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TRANSPARENT ACCOUNTABLE
LEGISLATION COMPLIANCE
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EXEMPT PUBLIC INTEREST
RECORDS STATISTICS
CONFIDENTIAL REFUSED RELEASE
ENVIRONMENT APPEAL
FEES HABITAT

Oifig an Choimisinéara Faisnéise
Office of the Information Commissioner

ANNUAL REPORT 2012

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Office of the Information Commissioner

Annual Report 2012

Contents

Foreword

I hereby submit my tenth Annual Report as Information Commissioner (the fifteenth Annual Report of the Information Commissioner since the establishment of the Office in 1998) to the Dáil and Seanad pursuant to section 40(1)(c) of the Freedom of Information Acts 1997 and 2003.

Emily O'Reilly
Information Commissioner
May 2013

Bernadette McNally
Director General

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CHAPTER 1

Chapter 1: The Year In Review

Your right to information

The Freedom of Information Act, 1997 as amended by the FOI (Amendment) Act, 2003 (FOI Act) gives people a right of access to records held by Government Departments, the Health Service Executive, Local Authorities and many other public bodies. It also gives people the right to have personal information about them held by these 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 European Communities (Access to Information on the Environment) Regulations 2007 to 2011 provide an additional means of access for people who want environmental information. The Regulations cover more organisations than the FOI Act. The Department of the Environment, Community and Local Government has published a set of Guidance Notes which are available on the website of the Commissioner for Environmental Information at www.ocei.gov.ie.

It should be noted that these two functions are legally independent of one another, as indeed, are my respective roles of Information Commissioner and Commissioner for Environmental Information.

Introduction

I am pleased to present my tenth Annual Report as Information Commissioner, which covers the period from 1 January 2012 to 31 December 2012.

As 2013 marks the 15th anniversary of the introduction of the FOI Act, I have had cause recently to pause and reflect upon the peaks and troughs of the evolution of the FOI legislation since its introduction. It is significant that I should do so in a year when the Government is putting the finishing touches to delivering on the commitment it made in its Programme for Government in 2011, namely, to restore the FOI Act to what it was before it was amended in 2003 and to extend its remit to other public bodies.

In an address which I gave at a conference hosted by the University of Limerick on 11 February 2013 to examine the impact of 15 years of the FOI Act on Ireland, I commented that the ebb and flow of an Act which was widely lauded when introduced, subsequently significantly truncated, and now proposed for restoration, highlights one particular truth about FOI – that Governments worldwide treat the information in their possession as a resource, to be doled out in amounts as they see fit, either copious flows or mean little trickles. I noted that ultimately, it is the Government that controls the tap.

I have stated before that the introduction of FOI cued nothing less than a complete culture shift. Before FOI, a culture of withholding information unless exceptional circumstances prevailed and even a paternalistic approach to dealing with the private affairs of citizens was the norm.

The introduction of FOI in Ireland in 1998 "let in the light" on many areas of public administration. Over the course of the following years, we witnessed huge improvements in the amount and type of information which is now available as a matter of course. Access to far greater levels of personal information empowered citizens. Indeed, many of my Office's decisions played their part, often significant, in shining the light on previously unbreached areas of the public service.

Of course, as I have suggested above, the Government controls the tap, and it was the Government of the day who, in 2003, decided that the flow of information should be curtailed. The Amendment Act restricted the right of access in many areas. It also led to the introduction of fees for FOI requests and substantial, prohibitive fees for applications for review to my Office. The introduction of fees had a considerable impact on FOI usage, and particularly on applications for review to my Office. In 2005, the [then] Joint Oireachtas Committee on Finance and the Public Service considered the impact of fees on the operation of the FOI Act. The Committee considered the fee for an application to my Office to be excessive, and in any event recommended that the fee be refunded where an appeal is successful. The Committee wrote to the Minister for Finance seeking to have "the matter addressed by way of legislation at the first available opportunity". It is very difficult to believe that "the first available opportunity" arose only this year.

Nevertheless, the fact remains that, at the time of writing, the restoration of the FOI Act to what it was before and the extension of the Act to a significant number of additional public bodies is imminent. In previous Annual Reports, I welcomed the Government's proposals for change. However, I also stated at the launch of my 2011 Report that the "acid test" would be if the Government introduced FOI legislation which was as comprehensive as that promised in the Programme for Government.

Ten months later, it is somewhat disappointing that the Amendment Bill remains to be published in full, although I am aware that the wheels of legislative development can often turn slowly. I am also cognisant of the efforts made by the Department of Public Expenditure and Reform to drive through the Government's legislative commitments. Furthermore, I note that there are some very positive additional measures proposed, such as the automatic application of FOI legislation to all newly formed public bodies. I also understand that an amended Act is expected to pave the way for Ireland's ratification of the Council of Europe Convention on Access to Official Documents 2009, which is to be very much welcomed. All in all, I am hopeful that the proposed changes to FOI will bring about greater levels of openness, transparency and accountability that will be both meaningful and beneficial.

Each year, my Office publishes statistical returns from all public bodies that come within the remit of the FOI Act. The statistics highlight the extent to which members of the public, journalists, private organisations and others avail of access rights under the Act. Comparisons are made between the year in question and previous years, and trends are noted. However, this year is different. I am disappointed to record in this Annual Report that for the first time since my Office was established, I am unable to offer commentary on a significant number of public bodies, as statistical returns for 2012 for the majority of civil service bodies have not been forwarded to my Office for publication.

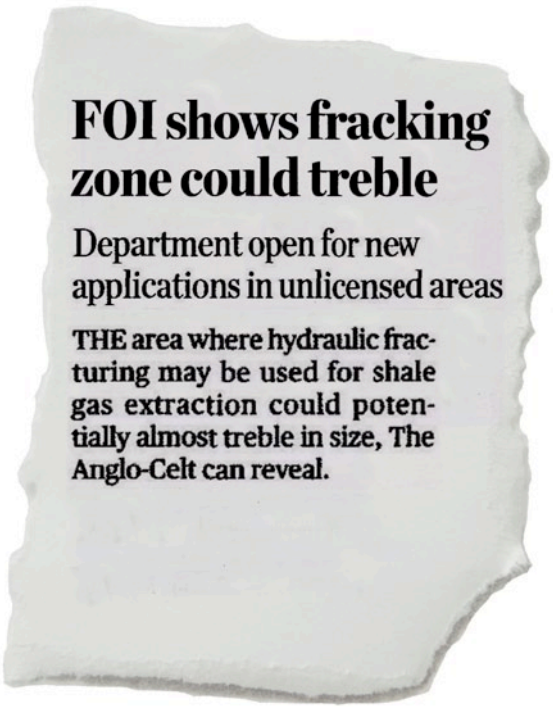
Previously, statistical returns for civil service bodies were collected by the Department of Jobs, Enterprise and Innovation. However, in 2012, the Department informed my Office that the process of collection and verification was becoming administratively unsustainable. The Department commented that when the FOI Act first came into effect, its role was to make statistical returns on behalf of approximately 40 public bodies. However, the number of bodies involved in 2011, when the last returns were made, was at least 188.

At this point, I wish to acknowledge the contribution made by the Department over the years in performing this increasingly demanding function. Nevertheless, I am disappointed that alternative arrangements for the collation of relevant statistics were not agreed in advance of the Department's decision to end its role in the matter. I am informed that the Department of Public Expenditure and Reform is considering how to resolve the issue.

In my Annual Report for 2012, I highlight a number of significant cases and issues that were dealt with by my Office during the year. The Report highlights some of the information which was brought into the public domain through FOI which would otherwise have remained

unknown. Some of the FOI-based headlines which appeared in published media reports are reproduced here.

In Part II of this Report, although there is no statutory requirement on me to do so, I report on my work as Commissioner for Environmental Information, as I have done in previous years. This function is legally separate to my role as Information Commissioner.



FOI shows fracking zone could treble

Department open for new applications in unlicensed areas

THE area where hydraulic fracturing may be used for shale gas extraction could potentially almost treble in size, The Anglo-Celt can reveal.

Anglo Celt 05-01-2012

Drinks body tried to alter damning report

■ Group sought to remove figures on alcohol-related rape in report

A group representing the drinks industry sought to alter paragraphs and remove figures on alcohol-related rape and domestic violence from a special report shaping Government policy.

Irish Examiner 13-04-12

Office news in 2012

Farewell to the former Director General

In February 2012, my colleague Pat Whelan retired from the position of Director General. Pat held that position when I was appointed Ombudsman and Information Commissioner in June 2003. I want to thank him sincerely for helping me through my early years in Office and at other times when his wisdom and experience helped steer me and the Office through demanding and challenging periods. I wish Pat well in retirement and in future endeavours.

Welcome to the new Director General

In April 2012, I was pleased to announce the appointment of Ms Bernadette McNally as Director General to the Office of the Ombudsman, Office of the Information Commissioner, Office of the Commissioner for Environmental Information, the Secretariat to the Standards in Public Office Commission (SIPOC) and the Office of the Commission for Public Service Appointments. The appointment was made by the Minister for Public Expenditure and Reform, Mr Brendan Howlin T.D., following a recommendation by the Top Level Appointments Commission.

Prior to her appointment, Bernie worked as a Senior Investigator at the Office of the Ombudsman and also was Chief Therapist Advisor in the then Department of Health and Children. I wish Bernie well in her new position and look forward to working with her in the years to come.

A personal note on my predecessor

Kevin Murphy RIP

I was greatly saddened at the passing of my predecessor and friend Kevin Murphy, in 2012. As Ombudsman and Information Commissioner, Kevin worked to develop principles of good administration, complaint handling and customer service for public bodies. In so doing, he helped to focus the attention of public officials on the needs of the people they served, rather than on the interests of the public bodies themselves.

Kevin exemplified everything that is good about the public servant and the public service and displayed a strong sense of ethical behaviour in everything that he did. He did his work diligently, thoughtfully and modestly. The values that should be embedded in our public service were deeply embedded in him, and his legacy will be a renewed effort on the part of this Office towards honouring those values and his memory through our own service to the public.

On my own behalf and on behalf of all of my staff, present and past, I again offer my condolences to Kevin's wife, Kay and to his children, grandchildren and wider family.

Key FOI statistics for the year

As I mentioned in my introduction, the statistical returns are incomplete for the year in review. Consequently, it is not possible to compare many of the statistics presented in this chapter and in Chapter 4 -Section (I) of this Report, with previous years. At the time of writing this Report it is estimated that the number of bodies for whom no statistical information is available for publication is in excess of 110.

In this regard, I would like to acknowledge the following Departments and Agencies who made returns to my Office for 2012. Statistical returns are complete for the following Departments and Agencies, and the bodies on whose behalf they collate statistics.

- National Federation of Voluntary Bodies, on behalf of the Intellectual Disability Sector
- Higher Education Authority
- Department of Health - on behalf of the Voluntary Hospitals and Physical Disability Sector. Separately, the Department also made returns on its own behalf and on behalf of certain agencies related to the Department.
- Colleges of Education, on behalf of Colleges including St Patrick's College, Drumcondra, Mary Immaculate College, Limerick, Mater Dei and others.
- Universities sector
- Institutes of Technology
- Health Service Executive
- Local Authorities

The following public bodies also made returns directly to my Office.

- Department of Jobs, Enterprise and Innovation
- Department of Communications, Energy and Natural Resources
- Department of Health
- Office of the Information Commissioner
- Office of the Ombudsman
- Standards in Public Office Commission
- Office of the Commission for Public Service Appointments

The absence of key statistics means that I am not in a position to comment comprehensively upon important usage statistics such as

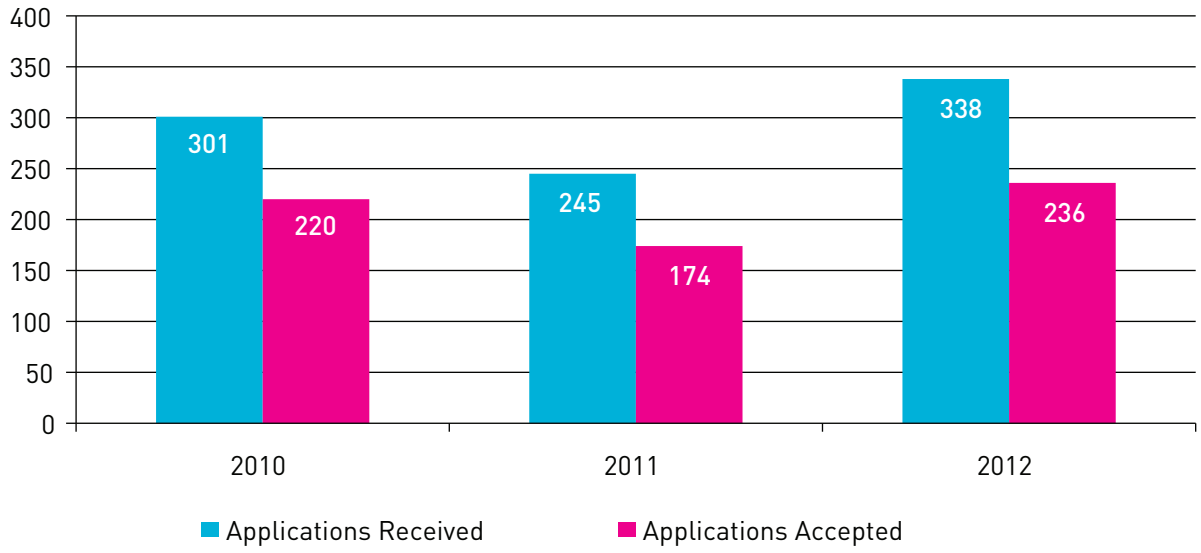
- the number of requests made to the various bodies,
- a sectoral breakdown of FOI requests to public bodies,
- details of the top ten bodies which received most requests in 2012,
- types of request and requester to public bodies,
- rates of applications for review, and
- release rates for public bodies.

Office of the Information Commissioner (OIC) caseload

A requester who is not satisfied with the decision of the public body on an FOI request may apply to my Office for a review of that decision. In most circumstances, this review will constitute the third analysis and decision in that case. The decision which follows my review is legally binding and can be appealed to the High Court, but only on a point of law.

The charts and graphs in this section are complete.

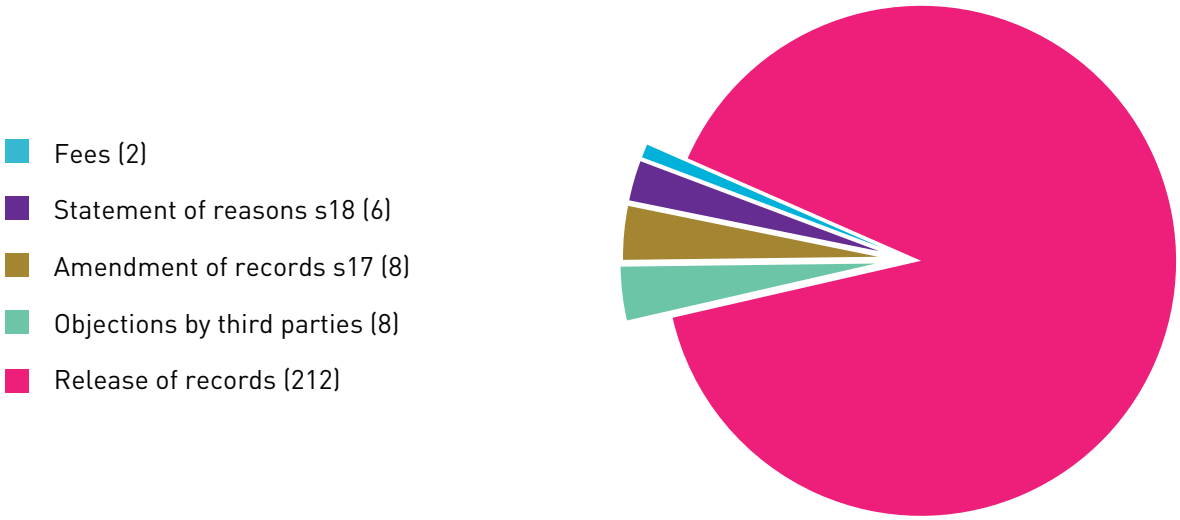
Applications to OIC 2010-2012



The diagram above shows that the number of applications to my Office in 2012 has increased by 38% on 2011, while the number of applications accepted has increased by more than 35%.

