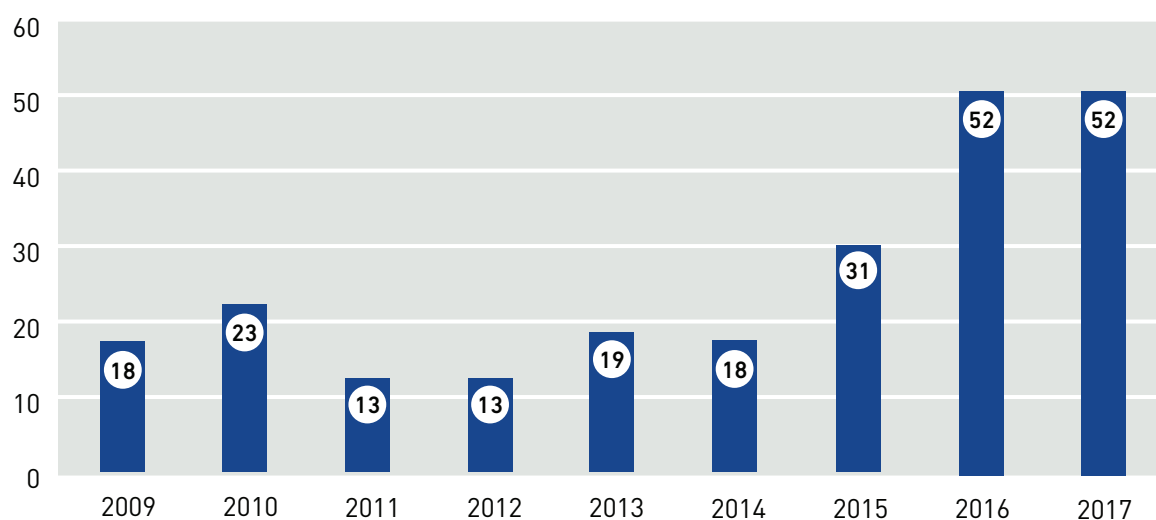
Appeals received by the OCEI in 2017

At the start of 2017, the OCEI had 39 appeals on hand; 36 from 2016 and three from 2015. In 2017, the OCEI received 52 new appeals from 16 appellants. This is the same as the number of new appeals that were received in 2016. In addition to the 52 new appeals received in 2017, one case was remitted to the OCEI by the Court of Appeal (see Minch -v- Commissioner for Environmental Information & Anor [2017] IECA 223 (Minch) under '2017 Court Proceedings').

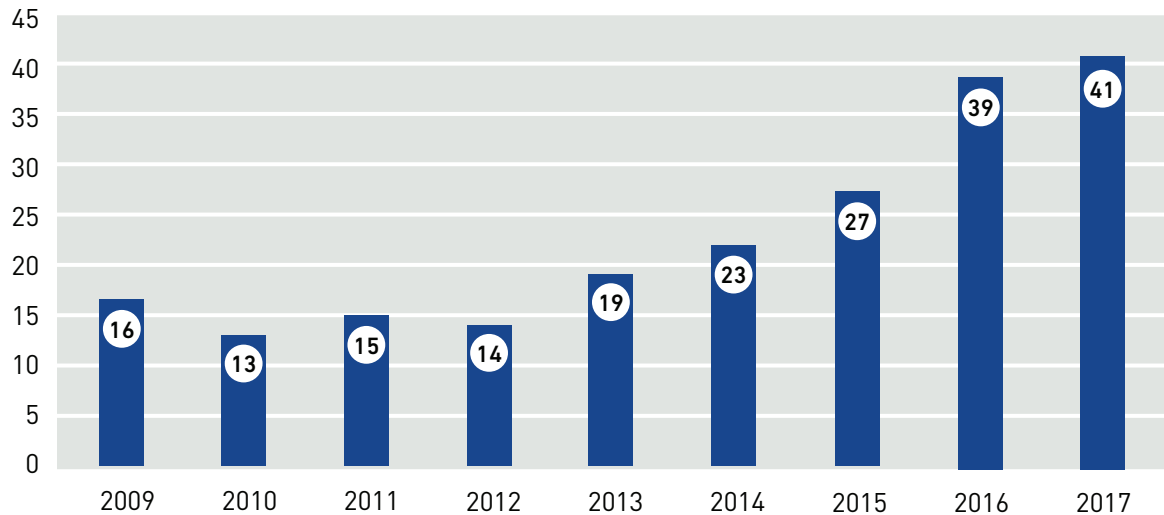
At the end of 2017, the OCEI had 41 valid appeals on hand. Of those 41 appeals, 38 were received in 2017, two in 2016, and one was the Minch appeal remitted to the OCEI by the Court of Appeal. At the time of writing, I have made a new decision in Minch and a decision in one of the two 2016 appeals and the remaining 2016 appeal is being progressed by an Investigator.

The two charts below show the number of appeals received, and the number of appeals on hand as of 31 December, each year from 2009 to 2017.

