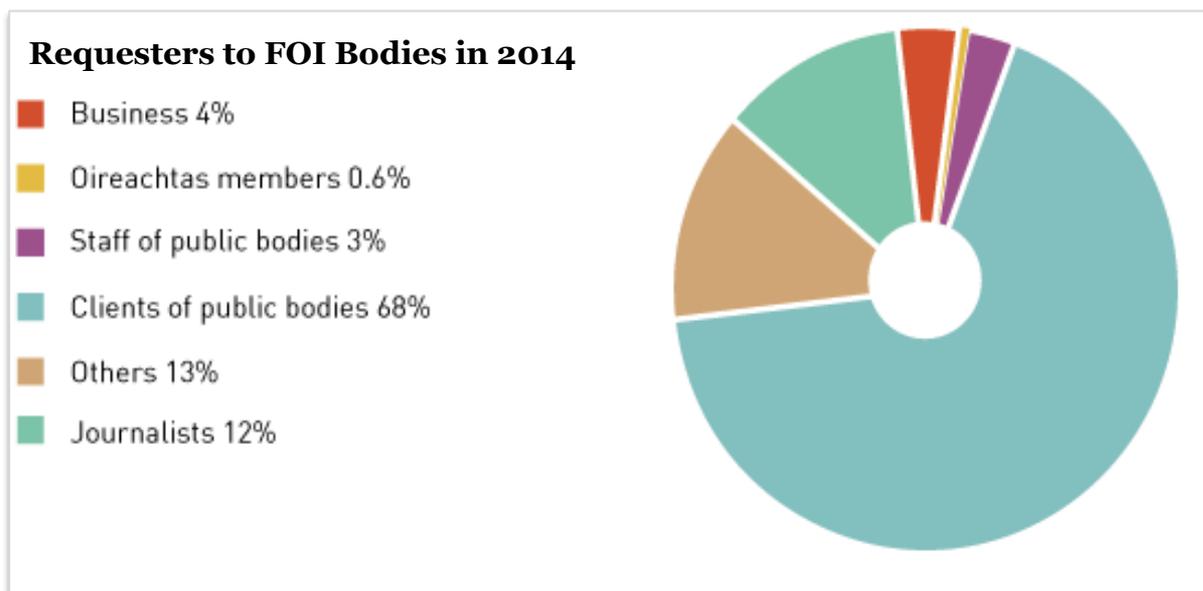


# Freedom of Information Requests – Advanced Training

8 September 2015

# The Freedom of Information Act 2014

- General right of access to records held by public bodies
- Records should be released unless an exemption applies
- Actions commenced but not completed before 14 October 2014 shall continue to be performed under the 1997 Act



# Right of Access

- **The 1997 Act: any record held by a public body**
  - Public Body: one of the bodies listed in Schedule 1
- **The 2014 Act: any record held by an FOI body**
  - FOI Body: “a public body or a prescribed body”
  - Public Body: “a higher education institution in receipt of public funding”

*“Presumption should be that the right of access would be set aside only where one of the exemptions very clearly supports a refusal of access”*

(CPU Code of Practice)

# Resources

- The Freedom of Information Act 2014
- The European Communities (Access to Information on the Environment) Regulations 2007
- The FOI Central Policy Unit
  - Code of Practice
  - Manuals
  - Guidance Notes
- The Office of the Information Commissioner
  - Decisions
  - Annual Reports
  - Special Reports

# The Freedom of Information Act 2014

<b>Section(s)</b>	<b>Provision</b>
9	Amendment of Records
10	Right to Information
11	Right of Access
12	Requests for Access
9, 13	Decisions on Requests
14	Extension of Time
15	Refusal of Requests – Administrative Grounds
22-26	Reviews/Appeals
27	Fees
28-41	Exempt Records
52	Offences

# Refusing Requests – Administrative Grounds

1. Record does not exist/cannot be found
2. Request does not contain sufficient particulars
3. Granting it would cause a substantial and unreasonable interference with or disruption of work
4. Information is in the public domain
5. Record will be published under law or by the FOI body
6. Request is frivolous, vexatious or forms part of a pattern of manifestly unreasonable requests from:
  - the same requester
  - from different requesters who appear to have made the requests acting in concert

