

ARTHUR COX

Freedom of Information Requests

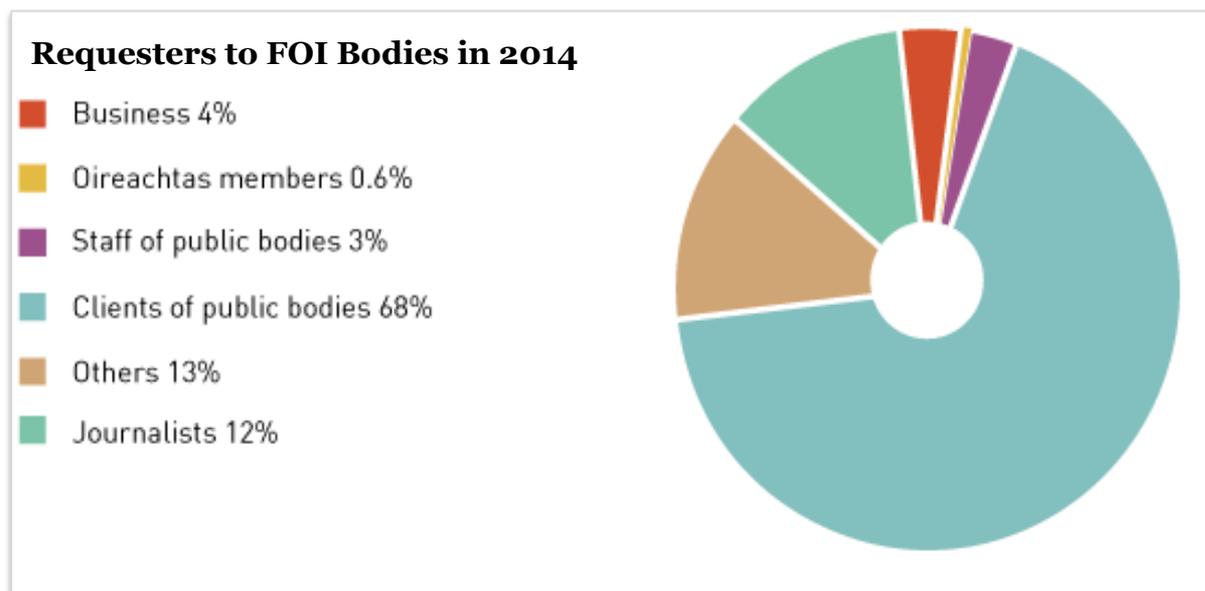
8 September 2015

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

- 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)

The Freedom of Information Act 2014

Section(s)	Provision
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

FOI Officers

- First point of contact with the public, the CPU and the Information Commissioner
 - engage with requesters to assist with requests
 - liaise effectively and maintain good relationships
- Provide guidance within the organisation
- Maintain standards of delivery of FOI
- Stay up to date with developments
- Provide training
- Keep relevant precedents for similar requests
(CPU Code of Practice)

Decision Makers

- Work proactively with requesters to ensure:
 - requests are:
 - appropriately focused and targeted
 - not voluminous
 - do not give rise to excessive administrative demands
 - FOI body clearly understands what information is being sought
 - early consideration is given to search and retrieval fees
 - Adhere to deadlines
 - Liaise with FOI Officer to identify precedents
 - Prepare a schedule of records identified
- (CPU Code of Practice)

FOI Requests to Third Level Institutions in 2014

Third Level Education Body	Personal	Non-Personal	Mixed	Total
University College Dublin	77	26	0	103
National University of Ireland Galway	22	18	0	40
University College Cork	14	15	3	32
University of Dublin (Trinity College)	11	19	1	31
University of Limerick	7	18	1	26
Cork Institute of Technology	5	20	0	25
Dublin City University	6	13	0	19
Dublin Institute of Technology	6	13	0	19
Waterford Institute of Technology	2	11	1	14
National University of Ireland Maynooth	2	8	0	10
St Patrick's College, Drumcondra	4	6	0	10
Galway-Mayo Institute of Technology	1	9	0	10
Other bodies	14	58	2	74
Total	171	234	8	413

Types of Applications

1. Access Requests
 - Personal records
 - Non-personal records created
 - on or after 21 April 1998
 - earlier if access is necessary or expedient to understand records created subsequently
2. Statement of Reasons
 - Persons “*affected by an act of the body and has a material interest in a matter affected by the act or to which it relates*” can apply for a statement of
 - the reasons for the act
 - any findings on any material issues of fact
3. Correction/Amendment
 - Incomplete, incorrect or misleading personal information can be subject to an application to:
 - alter the information
 - add a statement to the record
 - delete the information