Number of appeals received from 2009 to 2017



Number of appeals on hand as of 31 December from 2009 to 2017



Cases closed by the OCEI in 2017

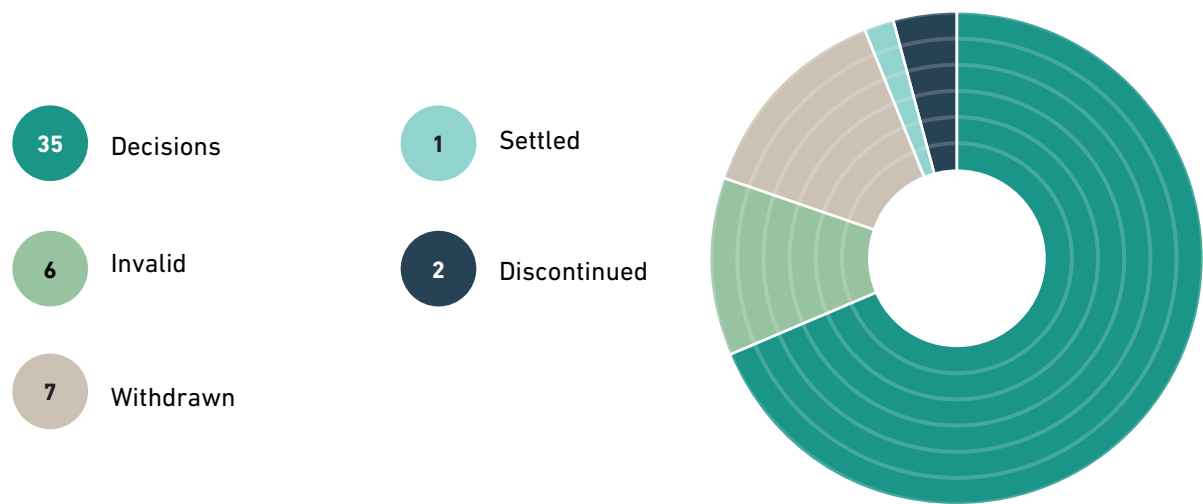
The OCEI closed 51 cases in 2017 - more cases than were closed in any other year since its establishment in 2007. I made 35 formal decisions in 2017; this too is more than in any other year since 2007. The outcome in the 51 cases that were closed by the OCEI in 2017 is as follows:

- 35 cases were closed by formal decision
- six appeals were invalid
- seven cases were withdrawn
- one case was settled
- two cases were discontinued

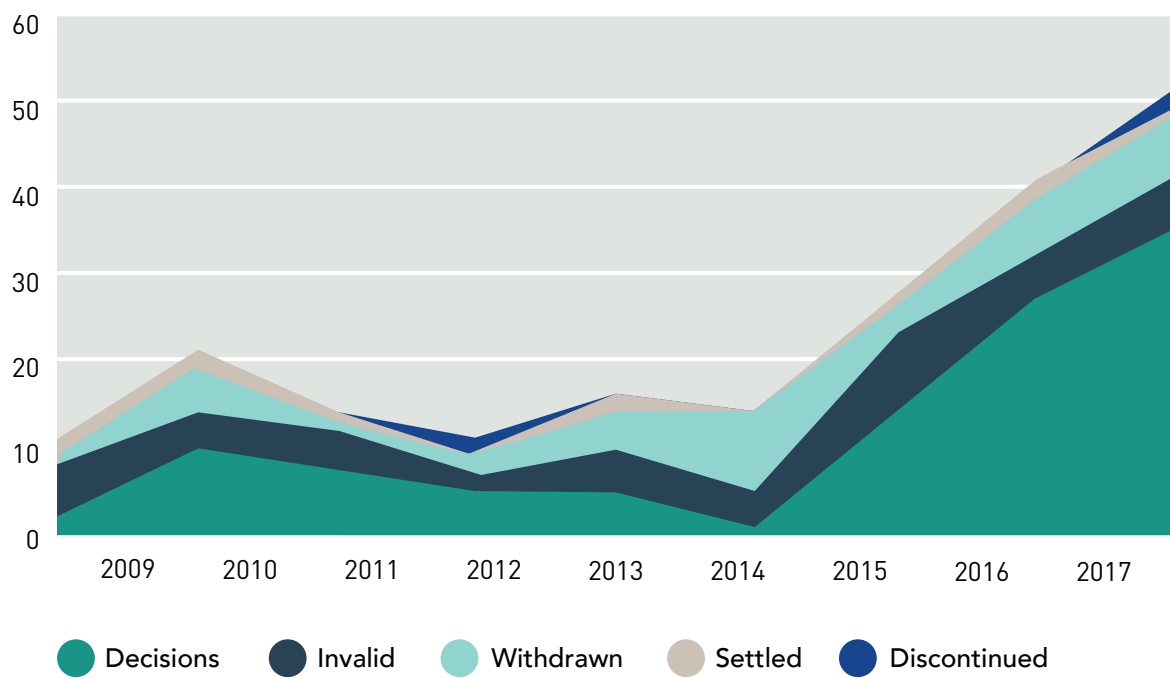
The average number of days taken for a case to be closed decreased by 54 days from 316 days in 2016 to 262 days in 2017.

The two charts below show the outcome in cases closed by the OCEI in 2017 and the outcome in cases closed by OCEI from 2009 to 2017.