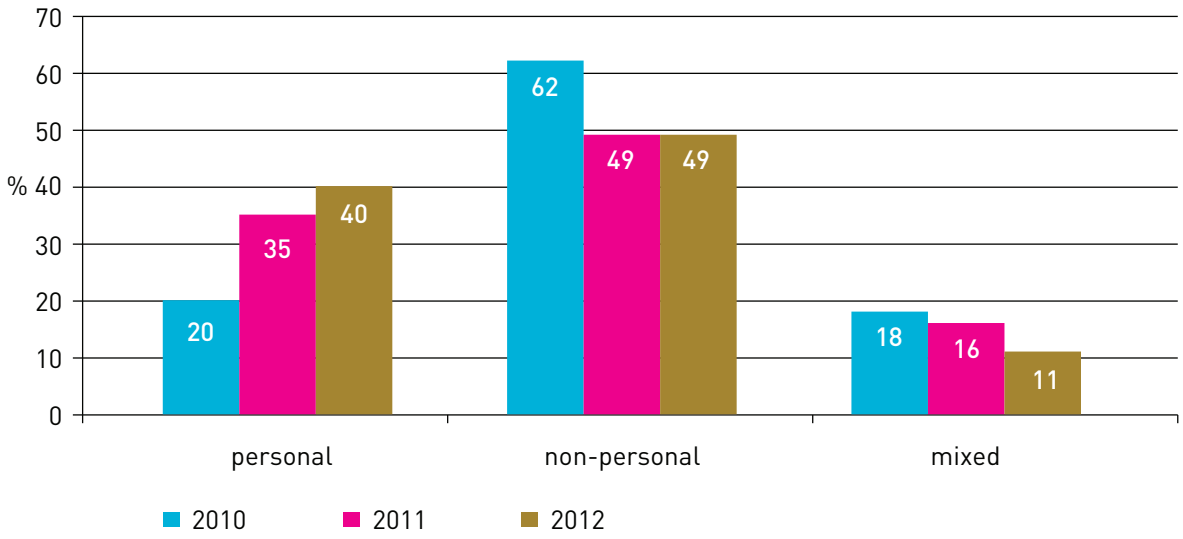
It can also be seen that a number of applications to my Office are not accepted for review. This is mainly due to applications being invalid or withdrawn by the applicant at an early stage.

Subject matter of review applications accepted by OIC



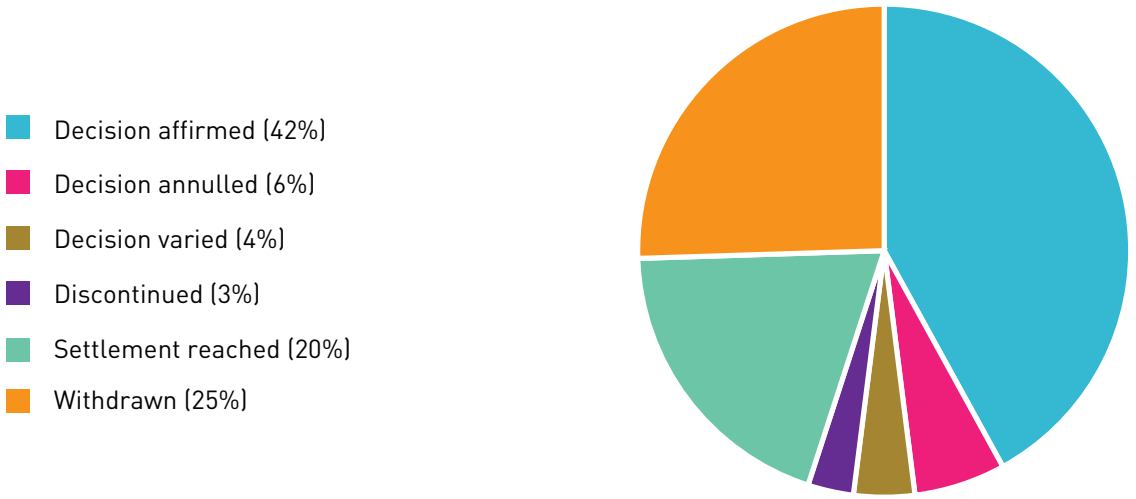
The majority of applications accepted by my Office in 2012 concerned applicants seeking access to records, following refusal of access by the public bodies concerned.

Applications accepted by OIC by type 2010 - 2012



The table above illustrates that in 2012, as in previous years, there was another increase in the percentage number of cases accepted by my Office in which the applicant sought access to personal information.

Outcome of reviews by OIC in 2012



In 2012, my Office reviewed decisions of public bodies in 200 cases, the same as in 2011. Similar to last year, the number of reviews of a more complex and time-consuming nature continued to increase in 2012, particularly the reviews concerning non-personal information. At the end of December 2012, my Office had 202 cases on-hand, compared to 166 at the end of 2011.

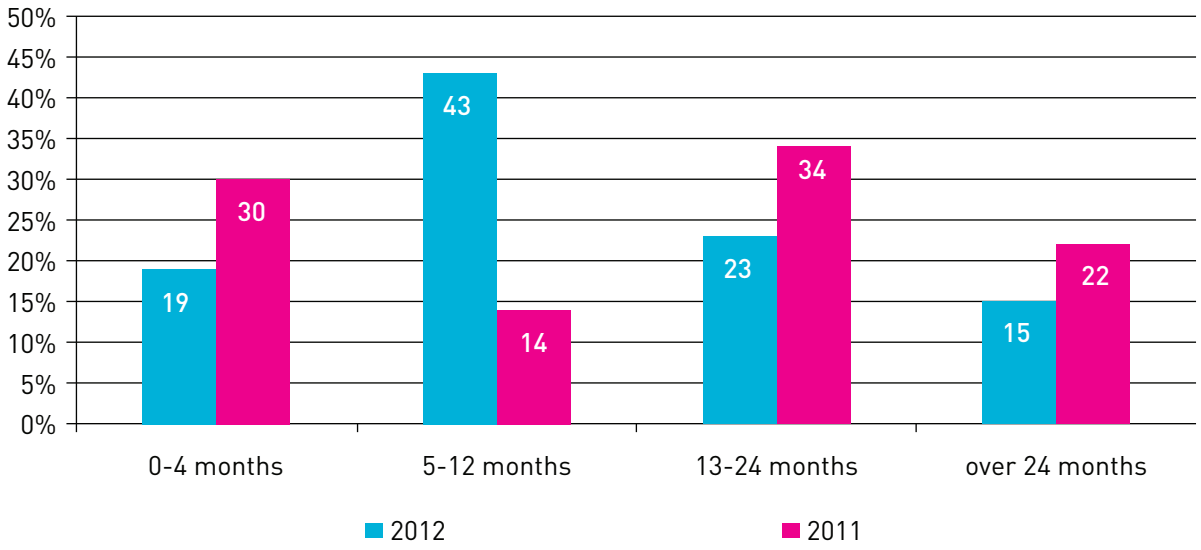
Settlements and withdrawals

45% of cases referred to my Office for review in 2012 were either settled or withdrawn (the figure for 2011 was 56%).

Settlements were achieved in 20% of cases closed during the year, and 25% of applications were withdrawn. I have commented further on settled cases in chapter 2 of my Report.

In a case where an application is withdrawn, this may come about following detailed discussions between the applicant and a member of my staff, and often follows as a result of a more detailed explanation of the public body's decision.

Age profile of cases closed by OIC

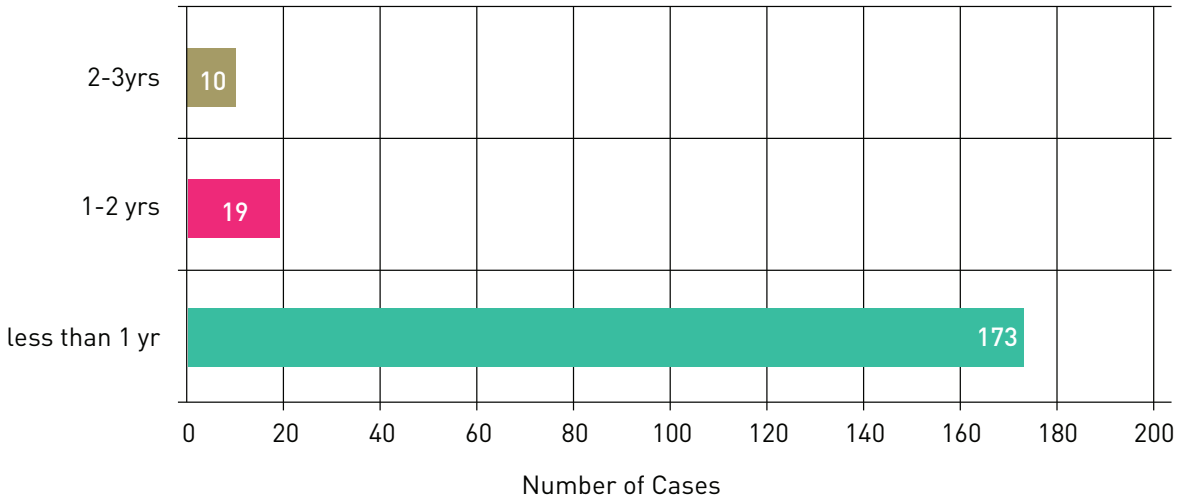


In every Annual Report, I comment on the age profile of cases and it is worth noting the significance of that profile as it relates to 2012.

The table above illustrates a significant decline in the number of cases closed by my Office within a four-month period. I am very disappointed that the rate of case closure within the four-month period has fallen so significantly. However, of the 200 cases reviewed in 2012, 62% were closed within a year which is a significant improvement on 2011, when 44% of cases were closed within a year.

I will not attempt to diminish the impact on applicants of the time taken by my Office to close cases. However, it is worth noting that my Office is making more formal, binding decisions on reviews than in previous years. In 2011, 22% of all applications for review resulted in a decision by my Office, whereas in 2012, the percentage of cases closed by way of formal decision was 52%. While I comment on the workload of my Office in chapter 2, it is nevertheless important to note that efforts are ongoing to reduce the time taken to review all applications.

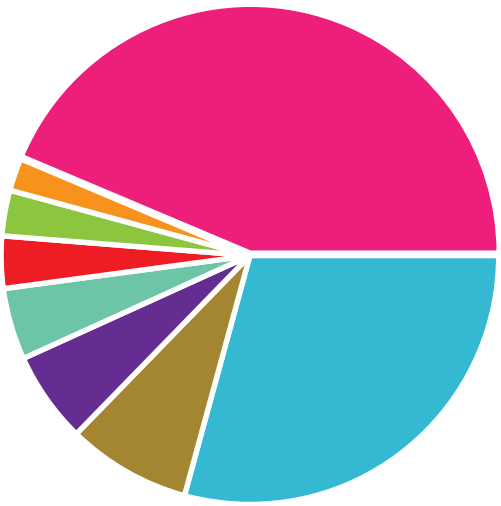
Age profile of cases on hand in OIC at end 2012



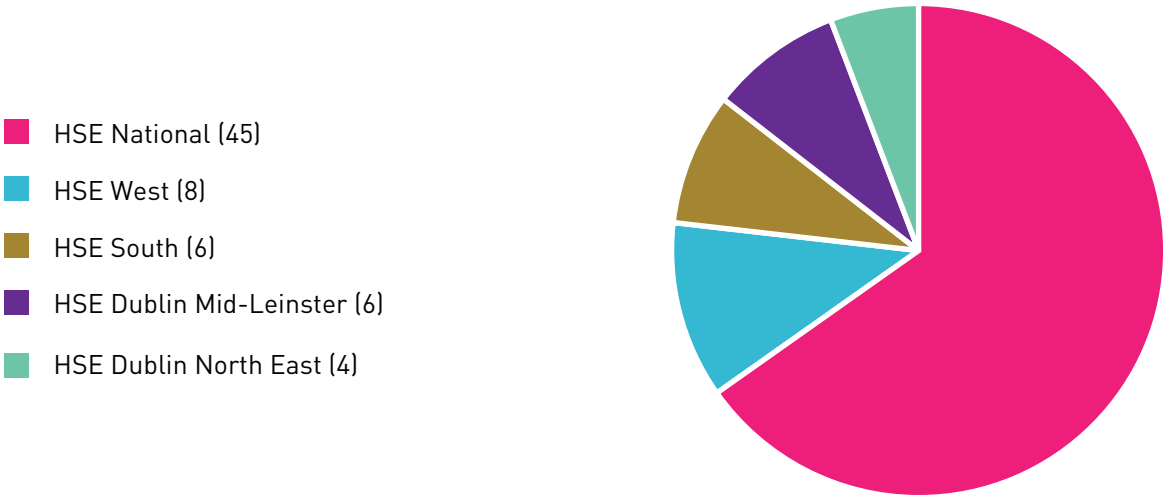
At the end of 2011, there were 76 cases on hand which were more than 1 year old. At the end of 2012, while the number of cases on hand has increased by almost 22%, the number of cases on hand which are more than 1 year old has fallen to 29. This reflects a specific initiative aimed at closing older cases.

Breakdown by public body of applications for review accepted by OIC

- Other Bodies (103)
- Health Service Executive (69)
- Department of Justice and Equality (19)
- Department of Agriculture, Food and the Marine (14)
- Office of the Revenue Commissioners (11)
- Dublin City Council (8)
- Department of Social Protection (7)
- Department of Education and Skills (5)



Breakdown of HSE cases accepted by OIC



The above diagrams show a breakdown by public body of the cases which were accepted for review by my Office during 2012. Of all the cases reviewed in 2012, 69 or 29% relate to the HSE. This represents a numerical increase but a percentage decrease in HSE cases accepted in 2011. The Department of Agriculture, Food and the Marine and the Office of the Revenue Commissioners have recorded significant increases in applications to my Office in the year.

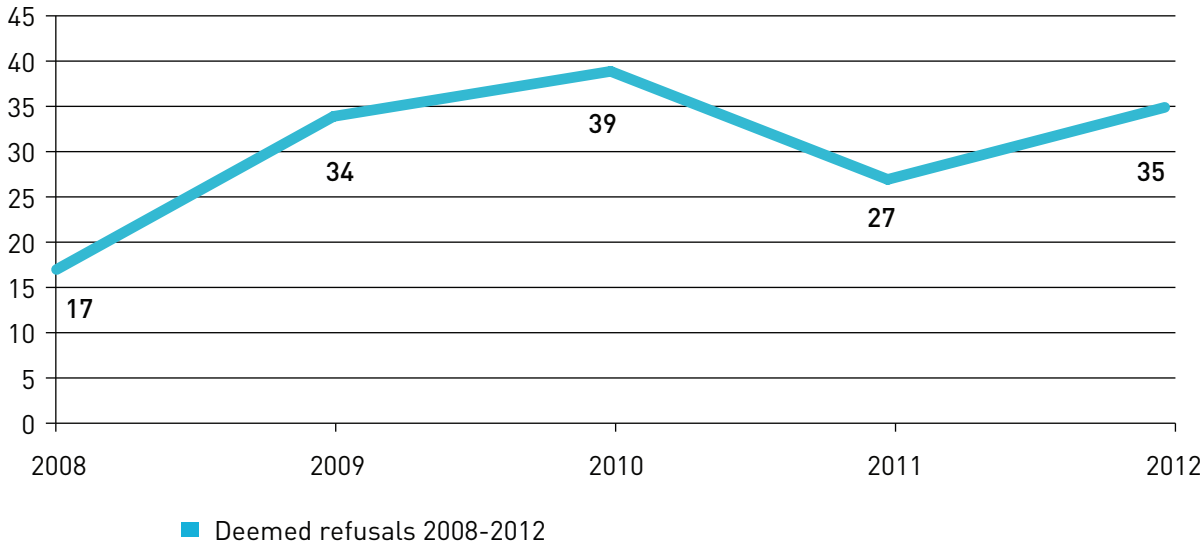
'Other bodies' account for 43% of all applications for review in 2012 and represents a total of 65 public body organisations. While in percentage terms there is no change in 2012 over the 2011 figure, the 'other bodies' in 2011 represented just 50 public body organisations.

The second diagram shows a breakdown of a total of 69 applications to my Office concerning the HSE. There has been a significant increase of over 70% in applications concerning HSE National, from 26 in 2011 to 45 in 2012. However there are decreases across the board in all other HSE areas in 2012.

Deemed refusals

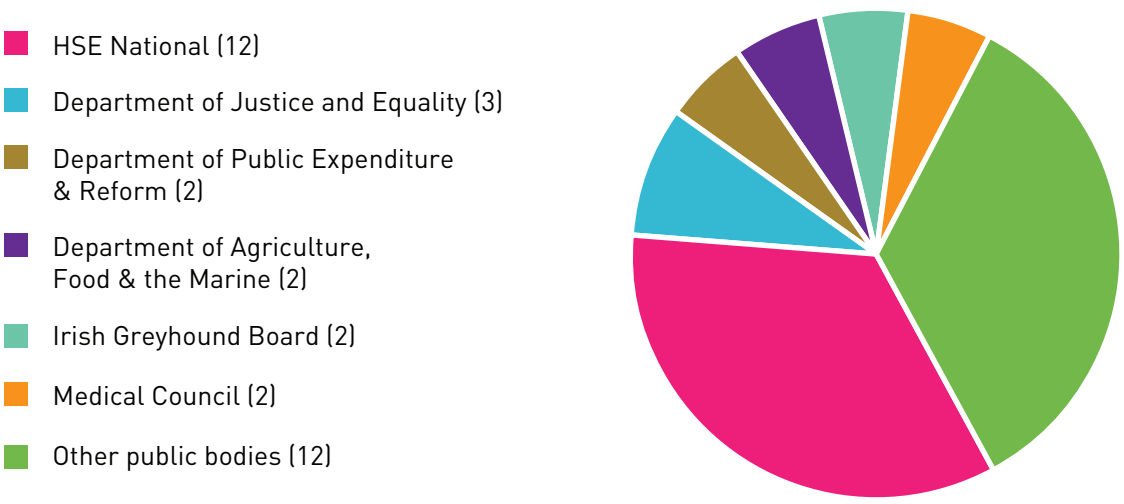
The FOI Act imposes statutory time limits on public bodies for the various stages of an FOI request. Specifically, a decision on an original request should issue within four weeks and, in the event of an application for internal review, a decision following receipt of that application should issue within three weeks. A breach of these time limits (whether by means of no decision, or a late decision at internal review stage), means that the requester has the right to take it as a deemed refusal of access. Following a deemed refusal at internal review stage, a requester is entitled to apply for a review to my Office.

