

Our Reference : 150205
15 February 2016

Dear Ms X

I refer to your application for a review of the decision of the Law Society of Ireland (the Society) 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. []

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.

For the purposes of the FOI Act, the term "enactment" is defined as a statute or an instrument made under a power conferred by a statute. The Law Society was incorporated by Royal Charter in 1852. In such circumstances, it seems to me that it does not come within any of the categories (a) to (h) as outlined above.

Accordingly, I find that the Law Society of Ireland is not a public body for the purposes of the FOI Act and that the Law Society was justified in refusing to process your FOI request.

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Yours sincerely,

Stephen Rafferty
Senior Investigator

5 December 2019

Our reference: OIC-53256-V2V6S9

Dear Mr Y

Re: Request under the Freedom of Information Act, 2014 (the FOI Act)

I refer to your application for a review of the decision of the Law Society of Ireland (the Society) to refuse a request you submitted to the Society under the FOI Act for access to certain records. The Society refused to process your request on the ground that it is not subject to the Act.

[... I have determined that the Society is not a public body for the purposes of the Act, for the reasons set out below.

In your letter of 31 October 2018 to this Office, you stated that the Society was established by Royal Charter in 1852 under the Chartered Companies Act 1837 and that it is therefore a public body as an entity established by or under the Chartered Companies Act 1837.

In its submission to this Office, the Society stated that it was, indeed, incorporated by Royal Charter in 1852, but not under the Chartered Companies Act 1837. It stated that it was incorporated by Royal Charter pursuant to a Petition to Queen Victoria by members of the Society called The Society of the Attorneys and Solicitors in Ireland.

The Society stated that according to the leading textbook on the history of the Society ("The Law Society of Ireland 1852-2002: Portrait of a Profession (Four Courts Press, 2002)), the Law Society of Ireland was established in 1830 and that it was, in its initial years, a club for which members had to be proposed and approved by the committee but subsequently became simply a voluntary society which actively encouraged solicitors to join. It stated that the Society, in 1841, adopted new rules, rule 1 of which provided that a Society be formed for the regulation of the profession of attorney and solicitor in Ireland and that it be called the Society of the Attorneys and Solicitors of Ireland. It stated that the Society was incorporated by Royal Charter dated 5 April 1852.

The Society also provided this Office with a copy of the Royal Charter which, it said, clarifies that the Society was formed not under the 1837 Act but pursuant to a Petition to Queen Victoria by members of the Society of the Attorneys and Solicitors in Ireland. It stated that a Royal Charter is a very different legal species to a statute of statutory instrument deriving as it does from the power of the Sovereign at common law to incorporate any number of persons assenting to be incorporated.

In your letter of 25 March 2019 to this Office, you argued that the Incorporated Society of the Attorneys and Solicitors of Ireland, the forerunner to the modern day

Law Society of Ireland, was established by Royal Charter in 1852 and that as a chartered company, it would have been subject to the provisions of the Chartered Companies Act 1837 and the Chartered Companies Act 1884. This does not, in my view, mean that the Society was established by or under those acts.

You also argued that alternatively,

- the Society was established by or under subsequent legislation that gave rise to modifications to the name and/or legal status of the original entity,
- it is an entity that was established by a Minister of the Government, namely the Lord Lieutenant (section 6(1)(c) of the FOI Act refers), or
- it is an entity that is directly or indirectly controlled by an entity that is a public body (the Incorporated Society of the Attorneys and Solicitors of Ireland) pursuant to paragraphs (b), (c), (d) or (e) of the FOI Act.

I do not accept any of those alternative arguments. In particular, the fact that subsequent legislation may have given rise to modifications to the name and/or legal status of the original entity does not, in my view, mean that the Society was established by or under that subsequent legislation.

I also note your comment that other entities established by Royal Charter are subject to the Act and the Society should be no different. You referred, in particular, to several of the State's hospitals and universities, such as the National Maternity Hospital and the National University of Ireland.

You may care to note that the entities in question were specifically prescribed as public bodies for the purposes of the FOI Act (S.I. No. 329/1999 - Freedom of Information Act, 1997 (Prescribed Bodies) Regulations, 1999 and S.I. No. 297/2006 - Freedom of Information Act 1997 (Prescribed Bodies) Regulations 2006 refer). The Society has not been so prescribed as a public body to date.

In conclusion, therefore, I am satisfied that I have no reason to depart from the original determination of this Office. I find the Society is not a public body for the purposes of the FOI Act 2014 as it is not captured by any of the categories set out in section 6(1). Accordingly, I find that the Society was not obliged to process your FOI request in accordance with the FOI Act.

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Yours sincerely,

Stephen Rafferty,
Senior Investigator