Outcome in OCEI cases closed in 2017



Outcome in OCEI cases from 2009 to 2017



Enquiries received by the OCEI in 2017

My staff recorded 15 general enquiries about the AIE Regulations in 2017. In 2017, my Office processed one request under the AIE Regulations and one request under the FOI Act 2014.

Powers under article 12(6) of the AIE regulations

Article 12(6) of the AIE Regulations provides that in the course of carrying out a review of an appeal I may:

- require a public authority to make environmental information available to me
- examine and take copies of environmental information held by a public authority
- enter any premises occupied by a public authority so as to obtain environmental information

I am pleased to report that I had no need to apply these powers in 2017.

Deemed refusals in 2017

Essentially, a deemed refusal occurs when a public authority fails to give a decision on a request in time. The AIE Regulations impose a statutory time limit on public authorities for processing a request. Article 7 of the AIE Regulations provides that a public authority must make a decision on an applicant's request within one calendar month, or where the public authority extends the time for processing requests due to the volume or complexity of the environmental information requested within two calendar months, from the date it received the request. Where an internal review is requested, article 11(3) of the AIE Regulations provides that a public authority must notify an applicant of its decision on the request within one calendar month from the date it received the request.

Where no decision is issued either on the original request (at first stage) or the internal review request (at second stage), or a decision is issued late, under the AIE Regulations the public authority is deemed to have made a decision refusing access. Following a deemed refusal at the internal review stage, an applicant is entitled to appeal to me for a review of the public authority's refusal within one calendar month of the date the applicant should have received the public authority's decision.

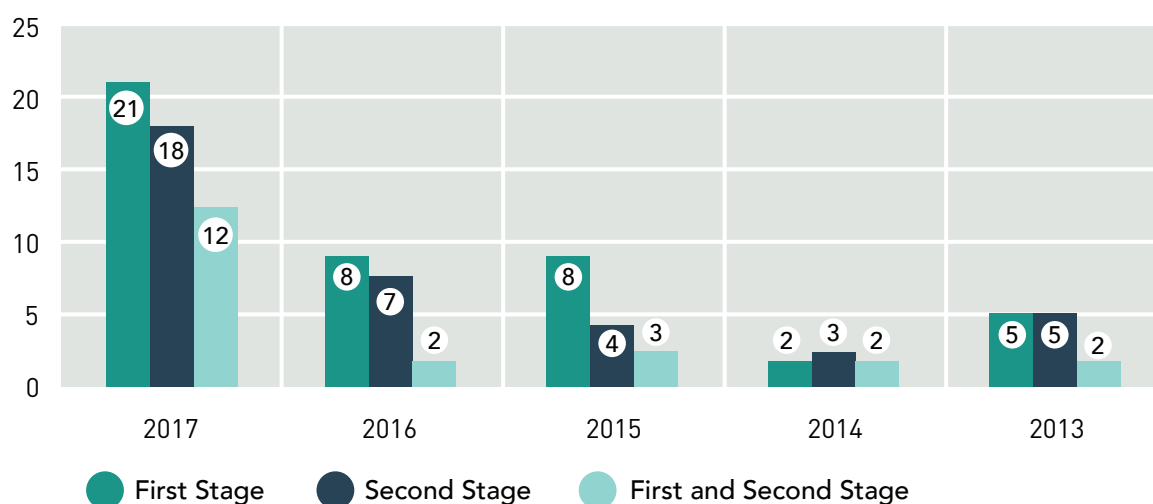
Increase in the number of deemed refusals

I am extremely disappointed to have to report that there was a sharp rise in the number of deemed refusals recorded by my Office in 2017. In cases closed by the OCEI in 2017, my Office recorded that there were 21 deemed refusals at first stage and 18 deemed refusals at second stage.

23% of OCEI appeals that were closed in 2017 arose from deemed refusals by public authorities at both stages of the request

As can be seen from the chart below, 2017 is by far the worst year on record in terms of the number of deemed refusals recorded by my Office.

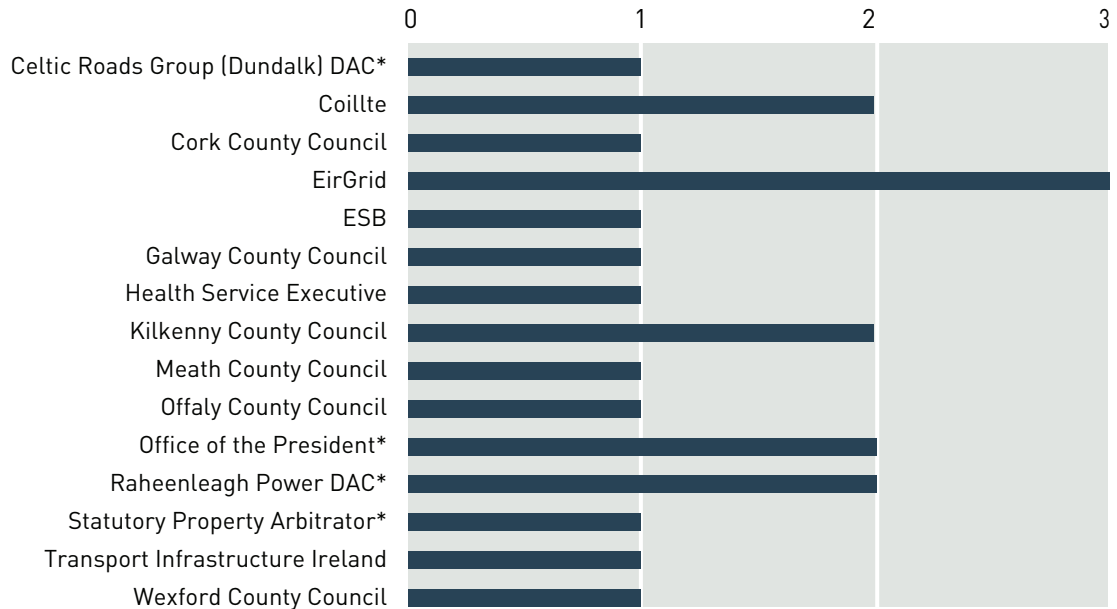
Decisions where public authorities failed to make a decision from 2013 to 2017



