

Guide to making a request under the Freedom of Information Acts 2014

Introduction

The Freedom of Information Acts 1997 and 2003 were repealed with the enactment of the most recent Freedom of Information Acts 2014 on 14 October 2014. The range of public bodies has been extended to cover all such bodies unless otherwise explicitly stated and the fees for requested information have also been adjusted.

Purpose of the Freedom of Information Act

Freedom of Information derives from the following broad principles:

- Decisions by public bodies should be more open to public scrutiny, thus providing greater appreciation of the issues involved in policy decisions and stronger public ownership and acceptance of decisions made;
- Those affected by decisions of public bodies should have the right to know the criteria used in making those decisions;
- Individuals have three principal rights:
 - To be offered access to any record held by a public body (section 11) subject to the record being exempt (sections 28-41) or excluded (under section 42)*
 - To have personal material on file amended where it is incorrect, incomplete or misleading (Section 9) *
 - To obtain reasons for a decision which affects them personally (section 10) *

** The right to access records, to have personal information amended and to have a statement of reasons for a decision can also be exercised by a parent or guardian in respect of a minor or disabled person and by the next of kin or personal representative of a deceased*

- Citizens, as shareholders in public bodies, should have the right to examine and review the deliberations and processes of public bodies;

What is a record?

A record can be any book, papers, memorandum, text or other document, a map, plan or drawing, any photograph, film or recording, or any form in which data are held (whether manual, mechanical or electronic), and anything that is a part, or a copy, or a combination of the original.

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Making an FOI request

A person who wishes to exercise their right of access to records under the Act must make a request, in writing, for access to the record concerned:

- Stating that the request is made under the Freedom Of Information Act 2014
- Setting out sufficient particulars to enable the record to be identified
- Specifying the preferred form of access, if he or she has such a preference (e.g. photocopy or computer disk)
- Stating any specific request for particular information (such as reports by medical referees etc)
- Stating whether the request is for personal or non-personal information, and supplying proof of identity if requesting personal information.

If the request is unclear or of a general nature, the public body must assist the requester in preparation of his/her request so as to enable identification of the information sought. A request may not be refused on the grounds of being either voluminous in nature or not sufficiently focused unless the body has first offered to assist the requester (sections 11(2)(a) and 15 (4) refer). The public body must also facilitate the rights of persons with a disability (section 11(2)(b)).

Charges for FOI requests

- There is **no charge** for a request for a personal record, unless the grant concerned relates to a significant number of records. In which case, when considering the search and retrieval fee, the means of the requester will be taken into account
- There is **no charge** for an application (under Section 9) for an amendment of a record containing incorrect, incomplete or misleading personal information
- There is **no charge** for an application (under Section 10) for the reasons for a decision affecting the individual
- There is **no charge** for a request for a non-personal record.
- Search and retrieval costs will apply to non-personal records at a rate of **€20 per hour**. However there is a minimum threshold of **€101**, below which no search, retrieval or copying fees will be charged (i.e. charges apply only where the preparation time for an FOI request exceeds 5 hours).
- An internal review costs **€30 (€10 for medical card holders and their dependents)**
- A review by the Information Commissioner is **€50 (€15 medical card holders and their dependents)**
- Search and retrieval is defined (by section 27(2)) as time spent by the the FOI body in – (a) determining whether it holds the information requested, (b) locating the information or documents containing the information or documents, (c) retrieving such information or documents, (d) extracting the information from the files, documents, electronic or other information sources containing both it and other material not relevant to the request, and (e) preparing a schedule specifying the records for consideration for release.
- There is a cap on the amount that can be charged and this is set at €500.
- There is also a further upper ceiling limit on estimated search and retrieval fees at €700, above which a public body can refuse to process a request unless the request is refined.

Dealing with FOI requests- Time limits

- You should receive an acknowledgment receipt **within 10 working days**
- The acknowledgment should set out the rights of the requester in relation to the right of review, including the procedure and time limits involved in a review
- The FOI Officer would then decide whether to grant or refuse to grant the request **within 20 working days**.
- Under Section 19, non reply to a request within **20 working days** is deemed to be a refusal thereby allowing the requester to proceed to internal review.

Review of Decisions

Under the Freedom of Information Act 2014, section 21, a person has the right to request an internal review of a decision by a public body. This review is carried out by the head of the public body concerned. The head of the public body may uphold, vary or annul a decision and make such a decision in relation to the matter as he/she considers appropriate.

Internal review must normally be undertaken before an appeal may be made to the Information Commissioner. The internal review must be completed by the public body **within 15 working days**.

What decisions are subject to Internal Review?

