

18 February 2020

Our Reference: OIC-57977-D2X7K1

Dear Mr X

I refer to your application for a review of the decision of Kilkenny LEADER Partnership (KLP) 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 KLP 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.

KLP describes itself on its website as a non-profit, independent, community led, local development organisation. Both KLP and the Department of Rural and Community Development (the Department) made submissions on their positions as to whether KLP is a public body for the purposes of the FOI Act.

From those submissions, it is apparent that KLP is a company limited by guarantee incorporated in accordance with the Companies Act. It does not have a share capital and is a registered charity. It is described as a Local Development Company which

was formed in 2008 after the merging of a number of separate development organisations operating in the Kilkenny area.

In conclusion, the following is apparent:

- KLP is not a Department of State.
- KLP was not established by or under any enactment other than the Companies Act.
- KLP was not established by the Government or by a Minister of Government. While KLP was formed as a result of a cohesion process which was a policy of government, KLP was established by way of merging existing development organisations.
- KLP is a CLG and has no share capital.
- KLP is not a subsidiary of any other entity or company.
- KLP is not directly or indirectly controlled by any entity falling under paragraphs (b) to (e).
- KLP is not an institution of higher education.
- KLP was never a public body or an element of a public body and does not fall under paragraph (h).

In conclusion, therefore, I find that KLP is not a public body for the purposes of the FOI Act as it is not captured by the provisions of section 6(1). You may care to note, however, that the Department considers KLP to be a service provider that provides various services to it in respect of the delivery of programmes funded by the Department. It said it has a service level agreement with KLP for the delivery of the LEADER programme in County Kilkenny. It said that where KLP provides a service to it, records relating to that service are deemed to be held by the Department under section 11(9) of the FOI Act. As such, you may wish to contact the Department with a view to clarifying if it might be deemed to hold records of the type you sought from KLP in this case.

Yours sincerely,

Stephen Rafferty
Senior Investigator