The sharp rise in the number of deemed refusals seems to me to be a strong indicator that public authorities are not devoting adequate resources to processing requests. I appreciate that the National AIE Statistics compiled by the Department of Communications, Climate Action and Environment (available at its '[National AIE Statistics](#)' webpage) show that the number of requests made to public authorities each year is increasing which is likely to put pressure on limited resources. However, the number of cases where an applicant did not receive an initial decision or an internal review is unacceptably high. The failure to make a decision at either stage of a request deprives an applicant of their right to access to environmental information under national, European and international law. Such "non-replies" also deprive requesters of important information on their right to appeal the refusal of their request.

In 21 (40%) out of the 51 cases closed by the OCEI in 2017, 15 public authorities failed to make first instance decisions on requests within the time specified by the AIE Regulations. The chart below shows which public authorities failed to make the decisions the first stage of AIE requests.

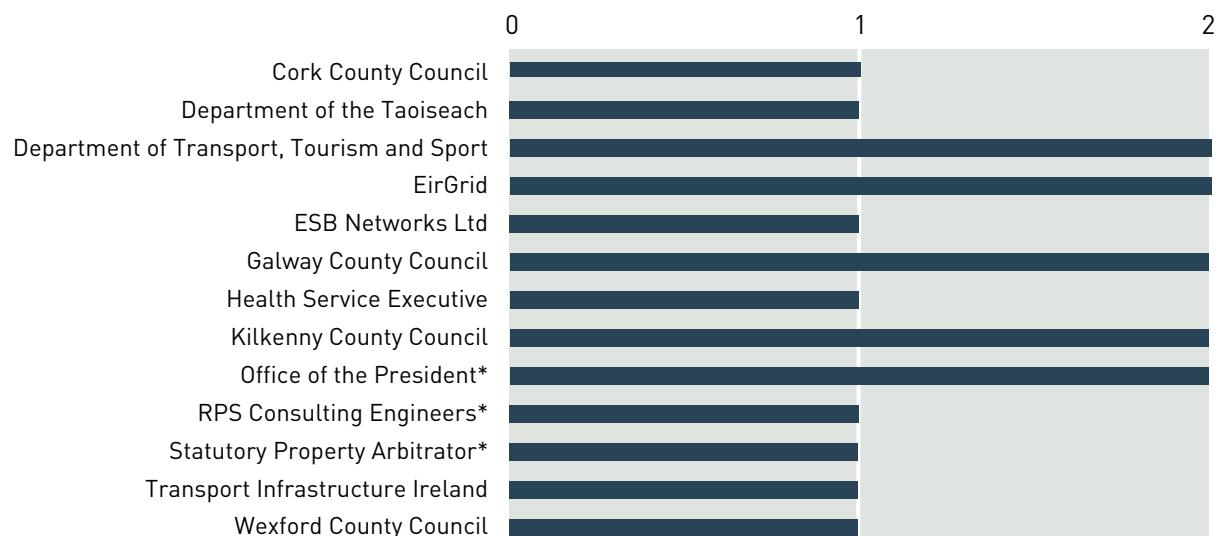
Deemed refusals at first stage in 2017



* Whether the body is a public authority within the meaning of the definition “public authority” in article 3(1) of the AIE Regulations is the issue at the centre of the appeal

In 18 (35%) out of the 51 cases closed by the OCEI in 2017, 13 public authorities failed to make internal review decisions within the time specified by the AIE Regulations. The chart below shows which public authorities failed to make decisions at the second stage of AIE requests.

Deemed refusals at second stage in 2017



* Whether the body is a public authority within the meaning of the definition “public authority” in article 3(1) of the AIE Regulations is the issue at the centre of the appeal

Although the Department's National AIE Statistics for 2017 are not yet available, a look at the number of requests received by public authorities in 2016 indicates that authorities who failed to issue decisions at first stage and second stage in 2017 broadly fall into two categories:

1. those that receive a large number of requests
2. those that receive a small number of requests or bodies that are not listed at all in the 2016 statistics

This supports my view that the provision of adequate resources, including training for staff in processing requests is an issue.

I note that some of the deemed refusals in 2017 related to cases where the relevant body does not consider itself a public authority and therefore that the AIE Regulations do not apply to it. However, as I may review a request that has been refused on the ground the body is not a public authority one would expect the body to notify the applicant of its decision that it is not a public authority for the purposes of the AIE Regulations.

