

Our References: 160415, 160418 & 160419

Ms X

20 March 2017

Dear Ms X

I refer to your application for a review of the decisions of the Dublin District Coroner, the Laois Coroner and the Cavan Coroner (the Coroner) to refuse your request for information under the Freedom of Information Act 2014 (the FOI Act) on the ground that the Coroner is not a public body for the purposes of the Act.

Section 6(1) of the FOI Act contains details of the bodies that are considered to be public bodies for the purposes of the Act. It provides as follows:

6(1) Subject to this section, each of the following shall be a public body for the purposes of this Act:

- (a) a Department of State;
- (b) an entity established by or under any enactment (other than the Companies Acts);
- (c) any other entity established (other than under the Companies Acts) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Companies Acts) by a Minister of the Government under any scheme;
- (d) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government;
- (e) a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (d) relates;
- (f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entity to which paragraph (b), (c) (d) or (e) relates;
- (g) a higher education institution in receipt of public funding;
- (h) notwithstanding the repeal of the Act of 1997 by section 5, and subject to this Act, any entity that was a public body (including bodies or elements of bodies prescribed as such) within the meaning of the Act of 1997 on the enactment of this Act.

As you know, you sought records from the Coroner in relation to the number of deaths in prison custody referred to the coroner over a 10 year period and the number of inquests held. The

Coroner refused this request on the basis that it was not subject to the Freedom of Information Act 2014.

I note that you had sought advice from the Central Policy Unit within the Department of Public Expenditure and Reform (CPU) and had been advised that they are of the opinion that coroners are subject to the FOI Act and that this is consistent with advice received from the Attorney General (the AG). This Office asked CPU to explain its position. It said that the AG's advice had been provided in light of a request to a different FOI body (not the Coroner) and was received in 2003. In other words, the advice related to the 1997/2003 FOI Acts, rather than the 2014 Act. Furthermore, it appears that when the advice was given to you by CPU, there may have been some confusion in that office as to whether the Coroner had been a prescribed FOI body under the 1997/2003 Acts. I am satisfied that Coroner was not a prescribed body under the earlier legislation. Accordingly, I cannot rely on the AG's advice to CPU on the question of whether the Coroner is an FOI body under the FOI Act 2014.

In my view, only sections 6(1)(b) and 6(1)(c) are of relevance to the question of whether the Coroner is a public body for the purposes of the Act. It is not clear to me that the Coroner is a public body under section 6(1)(b), as it seems to me that the Coroner is not an entity established by an enactment, as the establishment of its office predates modern legislation. Accordingly, I consider that section 6(1)(b) does not apply.

Furthermore, no Government or Minister past or present was responsible for the establishment of the role of Coroner in this case. Therefore, I consider that section 6(1)(c) does not apply. Accordingly, I find that the Coroner is not a public body for the purposes of the FOI Act and that the Dublin District Coroner, the Laois Coroner and the Cavan Coroner were justified in refusing to process your FOI requests.

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Yours sincerely,

Elizabeth Dolan
Senior Investigator