Deemed refusals 2008 - 2012



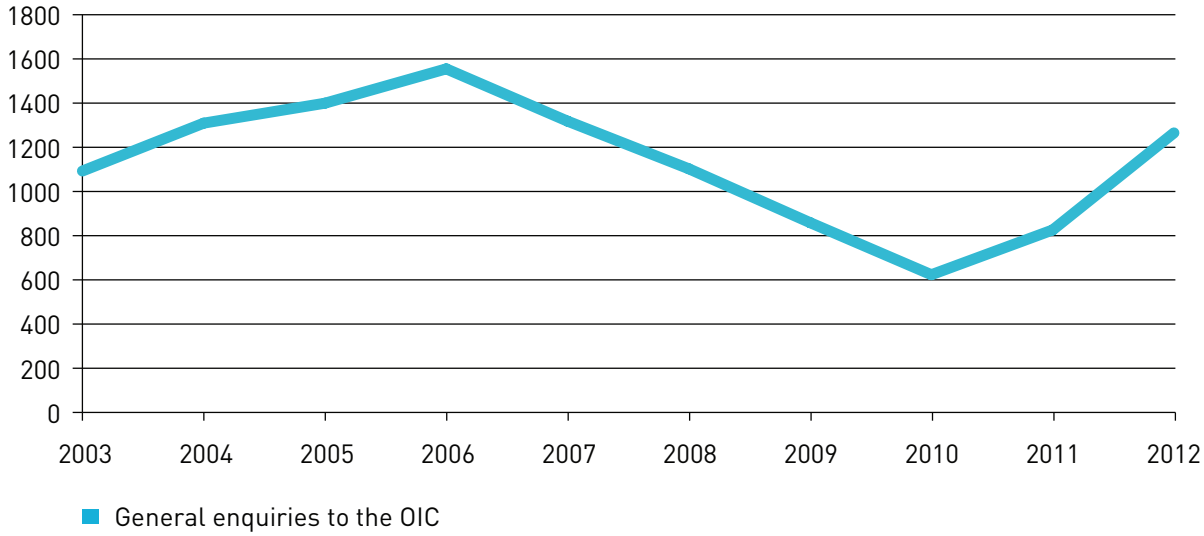
The chart shows that deemed refusals increased in 2012. As can be seen, the increase is the second highest total of deemed refusals over the five-year period shown. It may appear that the level of deemed refusals, as a percentage of the total number of requests made to public bodies, is relatively small. However, as with many statistics, greater detail lies within. The figure above records that of the 236 applications for review received by my Office in 2012, 15% were deemed refused at both the first stage (the original request by the applicant to the public body), and the second stage (the application for internal review). However, my Office has also recorded details on deemed refusals by public bodies at either the first or the second stage. In this regard, it is worth noting that in 2012, my Office recorded 52 (22%) applications for review as having the original request deemed refused by the public body. Similarly, 55 (23%) applications for review were recorded as having the internal review request deemed refused by the public body.

Deemed refusals 2012



Breaches occurred in respect of 18 public bodies in 2012, up from eight in 2011. This is disappointing and appears to reflect a worrying trend of FOI request processing not being afforded due weight in the allocation of diminishing resources within public bodies.

General enquiries to OIC



In 2012, the number of enquiries made to my Office increased by 53% to 1,262, consisting of 976 telephone calls, 256 e-mails and letters and 30 personal callers. These general enquiries do not relate to any particular review and typically involve requests for information about my Office or about the operation of the FOI Act, as well as matters outside my remit as Information Commissioner. It is likely that this substantial rise in enquiries to my Office was at least partially driven by the continuing economic downturn.

Fees received by OIC

Application fees for certain FOI requests apply in the following circumstances:

- €15 for an FOI request to a public body (reduced to €10 for medical card holders and their dependants);
- €75 for a request to the public body for an internal review of the FOI decision (reduced to €25 for medical card holders and their dependants);
- €150 for an application for review of a FOI decision by my Office (reduced to €50 for medical card holders and their dependants); and
- €50 for an application, by the third party to whom the records relate, for a review by my Office of a FOI decision to grant public interest access to records, following section 29 consultation procedures.

During 2012, my Office received 116 applications for review where a fee was paid. The total amount received in application fees by my Office in 2012 was €14,625. A total of €6,750 was refunded to applicants for the following reasons:

- €4,750 because the applications in question were either rejected as invalid, withdrawn or settled;
- €1,650 because the public body had not issued a decision or internal review decision within the time limits and was therefore of 'deemed refusal' status (section 41 of the FOI Act refers) which does not attract an application fee;
- €350 was refunded to applicants because of situations either where decisions were annulled, or a fee was not due.

Statutory notices

In most situations public bodies are very co-operative in supplying my Office with information which relates to submissions, records which are subject of review and statements of reasons for decision. I value this level of co-operation. The timely production of the information requested assists my Office in the decision-making process. The corollary is that where there is a delay in providing information to my Office, it takes longer to examine the application for review and arrive at a decision.

There are specific provisions in the FOI Act concerning the production of records and information to my Office. These include:

- **Section 35 of the FOI Act** which empowers me to direct the head of a public body where I consider that the reasons given in support of a decision are not adequate, to direct that a full statement of reasons for the decision be provided to the requester concerned and my Office, and

- **Section 37 of the FOI Act** which empowers me to require the production of information and/or records, and to enter premises occupied by a public body for the purpose of acquiring any information which is required for the purpose of conducting a review.

In 2012, my Office served three notices, under section 37, on two public bodies who had not co-operated, following the normal issuing of correspondence, two of which were served on the National Maternity Hospital and one on University College Dublin.

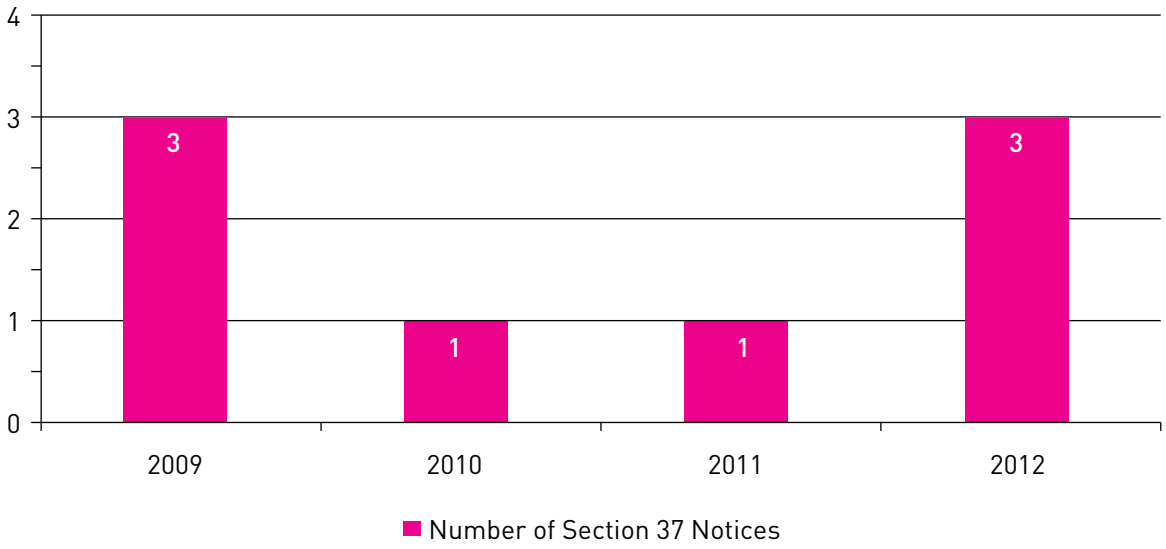
National Maternity Hospital

An email request for records associated with the applicant's FOI request was made to the hospital. Two letters of reminder followed. However, a reply was not received from the Hospital by the deadlines specified. Consequently, my Office issued a section 37 notice to the Master of the Hospital. The hospital's FOI Unit acknowledged the section 37 notice and the records were received.

A second section 37 notice issued to the Master of the National Maternity Hospital in similar circumstances. Again, the FOI Unit of the hospital contacted my Office (in relation to both section 37 notices) following which, records were received.

University College Dublin

A request was made to the FOI Unit of the College for a submission relating to a statement of reasons under section 18 of the FOI Acts. The College requested and was granted an extension to the initial submission deadline. However, when the record was not received by the new deadline, my Office issued two reminder letters to the College. The FOI Unit of the College contacted my Office and acknowledged the delay in supplying a submission. However, a section 37 notice was eventually issued to the President of the College, following which a submission was received one month later.



Statutory Certificates issued by Ministers/Secretaries General

The FOI (Amendment) Act of 2003 introduced provisions whereby certain records could be removed from the scope of the FOI Act by means of certification by a Minister or by a Secretary General of a Department. The relevant provisions are contained in sections 19, 20 and 25 of the FOI Act which also provide that a report specifying the number of such certificates issued must be forwarded to my Office.

Section 19

Section 19 is a mandatory exemption which provides protection for records relating to the Government or Cabinet. The definition of Government was amended by the 2003 Act to include a committee of officials appointed by the Government to report directly to it and certified as such by the written certification of the Secretary General to the Government.

I have been informed by the Secretary General to the Government that no section 19 certificates were issued by him in 2012.

Section 20

Section 20 of the FOI Act is a discretionary exemption which may protect certain records relating to the deliberative process of a public body. In the case of a Department of State, the Secretary General may issue written certification to the effect that a particular record contains matter relating to the deliberative process of that Department. Where such a certificate is issued, the record specified cannot be released under the FOI Act. In effect, the exemption becomes mandatory. Any such certificate is revoked in due course by the issue of written certification by the Secretary General.

Having consulted with each Secretary General, my Office has been informed that no new section 20 certificates were issued during 2012.

I am informed that a certificate under section 20 issued by the Secretary General of the then Department of Justice, Equality and Law Reform (now The Department of Justice and Equality) on 11 August 2006, and referred to in previous Reports, has not been revoked in line with the provisions of section 20(1A)(b). Therefore, it remains in force. A copy of the notification is attached at Appendix I.

A certificate under section 20, issued by the Secretary General of the Department of Defence on 4 March 2009, remains in place until 4 March 2013. A copy of the notification is attached at Appendix I.

Section 25

Where a Minister of the Government is satisfied that a record is an exempt record, either by virtue of section 23 (law enforcement and public safety), or section 24 (security, defence and international relations) and the record is of sufficient sensitivity or seriousness to justify doing so, that Minister, by issuing a certificate under section 25(1), may declare the record to be exempt from the application of the FOI Act. Each year, the Minister(s) in question must provide my Office with a report on the number of certificates issued and the provisions of section 23 or section 24 of the FOI Act which applied to the exempt record(s). I must append a copy of any such report to my Annual Report for the year in question.

Having consulted with each Secretary General, my Office has been notified of the following certificates issued under Section 25 of the Freedom of Information Acts, 1997 and 2003.

Six section 25 certificates were in place concerning the Department of Justice and Equality at 31 December 2012, three of which were renewed by the Minister in February, March and November 2012. A copy of the notification from the Secretary General is attached at Appendix I to this Report. The certificates issued above will fall for review under section 25(7) of the FOI Act in 2014.

Three section 25 certificates were in place concerning the Department of Foreign Affairs and Trade at 31 December 2012. A copy of the notification from the Secretary General is attached at Appendix I to this Report. The certificates issued above will fall for review under section 25(7) of the FOI Act in 2014.

I was notified by letter dated 21 December 2012 that, pursuant to section 25(7) of the FOI Act, the Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Jobs, Enterprise and Innovation, having reviewed the 12 certificates that were in operation for the period ended October 2012, were satisfied that it was not necessary to request the revocation of any of the 12 certificates in question. I attach a copy of the notification at Appendix II to this Report.

Appeals to the Courts

No Supreme Court or High Court judgments were delivered in 2012 in respect of decisions of my Office.

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. Following the amendment of the FOI Act in 2003, the decision of the High Court can be appealed to the Supreme Court.

Websites

I am pleased to note the new look to the websites of the Information Commissioner. During 2012, a Web Review Group was convened to consider among other things, how well people are engaging with the websites. The newly-designed sites are working well and one significant improvement is the search facility for decisions of the Information Commission.

Staffing matters

As with the past few years, 2012 was demanding on my staff and colleagues and once again, I would like to thank them sincerely for their continued hard work and support during the year.

In particular, I want to thank the former Director General, Pat Whelan, who retired in February 2012 and Bernadette McNally, the new Director General of the Office. I wish Bernadette well in her new role.

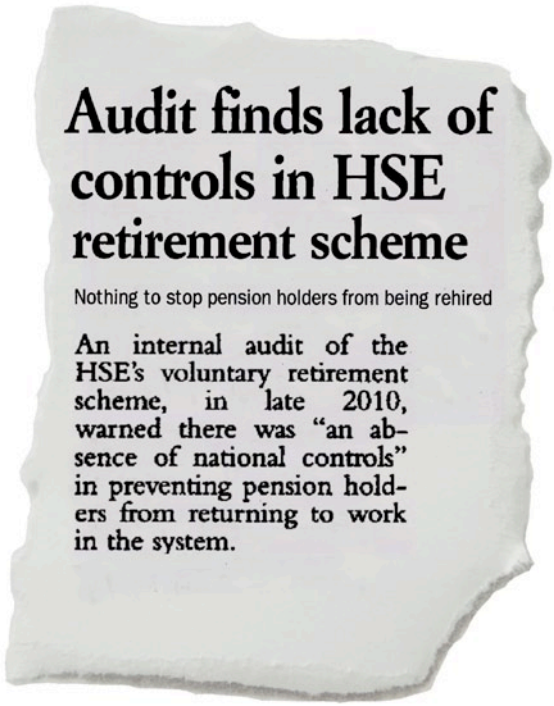
I also thank my Senior Investigators, Stephen Rafferty and Elizabeth Dolan, for their contribution and Melanie Campbell, Edmund McDaid and the staff of my Office for their help in compiling this Report.

There were a number of staffing changes in the Office during 2012.

I am pleased to welcome to the Office in 2012, Derek Charles, Roisin Connolly, Rachel Dunn and Anne Lyons, Investigators; and Kathleen Smyth, Clerical Officer.

I also want to thank Denise Freeman, Marie O'Brien and Colin Stokes who left the Office

during the year. I am grateful and appreciative of their hard work and commitment not only in 2012 but in the many years prior to their departure.



Audit finds lack of controls in HSE retirement scheme

Nothing to stop pension holders from being rehired

An internal audit of the HSE's voluntary retirement scheme, in late 2010, warned there was "an absence of national controls" in preventing pension holders from returning to work in the system.

Irish Examiner 17-02-2012

Lack of transparency forces parents to rely on their gut instincts

IT can cost more than the monthly mortgage payment and be pivotal in the development of a young child, but the business of childcare is subject to little transparency.

Thousands of parents who leave their children in the care of creches, pre-schools and Montessori schools every day have no ready access to inspection reports on how well they are meeting standards.

Irish Independent 02-07-12

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CHAPTER 2

Chapter 2: Issues Arising

The purpose of this chapter is to highlight issues relating to the operation of the FOI Act which arose over the last year. Some of the issues are operational and relate to particular public bodies, while others are matters which fall to be resolved at Government level or by the Department of Public Expenditure and Reform.

The issues discussed are:

- Review of the operation of the FOI Act
- Section 32 non-disclosure provisions
- Office workload
- Compliance of public bodies
- Settlements

Review of the operation of the FOI Act

When the Draft Heads of the FOI Amendment Bill were published in July 2012, the Minister for Public Expenditure and Reform also announced that his Department would undertake a focused review of the management of FOI requests by public bodies to determine what improvements in the working of the Act could be achieved and what steps may be necessary to seek to promote good practice in the use of the Act.

I very much welcomed this proposal and I am pleased that my Office has been asked to participate in the review group. In my view, there are a range of important matters which require urgent attention, including the future role of the Central Policy Unit within the Department, ongoing FOI training needs within public bodies, including bodies currently within remit and those proposed for inclusion, and the need to increase the amount of information made available as a matter of course outside of the FOI regime. I look forward to positive outcomes from the group's deliberations.

I am hopeful that the proposed changes to FOI will bring about more meaningful and beneficial openness and transparency. A well functioning FOI regime contributes a vital element to a genuine democracy. It plays an essential role in contributing to political and administrative accountability but most importantly to legitimacy.

Section 32 non-disclosure provisions

Section 32 of the FOI Act provides for the mandatory refusal of access to certain records whose disclosure is prohibited, or whose non-disclosure is authorised, by other enactments. Section 32 is a very important provision because it subordinates the access provisions of the FOI Act to all non-disclosure provisions in statutes, except for those which are cited in the Third Schedule to the FOI Act. The Act provides for the review by the Joint Committee on Finance, Public Expenditure and Reform every five years 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.

The last such review was conducted in 2005 and a further review is now several years overdue. When I appeared before the Joint Committee to discuss the Draft Heads of the FOI Amendment Bill, I reported that the reports of individual Ministers which have been made available to my Office show that, since the FOI Act became law in April 1997, many new non-disclosure provisions have been introduced in individual enactments. Indeed, the non-applicability of the FOI Act is appearing as a standard component of many new Acts.