2017 Court proceedings

A party to a review or any other person who is affected by a decision of my Office may appeal to the High Court on a point of law.

Minch -v- Commissioner for Environmental Information [2017] IEAC 223

In the case of Mr. Stephen Minch and the Department of Communications, Energy and Natural Resources (CEI/13/0006), I found that the Department of Communications, Energy and Natural Resources was justified in refusing the appellant's request on the ground that the information sought - a report entitled 'Analysis of options for potential State intervention in the roll out of next-generation broadband' (the Report) - was not environmental information. The appellant appealed my decision to the High Court. The High Court in Minch -v- Commissioner for Environmental Information [2016] IEHC 91 found that the remoteness test I had applied was too narrow. The High Court set aside my decision and remitted the matter to me. I appealed certain parts of the High Court judgment to the Court of Appeal.

The Court of Appeal delivered its judgment in Minch -v- Commissioner for Environmental Information & Anor [2017] IECA 223 on 28 July 2017 (Minch). The Court, in considering whether the Report constitutes a measure affecting or likely to affect the elements of the environment, stated that the "the reference to "likely to affect" the environment should really be understood in the sense of being "capable" of affecting the environment." The Court found that I had not erred in my findings that the Report in itself was not environmental information within the meaning of article 3(1)(c). However, the Court went on to find that the National Broadband Plan (NBP) was a plan that was likely to affect the environment within the meaning of article 3(1)(c). On the assumption the Report was used within the framework of the NBP, the Court affirmed the High Court's finding that the Report constituted environmental information "on" economic analyses or assumptions used within the framework of a measure affecting or likely to affect the environment. The Court subsequently noted that the Department accepted that the Report

had been used in the preparation of the NBP. The Court ordered the request to be remitted to me “limited to the consideration of the question of such exemptions as may apply to the release of said Report”.

I made a new decision in the case of Mr Stephen Minch and the Department of Communications, Climate Action and Environment ([CEI/17/0045](#)) on 16 February 2018.

Redmond & Anor -v- Commissioner for Environmental Information 2016/27 JR

In the case of Mr Jim Redmond and Coillte Teoranta ([CEI/14/0011](#)), I found that certain information on the transfer of land did not fall within the scope of the definition of environmental information as defined in article 3(1) of the AIE Regulations.

Following a judicial review application by the appellant and Mrs Redmond, the High Court in [Redmond & anor -v- Commissioner for Environmental Information & anor](#) [2017] IEHC 827 found that I was correct in concluding that the information concerning the sale of the leasehold of land was not environmental information within the meaning of the AIE Regulations. The Court stated that the information at issue could not be described as affecting or likely to affect the elements and factors of the environment referred to at article 3(1)(a) and 3(1)(b) of the definition of environmental information. The Court also stated that it appeared that the Court of Appeal in Minch did not disapprove of the use of the remoteness test, but rather applied that test and in doing so found that my application of the test was flawed. The High Court’s judgment in this case was appealed to the Court of Appeal in March 2018.

Friends of the Irish Environment -V- Commissioner for Environmental Information 2017/298 MCA

In my decision of Friends of the Irish Environment Limited and The Courts Service ([CEI/16/0038](#)) I found that the Courts Service holds the information requested while acting in a judicial capacity on behalf of the Judiciary. When acting in such a capacity, the Courts Service is not a public authority within the meaning of article 3(1) the AIE Regulations. Accordingly, I found that I have no jurisdiction to review the Courts Service’s decision on the AIE request. This decision was appealed to High Court in September 2017.

Communication to the Aarhus Convention Compliance Committee (ACCC/C/2016/141)

I reported in my [2016 Annual Report of the Commissioner for Environmental Information](#) that Right to Know CLG (an Irish advocacy group concerned with public access to information) made a communication to the Aarhus Convention Compliance Committee (ACCC/C/2016/141) in relation to aspects of Ireland's compliance with the Convention. This communication referred to the processing of requests by the OCEI. The Department of Communications, Climate Action and Environment submitted a response to this communication to the Compliance Committee on 5 May 2017 (available [here](#)). There is no further progress to report on this communication at this time.

Issues arising

In addition to the rise in deemed refusals discussed earlier, issues arising in appeals to my Office in 2017 include:

- the significant proportion of appeals concerning the definitions of “environmental information” and “public authority”
- the relatively limited number of appeals considering the use of the exceptions to disclosure and the public interest test
- the significant proportion of appeals concerning whether the public authority holds the information sought, or holds further information in addition to that identified for release

The latter raises possible questions about the level of trust between applicants for environmental information under the AIE Regulations and the public authorities processing requests.

The difficulties arising are often compounded by the broad nature of the definitions in the AIE Regulations such as the definitions of “environmental information” and “public authority”. The definition of environmental information is a technical expression with a legal meaning. What is or is not environmental information requires a degree of interpretation by the public authority on a case-by-case examination. In addition, the changing nature of public responsibilities and functions can lead to questions as to whether an entity is a public authority within the meaning of the definition in the AIE Regulations and add an extra layer of complexity to AIE appeals. Furthermore, the increasingly complex relationships between some public authorities and their subsidiaries can blur the lines as to where a request can be directed to.

