

INFORMATION COMMISSIONER

SUMMARY PROCEDURES

The Office of the Information Commissioner is the review body for Freedom of Information (FOI) in Ireland. Our job is to review decisions that FOI bodies make on FOI requests.

This document explains how we generally carry out reviews. We aim to ensure that the approach we adopt in each case is fair, and seen to be fair, to all the parties concerned. The document is for general information only and it does not contain a detailed description of the many issues that arise during reviews. It is not legally binding.

1. Applying for a review

When applying to the Information Commissioner for a review, applicants should supply:

- Their name, address, telephone number and other contact details (e.g. email address)
- The name of the FOI body that made the decision
- The reference number of the FOI body's decision (if they have it)
- Their original FOI request and subsequent correspondence with the FOI body
- The correct fee – see section 2
- If they believe no fee or a reduced fee applies, supporting information (e.g. a photocopy of their medical card)
- Written authorisation from the applicants if a third party wishes to act on their behalf
- Details of the parts of the FOI body's decision they are unhappy with and want us to review

Applicants can apply online, by email, by post or by hand-delivering their application.

We recommend using our online application form as the easiest and quickest method of applying for a review. Applicants can also [download the application form](#) and email it to applications@oic.ie or post it or drop it into 6 Earlsfort Terrace, Dublin 2, D02 W773. If the application is received outside of our office hours, we will treat it as received on the next business day.

*Our office is currently closed to personal callers due to Covid-19. Please visit our website for further information.

If a fee is required, we treat the application as having been made on the date when we have received both the application and the correct fee.

Applications for a review must be made within six months of notification of the decision (or within two weeks of notification of the decision in a section 14 or section 38 case). A section 14 case is where the FOI body decides to extend the period for making a decision on a request. A section 38 case is one where the FOI body has notified third parties about certain FOI requests that may affect their interests, concerning section 35 (information obtained in confidence), section 36 (commercially sensitive information) and section 37 (personal

information about a third party) of the FOI Act. The Commissioner may extend the time limit if there are reasonable grounds for doing so – see section 3.

We acknowledge receipt of all applications. We also notify the parties as soon as we decide whether or not to accept the application.

2. Fees

If a fee applies, we cannot accept or process an application until the fee is paid. Fees can be paid online.

Application Fees Payable

Whether a fee is due depends on the circumstances of the case.

- Request for access to personal records relating to the requester - no fee
- Application to amend records (section 9 of the FOI Act) - no fee
- Application for statement of reasons (section 10 of the FOI Act) - no fee
- Appeal of decision of an FOI body to charge a fee – no fee
- Request to which section 37(8) of the FOI Act applies - no fee
- Access to a non-personal record - €50
- Access to a non-personal record by the holder of an Irish medical card or a dependant of a medical card holder - €15 (*We need a photocopy of the medical card*)
- Third parties appealing an FOI body's decision to release their information on public interest grounds (section 38 of the FOI Act) - €15
- Appeal decision of an FOI body to extend the time for the consideration of an FOI request (section 14 of the FOI Act) - €50
- Appeal decision of an FOI body to extend the time for the consideration of an FOI request by the holder of an Irish medical card or a dependant of a medical card holder (section 14 of the FOI Act) - €15 (*We need a photocopy of the medical card*)

3. Screening applications

We screen applications for review to ensure they are valid. We can refuse to accept certain kinds of applications. Section 22 of the FOI Act lists the types of applications the Commissioner can refuse to accept.

Deemed refusals

When an FOI body fails to make an internal review decision within the statutory time-frame, this is known as a “deemed refusal”. We accept the application and instruct the FOI body to notify the applicant of its position. Once the FOI body does this, we close the file. We notify the parties that we will review the position if the applicant informs us within a set period (normally six months) that s/he remains dissatisfied.

Section 38 cases

Section 38 of the FOI Act requires FOI bodies to notify third parties about certain FOI requests that may affect their interests, concerning section 35 (information obtained in confidence), section 36 (commercially sensitive information) and section 37 (personal information about a third party) of the FOI Act. A Guidance Note on section 38 is available on our website at www.oic.ie and contains detailed information on how and when section 38 applies.

Admitting late applications

Section 22(4) of the FOI Act requires applicants to apply for a review within certain time limits. Applications for review must be made within six months of notification of the decision (or within two weeks of notification of a decision in a section 14 or section 38 case). The Commissioner may extend the time limit if there are reasonable grounds for doing so. The Commissioner decides each case on its merits. It is not possible to list all the possible reasonable grounds here. Examples of reasonable grounds are: illness; absence from home; failure by the FOI body to give the applicant details of his/her right of appeal to this Office; or evidence of genuine confusion by the applicant(s) about the appeal process. When we receive a late application, we invite the applicant to make a submission on why the Commissioner should extend the deadline.

When we accept an application

When we accept an application, we notify the FOI body, the applicant and in a section 38 case the requester if the application is made by the relevant third party, or any other relevant person under section 38. We ask the FOI body to provide us with the relevant records and a schedule of records within two weeks of the date of acceptance.

4. Assigning reviews for processing

We aim to review applications within 4 months if possible. We try to process straightforward reviews as soon as they have been accepted. We generally process more complex cases on the basis of age.

