

21 December 2017

Our Ref: 170428

Dear Mr X

I refer to previous correspondence in connection with your application for a review of the decision of the Royal Institute of Architects of Ireland (RIAI) on your FOI request.

As you know, sections 6(1) and 6(2) of the FOI Act 2014 (the 2014 Act) contain details of the bodies that are considered to be public bodies for the purposes of the Act. Essentially, under section 6(1), the body must come within any of the paragraphs (a) to (h). Under section 6(2), certain bodies specified in Schedule 1 Part 1 are public bodies for the purposes of the Act, subject to the provisions in Part 1. However, the RIAI is not specified in Schedule 1 Part 1 and, thus, is not a public body pursuant to section 6(2).

On 24 November 2017, Ms Y, Investigator, informed you of her view that the RIAI does not come within any of the paragraphs (a) to (h) of section 6(1) and that it is not a public body for the purposes of the 2014 Act, regardless of the fact that the RIAI itself believed it to be subject to the provisions of that Act, at least in respect of certain functions.

As Ms Y explained in previous correspondence, the RIAI believed that it came within paragraph (h) as it considered that it was a public body for the purposes of the FOI Acts 1997 & 2003 (the 1997 Act). It argued that it was subject to the 1997 Act pursuant to the provisions of paragraph 1(5)(f) of the First Schedule of that Act.

Paragraph 1(5) of the First Schedule of the 1997 Act provides that certain prescribed bodies are public bodies for the purposes of that Act. It goes on to list, at paragraphs (a) to (g), the types of bodies to which the paragraph applies. The RIAI believed that it was captured by paragraph (f) by virtue of the functions assigned to it under the Building Control Act 2007 (the BC Act).

Under section 3 of the 1997 Act, the Minister for Finance was empowered to make regulations to prescribe bodies for the purpose of paragraph 1(5). Whether or not the RIAI is captured by paragraph (f), the fact remains that the Minister did not prescribe the body for the purposes of paragraph 1(5). As such, the RIAI was not a public body for the purposes of the 1997 Act. It follows, therefore, that it does not come within category (h) of section 6(1) of the 2014 Act.

The RIAI was founded in 1839 as the Institute of the Architects of Ireland and was an unincorporated body. It was subsequently incorporated under the RIAI title in 1909 and is now a company limited by guarantee. As such, I am satisfied that the RIAI does not come within paragraph (a), (d), (e) or (g), and I note that you have not argued that it does. Accordingly, I have considered whether any of paragraphs (b), (c), or (f) apply.

Paragraph (b) captures an entity established by or under any enactment (other than the Companies Act). Paragraph (c) captures any other entity established (other than under the Companies Act) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Companies Act) by a Minister of the Government under

any scheme. In your submission of 7 December 2017, you argued that the BC Act appointed the RIAI as the statutory registration body for the purposes of that Act.

I would point out that neither paragraph (b) nor (c) capture an entity appointed by an enactment. Paragraph (b) captures the establishment of an entity by an enactment, while paragraph (c) captures the establishment or appointment by the Government or a Minister of the Government. In any event, paragraphs (b) and (c) are concerned with the manner in which entities are established, or appointed, and not with the functions they undertake. The RIAI was not established under the BC Act per se, nor was it established or appointed by the Government or a Government Minister. Rather, under the BC Act the RIAI was appointed, as a pre-existing body, to carry out certain statutory functions. In other words, while it was appointed to carry out certain functions, it was not, as an entity, appointed or established by that Act. It is not the functions of an entity that must be captured by paragraphs (b) and (c). Rather, it is the entity itself.

Furthermore, the fact that the BC Act required the RIAI to establish certain Boards does not mean that the RIAI could be said to have been established or appointed by that Act. I am satisfied that the RIAI does not come within paragraphs (b) or (c).

Paragraph (f) provides that an entity is a public body for the purposes of FOI if it is an entity that is directly or indirectly controlled by an entity which falls under sections 6(1)(b), (c), (d) or (e). I note your contention in your most recent correspondence that the RIAI is effectively controlled by the four statutory boards created following the 2007 Act and therefore, under section 6(1)(f), it is a body for the purposes of the 2014 Act. While I am satisfied that the Boards and the Committee that the RIAI was required to establish under the BC Act are not captured by the relevant paragraphs and are not public bodies in their own right, I am also satisfied that the RIAI is not directly or indirectly controlled by those Boards. I am satisfied that the RIAI does not come within paragraph (f).

I note that you also suggested that the provisions of section 6(7) of the 2014 Act be invoked to seek a binding determination on the matter from the Minister. As you know, the provision applies where a dispute arises between this Office and the entity. We referred the matter to the Department of Public Expenditure and Reform to seek such a determination on the ground that there was a dispute between this Office and the RIAI as to whether or not it is a public body for the purposes of the 2014 Act. In response, the Department stated that it has since confirmed with the RIAI that it does not dispute our finding that it is not a public body for the purposes of the Act and as there is no longer a dispute between this Office and the RIAI it does not intend to seek a determination from the Minister.

In conclusion, I find that the RIAI is not a public body for the purposes of the FOI Act as it does not come within any of the paragraphs (a) to (h) of section 6(1). While I appreciate that you will be disappointed with this outcome, in light of this finding this Office is not in a position to conduct a review under section 22 of the Act.

Yours sincerely,

Stephen Rafferty
Senior Investigator