The following decisions may be addressed by internal review:

- Decisions to refuse all or part of a request
- Decisions to defer access to records prepared solely for the Oireachtas
- Decisions to grant access in a form other than that requested
- Decisions refusing the amendment of personal information which the requester believes is incomplete, incorrect or misleading
- Decisions relating to the rights of a person to obtain reasons for acts of the public body affecting that person
- Decisions to charge a fee/deposit, or the amount of the fee/deposit charged

Procedures for Internal Review

An application for internal review must be made **within 20 working days of the initial decision**

The review must:

- Be undertaken at a higher level than that at which the original decision was taken
- Be completed within **15 working days** of the receipt of the request for a review
- Uphold, annul or vary the original decision

A decision to grant access to records must contain information as to how and when the records can be accessed and the fee payable. A decision to defer or refuse to grant access to records must contain reasons

for the deferral or refusal (unless the public body is entitled to refuse to confirm or deny the existence of the records), the fee payable by the requester and the right to appeal the decision. Under section 19(2), if no decision is made **within 15 working days**, non reply is deemed to be a refusal and the applicant may proceed with an appeal to the Information Commissioner.

Review by Information Commissioner

An application for review by the Information Commissioner that relates to an extension of time to consider an FOI request, or in relation to procedure in relation to FOI requests, must be made within **10 working days** of notification of the decision concerned.

An application in relation to any other decision, as set out below, must be made within **6 months** of the notification of the decision.

The Commissioner may review the following:

- A decision made on internal review under Section 21
- An initial decision on a request made by a head of a public body
- A decision made on internal review to charge a fee or deposit exceeding €10
- A decision to refuse a request for a record on the grounds that the record is excluded from the scope of the Act by virtue of Section 42
- A decision to extend the 4 week time limit for consideration of an FOI request under section 14
- A decision on a request to which the third party consultation procedure outlined in section 38 applies

The Commissioner may not review the following:

- A decision made by the Commissioner in respect of a record held by the Commissioner
- A decision in respect of which internal review is available
- A decision to refuse access to a record which is subject to a Ministerial certificate under sections 32 or 33

If a decision to refuse a request is appealed to the Information Commissioner, the public body will be invited to make a submission. The Information Commission may uphold, vary or change the initial/reviewed decision. A decision by the Information Commissioner must be made **within 4 months**.

Decisions of the Information Commissioner are binding on the parties concerned (section 22(14)), subject to appeal to the High Court on a point of law, or on a finding of fact in a case where a person contends that the release of the record would contravene a requirement imposed by EU law, under Section 24. The Information Commissioner can apply for a court order to oblige a public body to comply with a binding decision where it has failed to do so. (section 45)

An appeal to the High Court must be initiated no later than **20 working days** after the notice of the decision which is being appealed. Where a Commissioner has decided to part grant a request for records, a person has **40 working days** to appeal to the High Court. Documents must be released by the public body within **20 working days** of the Commissioners decision. A decision of the High Court may be subsequently appealed to the Court of Appeal.

Sample Freedom of Information request

FOI Officer

[Insert address of relevant government department]

[Insert Date]

Re: Request under Freedom of Information 2014 by *Insert Name*
[Address]
[Insert Reference Number – “69 number”]

Dear Sir/Madam,

I, _____ *[insert name]* wish to make a Freedom of Information application in relation to all documents and records, including records in electronic format, held by your Department concerning *[insert sufficient information to enable the records to be identified]*. In particular, such records should include *[mention any specific documents required]*.

My preferred form of access is *[photocopy or computer disk etc.]*

I authorise you to send copies of all documents and records including records in electronic format, held by your Department to *[Insert name/address of person you wish to receive the files (such as a policy worker dealing with your case/ solicitor)]*.

Yours sincerely,

[insert name]

Sample Freedom of Information Request for Parent/Guardian

FOI Officer

[Insert address of relevant government department]

[Insert Date]

Re: Request under Freedom of Information Act 2014 by [insert name]

On behalf of [insert name of child]

[Insert Address]

Reference: [insert case reference number "69 number"]

Dear Sir/Madam

I, [insert name], wish to make a Freedom of Information application on behalf of [insert name of child] in relation to all documents and records, including records in electronic format, held by your Department including the Reception and Integration Agency. Such documents should include [reports by medical referee (s) retained by RIA] as well as all personal records relating to [insert name of child].

As the [mother/father] and guardian and next-friend-of [insert name of child], also of the above address, who is a minor, I authorize you to send copies of all documents and records, including records in electronic format, held by your Department to [insert name of person dealing with your case, and address].

Yours sincerely

[insert name]