

12 April 2016

**Our Reference: 150216**

Dear Mr. X

I refer to your application for a review of the decision of the Property Arbitrator, a position held by [ Y ] to refuse your request for information under the Freedom of Information Act 2014 (the FOI Act) on the ground that the Property Arbitrator 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.

As you know, where the State acquires land under a compulsory purchase order and there is a dispute about compensation, the Reference Committee appoints a Property Arbitrator. I am informed that the legal position relating to the Reference Committee and the Property Arbitrator is as follows:

The Reference Committee was established by section 1(5) of the Acquisition of Land (Assessment of Compensation) Act 1919 and was re-constituted by the Acquisition of Land (Reference Committee) Act 1925. Under the Property Values (Arbitration and Appeals) Act

1960, the Reference Committee may appoint one or more Property Arbitrators. Under section 2(2) of the Act of 1960, a Property Arbitrator shall hold office on such terms and conditions as the Reference Committee may from time to time determine with the approval of the Minister for Finance.

In my view, only sections 6(1)(b) and 6(1)(f) are of relevance to the question of whether the Property Arbitrator is a public body for the purposes of the Act. While it appears that the Reference Committee, as a body established by the Act of 1919, is a public body under section 6(1)(b), it seems to me that rather than establishing the role of Property Arbitrator, the Act of 1960 empowers the Reference Committee to appoint an Arbitrator. As such, I consider that section 6(1)(b) does not apply.

On the matter of whether section 6(1)(f) applies, I note that the Reference Committee appoints the Property Arbitrator and determines the terms upon which he or she holds office. I also note that appointments to the position of Property Arbitrator are made by the Courts Service on behalf of the Committee. However, this does not, in my view, mean that the Property Arbitrator is directly or indirectly controlled by the Committee in so far as the functions of the Property Arbitrator are concerned. The Property Arbitrator is clearly intended to act independently of the Committee. In such circumstances I am of the view that section 6(1)(f) does not apply.

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

[       ]

Yours sincerely,

---

Stephen Rafferty  
Senior Investigator