Threshold jurisdictional questions

A significant number of the decisions that I made in 2017 concerned threshold jurisdictional questions relating to the application of the definitions of “environmental information” and “public authority” in article 3(1) of the AIE Regulations.

*43% of decisions made by the
Commissioner for Environmental
Information considered whether
the information requested was
“environmental information” or whether
the body that received the request was a
“public authority”*

Ten (29%) of the 35 decisions I made exclusively considered whether the information requested was “environmental information” or whether the body that received the request was a “public authority”. In total 15 (43%) of the 35 decisions I made involved a threshold jurisdictional issue. Of the ten decisions exclusively considering the threshold jurisdictional issue, I affirmed the decision in 3 (30%) of the appeals and annulled the decision in 4 (40%) of them. I varied the public authority’s decision in one (10%) of the ten decisions. In two (20%) of the ten decisions, I did not have the information before me during my review that was available to the original decision maker, therefore I did not consider it appropriate for me to affirm or annul the decision or to require the public authority to provide the appellant with further information.

Limited use of the exceptions to disclosure

In contrast to the proportion of decisions concerning threshold jurisdictional questions, there were a relatively limited number of decisions considering the use of the exceptions to disclosure and the use of the public interest test in the AIE Regulations. Of the 35 binding decisions I made in 2017, only eight (23%) concerned a refusal to grant access to information using the exceptions to disclosure set down in the AIE Regulations. In five (62.5%) of the eight decisions, I affirmed the relevant public authority’s decision. In three (37.5%) of the eight decisions, I annulled the relevant public authority’s decision.

*Only 23% of decisions made by the
Commissioner for Environmental
Information considered the use of the
exceptions to disclosure*

Information held by or for a public authority

In a significant number of decisions that I made in 2017 the question arose as to whether the information requested (or further information) was held by the public authority or held for the public authority by another person or body such as a subsidiary company of the authority.

*In 34% of decisions made by the
Commissioner for Environmental
Information a central issue of the appeal
was whether information was held by or
for the public authority*

While the issue of whether environmental information is held by or for a public authority is a regular aspect of appeals, this was a central issue in 12 (34%) of the 35 decisions I made in 2017. In six (50%) of the 12 decisions I affirmed the public authority's decision. In four (33%) of the 12 decisions I annulled the public authority's decision. In 2 (17%) of the 12 decisions I varied the public authority's decision.

Significant decisions in 2017

Summary of decision outcomes in 2017

In 2017, I made 35 formal decisions on appeals under the AIE Regulations. In 18 (51%) of the 35 decisions, I found that refusal of requests were (to some extent) not justified. In 15 (43%) of the 35 decisions, I found that refusal of requests were justified in full (although not always for the same reasons provided by the public authority). In 2 (6%) of the 35 decisions, I varied the public authorities' decisions and required the authorities to provide the appellants with access to information.

The chart below provides a breakdown of the articles considered in the 35 decisions.

Articles considered in the 35 formal decisions



The following are some examples from the decisions I made in 2017. All of my decisions are published on the OCEI website at www.ocei.ie/en/decisions/.

Decisions on the definition of “environmental information”

Article 3(1) defines “environmental information” for the purposes of the AIE Regulations. The definition includes any information on the six broad categories listed at paragraphs (a) to (f) of that article. The category that was most at issue in 2017 was paragraph (c) concerning whether information on a measure or activity affecting or likely to affect the elements and factors of the environment or a measure designed to protect those elements is environmental information.

- Ms Fand Cooney and EirGrid ([CEI/17/0029](#))

In this case I found that single line diagrams illustrating the layout of the electric power distribution system for electricity substations in the Laois-Kilkenny Reinforcement Project were integral information on that Project - in particular the construction of the substations. I therefore found that the requested information was information “on” an activity and was environmental information under article 3(1)(c) of the definition.

- Dr Fred Logue on behalf of FP Logue Solicitors and the Department of the Environment, Community and Local Government ([CEI/16/0025](#))

In this case the appellant requested details of the procedures used by Ireland for its participation in proceedings before the Aarhus Convention Compliance Committee (ACCC). That information was held by the Department as draft protocols for engagement between public bodies in dealing with communications before the ACCC.

I found that information in the draft protocols relating to the Aarhus Convention and proceedings of the ACCC is integral information on the Convention and ACCC proceedings, both of which I

accepted are measures designed to protect the elements of the environment. I went on to find that those parts of the draft protocols are environmental information within the meaning of article 3(1)(c) and I annulled the Department's decision in so far as it related to that information. However, as that information is publicly available online in an easily accessible manner I did not require its release.

I went on to find that the remainder of the information about the procedural actions to be taken by Irish public authorities in response to ACCC communications are incidental national processes and that the remainder of the information does not impart integral information on the Aarhus Convention or proceedings of the ACCC. I therefore found that the remainder of the information is not environmental information for the purposes of the AIE Regulations. As a result, I affirmed the rest of the Department's decision as the remainder of the information in the draft protocols is not environmental information.