Search and Retrieval Fees

Request/Application	Standard Fee	Reduced Fee
Initial Request	Free (was €15)	Free (was €10)
Internal Review	€30 (was €75)	€10 (was €25)
Review by Information Commissioner	€50 (was €150)	€15 (was €50)
Application for Amendment	Free	Free
Application for Reasons for a Decision Affecting an Individual	Free	Free

- Fees will not apply to:
 - requests for access to an individual’s personal records
 - an appeal of a decision to charge a fee or deposit
- Reduced fees will apply to medical card holders and third parties who appeal a decision to release their information on public interest grounds

Search and Retrieval Fees

Type of Fee	Standard Fee
Search and Retrieval of Records	€20 per hour
Photocopying	4 cent per sheet
CD-ROM containing Copy of Documents	€10

- Fees may be applied for time spent finding and retrieving records and for any copying costs incurred
- Will only apply:
 - if the cost of search, retrieval and copying exceeds €100
 - if preparation time exceeds 5 hours
- Fees are capped at €500
- FOI bodies can refuse to process requests for which the estimated cost of search, retrieval and copying is more than €700

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

Section(s)	Provision
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

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

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?

The Data Protection Acts 1988-2003

- The Data Protection Acts 1988 and 2003 grant data subjects the right to access “personal data” held on a computer or in manual form
- If a request is made under both Data Protection and FOI:
 - Advise the requester of their rights under both Acts and ask them to seek the records under one
 - If the requester refuses, a letter in relation to both Acts may issue with only one copy of the documents
- If the request is granted: no requirement to consider the other Act
- If the request is refused:
 - consider the request under the other Act
 - if there is a potential right of access to the records under the other Act, notify the requester of their rights under that legislation

Processing Requests

1. On receipt	Check the validity of the request: <ul style="list-style-type: none">✓ states that it is made under the FOI Act;✓ records sought are likely to be within TCD's remit✓ contains sufficient particulars to enable identification of the records by taking reasonable steps
2. Acknowledgment	If the request is valid, issue a standard acknowledgement, specifying: <ul style="list-style-type: none">✓ timescales for the decision✓ information on who will process it✓ the deadline for issue of the response✓ that a review may be sought if the deadline is missed
3. Assess Fees	If applicable, advise the requester on: <ul style="list-style-type: none">✓ the level of search and retrieval fees✓ how they are calculated✓ how much of a deposit (if any) is required and when✓ potential to reduce fees by refining the request

Processing Requests

4. Searching

- Identify and document the steps taken to locate records
- If the records are not located, seek signed confirmation from the relevant divisions of the searches undertaken
- Copy all records within the scope of the request
- Record time spent on collating/copying records

5. The Decision

- Document factors taken into consideration in reaching the request
- Consider whether exemptions apply
- If any/all of the information sought should not be released in full or in part, review guidance on exemptions and apply them as appropriate

Processing Requests

6. Response Letter

State:

- ✓ the decision
- ✓ the number and nature of records considered
- ✓ specific factors taken into account in making the decision
- ✓ the actual search and retrieval cost (deducting any deposit paid)
- ✓ if applicable, the reasons why access has not been granted in full or in part and reference the relevant sections of the 2014 Act

Provide:

- ✓ a breakdown of the search and retrieval fees (hourly charges and an explanation of costs)
- ✓ a schedule providing details of records being released in full, to which partial access is being given and those being refused

Deadlines

Provision	Deadline
Acknowledgment of Request	10 days
Amendment of Records	4 weeks
Right to Information	4 weeks
Access Requests – Notify Requester	2 weeks
Decisions on Requests	4 weeks
Extension of Time	4 weeks
Application for Internal Review	4 weeks
Application for ICO Review	2 Weeks

Reviews and Appeals

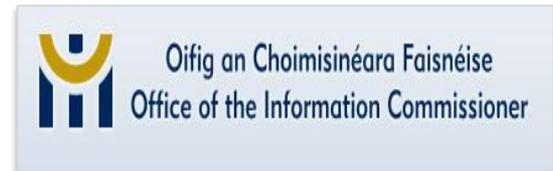
1. TCD Reviewers

- 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

Head of FOI Body	Decisions of an FOI body in relation to: <ol style="list-style-type: none">1. Refusal to grant an FOI request (in whole or in part)2. Refusal to amend a record3. Refusal to provide a statement relating to an act of an FOI body affecting a person with a material interest4. The contents of a statement relating to an act of an FOI body affecting a person with a material interest5. Manner of Access (including partial access)6. Charges or Fees7. Deferral of Access (records prepared for the Oireachtas)
Information Commissioner	Decisions of an FOI body in relation to 1 to 6 above and: <ol style="list-style-type: none">1. Application of the 2014 Act2. Reviews by of the Head of an FOI body3. Extensions of Time4. Information Obtained in Confidence5. Commercially Sensitive Information6. Personal Information7. Deferral of Access (records held by Department of State/Government Minister and deliberations of FOI bodies)

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.

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Thank you for your
time today

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