

3 March 2020

Our Reference: OIC-53446-Y1K1C7

Dear Mr X

I refer to your application for a review of the decision of the Irish Horseracing Regulatory Board (IHRB) 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 IHRB 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.

In your correspondence with this Office, you argued that IHRB is captured by paragraph (f) of the definition on the ground that as Horse Racing Ireland (HRI) funds the regulatory functions of IHRB, it indirectly controls IHRB.

I am satisfied that HRI is an entity to which paragraph (b) relates. Accordingly, the question to be considered is whether HRI directly or indirectly controls IHRB. In my view, it does not.

According to its website, IHRB is a company limited by guarantee set up by the Turf Club and the Irish National Hunt Steeplechase Committee (INHSC) for the purpose of carrying out the regulatory and licensing functions for Irish horseracing. In its submission to this Office, IHRB explained its background as follows:

The Turf Club and Irish National Hunt Steeplechase Committee (INHSC) are private members clubs established in 1790 and 1866 respectively. The Clubs were responsible for the provision of regulatory and licensing services to flat and national hunt horseracing within Ireland. The role of the Clubs as a Racing Regulatory Body was recognised and confirmed in the Irish Horseracing Industry Act 1994. The 1994 Act did not establish the Racing Regulatory Body or endow additional powers but recognised the existing role and functions of the Clubs and confirmed them when establishing the Irish Horseracing Authority.

The Horse and Greyhound Racing Act, 2001 dissolved the Irish Horseracing Authority and established Horse Racing Ireland (HRI) and set out its role and functions within the Industry as a whole. Under this legislation certain functions provided by the Turf Club which were not regulatory in nature were transferred to the new body. The Horse Racing Ireland Act, 2016 amended sections of the previous legislation in relation to HRI and confirmed some matters regarding interactions between HRI and the Racing Regulatory Body (at that time the Turf Club). The HRI do not have shares in either club and have no direct or indirect control of the IHRB which is a separate legal entity.

Having considered the IHRB's submission, I accept that it is not directly or indirectly controlled by HRI. I find, therefore, that paragraph (f) of section 6(1) does not apply. For the avoidance of doubt, I also find that none of the other paragraphs of section 6(1) apply.

I would add that the mere fact that a body may receive funding from a public body that is subject to the FOI Act does not, of itself, mean that it is directly or indirectly controlled by the public body. It seems to me that IHRB may well be a body that is capable of being prescribed as a public body under section 7 of the Act. However, no such bodies have been prescribed under section 7 to date.

In conclusion, therefore, I find that IHRB 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,

Stephen Rafferty
Senior Investigator