# Exempt Records

<b>Section(s)</b>	<b>Provision</b>
28	Government Meetings
29	Deliberations of FOI Bodies
30	Functions and Negotiations of FOI Bodies
31	Parliamentary, Court and Certain Other Matters
32	Law Enforcement and Public Safety
33	Security, Defence and International Relations
35	Information Obtained in Confidence
36	Commercially Sensitive Information
37	Personal Information
39	Research and Natural Resources
40	Financial and Economic Interests of the State

# Does not exist/cannot be found

## Ms GK and The Health Service Executive (Case No. 130242)

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Tuesday 1 September 2015

News Health

### 'Records of patient were deliberately removed'

 **Shane Phelan**   
EMAIL

**PUBLISHED**  
09/05/2015 | 02:30

     
SHARE



*Despite Mr Tyndall's concerns, the matter was not referred to the gardaí by the HSE*

A patient's medical records may have been "deliberately removed" from his file after relatives raised concerns about the standard of his care, according to the Information Commissioner.

# Does not exist/cannot be found

## ICO Report 2014

*When reviewing the decision of a public body to refuse a request...I have regard to the evidence available to the decision maker and the reasoning used by the decision maker in arriving at his/her decision and I also assess the adequacy of the searches conducted by the public body in looking for relevant records.*

*The evidence in such search cases generally consists of the steps actually taken to search for records, along with miscellaneous other evidence about the record management practices of the public body, on the basis of which the public body concluded that the steps taken to search for records were reasonable.*

*On the basis of the information provided, I form a view as to whether the decision maker was justified in coming to the decision that the records sought do not exist or cannot be found.*

# Interference with or disruption of work

Mr X and The Department of Transport, Tourism and Sport (Case No. 090077)



The screenshot shows the website of the Office of the Information Commissioner (Oifig an Choimisinéara Faisnéise). The header includes the logo and name of the office, along with links for 'Skip to Content', 'Contact', and 'Sitemap'. The main navigation menu contains 'Home', 'About Us', 'Apply for Review', 'News', and 'Decisions'. The breadcrumb trail indicates the current page is 'Home / Decisions / Decisions List'. The main content area features the title 'Mr X and the Department of Transport, Tourism and Sport' in a large, bold, orange font. Below the title, there is a summary of the decision: 'Whether the Department was justified in its decision to refuse access to records, concerning the hosting of American Football events in Ireland, under various provisions of the FOI Act'. The text also states that the review was conducted in accordance with section 34(2) of the FOI Act by Elizabeth Dolan, Senior Investigator.

# Frivolous, vexatious, manifestly unreasonable

## Patrick Kelly and The Information Commissioner [2013] 325 MCA



The screenshot shows a news article from the 'News Courts' section of the Independent.ie website. The article is dated Tuesday, 15/05/2012, at 13:26. The author is Ray Managh. The headline is 'Teacher launches infringement proceedings in High Court'. The sub-headline reads: 'A 33-YEAR-old teacher has launched infringement proceedings against Ireland which could result in a High Court judge's ruling and criticisms against him being revoked.' Below the article, there are two advertisements: 'Earn €75 Per Week Online' and 'Exclusive Jewellery'. The main text of the article begins with 'Patrick Kelly, of Deansrath Avenue, Clondalkin, Dublin, told the Circuit Civil Court yesterday (Tuesday) that he had asked the European Commission to commence infringement proceedings under the Treaty on the Functioning of the European Union.'

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Tuesday 1 September 2015



### Teacher launches infringement proceedings in High Court

Ray Managh PUBLISHED 15/05/2012 | 13:26

 SHARE

A 33-YEAR-old teacher has launched infringement proceedings against Ireland which could result in a High Court judge's ruling and criticisms against him being revoked.