Decisions on the definition of "public authority"

Article 3(1) of the AIE Regulations defines "public authority" as:

- (a) government or public administration, including public advisory bodies
- (b) any natural or legal person performing public administrative functions under national law
- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b)

Article 3(2) of the AIE Regulations provides that the definition does not include any body acting in a judicial or legislative capacity. Under article 11(5) of the AIE Regulations, where a body refuses a request because it is not a public authority I may review its decision that it is not public authority. My review in such appeals is limited to determining whether the body or person is a public authority within the meaning of the AIE Regulations.

- Hedge Laying Association of Ireland and the Department of Transport, Tourism and Sport (CEI/17/0023)

In this case I considered for the first time the issue of whether a public authority is "acting in a ... legislative capacity". The information requested related to the consultation between the Department of Transport, Tourism and Sport (the Department) and the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs on a Bill going through the Houses of the Oireachtas. I found that, while the Bill is going through the legislative process, the Department is acting in a legislative capacity which places it outside of the definition of "public authority". However in accordance with the Court of Justice of the European Union in *C-204/09 Flachglas Torgau GmbH v. Federal Republic of Germany* (14 February 2012), I noted that once the legislative process concludes i.e. when the Bill has been promulgated as law by the President, the Department will be a public authority. Then the appellant if it so wishes can make a new request for the information, without prejudice to the use by the Department of any of the grounds for

refusing access to information set down in the AIE Regulations.

- Darragh McDonagh and Galway Harbour Company ([CEI/16/0034](#))

In this case I found that Galway Harbour Company (GHC) has special powers, vested by law, which go beyond the normal rules applicable to relations between persons governed by private law and is a legal person performing public administrative functions under national law. I therefore found that GHC is a public authority under article 3(1)(b) of the definition. In reaching my determination I gave consideration to the fact that GHC was established under the Harbours Act 1996, that it has the power to compulsory acquire land and that it has the power to make bye-laws. I therefore annulled GCH's decision and expressed the expectation that it should proceed to process the request.

Information held by or for a public authority

The matter of whether environmental information was held by or for the public authority was an issue in several appeals in 2017. The article at the centre of such appeals is primarily article 7(5) of the AIE Regulations. My approach in these types of appeals is to assess the adequacy of the searches conducted by the public authority in looking for information relevant to the request.

- An Taisce and the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs ([CEI/16/0033](#))

In this case I found the Department's internal review decision was not justified on the basis that the decision maker did not consider the relevant version of the Minister's diary which was the subject of the request. The diary was treated as "a living document" and as the version of it that was available to the original decision maker was no longer available at the time of my review, I was unable to determine if it contained any environmental information. For that reason, I did not consider that it was appropriate for me to affirm or annul the decision or to require the Department to provide the appellant with further information. While I was satisfied in this appeal that the Department acted in good faith in always regarding the Minister's diary as "a living document", I went on to state that in hindsight this case shows the need for a public authority to "freeze" a copy of the relevant information on first learning of a request relating to a record such as a working diary. It also highlights the need for public authorities to ensure that a copy of such key information is retained for use by an internal review decision maker and later again, by my Office in the event of an appeal.

- Mr Brendan Dowling and Galway County Council ([CEI/17/0014](#))

In this case I found that the Council was not justified in refusing the appellant's request for information relating to compliance with planning conditions on the basis that the information requested was already publicly available on its Online Planning Register. I stated that where a public authority grants access to information on the basis that it is publicly available it must be satisfied that all the information requested is in fact publicly available. I went on to say that where access is granted by directing a person to where the information is publicly available, the public authority should provide sufficient detail to enable the applicant to actually access

the information. I annulled the Council's decision and expressed the expectation that it should proceed to process the request. As the Council had not completed a thorough search for all relevant records, I did not have a copy of all the information covered by the request and as a result I did not consider it to be appropriate for me to require the Council to release the information.

- Francis Clauson and Coillte Teoranta ([CEI/17/0011](#))

In this case I considered whether information held by a wind-farm company, Raheenleagh Power DAC, which is part-owned by Coillte would be held for Coillte. Coillte stated that it assumed that at least some information of the type requested existed and that if it did it was most likely held by Raheenleagh Power DAC. In the circumstances of the case I was not satisfied that such information, if held, would be held for Coillte. I found that Coillte's decision to refuse to provide the appellant with access to further information was justified and affirmed its decision.

Manifestly unreasonable requests for environmental information

Three (37.5%) of the eight decisions I made involving the use of the exceptions to disclosure in the AIE Regulations considered whether the request was manifestly unreasonable having regard to the volume or range of information sought. I cautioned in last year's Annual Report that making a very broad request runs the risk of a refusal where an unmanageable amount of information falls within the scope of the request. I reiterate this year that I strongly encourage both applicants and public authorities to engage on the scope of AIE requests.

- Mr A and the Environmental Protection Agency ([CEI/16/0030](#))

In this case the request was for "all records" in the possession of the EPA in relation to the Enva plant in Laois. The EPA estimated that processing the request would take over 130 person-hours. It invited the appellant to reformulate his request and provided information on how certain information could be accessed. In the circumstances of the case I was satisfied that processing the request would impose an unreasonable burden on the EPA; in particular, on the work-time of senior and specialist members of staff, to the detriment of the Agency's important core work.