The number of non-disclosure provisions being introduced in individual enactments is increasing. Departments are reporting approximately 230 enactments containing non-disclosure provisions, of which 50% became law since 1 January 1998. This means that as many non-disclosure provisions have been introduced since 1997 as were introduced in the preceding 75 years. I proposed to the Joint Committee that the current proposals to amend the FOI legislation presents an opportune time for it to conduct a review of the operation of section 32 and to incorporate into the Bill any changes proposed arising from that review. At the time of writing (March 2013), I have not received notification of the Joint Committee's intention to conduct such a review.

Office workload

In the current economic climate, almost all public bodies face the challenge of meeting increasing demand with diminishing resources, and my Office is no different. Furthermore, as I explained in chapter 1, the number of reviews of a more complex and time-consuming nature continues to increase. Nevertheless, I am acutely aware of the effects of delays in completing applications for review. I have often publicly expressed my view that information delayed is information denied.

At the start of this year, my Office had over 200 applications for review on hand, which is roughly the equivalent to the total number of reviews completed in 2012. This is unacceptable

as is the fact that only 19% of cases closed in 2012 were closed within the timeframe provided for in the FOI Act.

With this in mind, my Office has begun a process of reform, involving a complete review of organisational structures and processes with a view to implementing changes aimed at improving case turnaround times and increasing case throughput. The process is similar to that undertaken by the Office of the Ombudsman, a process which yielded significant improvements.

As an interim measure, my Office has introduced a "triage" process whereby all new applications are examined to determine if it might to possible to effect a more speedy resolution of the matter. This 'triage' process was adapted from the Ombudsman initiative mentioned above and commenced in late 2012. I am hopeful that the structures and processes review will achieve tangible improvements in case throughput and turnaround times.

Compliance of public bodies

My Office is keen to foster better working relationships with all public bodies so that, for example, in the event of difficult or complicated cases, issues may be resolved with a minimum of fuss and in a spirit of cooperation. Good communications are critical to maintaining those relationships but occasionally, the personal contact between staff of my Office and representatives of the public bodies is not enough to 'get the job done'. This is where I must rely on provisions such as section 37 of the FOI Act.

My staff have recorded a small number of instances during the year when certain public bodies questioned whether or not information required by my Office under section 37 of the FOI Act should in fact be forwarded. I fully appreciate the concerns and obligations of public bodies relating to information held by them, which may be regarded as highly sensitive. However, section 37 of the FOI Act provides for a public body to furnish my Office with any information which is deemed relevant for the purposes of a review. In particular, I would remind public bodies that section 37(3) of the FOI Act provides that no enactment or rule of law prohibiting or restricting the disclosure or communication of information shall preclude a person from furnishing to the Commissioner any such information or record. In certain cases in 2012, confusion about the provisions of section 37 and the obligations on public bodies, has given rise to delays in the investigative process.

Another worrying trend, most noticeable in 2012, is a tendency for public bodies to request an extension to a deadline set by my staff when a request is made for records, submissions etc. While each case is treated on its merits, it is not generally appropriate that extensions would be granted on the grounds of insufficient resources. It remains the fact that some public bodies fail to recognise that the administration of the FOI Act is one of their statutory functions which should be afforded as much weight as any other statutory function. It is of significant concern to me if extensions become the norm, or default position, of public bodies in considering requests from my Office.

On more than one occasion in 2012, some public bodies did not provide staff cover for FOI Officers who were on leave. In one case, my Office received a copy of correspondence in which the requester was untypically informed by the public body that due to staff resource issues, the FOI request was unlikely to be dealt with within the time frame provided for in the Act. The letter also informed the requester about the definition of 'deemed refusals'. In another case, my Office was informed that the FOI Unit of a public body would close for one month and consequently, would not be available to process enquiries from my Office.

As I have already mentioned, my Office has set specific goals of achieving a higher rate of review completion within a four-month time period. Clearly, this will require a significant degree of cooperation by public bodies, and I sincerely hope that public bodies will recognise the importance of complying with deadlines and with the provisions of the Act if the level of service for users of FOI is to be improved.

Settlements

During the course of a review, my Office may examine the possibility of a settlement between the parties concerned, with the aim of resolving the case without the need for a binding decision. During 2012, 45% of completed reviews were either settled or withdrawn. It has consistently been the experience of my Office over the years that there exists significant scope for settlement of reviews and I have stated previously that this would suggest there is considerable scope for public bodies to take a more active approach in consulting with requesters to determine if their requirements may be met by narrowing the differences between the two parties and reaching an agreement on an acceptable settlement.

While the settlement process can sometimes be time-consuming for staff of my Office and may involve a degree of flexibility from all parties concerned, I am nevertheless convinced it is a worthwhile process. I would encourage public bodies to engage directly with requesters with a view to achieving settlements in those cases where a full granting of the request is unlikely.

The following is an example of a case which was settled in 2012

My Office reached a settlement in February 2012 with the Department of Foreign Affairs in relation to a request for access to records relating to the Visa Office in Abu Dhabi, United Arab Emirates. The case involved a large number of records for which numerous exemptions had been claimed. Many of the records contained information relating to the international relations of the State and my Investigator accepted that they could therefore fall within the ambit of section 24(1)(c) of the FOI Act. However, she disagreed with the Department regarding the applicability of the class-based exemption under section 24(2)(c) of the Act. She also disagreed with the Department that section 20(1) of the Act, the exemption relating to the deliberative processes of a public body, applied to records relating to certain administrative matters that had been settled with the opening of the visa office. In addition, she had questions about some of the other claims for exemption that had been made.

In the circumstances, my Investigator proposed a meeting with the Department, explaining that she wished to work towards a settlement of the matter on the basis of the release of the information that was not, or was no longer, sensitive, while protecting the information that was. The Department agreed to the proposal, and a constructive meeting was subsequently held at which my Investigator and two officials from the Department discussed the contents of the records and the relevant issues at length. Following the meeting and additional contacts, the Department agreed to the administrative release of the records that had not been shown to be of a sensitive nature. The applicant, in turn, agreed to settle the case on this basis and therefore withdrew his application for review.

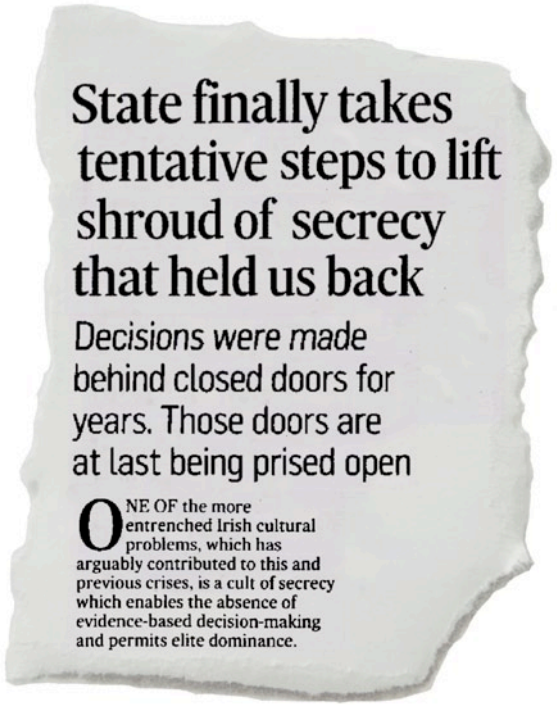
Officials knew of 'recent' €3.6bn error for a year

Exchequer records date to August 2010

MINISTER FOR Finance Michael Noonan was told by his department's officials last year that a €3.6 billion accounting error had only "recently" come to light despite a paper trail stretching back more than 12 months.

In a briefing note for the Minister, prepared on October 28th last, he was told the National Treasury Management Agency (NTMA) "have recently drawn to our attention" a double-count of money borrowed by the Housing Finance Agency.

Irish Times 13-02-2012



State finally takes tentative steps to lift shroud of secrecy that held us back

Decisions were made behind closed doors for years. Those doors are at last being prised open

ONE OF the more entrenched Irish cultural problems, which has arguably contributed to this and previous crises, is a cult of secrecy which enables the absence of evidence-based decision-making and permits elite dominance.

Irish Times 01-08-12

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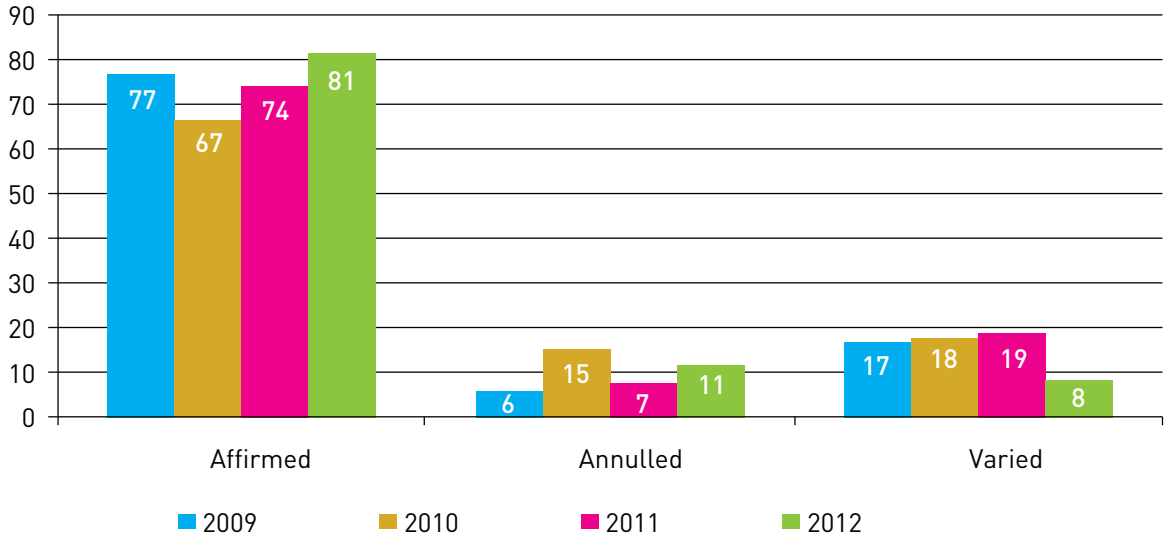
CHAPTER 3

Chapter 3: Decisions

Formal decisions

In 2012 a total of 200 cases were reviewed by my Office. As I mentioned earlier, this total is comprised mainly of formal decisions, settlements and withdrawals. The outcome of the reviews which went to formal decision in the years 2009, 2010, 2011 and 2012 is highlighted in the table below.

Percentage comparison of formal decisions 2009 - 2012



The table shows that in cases which went to formal decision, the Office recorded an increase in annulled decisions in 2012 over 2011.

Annulled decisions – Section 29

A number of the decisions annulled by my Office in 2012 were due to non-compliance by the public body concerned with certain provisions of section 29, in that consultation procedures did not take place within the prescribed statutory deadlines.

Section 29 of the FOI Act sets out the procedures to be followed where the public body considers that although a record is exempt from disclosure because it contains information given in confidence (section 26), commercially sensitive information (section 27) or personal information relating to a third party (section 28), on balance, the record falls to be released in the public interest.

Where section 29 applies, the body is required to notify an affected third party, within a specified period of time, before making a final decision on whether or not the exemption(s), otherwise found to apply, should be overridden in the public interest.

In cases where the public body did not adhere to the statutory deadlines, I take the view that it is appropriate for my Office to accept such applications for review in the first instance. If my Office were to refuse to accept defective section 29 applications, the initial decision of the public body would, arguably, remain and there would be no mechanism available to my Office to ensure that the rights of all affected parties were protected. A more detailed explanation of the provisions of section 29 can be found in my Annual Report 2011.

The following are a number of formal decisions issued during 2012, which highlight points of interest to public bodies and FOI users alike. The full text of each decision is available on my Office website (www.oic.gov.ie).

Significant decisions

Mr. X and the Department of Communications, Energy and Natural Resources – Case 080288

In September 2008, the applicant sought access to the "database of coverage information that informs the map entitled 'Wireless and Broadband Coverage'", which had been published in August 2008 as part of the National Broadband Scheme (NBS). The request followed one of a similar nature that ultimately gave rise to case 080184, which I discussed in my Annual Report 2011. Unlike case 080184, the database which was the subject of the applicant's request in this case still existed, but the Department made claims for exemption under sections 23, 24, 26, and 27 of the FOI Act. The question that immediately arose, however, was whether the information contained in the database could, with effort, be sourced from the public domain or not. The apparent availability of at least some of the information concerned in the public domain, for instance, by accessing the 'Siteviewer' service on the website of the Commission for Communications Regulation (ComReg), seemed to undermine the claims of sensitivity that had been made with respect to the database at issue.

In reaching my decision, I had regard to the comments of Costello J in *House of Spring Gardens Limited v. Point Blank Limited* [1984] I.R 611. I observed that if it takes skill, time and labour to compile the information concerned, the information may still be regarded as confidential even if the component parts were sourced from the public domain. In relation to the database at issue, I accepted that, while certain individual details therein could be obtained from publicly available sources such as 'Siteviewer', or the various planning authorities, no single source of such comprehensive information about the telecommunications infrastructure of this country could be found in the public domain. Moreover, in the context of the claims for exemption made by the Department under sections 23 and 24 of the FOI Act, I attached significant weight to the views of members of the security services who had made presentations at a meeting held in May 2012.

The evidence presented by the Department in this case was relevant to a number of the exemption provisions of the FOI Act, but in light of what I was free to disclose, I considered that section 23(1)(c) was the most appropriate exemption to apply. Describing the database as "a directory giving the precise locations and antennae height of the majority of the broadband transmission sites in the country, including the exempted structures on property in private ownership", I was fully satisfied that granting access to the database in full could reasonably be expected to facilitate the commission of an offence, whether mere theft and vandalism of a particular transmission site, or a larger criminal enterprise such a bank robbery. Accordingly, I found that section 23(1)(c) applied.

The Irish Times and the Department of Finance – Case 100173

This case concerned the refusal of the Department of Finance to release a number of records relating to correspondences between the then Minister for Finance, Mr. Brian Lenihan, and the CEO of an identified public service body. During the course of the review the Department released certain records but withheld others either in full or in part, in accordance with sections 21(1)(c), 31(1)(a) and (b) of the FOI Act. Three of the records at issue related to financial issues including the liquidity of the banking system.

The Department argued that disclosure of the records would disclose positions taken for the purpose of negotiations (section 21(1)(c)) and could cause the financial markets to take a negative view of Ireland's capacity to repay borrowing which could reasonably be expected to have a serious adverse effect on the financial interests of the State, or on the ability of the Government to manage the national economy (section 31(1)).

However, the exemptions in both section 21 and section 31 can be dis-applied where the public interest, on balance, is better served by granting than by refusing the request. In conducting this exercise in this particular case, I considered the extent to which release of the records might undermine the public interest in protecting the functions and negotiations of public bodies in so far as they relate to the financial interests of the State and possible effects of release in negotiations in the financial environment. I also considered the extent to which release of the records might undermine the public interest in protecting the financial and economic interests of the State and the possible effects of release on those financial and economic interests and on the Government's ability to manage the national economy.

In my view the prospect that release of records causing significant harm as claimed by the Department with the type of consequences suggested by it, cannot be lightly disregarded or dismissed, especially given the uncertainty and volatility of international markets. While the Department asserted that release of the records would have negative consequences for how it performs its functions and engages in negotiations, I was not satisfied that it supported this assertion to any real extent.

However, I also consider that the release of a record which could reasonably be expected to have a serious adverse affect on the financial interests of the State should only be contemplated where there is a significant public interest served by releasing such a record. I recognise that the public interest in transparency is served only where records are released and that refusing release is contrary to the public interest in achieving transparency. In this case, however, having accepted the Department's contention that the release of the records could reasonably be expected to have a serious adverse affect on the financial interests of the State, I did not consider that the public interest in achieving transparency was sufficient to outweigh the public interest in ensuring that such harm does not arise. I therefore affirmed the Department's decision to refuse access to the records.

Mr Gavin Sheridan and the Industrial Development Agency – Case 110092

This case concerned the refusal of the IDA to release names of individuals from whom it leased various premises, on the basis that such details comprised the individuals' personal information.

The IDA released details of the location and size of the properties, the start and end dates of the leases (all commenced in the early 1980s, with one commencing in 2007), and the amount of rent payable by the IDA in each year specified in the request.

Section 28(1) of the FOI Act *must* be applied to a record which, if released, would "involve the disclosure of personal information" about an identifiable individual. My Office accepted that disclosure of the withheld names would disclose to the world at large a number of inextricably linked facts about the parties concerned i.e. their ownership of, and yearly income from, particular properties. Information about an individual's financial affairs and property is defined by the FOI Act to be personal information. Consequently, my Office found that section 28(1) applied and that such details were not already in the public domain. If they had been, section 28(1) would not have applied.

In considering the public interest at section 28(5)(a), I had regard to the 2011 judgment of the Supreme Court in the case of The Governors and Guardians of the Hospital for the Relief of Poor Lying-In Women v The Information Commissioner (the Rotunda judgment). A number of *obiter* comments were made which, although concerning the public interest test at section 26(3) of the FOI Act, provide useful guidance in considering any public interest test contained in the FOI Act.