[Earn €75 Per Week Online](#)  
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[surveycompare.net](http://surveycompare.net)

[Exclusive Jewellery](#)  
Extraordinary items at the weekly jewellery auction. Place your bids!  
[catawiki.com/jewellery-auction](http://catawiki.com/jewellery-auction)

Ads by Google

Patrick Kelly, of Deansrath Avenue, Clondalkin, Dublin, told the Circuit Civil Court yesterday (Tuesday) that he had asked the European Commission to commence infringement proceedings under the Treaty on the Functioning of the European Union.

Kelly had taken a public dressing down from Mr Justice John Hedigan in the High Court on May 9 last when the judge described as a "public scandal" the fact that legal proceedings by him against University College, Dublin, had continued for as long as they had.

# Frivolous, vexatious, manifestly unreasonable

## ICO Report 2014

Request is:

- made in bad faith
- part of a pattern of conduct that amounts to an abuse of process or the right of access

*“The refusal of requests on the grounds that they are frivolous or vexatious is not something that should be undertaken lightly.”*

## High Court Appeal

- *“a pattern of litigation”* which is not only futile, misconceived or bound to fail *“but can be said to be actuated by ill-will or bad faith”*
- The Information Commissioner is entitled to use his/her discretion.
- No obligation on to prove the applicant’s state of mind
- Inferences may be drawn *“on a common sense basis from a pattern of conduct”*

# Right of Access

## **The Rotunda Case:**

- Requester was born in the Rotunda Hospital in 1922
- Request for his mother's age on his date of birth was refused
- The Information Commissioner directed the information be released and the High Court confirmed the decision
- The Supreme Court overturned this on appeal and held there was no statutory "right of access" to exempt records
- *"Any "public interest" would, in my view, require to be a true public interest recognised by means of a well known and established policy, adopted by the Oireachtas, or by law"* (Macken J, obiter)

## **The 2014 Act** now provides that:

- No right of access will apply to an exempt record where the exemption "operates by virtue of the exercise of a discretion that requires the weighing of the public interest, if the factors in favour of refusal outweigh those in favour of release"
- FOI bodies are to have regard to "the need to achieve greater openness in the activities of FOI bodies and to promote adherence by them to the principle of transparency in government and public affairs" when considering requests

# Public Interest

Public interest test applies in three ways:

1. Disclosure would be “**contrary to**” the public interest
  - Government Meetings
  - Deliberations of FOI Bodies
  - Parliamentary, Court and Certain Other Matters
2. The public interest would “**on balance, be better served**” by the disclosure
  - Functions and Negotiations of FOI Bodies
  - Information Obtained in Confidence
  - Commercially Sensitive Information
3. Public interest in the disclosure **outweighs** the public interest in upholding an individual’s right to privacy
  - Personal Information

# Disclosure “contrary to” the public interest

## Court Matters

- Legal Professional Privilege
  - Mr X and Meath County Council (Case No. 120210)
- Contempt of Court
  - L. K. v The Information Commissioner v The Health Service Executive 2012 415 MCA

# Public interest “better served” by disclosure

## Commercial Information

- Trade secrets, financial, commercial, scientific, technical or other information
- Disclosure could be expected to result in:
  - a material financial loss or gain
  - prejudice to conduct or outcome of contractual or other negotiations
    - Cork City Council and The Department of The Environment, Community and Local Government (Case No. 140144)
    - Westwood Club and The Information Commissioner [2013] 176 MCA

# Privacy outweighs disclosure

## Public Interest v Right to Privacy

- Objective standard
- Balancing of one right against the other:
  - Mr P and The Health Service Executive & Our Lady's Hospital for Sick Children (Case Nos. 090261/62/63)
  - Fiona Gartland and The Courts Service (Case No. 130140)

# Personal Information

- FOI requests which would involve the disclosure of personal information should be refused unless:
  - the requester is the subject of that personal information
  - the subject consents to its disclosure
  - the same kind of information in respect of individuals generally or a significant size of a class of individuals is available to the general public
  - the requester gave the information to the FOI body and was informed beforehand that it would/might be made available to the general public
  - disclosure is necessary in order to avoid a serious and imminent danger to the life or health of an individual
- Verify the requester's identity
- Obtain suitable authorisation if the request is made on behalf of another person
  - Has the subject provided consent?
  - Is the consent valid, informed and recent?
  - Does the consent demonstrate that the subject knows what they are consenting to, e.g. the type of information?