Internal communications of public authorities

Two (25%) of the eight decisions I made involving the use of the exceptions to disclosure in the AIE Regulations considered whether the information concerned the internal communications of public authorities within the meaning of article 9(2)(d).

- Dan Danaher, on behalf of the Clare Champion and Clare County Council ([CEI/15/0035](#))

In this case the Council refused access to incident reports relating to a chemical release incident on the basis they were internal communications. I found that the incident reports were purely administrative and factual in character and were part of a routine record-keeping process. In the circumstances of the case, I also found that even if such information was capable of constituting internal communications, the public interest in disclosure of information of a chemical release incident would outweigh the interest served by this ground for refusal.

Other matters of interest in 2017

New OCEI website

The OCEI launched a new website in December 2017. The new website is more user friendly and accessible and will facilitate the delivery of enhanced online services for both members of the public and other stakeholders. The online forms have been updated and simplified for the public and the websites are now fully mobile friendly. It provides an enhanced search function that allows our customers to more easily search for my decisions and other useful resources such as relevant case law. It has an online portal facility offering a fast and efficient facility to submit and manage applications appeals online. The new portal also allows our customers to quickly and securely transfer data and documents to us.

Engagement with the Department of Communications, Climate Action and Environment

In October 2017, an Investigator in my Office participated in the Department's Scoping Workshop on Revision of Departmental AIE Guidance. The focus of the workshop was on revising the 'Guidance for Public Authorities and others on implementation of the Regulations' (May 2013) published by the Minister pursuant to article 14 of the AIE Regulations. The workshop included external stakeholders and non-governmental organisations. In December 2017, my Office provided the Department with observations on that draft revised guidance.

I look forward to further engagement with the Department in 2018 on the publication of revised guidance on access to information on the environment and on other issues of mutual concern.

Appendices

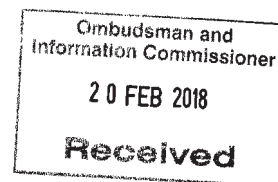
Appendix I

Statutory Certificates issued by Ministers in 2017



An Roinn Gnóthaí Eachtracha agus Trádála
Department of Foreign Affairs and Trade

15 February 2018



Ms Jacqui McCrum
Director General
Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

Notification under Section 34 of the Freedom of Information Act 2014

Dear Ms McCrum

I refer to your recent letter on the above.

On 21 July 2017 the Tánaiste, Minister for Foreign Affairs and Trade issued three certificates in accordance with Section 34 of the Freedom of Information Act 2014 by reference to which the records are exempted under Section 32 and Section 33. The certificates related to three requests for the same set of records.

Please find enclosed copies of the certificates issued in 2017.

Yours sincerely

Austin Gormley
Director
Corporate Services Division

Appendix I



OIFIG AN ARD-RUNAÍ, AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS
OFFICE OF THE SECRETARY GENERAL, DEPARTMENT OF JUSTICE AND EQUALITY

Ms. Jacqui McCrum
Office of the Information Commissioner
18 Lower Leeson St
Dublin 2
D02 HE97

**Ombudsman and
Information Commissioner**

21 FEB 2018

Received

Notification under Section 34 of the Freedom of Information Act, 2014

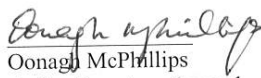
Dear Ms. McCrum,

I refer to your correspondence regarding the certificates issued by the Minister for Justice and Equality under section 34 of the Freedom of Information Act 2014.

The Minister signed three of these certificates in 2017 on the 10, 22 and 25 June, under Section 34 of the Freedom of Information Act 2014 by reference to the records that are exempted under Section 32 and Section 33.

Please find attached copies of the 3 certificates signed in 2017.

Yours sincerely,


Oonagh McPhillips
Acting Secretary General
19 February, 2018

Cuirfear fáilte roimh chomhfhreagras i nGaeilge

51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2, D02 HK52 / 51 ST. STEPHEN'S GREEN, DUBLIN 2, D02 HK52
TEILEAFÓN/TELEPHONE: (01) 602 8202 IOSGHLAO/LO-CALL: 1890 221 227 RIOMHPOST/EMAIL: SECRETARYGENERAL@JUSTICE.IE

Appendix II

Review under section 34(7) of Ministerial Certificates issued



Roinn an Taoisigh
Department of the Taoiseach

January 2018

Mr. Peter Tyndall,
Information Commissioner,
Office of the Information Commissioner,
18 Lower Leeson Street,
Dublin D02 HE97

**Re: Review of Certificates issued under Section 34 of the
Freedom of Information Act, 2014**

Dear Commissioner,

I would like to confirm that, pursuant to the above Act, the Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation carried out a review of the operations of the Act, for the period ended 2 August 2016 on 18 October 2017.

Fifteen Certificates were reviewed, nine of which were issued by the Minister for Justice and Equality and six by the Minister for Foreign Affairs and Trade.

The Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation are satisfied that it is not necessary to request revocation of any of the fifteen certificates which were the subject of this review - copies of the forms signed by the reviewers to that effect are enclosed.

Yours sincerely,

Dermot McAuley
Department of the Taoiseach

Enc:

c.c. D/J&E, D/FA&T, D/BE&I, D/PER

Tithe an Rialtais, Baile Átha Cliath 2.
Government Buildings, Dublin 2.