Essentially, a public interest ("a true public interest recognised by means of a well-known and established policy, adopted by the Oireachtas, or by law") must be distinguished from a private interest, and the public interest test concerned would not weigh in favour of release where the interest identified is exclusively private. Thus, when considering the public interest test in the release of personal information, privacy rights will be set aside only where the public interest served by granting the request is sufficiently strong to outweigh the public interest in protecting privacy.

Arguments made against release included concerns as to the potential impact of release on the personal safety of any elderly third parties and the expectation of secrecy attaching to leases signed in the 1980s.

I took the view that the breach of privacy that arises in the cases of those who leased properties to the IDA in the 1980s may be somewhat more than minimal. However, I did not feel it appropriate to accept that any particular class of citizen, or age group, should have a greater right to privacy than any other. Neither did I accept that the parties could have had any justifiable belief that details of annual payments they were due to receive from the

State, further to arrangements entered into for commercial advantage, would be kept secret indefinitely, particularly where those with leases dating from the 1980s sought rent reviews in either 2007 or 2008. I consider an expectation of a diminution of privacy rights, at least in relation to the disclosure of details of commercial transactions with public bodies, to be a necessary consequence of entering into such arrangements.

The public interest arguments favouring release were ensuring openness and accountability for the expenditure of public monies, particularly given the length of time over which the monies are payable (21 years in the case of the lease signed in 2007 and 35 years in all others) and given that the monies were payable regardless of whether the IDA sublet the premises, or sublet them for a rental amount less than that payable to the landlord.

I take the view that public bodies should be open as to with whom they do business and to whom state monies are paid, and to show that they are ready to be held accountable, if necessary, for those arrangements. My Office ultimately found that the public interest warranted the release of the names at issue.

Mr X, on behalf of the Irish Fire and Emergency Services Association (IFESA) and Dublin City Council - Cases 110102 & 110198

Case 110102 concerned nine FOI requests (with 58 different elements) made to the Council by one requester between 12 January and 14 February 2011. The same requester made three further requests to the Council, containing 12 separate elements, on 20 June, 19 July and 21 July 2011 (case 110198 refers). The Council refused the requests on a number of grounds, including that they were frivolous or vexatious or formed part of a pattern of manifestly unreasonable requests from the same requester (section 10)(1)(e)). Both cases were dealt with as a composite review.

In another decision, I had previously set out a number of non-exhaustive factors that I consider relevant in assessing whether a request may be categorised as "frivolous or vexatious":

- the number of requests made;
- the nature and scope of the requests;
- the purpose of the requests;
- the intent of the requester.

I also consider these factors to be equally relevant in determining whether or not there is evidence of a pattern of manifestly unreasonable requests.

My Office considered the number of requests to be excessive, in light of the extent of information sought in each, and the short time period over which they were made. In addition, the requests were considered to be excessively broad *and* unusually detailed, having regard to the diverse range of records sought in the various elements thereof. In light of particular

comments in the applicant's letters to the Council, my Office agreed with the Council's view that the requests had been made with the intention of accomplishing an objective unrelated to the access process i.e. with the aim of forcing the Council to liaise with, and/or ultimately recognise the representative association with which the applicant was involved. In this regard, it should be noted that section 8(4) of the FOI Act, as amended, allows a public body to take into account the motive of a requester when considering if section 10(1)(e) applies.

Accordingly, I took the view that the various requests comprised a pattern of manifestly unreasonable requests, and that using FOI in such a way was an abuse of the right of access such that the requests appeared to be vexatious. I held that, in either scenario, section 10(1)(e) of the FOI Act applied.

Ms X and the Health Service Executive Dublin Mid-Leinster - Case 110106

This review was remitted to the Information Commissioner by the President of the High Court for determination in accordance with the law.

In this case, the applicant sought a review of the decision of the HSE to grant access to seven reports compiled and held by the HSE, following its investigation of complaints regarding a nursing home. The applicant was the Person-in-Charge at that nursing home. Having conducted my review, I found that that HSE's decision to grant access was justified. My decision was appealed to the High Court on a point of law and, on 31 May 2011, the High Court remitted the review back to my Office for determination on the ground that a number of procedural issues had been identified.

In my decision, I had referred to published reports of prior inspections of the nursing home which were not within the scope of the FOI request but the applicant was not given an opportunity to make a submission to my Office in relation to those reports. Further procedural issues were identified, including an issue relating to whether or not the names of nurses at the nursing home constituted personal information.

In accordance with the Order of the High Court, the decision of the HSE was reviewed afresh by my Office. In the intervening period, the nursing home in question had closed which, in my view, directly undermined the applicant's arguments as to the potential harm which might arise from the release of what was considered to be commercially sensitive information.

The applicant also argued that all the information she provided, or that was provided by the staff of the nursing home, was provided in confidence and that the publication of the information would constitute a breach of a duty of confidence owed. I considered that there is a public interest in members of the business community (including nursing home proprietors/operators) being able to communicate with public bodies (such as the HSE) without fear of disclosure in relation to sensitive matters. However, I did not accept that any understanding of confidence could exist in circumstances where the HSE was involved in the investigation of alleged breaches of regulations.

On the matter of where the balance of the public interest lay, I considered that there is a significant public interest in optimising openness and transparency in relation to inspections carried out by the HSE under the Nursing Homes (Care and Welfare) Regulations, 1993. I also considered that there is a significant public interest in ensuring accountability in respect of the substantial sums paid out by the Exchequer in terms of subventions to patients resident in nursing homes. Having considered the matter at length, I found that the public interest would be better served by granting access to the reports sought.

Mr & Mrs Y c/o Solicitors and the Health Service Executive (HSE) – Case 110158

This case concerned the refusal of the HSE to release details of who reported the applicants to the HSE concerning their children. The HSE initially relied on the exemptions in sections 26(1)(a) and 28(1) to refuse to grant access but during the course of the review it also invoked the exemption in section 23(1)(b) to withhold the information sought.

In this case I further developed my Office's approach to the consideration of the section 23(1)(b) exemption, which provides for the protection of the identity of persons who have given information in confidence to public bodies in relation to the administration of the civil law. The exemption is aimed at ensuring that members of the public are not discouraged from co-operating with agencies engaged in the enforcement or administration of the civil law. For the exemption to apply, three specific requirements must be met. The first is that release of the withheld information could reveal, whether directly or indirectly, the identity of the supplier of the information. The second is that the information must have been given to the public body in confidence, while the third is that the information must have been supplied to the public body in relation to the enforcement of administration of the civil law.

In this case, the applicants argued that the information given to the HSE was maliciously motivated and thus could not have been made in confidence. In support of their argument, they referred to the case of Cruise v Bourke [1919] 2 IR 182 where Madden J. held that malice could be inferred if it could be shown that the Defendant had no reasonable or probable cause for advancing the prosecution and had no honest belief in the Plaintiff's guilt. The HSE's position was that every such report it receives is acted upon in good faith. While it was of the opinion that it was likely the report was malicious, the HSE stated that it was not in a position to take a more unequivocal view of the matter and that it was not in a position to know definitively whether the person(s) who made the report was acting in good faith.

Previous decisions of my Office indicated that the issue of whether information was provided in good faith is a factor to be considered in the determination of whether or not information has been given in confidence. In this case, while I accepted that some circumstantial evidence existed to suggest that the report to the HSE may have been maliciously motivated, I was not convinced that sufficient evidence existed to state categorically that this was the case. In any event, I accepted that the HSE acts upon every such report in good faith. I

further acknowledged that when one considers the person who, in good faith, supplies information which is subsequently found on investigation to be inaccurate or mistaken, the difficulty for the HSE in handling such reports in any other manner becomes apparent.

I accepted that the disclosure of the identity of complainants, even where the evidence suggests that the complaint was maliciously motivated, could prejudice the flow of information from the public and that the HSE relies upon such information to carry out its functions. In this case, I gave significant weight to safeguarding the inherent importance in protecting the free flow of information to the HSE and I accepted the HSE's position that the information was given in confidence in this case, notwithstanding the fact that the allegations were subsequently regarded as unfounded. Accordingly, I found that all three conditions for section 23(1)(b) to apply were met and I upheld the decision of the HSE to refuse access to the information sought.

Mr "C" and the Department of Health - Case 110166

The applicant sought from the Department of Health certain information relating to mortality rates for Mayo General Hospital, Castlebar. He argued that the information should be released as the Minister for Health had put similar information for hospitals in Galway and Roscommon on public record. The Department decided to defer access to the information sought in accordance with section 11(1)(b) of the FOI Act. Section 11(1)(b) allows a public body to defer access to certain information where it considers that release before a specified day would be contrary to the public interest

This provision is rarely used by public bodies and I view the case as helpful in explaining how I address the public interest test associated with section 11(1) of the Act. The public interest test contained in section 11 is stronger than those found elsewhere in the Act insofar as it will only justify the withholding of a record where its disclosure on or before a particular day is contrary to the public interest. There is no need to show that the disclosure of the record is positively in the public interest.

The Department decided to defer release of the information under section 11(1)(b) of the FOI Act, on the basis that *"a report is in final preparation which will provide the data requested in relation to all hospitals as well as other important indicators"* and that it is *" expected that the report will be completed by the end of September* [2011] *and published following discussion with the Minister".*

During the course of the review, it became clear to my Office that the publication of the report containing the information sought would be delayed. Regardless, the Department argued that the release of the information sought prior to the publication of the report would be contrary to the public interest.

The Department argued that release of the information sought would lead directly to negative impacts on the public and have serious public health implications and that

releasing inaccurate information would have an impact on, and undermine, public confidence in future reports that are due to be published and which will provide important data in relation to health care provision in Ireland. This argument was based on the argument that the information at issue may be inaccurate and, therefore, misleading. The Department considered that the information may be related by individuals or their families to care that they received in the hospital, giving rise to concerns which might well be unfounded. Separately, the Department argued that the release of the information may subvert its wider intentions in relation to the improvement of quality of data which, it argues, is not in the public interest.

The applicant, on the other hand, argued that the Minister for Health put the mortality rate for cardiac patients in both Roscommon and Galway Hospitals on the public record in a Dáil debate on 5 July 2011 and that it was very difficult to see how the Department could argue that the release of the information for the third major hospital in that region would be contrary to the public interest. He suggested, in fact, that it would serve the public interest to release the information relating to Mayo General Hospital to allow for a more informed public debate.

In my view, the fact that the release of factual information may not be without consequences and may prompt questions from the media or other sources does not, of itself, suggest that release would be contrary to the public interest. One would imagine that it would be quite easy to provide a fuller explanation to any member of the public who might query the figures or to provide additional explanatory background information when releasing the information sought.

In this case, I also found the Department's concerns in terms of the potential for having serious health implications to be overstated, and I did not accept that the release of the information at issue would be likely to undermine public confidence in future reports.

On the matter of whether the release of the information might subvert the Department's wider intentions in relation to the improvement of quality of data, I understood that this argument related to concerns expressed by some hospitals as to the accuracy of the data contained in the report. However, I was also aware that the Department had since engaged in a consultation process with the hospitals to address concerns relating to its intention to publish the report and I did not see how the release of the information sought in this case could give rise to the harm identified, particularly given that the Department fully intended to publish the report with the information at issue unchanged.

I found that the Department had not presented any compelling arguments that showed that the release of the information sought would be contrary to the public interest. I found that the Department was not justified in deciding to defer access under section 11(1)(b) of the FOI Act.

Mr X and the Health Service Executive - Case 110204

Mr X applied to the HSE for access to the ''medical records'' of his deceased parents. The HSE relied on section 28(1) of the FOI Act to refuse access to the medical records of the applicant's late father because his G.P. held a record wherein the applicant's late father expressed his wish to change his "next of kin" from the applicant to other person(s). A record also existed which indicated that the applicant's late father informed his G.P. of his wish that a named person other than the applicant should be contacted if anything happened to him.

Section 28(1) of the FOI Act provides that a public body shall refuse to grant access to a record where access would involve the disclosure of personal information relating to a third party, including personal information relating to a deceased individual. However, regulations made in 2009 (the Freedom of Information Act 1997 (Section 28(6) Regulations) 2009 (S.I. No 387 of 2009)) provide, at article 4(1)(b)(iii), that subject to the other provisions of the FOI Act, a request for access to records of a deceased individual shall be granted to

"the spouse or the next of kin of the individual where in the opinion of the head, having regard to all the circumstances and to any relevant guidelines published by the Minister, the public interest, including the public interest in the confidentiality of personal information, would on balance be better served by granting than by refusing the request"

"Next of kin" is defined in Article 4(2) of the 2009 Regulations and in the Guidance Notes for consideration by decision makers in applying the 2009 Regulations. I was satisfied from an examination of these provisions that the applicant qualified as the deceased's "next of kin", regardless of any expressed wish by his late father to change this. Therefore, I decided that the applicant's request for access to his late father's medical records fell to be considered in accordance with the provisions of Section 28(6) of the FOI Act, the 2009 Regulations and the relevant Guidance Notes published by the Minister for Finance.

Section 28(6) of the FOI Act and the associated 2009 Regulations provide for the release of personal information of deceased persons to "next of kin" under certain circumstances.

The Guidance Notes specify that certain factors should be taken into consideration in determining whether the public interest would be better served by granting than by refusing the request. Factors include:

- The confidentiality of personal information;
- Whether or not the deceased would have consented to the release of the records to the requester when living;
- The nature of the relationship of the requester to the deceased; and
- The nature of the records to be released. In relation to medical records, due regard should be had to the confidentiality of medical records in accordance with the Irish Medical Council Guide to Ethical Conduct and Behaviour.

I considered the HSE's record relating to the wishes of the applicant's late father. The G.P. involved subsequently informed the HSE of her opinion that the applicant's late father was of sound mind when he made his request. In view of these factors, I was not satisfied that the applicant's late father would have agreed to the release of the records at issue while he was living. The FOI Act recognises a very strong public interest in protecting privacy rights. Consequently, I found that the public interest would, on balance, be better served by refusing access to the medical records of the applicant's late father in this case.

Mr X and a Public Body - Case 120023

The applicant sought records relating to an independent investigation, conducted at the request of his employer (a public body), into whether or not certain of his actions amounted to misconduct. Ultimately, the review concerned an email sent to the body by the person who conducted the investigation (the "third party") *after* the investigation had ended, which the body withheld under section 26(1)(a) of the FOI Act.

Public bodies cannot rely on section 26(1)(a) in relation to records prepared by anyone providing a service for the body under a contract for service, in the course of performing his or her functions, unless a duty of confidence is owed to another, external, party (section 26(2) refers). However, the body contended that the third party was no longer a "service provider" when he sent the email, in which case section 26(1)(a), a mandatory exemption, was relevant.

In order for a record to be exempt under section 26(1)(a), it must contain information

- given to a public body in confidence *and*,
- on the understanding that it would be treated by it as confidential *and*,
- in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons *and,*
- it is of importance to the body that such further similar information as aforesaid should continue to be given to the body.

As regards the first and second tests, my Office noted that the email, and its response, did not indicate that either the body or the third party had any kind of understanding that the latter gave the information in the email to the body in confidence and on the understanding that it would be treated by it as confidential. The public body's arguments appeared to represent its understanding of the circumstances under which the third party sent the email, rather than why it, presumably, held the same position having regard to the circumstances in which that email was received. In this regard, I note Macken J.'s comments in the Rotunda judgment referred to earlier, regarding the importance of considering the "circumstances in which [the information] was imparted *and* received" (emphasis added). However, a finding was not made on these tests, given that my Office considered that the fourth test above was not met.

The body appeared to accept it did not need to continue to receive communications such as the email at issue. However, both it and the third party argued that release of the email could render service providers reluctant to undertake work for the body in future.

While the body appeared to argue that it was, accordingly, not in the public interest to release the record, the public interest is only relevant when one accepts that a record is *prima facie* exempt from release. I accept that it may be of importance to a body to continue to receive certain information from service providers (such as clarification on issues that only they can provide) after a contract has concluded. Also, I note that service providers may need to contact a public body, after conclusion of a contract, in relation to commercially sensitive or personal matters. However, neither consideration was relevant in this case.

What was relevant was the body's apparent acceptance that it did not need to continue to receive information such as that contained in the email. I note that the body had not explained why it might consider that service providers would be reluctant to carry out a service for it in accordance with an agreed contract for service, which would set out rights and obligations of both parties, including those in relation to the provision of information.

I was not satisfied that sufficient argument had been made that the fourth test had been met in this case. I found that the body's application of section 26(1)(a) was not justified. As no arguments had been made that any other provision of the FOI Act applied, I directed the release of the record.

Mr X c/o Y solicitors and the Department of Agriculture, Food and the Marine – Case 120084

In this case, I found that a decision by the Department of Agriculture, Food & the Marine to refuse a request pursuant to section 28 of the FOI Act (which relates to personal information) was justified. The applicant had sought information relating to third party claims submitted to and paid out by the Department relevant to his lands.

I was aware that my consideration of the public interest in this case ran contrary to the approach I had adopted in some previous cases where I considered that applicants for certain grant aid are, as farmers, comparable to sole traders and as such, information relating to the payment of such grants relates to the business affairs of sole traders and does not constitute personal information about the individuals concerned. However, those decisions were taken before the Rotunda judgment, which I referred to earlier.