# Reviews and Appeals

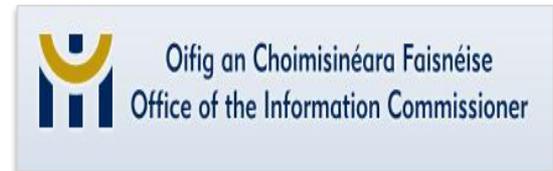
## 1. TCD Reviewers

- Section 21 of the 2014 Act
- Delegated by the Provost



## 2. The Information Commissioner

- Section 22 of the 2014 Act



## 3. The High Court

- Section 23 of the 2014 Act



# Review of Decisions of FOI Body

<b>Head of FOI Body</b>	Decisions of an FOI body in relation to: <ol style="list-style-type: none"><li>1. Refusal to grant an FOI request (in whole or in part)</li><li>2. Refusal to amend a record</li><li>3. Refusal to provide a statement relating to an act of an FOI body affecting a person with a material interest</li><li>4. The contents of a statement relating to an act of an FOI body affecting a person with a material interest</li><li>5. Manner of Access (including partial access)</li><li>6. Charges or Fees</li><li>7. Deferral of Access (records prepared for the Oireachtas)</li></ol>
<b>Information Commissioner</b>	Decisions of an FOI body in relation to 1 to 6 above and: <ol style="list-style-type: none"><li>1. Application of the 2014 Act</li><li>2. Reviews by of the Head of an FOI body</li><li>3. Extensions of Time</li><li>4. Information Obtained in Confidence</li><li>5. Commercially Sensitive Information</li><li>6. Personal Information</li><li>7. Deferral of Access (records held by Department of State/Government Minister and deliberations of FOI bodies)</li></ol>

# High Court

- Any person affected by a decision of the Information Commissioner can bring an appeal to the High Court **on a point of law only**:

*“The finding should be appealed only if there are important negative implications arising from it, either in relation to the particular records concerned, or in relation to the impact in FOI bodies more generally of wider application of some principle set out in the finding”* (FOI CPU Notice 17 – Appeal to Court)

- An appeal must generally be initiated not later than 4 weeks after notice of the decision concerned
- Appeals on decisions to grant access to only some or part of the records requested can be initiated up to 8 weeks after the date of the notice

# Offences

***“Where an FOI request has been made in respect of a record, a person who without lawful excuse and with intention to deceive destroys or materially alters a record shall be guilty of an offence”***

- Punishable on summary conviction by a fine of up to €4,000
- Proceedings can be brought within 12 months of:
  - i. the offence; or
  - ii. the date on which sufficient evidence to prosecute becomes known.
- Officers of incorporated or unincorporated bodies may be held personally liable if the offence was committed with their consent, connivance or approval or is attributable to any wilful neglect on their part.

# Access to Information on the Environment



## The Access to Information on the Environment Regulations

Information on:

- (a) the state of the elements of the environment
- (b) factors...affecting or likely to affect the elements of the environment,
- (c) measures (including administrative measures), and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements
- (d) reports on the implementation of environmental legislation
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c)
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, 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 referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c)

# Requests under the AIE Regulations

- Must be made in writing or electronic form and state:
  - it is made under the regulations
  - the applicant's contact details
  - the environmental information requested
  - the form of access desired
- Decisions must be made within one month of receipt of the request
- Right of Appeal to:
  - the public authority
  - the Office of the Commissioner for Environmental Information
  - the High Court

# Requests under the AIE

- Applications can be refused on the grounds of:
  - the confidentiality of personal information
  - the interests of the person who supplied the information requested
  - the protection of the relevant environment
  - the confidentiality of the proceedings of public authorities
  - the course of justice
  - commercial or industrial confidentiality
  - the volume or range of information sought
  - the request being formulated in too general a manner
  - internal communications of public authorities
- Requests relating to information on emissions into the environment shall not be refused

ARTHUR COX

Thank you for your  
time today

[Colin.Rooney@arthurcox.com](mailto:Colin.Rooney@arthurcox.com)

8 September 2015