5. Notice under section 23 of the FOI Act

Sections 13 and 21 of the FOI Act require FOI bodies to give reasons for refusing access to information. It is not enough to repeat the words of the particular exemption. We consider whether the reasons given by the FOI body in its decision are adequate or not. If the Commissioner considers that the statement of reasons is inadequate, we may issue a notice, under section 23 of the FOI Act, to direct the FOI body to furnish a statement of reasons, both to the requester and to the Commissioner. After issuing a section 23 notice, we then deal with the case as normal.

6. Requesting submissions

When we accept a review, we generally invite applicants and any other party we notify to make a submission. In cases about access to records, we also invite FOI bodies to make focused submissions. Our “Sample Questions for FOI Bodies” documents are available on our website at www.oic.ie. We usually give FOI bodies two weeks to make focused submissions. The opportunity to make focused submissions generally represents the FOI body’s final opportunity to show that the conditions of the exemptions are met. Once the deadline for submissions has passed, we consider the case and decide on the best way to resolve it.

As a general rule, we do not exchange submissions between parties. However, we notify the relevant parties of any new material issues which arise for consideration. Material issues are issues that are relevant to the outcome of the review and which are likely to influence the decision the Commissioner will make. Where the influence of new material issues is likely to be adverse to a party, we notify the party concerned and give them an opportunity to comment. An example of a material issue would be when a party raises a new exemption under the FOI Act.

Although the opportunity to make focused submissions generally represents the FOI body’s final opportunity to do so, it may be necessary to seek clarification of certain matters. We seek clarification in cases when certain gaps must or should be addressed in order to remove an element of uncertainty or confusion. We generally give no longer than two weeks to provide the clarification sought.

Under section 22(12) of the FOI Act, the FOI body must satisfy us that its decision to refuse to grant the request was justified. If a third party applies for a review of a decision to grant a request affecting its interests, the third party must satisfy us that the decision to grant the request was not justified.

A failure to justify a decision to refuse access to records does not necessarily mean that the Commissioner will annul the decision. The Commissioner has an inquisitorial role. He will conduct an independent analysis of the records before making a final decision.

7. Notifying third parties

Section 22(6) of the FOI Act requires the Commissioner to notify the following parties of a proposal to review a decision of an FOI body:

- the head of the FOI body
- the applicant
- in the case of a decision in respect of a request to which section 38 relates, the original requester if the application is made by the third party who gave the information

concerned or to whom the information relates and otherwise any person to whom section 38(2) applies

- any other person who, in his opinion, should be notified.

Under section 24 of the FOI Act, a party to a review or any other person affected by a decision of the Commissioner may appeal against that decision to the High Court on a point of law. In deciding whether we need to notify a third party about a review, we consider who is likely to be affected by the decision of the Commissioner.

When we notify third parties, we invite their submissions, usually within two weeks. If a party fails to respond within the timeframe specified, the Commissioner may proceed to issue a decision without further reference to the party concerned.

8. Settlements & Withdrawals

In deciding how best to resolve a case, we consider if it is possible to settle the case without issuing a binding decision. Application fees are refundable when cases are settled or applications for review are withdrawn.

A settlement is not designed to reduce the rights of applicants. It is aimed at narrowing the differences between the sides. Even if a binding decision is required, the settlement process can help to ensure that the final decision concentrates only on the essential items that are in dispute.

If we consider that it is possible to settle the case or narrow the differences between the parties, we contact the parties concerned. We use informal methods of communication wherever possible and outline the possible basis of the settlement.

9. Section 9 Cases

Section 9 cases are about amending personal information in records. In a section 9 case, we confirm at the outset whether the application concerns personal information within the meaning of section 2 of the FOI Act. If we are satisfied that the application does not concern personal information, we notify the applicant of this new material issue and give them an opportunity to comment within two weeks. If we are satisfied that the application is for the amendment of personal information, we invite the parties to make focused submissions, usually within two weeks. Our Sample Questions document on section 9 is available on our website at www.oic.ie.

10. Section 10 Cases

Section 10 cases are about FOI bodies giving statements of reasons for acts or decisions which affect the applicant. We firstly decide if the review involves a refusal to provide a statement of reasons or if the adequacy of the statement provided is the issue. We then invite the parties

to make focused submissions, usually within two weeks. Our Sample Questions document on section 10 is available on our website at www.oic.ie.

11. Search Cases

Search cases are about refusals of requests on the basis that the records concerned do not exist or cannot be found. In these cases, the Commissioner reviews the FOI body's decision to refuse access on that basis. It is not the Commissioner's role to search for records. We ask the FOI body about its record management procedures and the steps it took to find the relevant records, to decide whether it took all reasonable steps in the circumstances. If an FOI body finds additional records during a review, we generally require it to make a new decision on those records. However, we can include them if that would not delay the review unnecessarily.

12. Closing Cases

We close cases when:

- the applicant withdraws their application for review
- the parties agree to a settlement
- the Commissioner discontinues the case under section 22(9) of the FOI Act
- the Commissioner completes the review of the decision of the FOI body under section 22(2) of the FOI Act

We notify the relevant parties of the outcome of any review. We then arrange to either return the records to the FOI body or destroy them in a confidential manner.

We publish anonymised versions of our decisions on our website at www.oic.ie. We publish the applicant's name if the applicant asks us to.

Our office is open between 9.15 a.m. and 5.00 p.m. Monday to Friday.

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