

2 April 2019

Our Reference: 180452

Dear Mr X

I refer to your application for a review of the decision of the Honorable Society of King's Inns (King's Inns) to refuse your request for information under the Freedom of Information Act 2014 (the FOI Act) on the ground that it is not a public body for the purposes of the Act.

For the reasons I have set out below, I am satisfied that King's Inns is not a public body for the purposes of the Act and that it was justified in refusing to process your FOI request.

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.

You have argued that King's Inns is captured by paragraph (b) of the definition as it is an entity established by or under any enactment. That argument is based on your understanding that a broad definition of the word "established" should be adopted.

The Oxford Dictionary provides a number of definitions for the word "establish", the first being "set up on a firm or permanent basis" and the second "achieve permanent acceptance or recognition for". While I note your argument that the latter meaning is sufficient, I cannot accept this argument in the context of paragraph 1(b). This Office takes the view that, in considering that paragraph as a whole, the meaning envisaged is whether the entity is "set up" by or under any enactment.

King's Inns was established when King Henry VIII granted a number of judges and senior lawyers the lands and properties on which the Four Courts now stand, there is no clear legislative basis for its establishment. While there is legislation which may refer to, govern, and/or regulate King's Inns, I am of the view that its establishment took place prior to the enactment of any such legislation. Furthermore, even where legislation may modify the name or status of King's Inns, this does not, in my view, alter the basis on which the body was established. Accordingly, I am satisfied that it is not captured by section 6(1)(b) of the FOI Act.

You have also argued that Kings Inns is captured by paragraph 1(g) of the definition as it is a higher education institution in receipt of public funding. In its submissions to this Office, King's Inns argued that while it engages in the training of barristers, it is not a "higher education institution" as that term is defined in Irish law.

Section 1(1) of the Higher Education Authority Act 1971 (as amended by Section 52 of the Institutes of Technology Act 2006) defines an "institution of higher education" in the following terms:

- (a) a university
- (b) a college of a university,
- (c) a college to which the Institutes of Technology Acts 1992 to 2006 apply,
- (d) Dublin Institute of Technology
- (e) Royal College of Surgeons in Ireland
- (f) National College of Art and Design
- (g) Royal Irish Academy
- (h) Such educational institutions as may be designated by order under section 5

King's Inns does not fall within categories (a) to (g) and has not been designated as an institution of higher education for the purposes of category (h). Accordingly, I find that King's Inns cannot be said to be a higher education institution and, as such, it is not captured by section 6(1)(g).

For the avoidance of doubt, I also find that King's Inns is not captured by any of the remaining paragraphs of section 6(1).

In conclusion, therefore, I find that King's Inns is not a public body for the purposes of the FOI Act as it is not captured by the provisions of section 6(1).

Yours sincerely,

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Stephen Rafferty  
Senior Investigator