Among other things, the Rotunda judgment required me to alter the approach I had previously adopted in my interpretation of the definition of personal information for the purposes of the FOI Act. I was satisfied, having regard to the Rotunda judgment, that information relating to the payment of grants, such as the information at issue in the records in this case, was personal information. As such, the manner in which I considered the public interest balancing test was necessarily affected.

Having considered the various public interest factors, I was satisfied that the public interest in granting the applicant's request did not outweigh the public interest that the right to privacy of the individual or individuals to whom the information related should be upheld.

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CHAPTER 4

Chapter 4: Statistics

Section I - Public Bodies - 2012

The absence of key statistics means that I am not in a position to comment on most of the tables which are usually published in Section I – Public Bodies.

Tables about which I cannot comment are:

Overview of FOI requests dealt with by public bodies
FOI requests dealt with by public bodies and subsequently appealed
FOI requests received - by requester type
Overview of FOI requests dealt with by public bodies
Analysis of FOI requests dealt with by public service sector
FOI requests received by civil service departments/offices
FOI requests received by other bodies
Fees charged

Given that statistical returns were made as normal by a number of Agencies, I can provide details in the usual manner under the following table headings.

For ease of comparison, I have retained the numbering convention used in the tables in previous Annual Reports.

Table 7: FOI requests received by local authorities
Table 8: FOI requests received by the HSE
Table 9: FOI requests received by voluntary hospitals, mental health services and related agencies
Table 10: FOI requests received by third level education Institutions

Section II - Office of the Information Commissioner – 2012

The information in this section is complete

Section I – Public Bodies – 2012

Table 7: FOI requests received by local authorities

Local Authority*	Personal	Non-personal	Mixed	Total
Dublin City Council	150	119	3	272
Cork County Council	13	103	0	116
Cork City Council	20	61	0	81
Fingal County Council	24	44	0	68
Dún Laoghaire-Rathdown County Council	22	42	0	64
Clare County Council	8	53	0	61
Mayo County Council	8	53	0	61
Galway County Council	5	55	0	60
Kerry County Council	5	42	5	52
Louth County Council	26	21	1	48
Donegal County Council	14	32	0	46
Meath County Council	7	38	0	45
Galway City Council	21	19	0	40
South Dublin County Council	13	24	0	37
Kildare County Council	5	32	0	37
Wicklow County Council	8	29	0	37
Limerick City Council	19	15	0	34
North Tipperary County Council	0	33	0	33
Kilkenny County Council	11	20	0	31
Wexford County Council	7	21	0	28
Waterford County Council	2	25	0	27
Limerick County Council	2	16	8	26
South Tipperary County Council	2	20	1	23
Sligo County Council	4	18	0	22
Longford County Council	7	12	0	19
Roscommon County Council	5	12	2	19
Waterford City Council	6	11	0	17
Cavan County Council	4	14	0	18
Carlow County Council	2	15	0	17

Monaghan County Council	2	14	0	16
Westmeath County Council	4	12	0	16
Laois County Council	2	13	0	15
Leitrim County Council	4	11	0	15
Offaly County Council	6	9	0	15
Total	**438**	**1,058**	**20**	**1,516**
Regional Authorities	0	9	0	9
Regional Assemblies	0	3	0	3
***County Council figures include any FOI requests received by Town and Borough Councils**				

Table 8: FOI requests received by the HSE

HSE area*	Personal	Non-Personal	Mixed	Total
HSE South	2,905	117	14	3,036
HSE West	2,379	49	1	2,429
HSE Dublin North East	879	32	1	912
HSE Dublin Mid-Leinster	797	31	2	830
HSE National Requests	4	258	0	262
Total received	**6,964**	**487**	**18**	**7,469**
***Figures represent the regional structure of the HSE**				

Table 9: FOI requests received by Voluntary Hospitals, Mental Health Services and Related Agencies

Hospital/Service/Agency	Personal	Non-Personal	Mixed	Total
Mercy University Hospital, Cork	610	4	0	614
St James's Hospital	447	20	2	469
Mater Misericordiae Hospital	324	15	0	339
Rotunda Hospital	248	50	0	298
Tallaght Hospital	244	13	0	257
Cappagh National Orthopaedic Hospital	68	186	0	254
St. John's Hospital, Limerick	174	0	0	174
Beaumont Hospital	20	124	0	144
National Maternity Hospital, Holles Street	127	10	3	140

South Infirmary - Victoria Hospital, Cork	130	2	0	132
Our Lady's Hospital for Sick Children, Crumlin	119	5	1	125
St. Vincent's University Hospital	111	14	0	125
Temple Street Children's Hospital	109	7	0	116
Coombe Hospital	99	10	0	109
Royal Victoria Eye and Ear Hospital	51	0	0	51
Mental Health Commission	25	3	8	36
Health Information and Quality Authority	10	19	0	29
National Rehabilitation Hospital, Dún Laoghaire	28	0	0	28
Medical Council	17	8	0	25
Hospitaller Order of St. John of God	24	0	0	24
Drug Treatment Centre Board	20	0	0	20
Other Hospitals/Services/Agencies	72	12	4	88
Total	**3,077**	**502**	**18**	**3,597**

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

Third Level Education Body	Personal	Non-Personal	Mixed	Total
Waterford Institute of Technology	8	82	0	90
University College Dublin	24	24	0	48
Galway-Mayo Institute of Technology	22	5	1	28
University College Cork	5	21	2	28
National University of Ireland Galway	10	17	0	27
University of Dublin (Trinity College)	5	17	0	22
University of Limerick	4	12	1	17
Dublin Institute of Technology	8	9	0	17
Dublin City University	5	8	1	14
National University of Ireland Maynooth	2	11	0	13
Institute of Technology Carlow	0	12	0	12
Other bodies	13	102	1	116
Total	**106**	**320**	**6**	**432**

Section II - Office of the Information Commissioner - 2012

Table 13: Analysis of applications for review received

Applications for review on hand - 01/01/2012	19
Applications for review received in 2012	338
Total applications for review on hand in 2012	**357**
Discontinued	6
Invalid applications	75
Applications withdrawn	7
Applications rejected	4
Applications accepted for review in 2012	236
Total applications for review considered in 2012	**328**
Applications for review on hand - 31/12/2012	29

Table 14: Analysis of review cases

Reviews on hand - 01/01/2012	166
Reviews accepted in 2012	236
Total reviews on hand in 2012	**402**
Reviews completed	200
Reviews carried forward to 2013	**202**

Table 15: Applications for review accepted in 2012

Health Service Executive		69
HSE National	45	
HSE West	8	
HSE South	6	
HSE Dublin Mid-Leinster	6	

HSE Dublin North East	4	
Department of Justice and Equality		19
Department of Agriculture, Food and the Marine		14
Office of the Revenue Commissioners		11
Dublin City Council		8
Department of Social Protection		7
Department of Education and Skills		5
Others (bodies with less than 5 applications each)		103
Total		**236**

Table 16: Outcome of completed reviews - 3-year comparison

	2012	%	2011	%	2010	%
Decision affirmed	84	42%	32	16%	66	29%
Decision annulled	12	6%	3	2%	15	7%
Decision varied	8	4%	8	4%	18	8%
Discontinued	6	3%	35	17%	2	1%
Settlement reached	39	20%	49	25%	63	28%
Withdrawn	51	25%	70	34%	61	26%
Invalid	0	0%	3	2%	3	1%
Reviews completed	200	100%	197	100%	225	100%

Table 17: Subject matter of review applications accepted - 3-year comparison

	2012	%	2011	%	2010	%
Refusal of access	212	90%	157	90%	197	89%
Objections by third parties to release information about them or supplied by them	8	3%	6	3%	8	4%
Amendment of records under section 17	8	3%	5	3%	5	2%
Statement of reasons under section 18	6	3%	5	3%	9	4%
Decision to charge a fee	2	1%	1	1%	1	1%
Applications accepted	236	100%	174	100%	220	100%

Table 18: Applications accepted by type - 3-year comparison

	2012	%	2011	%	2010	%
Personal	94	40%	61	35%	45	20%
Non-personal	115	49%	86	49%	136	62%
Mixed	27	11%	27	16%	39	18%
Total	**236**	**100%**	**174**	**100%**	**220**	**100%**

Table 19: General enquiries

Year	Number
2012	1,262
2011	824
2010	622
2009	857
2008	1,100
2007	1,315
2006	1,551
2005	1,396
2004	1,306
2003	1,090
Total	**11,323**

Table 20: Deemed refusals due to non-reply by public bodies

Refusal of original and internal review decisions			
Public Body	**2012**	**2011**	**2010**
HSE National	12	9	5
Department of Justice and Equality	3	7	4
Department of Agriculture, Food and the Marine	2	1	1
Department of Public Expenditure and Reform	2	-	-
Medical Council	2	-	-
Irish Greyhound Board	2	-	-
HSE West	1	1	2
Adelaide and Meath Hospital (AMNCH)	1	-	1

Our Lady's Hospital for Sick Children	1	-	-
Rotunda Hospital	1	-	1
National Maternity Hospital	1	-	-
Sligo County Council	1	-	-
Monaghan Town Council	1	-	-
Cork County Council	1	-	-
Department of Environment, Community and Local Government	1	-	-
Office of Public Works	1	-	-
Department of Children and Youth Affairs	1	-	-
University College Dublin	1	1	-
Total 2012	**35**		

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Oifig an Choimisinéara um Faisnéise Comhshaoil
Office of the Commissioner for Environmental Information

CHAPTER 1

Chapter 1: The AIE Regime In Ireland

Introduction

The Access to Information on the Environment (AIE) regime is based on Directive 2003/4/EC on public access to environmental information. The Directive was adopted by the European Union (EU) in order to give effect to the first pillar of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which is more commonly known as the "Aarhus Convention". Ireland ratified the Convention on 20 June 2012, but the EU has been a Party to the Convention since May 2005.

The Directive has, as its key provision, the establishment of a right of access to environmental information held by public authorities. The Directive has been transposed into Irish law by the European Communities (Access to Information on the Environment) Regulations 2007 to 2011. An unofficial consolidated version of the Regulations is available on the website of the Department of the Environment, Heritage and Local Government (the Department) at http://www.environ.ie/en/AboutUs/AccesstoInformationontheEnvironment/.

The Office of the Commissioner for Environmental Information (OCEI) was established under Article 12 of the AIE Regulations, and it is also considered as relevant to Ireland's obligations under the access to justice pillar of the Aarhus Convention. I became the Commissioner for Environmental Information, because Article 12(2) assigns this position to the person holding the Office of the Information Commissioner under the FOI Act. My role as Commissioner for Environmental Information, which is additional to and legally independent of the roles I have as Ombudsman and Information Commissioner, is to review decisions of public authorities on appeal by members of the public who are not satisfied with the outcome of their requests for environmental information. My decisions on appeal are final and binding on the affected parties, unless a further appeal is made to the High Court within two months of the decision concerned.

The purpose and obligations of the AIE regime

The ultimate goal of the AIE regime is to contribute to a better environment through more effective public participation in environmental decision-making. To this end, AIE imposes significant obligations on public authorities that are designed to facilitate public access to environmental information. Access to environmental information is also meant to be generally affordable, if not free.

Objectives

The purpose of the AIE regime is reflected in Recital 1 of the preamble to the Directive: "Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment." The objectives of the Directive are stated in Article 1 and include setting out "practical arrangements" for the exercise of the right of access and also ensuring that environmental information is "progressively made available and disseminated to the public in order to achieve the widest possible systemic availability".

Obligations & Expectations

Accordingly, the Regulations impose certain general duties on public authorities in order to facilitate access to environmental information. Public authorities are under a duty to inform the public of their rights and to provide information and guidance on the exercise of those rights. Public authorities must "make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means". The Regulations, as amended, now require public authorities to "ensure that environmental information compiled by or for it, is up-to-date, accurate and comparable". In addition, public authorities are required to "maintain registers or lists of the environmental information held by the authority and designate an information officer for such purposes or provide an information point to give clear indications of where such information can be found". In line with Article 7(4) of the Directive, a public authority is also required, in the event of an imminent threat to human health or the environment, to "ensure that all information held by or for it, which could enable the public likely to be affected to take measures to prevent or mitigate harm, is disseminated immediately and without delay".

Thus, the scheme of the AIE regime envisions that the environmental information held by or for public authorities will be systematically organised, managed, catalogued, and at least ready for active dissemination to the public. It is also the expectation that requests for environmental information will generally be granted. Although the Regulations set out certain mandatory and discretionary grounds for refusal, requests for environmental information cannot, in most cases, be refused where the request relates to emissions into the environment. All requests are subject to consideration of the public interest under Article 10(3) of the Regulations. Article

10(4) of the Regulations, in turn, specifies that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest.

Charges

Moreover, under the AIE regime, no upfront fee applies for making a request or for applying for an internal review of a decision to refuse a request. The on-sight examination of the information requested is also free of charge. A public authority may charge a fee when it makes environmental information available, but any such fee must be "reasonable having regard to the Directive". Where a public authority proposes to charge fees, it is obliged to make a list of the chargeable fees available to the public. There is a right of appeal (internal and external) on the ground that the amount of the fee charged is excessive.

However, as a general rule, a fee of €150 must be charged for making an appeal to my Office. A reduced fee of €50 applies in respect of an appeal to my Office by a medical card holder, a dependant of a medical card holder, or a relevant third party. The Regulations, as amended, now provide that I may waive all or part of the appeal fee where the original decision was untimely.

The scope of the AIE regime

While there are limits to the scope of the AIE regime, it has a broad application by virtue of its wide-ranging definitions of "environmental information" and "public authority".

What is environmental information?

The definition of "environmental information" in the Directive and in the Regulations covers information "in written, visual, aural, electronic or any other material form on" the following six categories:

- the state of the elements of the environment (e.g., air, water, soil, land, landscape, biological diversity),
- factors affecting or likely to affect the elements of the environment (e.g., energy, noise, radiation, waste, emissions),
- measures (e.g., policies, legislation, plans, programmes, environmental agreements) and activities affecting or likely to affect the elements and factors referred to above as well as measures or activities designed to protect those elements,
- reports on the implementation of environmental legislation,
- cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to above, and
- the state of human health and safety, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment.

What is a public authority?

Unlike FOI legislation, the Regulations do not prescribe a list of individual public authorities that are subject to the AIE regime. Rather, the Regulations broadly define the term "public authority" to mean –

- government or other public administration (including public advisory bodies) at national, regional or local level,
- any natural or legal person performing public administrative functions under national law, including in relation to the environment, and
- any natural or legal person having public administrative responsibilities or functions, or providing public services, relating to the environment under the control of a body or person encompassed by either of the first two categories.

The definition in the Regulations states that it includes certain types of entities. The Regulations, as amended, require the Minister for the Environment, Heritage and Local Government to "ensure that an indicative list of public authorities is publicly available in electronic format". An indicative list of a general nature is available on the Department's website. Where there is a dispute as to whether a body is a public authority, the person making the request has a right of appeal to my Office.

Guidance

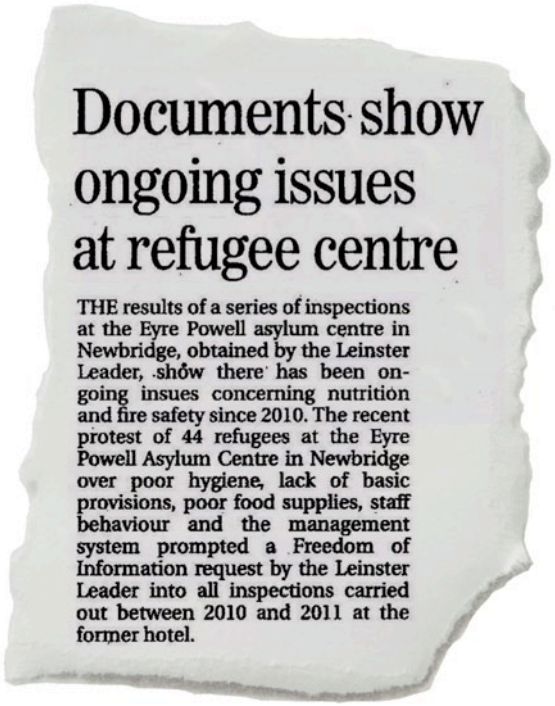
Guidelines relating to the implementation of the Regulations have been issued by the Minister and are available on the Department's website. Although public authorities are required to have regard to the guidelines in performing their functions under the Regulations, the guidelines do not purport to be a legal interpretation of the Regulations. Another guide for understanding the AIE regime is *The Aarhus Convention: An Implementation Guide* [ECE/CEP/72] (the Aarhus Guide), which is available at www.unece.org/fileadmin/DAM/env/pp/acig.

Breast cancer misdiagnosis features highly in legal actions

MORE THAN a quarter of the legal actions taken against Irish hospitals for alleged cancer misdiagnosis over the past eight years related to cases of breast cancer, data released under the Freedom of Information Acts shows.

Some 100 claims of alleged cancer misdiagnosis were received by the State Claims Agency between January 2004 and December 2011 following treatment at 33 hospitals across the State, according to figures released to *The Irish Times*.

