

Our Reference: OIC-110829-M7K7P3

21 October 2021

By email

Re: Horse Sport Ireland

Dear Ms X

I refer to your application for a review of the decision of the Horse Sport Ireland (HSI) to refuse your requests 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 HSI is not a public body for the purposes of the Act and that it was justified in refusing to process your FOI requests.

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:

1. a Department of State;
2. an entity established by or under any enactment (other than the Companies Acts);
3. 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;
4. 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;
5. a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (d) relates;
6. 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;
7. a higher education institution in receipt of public funding;
8. 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.

For HSI to be a public body for the purposes of the Act, it must come within one or more of the categories as set out in paragraphs (a) to (h) as described above. In its submissions to this Office, HSI argued that none of the relevant paragraphs apply to it as;

1. It is not a Department of State,
2. It was established under the Companies Acts and was not established by or under any other enactment,

3. It was established under the Companies Acts and was not established or appointed by the Government or a Minister of the Government,
4. It is a company limited by guarantee and does not have shares,
5. It is not a subsidiary of any other company,
6. It is not directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates
7. It is not a higher education institution, and
8. It was not a public body within the meaning of the FOI Act 1997

It seems to me that your arguments that the Act applies to HSI are two-fold. First, you argue that it has been accepted previously, both by HSI and by this Office, that the Act applies to HSI. Secondly, it appears that you consider HSI to be a public body for the purposes of the FOI Act having regard to matters such as the level of funding that HSI receives from the Department of Agriculture, Food and the Marine (DAFM) and Sports Ireland, the number of ministerial appointments to the Board of HSI and the Service Level Agreement between the Department and HSI.

In relation to the first point, HSI explained that it received a letter from the Department of Public Expenditure and Reform (DPER) in November 2014, wherein DPER informed it of its view that HSI came within the definition of public body set out in section 6. The letter did not explain the precise basis on which that view was based. HSI said it simply accepted DPER's view at the time but that it has since received legal advice that it does not meet the definition of a public body within the FOI Act.

Similarly, this Office previously processed reviews concerning HSI as no argument had been made at the time that it was not a public body for the purposes of the Act. However, the fact that this Office previously processed such reviews has no bearing on whether or not HSI is such a public body.

In relation to the second point, it seems to me that you are essentially suggesting that HSI is controlled, whether directly or indirectly, by DAFM. I am satisfied that paragraphs (a) to (e) and paragraphs (g) and (h) of the definition of a public body do not apply to HSI. The question of whether a body is controlled by another body is of relevance to paragraph (f). However, as you can see, for paragraph (f) to apply, the body must be directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates. Control by a Department of State is specifically excluded. As such, I am satisfied that paragraph (f) does not apply in this case.

It is also relevant to note that under section 7 of the Act, the Minister for Public Expenditure and Reform may prescribe certain entities as prescribed bodies for the purposes of the Act, including entities that are financed wholly or partly, directly or indirectly, by means of monies provided, or loans made or guaranteed, by a Minister of the Government. As such, while HSI may fall within the description of the types of entities that may be prescribed for the purposes of the FOI Act, the fact remains that no such bodies have been prescribed in this manner to date.

In conclusion, therefore, I am satisfied that HSI is not captured by any of the paragraphs (a)-(h) of section 6(1) and as such, that it is not a public body for the purposes of the FOI Act.

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Yours sincerely,

Stephen Rafferty
Senior Investigator