Irish Times 13-10-2012



Documents show ongoing issues at refugee centre

THE results of a series of inspections at the Eyre Powell asylum centre in Newbridge, obtained by the Leinster Leader, show there has been ongoing insues concerning nutrition and fire safety since 2010. The recent protest of 44 refugees at the Eyre Powell Asylum Centre in Newbridge over poor hygiene, lack of basic provisions, poor food supplies, staff behaviour and the management system prompted a Freedom of Information request by the Leinster Leader into all inspections carried out between 2010 and 2011 at the former hotel.

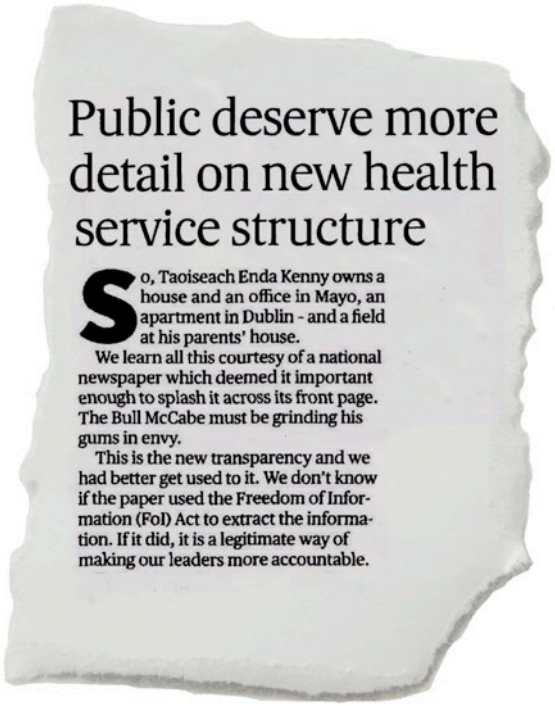
Leinster Leader 24-07-12

Clarity needed on finance lobbying

FROM a Freedom of Information request, I have discovered the massive extent of the international finance industry's regular and direct access into the heart of the Irish government, to influence not only Irish policy but also EU policy.

When this group is influencing policy that not only affects the financial services sector but also impacts on the lives of all sections of Irish society,.

Leinster Express 09-05-2012



Public deserve more detail on new health service structure

So, Taoiseach Enda Kenny owns a house and an office in Mayo, an apartment in Dublin - and a field at his parents' house.

We learn all this courtesy of a national newspaper which deemed it important enough to splash it across its front page. The Bull McCabe must be grinding his gums in envy.

This is the new transparency and we had better get used to it. We don't know if the paper used the Freedom of Information (FoI) Act to extract the information. If it did, it is a legitimate way of making our leaders more accountable.

Meath Chronicle 21-01-12

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Office of the Commissioner for Environmental Information

CHAPTER 2

Chapter 2: The Year In Review

Appeals and enquiries

During 2012, thirteen appeals were received by my Office. My Office recorded that four of these appeals involved a deemed refusal of the request concerned at the original and/or internal review decision-making stage. A deemed refusal occurs when the public authority fails to issue a decision on the request within the relevant time limit specified in the Regulations (usually one month).

Eleven appeals were closed during the year. Five formal decisions were issued; relevant summaries are set out in the chapter following. The one decision which has not been summarised was very similar in nature to case CEI/11/0009, in that it involved a dispute over whether any further relevant records pertaining to the Glanbia site in Waterford were held by or for Waterford City Council. As a general rule, appeal decisions are published in full on my Office's website at www.ocei.gov.ie.

One case was deemed to have been withdrawn as settled once the information sought was released following my Office's intervention. One appeal was withdrawn prior to acceptance, because the requested information was made available by the public authority, albeit belatedly. Another appeal was withdrawn following contacts with my Office. One other case was discontinued on the basis that, while the appellant was not satisfied with the outcome of the appeal, she accepted that no further relevant information was held by or for the public authority concerned and that nothing further would therefore be accomplished by pursuing the matter. A further two appeals were deemed to be invalid, in one case because no internal review request had been made and in the other because it was determined that this Office did not have the jurisdiction to review the matter concerned.

A little over half of the appeals arose from requests to local authorities and government departments. Other public authorities whose decisions were appealed included Ordnance Survey Ireland, the Marine Institute, Eirgrid Plc, and the National Transport Authority.

Sixteen cases were on hand at the end of the year. My staff recorded 30 general enquiries about the Regulations.

Article 12(6) of the Regulations

Article 12(6) gives me certain powers in dealing with 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, and
- 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 invoke this provision in 2012.

Issues arising in 2012

Last year, as in previous years, I commented on the low level of activity under the Regulations. In last year's Report, I also highlighted some of the practical difficulties my Office has encountered in relation to the operation of the AIE regime. This year I wish to emphasise the lack of adequate resources available to my Office.

Although the OCEI is a legally independent Office, to date, it has not received any funding allocation from the State and must rely entirely on the resources that can be made available from the Office of the Information Commissioner (OIC). However, the OIC is stretched beyond its limits at present, with a significant backlog of cases already on hand, and is facing a significant increase in demand arising from the proposed Freedom of Information legislative changes. Moreover, while the number of AIE appeals received each year has remained quite low, the reviews tend to be complex or otherwise resource intensive.

Consequently, there generally are considerable delays in bringing AIE appeals to completion. One particularly complex case from 2010, involving the contract for the construction and operation of the Poolbeg incinerator, closed only recently by way of settlement, and another case from 2011 remains pending. I am aware that this situation is very unsatisfactory for members of the public who seek access to environmental information in order to participate more effectively in environmental decision-making, as envisioned by the Directive. The Director General of both Offices has written on my behalf to the Department of Public Expenditure and Reform requesting additional staff. For the time being, however, I simply am not in a position to devote more staff resources to processing AIE appeals.

I note that one measure that public authorities generally can take to reduce the administrative burden involved in dealing with AIE requests in the long-term is to comply with the information management requirements that are set out in Article 5 of the Regulations. As I observed in chapter 1, the scheme of the AIE regime envisions that the environmental information held by or for public authorities will be systematically organised, managed, catalogued, and at least ready for active dissemination to the public. Such information management practices would reduce the resources required of individual staff members in searching for and retrieving the environmental information requested. The active

dissemination of the environmental information held by a public authority through publication on its website could obviate the need for a formal request in the first instance. I refer to this matter again in the next chapter in my summary of Case CEI/11/0009.

High Court and Supreme Court judgments

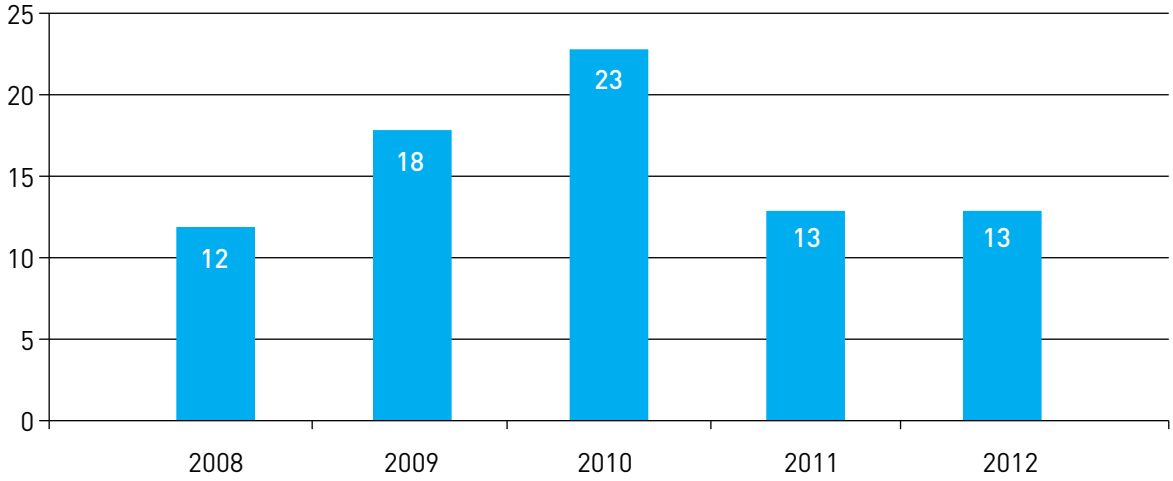
A party to an appeal to my Office or any other person affected by my decision may appeal to the High Court on a point of law from the decision. My decisions in two similar cases dealing with the scope of the public authority definition, CEI/10/0005 – *Mr. Gavin Sheridan and the National Asset Management Agency*, and CEI/10/0007 – *Mr. Gavin Sheridan and Anglo Irish Bank*, were appealed to the High Court in November 2011. The appeal brought by the National Asset Management Agency (NAMA) was heard for two days in July 2012. Subsequently, the Court required further submissions, and a further hearing was then held on 31 October 2012. Judgment was delivered on 27 February 2013, upholding my decision finding that NAMA is a public authority within the meaning of the Regulations.

There were no new High Court appeals taken against decisions of my Office in 2012. My Office's appeal to the Supreme Court against the judgment of Mr. Justice O'Neill in *An Taoiseach v. Commissioner for Environmental Information* (Case CEI/07/0005) is still pending.

Statistics

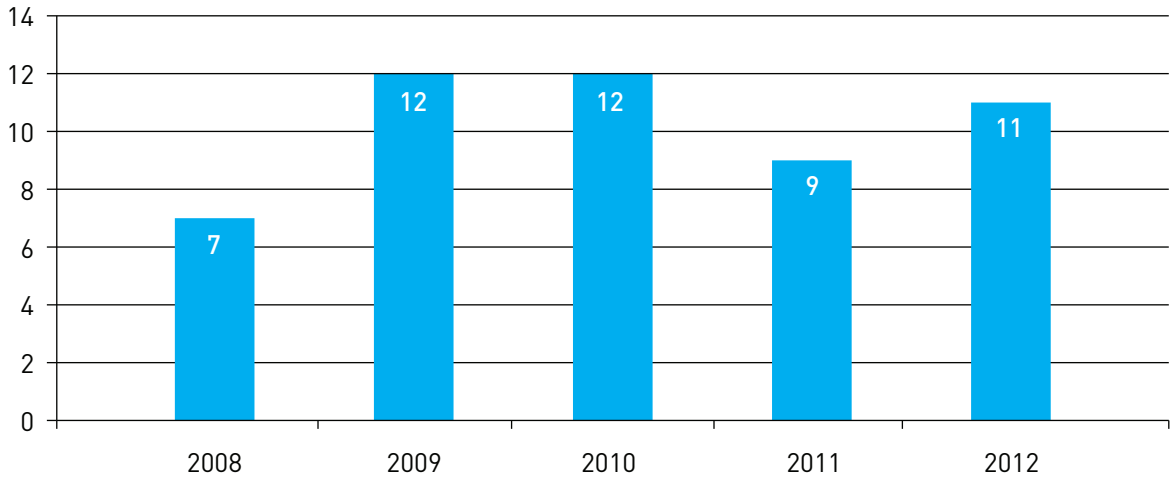
- Appeals received: 13

Appeals received



- Appellants to CEI: 11

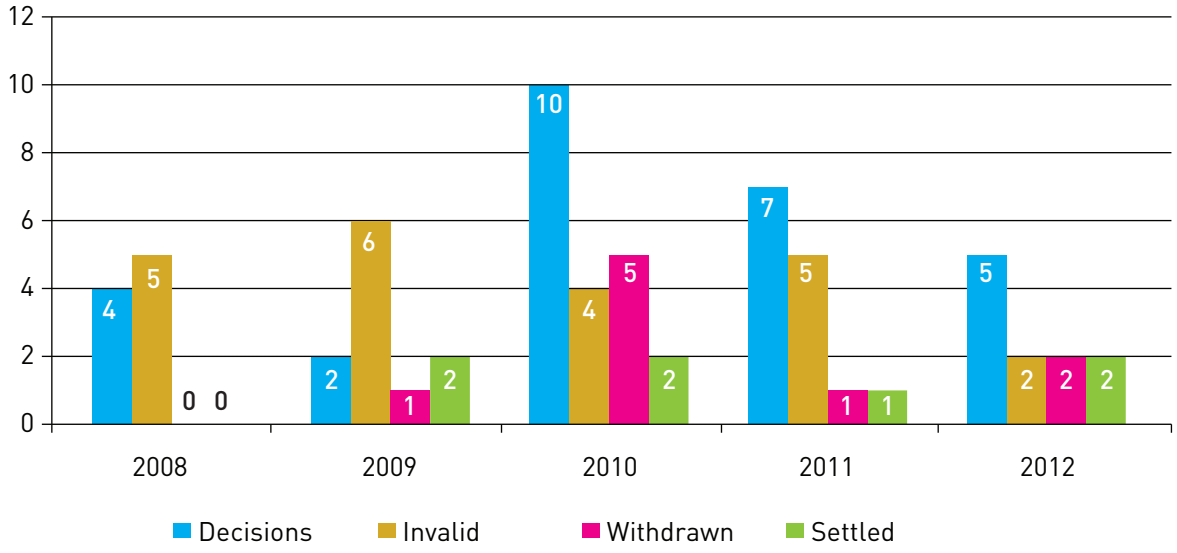
Appellants to CEI



- Outcome: of CEI appeals by year
  - 5 decisions
  - 2 invalid
  - 2 withdrawn
  - 1 settled
  - 1 discontinued *

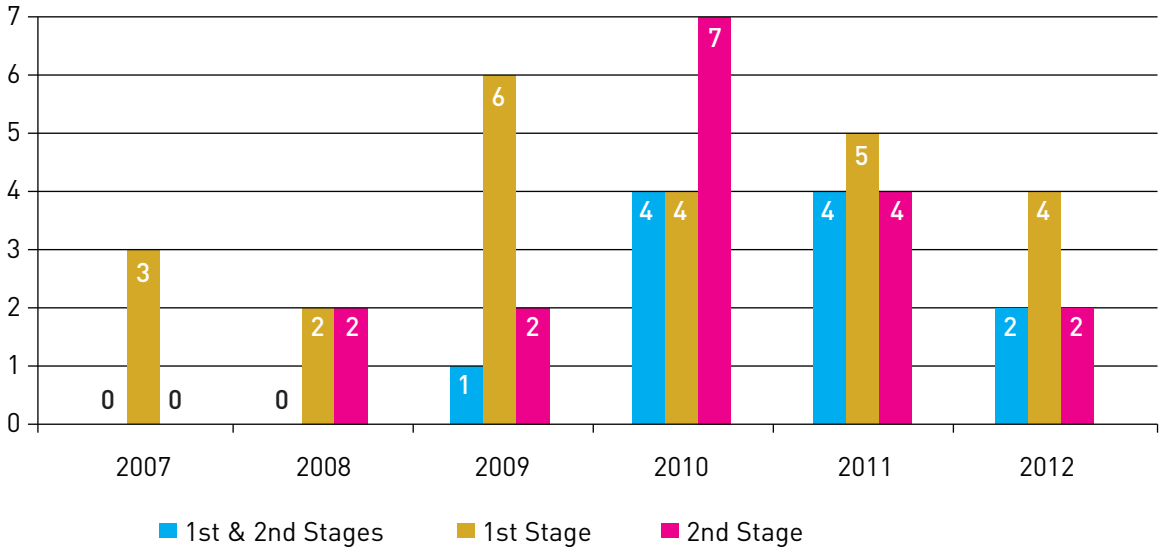
* For consistency in recording outcomes, the 'discontinued' review is included in the 'settled' statistic in the bar chart below.

Outcome of CEI appeals by year



- Deemed refusals (first and/or second stage)

Deemed Refusals



- Beginning with my next Annual Report, I propose to include in future Reports details of the public bodies where the decision was deemed to have been a refusal arising from the failure to respond within the deadlines specified in the Regulations at first and/or second stage.

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CHAPTER 3

Chapter 3: Decisions

In this chapter, I provide summaries of four decisions made in 2012. The full text of these decisions can be found on my website at www.ocei.gov.ie.

Mr. Tony Lowes, Friends of the Irish Environment, and the Office of the Attorney General (AGO) – Decision of 3 May 2012 - Case CEI/09/0014

Whether the AGO was justified in refusing access to all records held in relation to two cases brought against Ireland by the European Commission

This is my first decision applying the provisions of Article 9(2)(a) of the Regulations. The request, which was made on 21 July 2009, was for access to all records held, including but not limited to Letters of Formal Notice, Reasoned Opinions, advice sought or received [including all legal advice], minutes of meetings, and all internal and external communications by email or otherwise, in relation to two cases involving infringement proceedings brought against Ireland by the European Commission [Case C-392/96 and Case C-294/03]. The AGO took no action on the request within the one-month deadline specified in Article 7 of the Regulations. On internal review, however, the AGO refused the request in reference to Article 6(1)(d) of the Regulations, stating that the request was not specifically directed to environmental information and therefore fell outside the scope of the Regulations.

In my decision, I noted that Case C-392/96 and Case C-294/03 were two related actions concerning, in essence, the adequacy of required legislative measures designed to protect certain environmental elements referred to in paragraph (a). In light of the subject matter of the appellant's request, and based on my examination of a sample of records that had been made available to my Office for the purposes of my review, I considered it likely that most of the records relevant to the request would contain environmental information within the meaning of Article 3(1)(c) of the environment information definition set out in the Regulations.

However, Article 9(2)(a) of the Regulations allows a public authority to refuse to make environmental information available where the request is manifestly unreasonable having regard to the volume or range of information sought. In this case, the proceedings referred to in the request spanned a period of over a decade and it was therefore to be expected that

the relevant files held by the AGO would include a voluminous amount of correspondence, legal advice, and legislative material. Moreover, the request did not seek access to particular items of environmental information relevant to the legislative measures underlying Cases C-392/96 and C-294/03, but rather was directed at all records relating to the proceedings. On the face of it, therefore, the request seemed to be more about how the AGO dealt with the infringement proceedings on behalf of the State than it was about access to environmental information per se. In the circumstances, I found that the request was manifestly unreasonable by its very nature. Given the broad nature of the request and the large number of files involved, I also accepted that processing the request would impose an unreasonable burden on staff resources. I was therefore satisfied that the AGO's decision to refuse the request was justified under Article 9(2)(a) of the Regulations, and I affirmed the decision accordingly.

Mr. Gavin Sheridan and Central Bank of Ireland (the Bank) – Decision of 26 March 2012 - Case CEI/11/0001

Whether the Bank was justified in refusing access to certain items of information relating to mileage claims on the ground that the information concerned was not environmental information within the meaning of the Regulations

In a request originally dated 30 November 2010 and subsequently revised on 13 January 2012, the applicant sought access to a "datadump" of mileage claims as recorded by the Bank during a certain period. The Bank refused the request on the basis that the requested information was not environmental information within the meaning of the Regulations. Following the applicant's appeal to my Office, the Bank produced a travel spreadsheet with the relevant information for the purposes of my review. The Bank also agreed to release the information appearing in the columns under the headings of Mode of Transport, KM per trip, Date Outward, and Date Return. The question before me was whether the remainder of the information in the spreadsheet relating to the mileage claims was environmental information within the meaning of the Regulations.

I noted that there are limits to the scope of the AIE regime. Having regard to the comments of the European Court of Justice (ECJ) in Glawischnig v. Bundesminister für soziale Sicherheit und Generationen, Case-316/01 (12 June 2003) in relation to the definition of environmental information, I found that, in order for information to qualify as "environmental information" for purposes of the Regulations, it is necessary for the information to fall within one of the six categories set out in the definition in Article 3(1).

In relation to the question of "activities" under paragraph (c) of the definition, I noted that such activities only come within the scope of the definition by virtue of their direct or indirect link to an impact on the elements of the environment. In the circumstances, I found that information on an activity must, at a minimum, reflect the link to the environmental impact of the activity in order to fall within the ambit of paragraph (c); it is not sufficient for information simply to be related to the activity. To put it another way, there must be a sufficient

connection between the information concerned and an aspect of the activity that has an effect on the environmental elements and factors referred to in paragraphs (a) and (b) of the definition.

With some reservation, I accepted that official travel by car is an activity within ambit of paragraph (c) of the definition. However, I determined that the remaining items of information that were at issue, including destination, motor expenses, and mileage amounts, do not have a sufficient connection with the environmental impact of the activity of travel by car to meet the definition of "environmental information" under the AIE Regulations. I found in the circumstances that the Bank's decision to refuse the appellant's request for information relating to mileage claims, apart from the information which had already been released, was justified and should be affirmed.

Ms. Rita Canney and Waterford City Council (the City Council) – Decision of 7 June 2012 - CEI/11/0009

Whether the City Council was justified in refusing access to the original Tree Protection Order (TPO) file relating to trees on the Glanbia site in Waterford

In a request dated 9 February 2011, the applicant sought access to all documentation pertaining to TPO PD 271/76, a file relating to trees on lands associated with the Glanbia premises, (Glenville), Maypark Lane, Waterford. No written decision was made by the City Council within the relevant time limits set out in the Regulations. Belatedly, however, on 16 May 2011, the City Council issued a statement explaining that some information relating to TPO PD 271/76 had been located and was available on file in the Environmental Services and Planning Office, but that the original documentation relating to the TPO could not be found. The applicant appealed to my Office against the City Council's decision on 10 June 2011.

Article 7(5) of the Regulations is the relevant provision that applies where the information requested is not held by or for the public authority concerned. In this case, I explained that where a public authority effectively seeks to refuse a request for environmental information on the basis of Article 7(5), I must be satisfied that adequate steps have been taken to identify and locate relevant records, having regard to the relevant circumstances. Moreover, I noted that, in determining whether the steps taken are adequate in the circumstances, a standard of reasonableness must necessarily apply.

The City Council provided a detailed explanation of its efforts to locate the original TPO PD 271/76 file, which admittedly should have been transferred with other 1976 files to its Records Centre from Waterford County Council following a boundary extension that took place in 1980. The City Council also presented supporting documentation to show that the file was marked as missing on the County Council's records system and was not included in the transfer sheet when the 1976 files were transferred to the City Council Records Centre. Having regard to the relevant submissions, the age of the file in question, and date of the transfer of records from the County Council to the City Council following the boundary

extension in 1980, I was satisfied that the City Council had fulfilled its obligations under Article 7 of the AIE Regulations with respect to the applicant's request for documentation pertaining to TPO PD 271/76 and that Article 7(5) applied.

I observed, however, that Article 5 of the Regulations imposes certain requirements on public authorities that are designed to facilitate access to environmental information. Although I have no enforcement powers in relation to Article 5 of the Regulations, I noted that it is undoubtedly the case that compliance with its requirements would involve the implementation of organisational systems and efficiencies that ultimately would reduce the resources required of individual staff members to search for and retrieve environmental information. I further noted that, if the relevant environmental information were made available on the public authority's website, this could obviate the need for a formal access request in the first instance. Therefore, I considered it appropriate to urge public authorities, such as the City Council, to have due regard to the requirements of Article 5 not only to facilitate access to environmental information, but also to reduce the administrative burden that can otherwise ensue.

Ms. Rita Canney and Waterford City Council (the City Council) – Decision of 23 October 2012 - CEI/10/0015

Whether the City Council was justified in refusing access to further relevant records relating to the Greening of Waterford Study and Report

In a request dated 13 April 2010, the appellant sought access to all information, whether in hard or soft copy format, relating to the Greening of Waterford Study and Report, excepting copies of the final report and previous drafts already in her possession. The City Council carried out searches for the relevant records and made them available for viewing at its offices, in compliance with the terms of her request. The adequacy of the searches carried out was not ultimately a matter of serious dispute. The problem that arose, however, was due to the fact that the software used by the City Council for storing the soft copy records was "quite specialised" and thus difficult for an untrained person to avail of.

During the course of my review, arrangements were made for the appellant to access the relevant soft copy files at the City Council's offices. The records that were supposed to be made thus available to the appellant included (1) the large-scale maps of "Locally Sensitive Sites" and (2) maps of other locally significant habitats referenced in the Greening Report. A member of staff was present during the appellant's visit to the offices in order to assist her with accessing the files. Evidently, however, despite the staff member's best efforts, the visit was not a success because of difficulties encountered in locating and assembling the information sought. It was not disputed that the difficulties were due to the specialised nature of the software needed to view the information concerned.

Thus, the appellant had been granted access to the soft copy records held by the City Council relating to the Greening of Waterford project, as she had requested, but the form of access

did not meet her expectations. Moreover, because of the difficulties encountered with the software, it remained unclear whether all of the maps that the appellant considered should exist were actually held by the Council or not. This situation was understandably frustrating for the appellant, particularly given the apparent importance of the maps for the conservation of Waterford City's wetlands.

I noted that the overall purpose of the AIE regime is to contribute to a better environment by increasing public access to environmental information and thereby achieve more effective public participation in environmental decision-making. The failure by a public authority to maintain environmental information in a manner that is readily reproducible and accessible by the public would obviously tend to undermine this purpose, which is why it is inconsistent with the requirements of Article 5 of the Regulations, as amended. I further noted, however, that I have no enforcement powers in relation to Article 5 of the Regulations. Therefore, while the City Council's grant of access to the soft copy records held by it in this case could not be said to be truly satisfactory from an environmental perspective, I simply was not in a position to require the City Council to produce readily accessible maps where such maps were not already held by or on behalf of the City Council. In the circumstances, I concluded that the City Council's effective decision to refuse the appellant's request for further records relevant to her request was justified under Article 7(5) of the Regulations.

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Certificates issued under section 20 and section 25 of the FOI Act

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

Ms Bernadette McNally
Director General
Office of the Information Commissioner
18 Lwr Leeson Street
Dublin 2

Notification under Section 20 and Section 25 of the Freedom of Information Acts, 1997 and 2003

Dear Ms McNally,

I refer to your letter dated 23 January 2013 in relation to certificates issued by Secretaries General and Ministers under Sections 20 and 25 of the Freedom of Information Acts, 1997 and 2003.

Please note that a certificate under Section 20 was issued by my precedessor on 11 August, 2006 in relation to Risk Registers. This Department has a total of six Section 25 Ministerial Certificates. Three certificates were renewed by the Minister last year. Please find enclosed a copy of all three certificates as referred to.

Yours sincerely,

Brian Purcell
Secretary General

February 2013

94 Faiche Stiabhna, Baile Átha Cliath 2 / 94 St. Stephen's Green, Dublin 2
Teileafón/Telephone: (01) 602 8202 Íosghlao/Lo-call: 1890 221 227 Faics/Fax: (01) 661 5461 Ríomhphost/Email: info@justice.ie

Appendix I

An Roinn Cosanta
Department of Defence

30 January 2013

Ms Bernadette McNally,
Director General,
Office of the Information Commissioner,
18 Lower Leeson Street,
Dublin 2

Freedom of Information Acts 1997 and 2003 ("the FOI Act")
Notification under Section 20 and Section 25

Dear Ms McNally,

In response to your recent correspondence in relation to Section 20 and Section 25 certificates I would like to confirm that the Department of Defence have **not** issued any such certificates in 2012.

I would also like to confirm that the Section 20 Secretary General Certificate issued by the Department of Defence on 4 March 2009 was reviewed in March 2011 and the decision of the Secretary General will remain in place till 4 March 2013.

Yours sincerely,

Cliona O'Sullivan,
Freedom of Information Office,
Department of Defence.

Cuirfear fáilte roimh chomfhreagras i na Gaeilge,

Bóthar an Staisiúin, An Droichead Nua, Contae Chill Dara
Station Road, Newbridge, Co. Kildare

Teileafón / Telephone: (045) 492000 Glao Áitiúil / LoCall: 1890 25 1890 R-Phost / E-mail: customer@defence.ie Láithreán Gréasáin / Web:www.defence.ie

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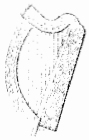

An Roinn Gnóthaí Eachtracha agus Trádála
Baile Átha Cliath 2

Department of Foreign Affairs and Trade
Dublin 2

1 February 2013

Ms Bernadette McNally
Director General
Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

Notification under Sections 20 and 25 of the Freedom of Information Acts, 1997 and 2003

Dear Ms McNally

I refer to your recent letter on the above subject.

I confirm that, during 2012, I did not issue any certificates under Section 20 of the Freedom of Information Acts.

On 16 November 2012, the Tánaiste and Minister for Foreign Affairs and Trade issued three certificates under Section 25 of the Freedom of Information Acts, by reference to which the records requested are exempt under Section 23 and 24.

Please find enclosed copies of the certificates issued in 2012.

Yours sincerely

David Cooney
Secretary General

+353 (0)1 478 0822 • http://www.dfa.ie

Appendix II

Review under section 25(7) of Ministerial Certificates issued

Roinn an Taoisigh
Department of the Taoiseach

21st December 2012

Ms. Emily O'Reilly
Information Commissioner
18 Lower Leeson Street
Dublin 2

Review of Certificates issued under Section 25 of the Freedom of Information Act 1997 (as amended by Section 20 of the Freedom of Information Act 2003)

Dear Commissioner,

I would like to inform you that pursuant to the above Acts, the Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Jobs, Enterprise and Innovation carried out a review of the operation of the Act, for the period ended 31 October 2012 on 18 December 2012.

Of the twelve certificates reviewed, three were issued by the Minister for Foreign Affairs, three by the Minister for Foreign Affairs and Trade. Five were issued by the Minister for Justice and Equality and one by the Minister for Justice, Equality and Law Reform.

Having completed the review, the Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Jobs, Enterprise and Innovation are satisfied that it is not necessary to request revocation of any of the twelve certificates which were the subject of the review – copies of the forms signed by the reviewers to that effect are attached.

Yours sincerely,

Eileen Dolan
Freedom of Information Officer

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

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Arna phriontáil ar phápéar athchúrsáilte
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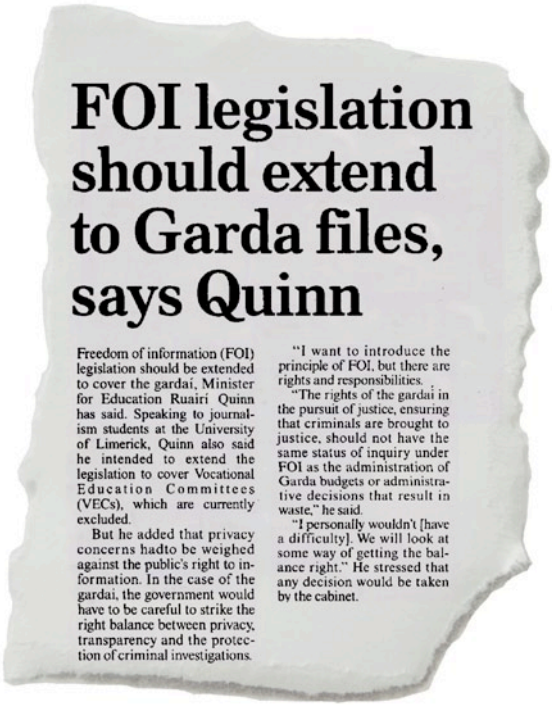
Appendix III

Annual Energy Efficiency Report 2012

Monthly Energy Report	OPW - Office of Public Works Office of the Ombudsman
Dec 2012	
Summary	
Month to month	
Energy usage has decreased by -27.0% from 58,955kWh in Dec 2010 to 43,023kWh in Dec 2012. As a result, C02 emissions for this period have decreased by -19.4% from 19,886kg to 16,023kg, (-3,862Kg).	
Annual	
The base year used for all these calculations is 2010. Compared to this base year, energy consumption on site has decreased by -32,453kWh or -7.0% over the last 12 months. In terms of total CO2, production has decreased by -8.3%, since 2010 or by -17,143Kg. Normalised for weather variations, CO2 has decreased by -11.1%, since 2010 or by -22,293Kg	
Energy use - Dec 2012	
Annualised energy usage	

Description	Electricity	Gas	Total
Benchmark Year	284,062	179,086	463,148
Previous 12 months	257,401	173,294	430,695
% Difference	-9.4%	-3.2%	-7.0%

More details on the Energy Report are available at www.oic.ie



FOI legislation should extend to Garda files, says Quinn

Freedom of information (FOI) legislation should be extended to cover the gardai, Minister for Education Ruairí Quinn has said. Speaking to journalism students at the University of Limerick, Quinn also said he intended to extend the legislation to cover Vocational Education Committees (VECs), which are currently excluded.

But he added that privacy concerns hadto be weighed against the public's right to information. In the case of the gardai, the government would have to be careful to strike the right balance between privacy, transparency and the protection of criminal investigations.

"I want to introduce the principle of FOI, but there are rights and responsibilities.

"The rights of the gardai in the pursuit of justice, ensuring that criminals are brought to justice, should not have the same status of inquiry under FOI as the administration of Garda budgets or administrative decisions that result in waste," he said.

"I personally wouldn't [have a difficulty]. We will look at some way of getting the balance right." He stressed that any decision would be taken by the cabinet.

Sunday Business Post 05-02-2012

The not-for-profit pay bill

Four Irish charities refused to disclose the remuneration paid to top executives despite receiving state funding and millions of euro in public donations

They receive tens of millions from the state and tens of millions in public donations. However, four of the countries biggest and better-known charities are refusing to disclose details of the annual pay packages received by their chief executives. A number of major charities provided detailed information for a survey by *The Sunday Business Post*, but Unicef, the Irish Society for the Protection of Cruelty to Children (ISPCC), Arthritis Ireland and Bothar refused.

Sunday Business Post 24-06-2012

Top HSE barristers were paid up to €1 million each

Top-earning barristers working for the Health Service Executive (HSE) have been paid fees of up to €1 million since the beginning of 2010.

Figures from the HSE show that Felix McEnroy SC was the highest-paid barrister, making €968,000 in 2010 and more than €580,000 in the first half of 2011.

The executive was unable to collate the full cost of external legal fees paid to barristers in 2011, but its figures for the first six months of that year showed that junior counsel Mairéad McKenna and Mary Phelan were paid €225,000 and €266,000, respectively.

Sunday Business Post 30-12-2012

6,953 on hospital waiting list

HSE FIGURES ARE REVEALED

THERE ARE 6,953 people on the outpatient waiting list at Sligo General Hospital.

That's according to figures released from the HSE and published for the first time as part of its Outpatient Data Quality Programme, which was introduced in January of last year. In the past, data was available only from individual hospitals under the Freedom of Information Act.

In February this year, there were 772 patients waiting 12 to 24 months who were referred to Sligo General Hospital before January 1st 2011. There were 183 waiting 24 to 36 months, 92 waiting 36 to 48 months and 16 waiting over 48 months.

Sligo Champion 11-04-2012