

18 April 2016

Our Reference: 150428

Dear Sir/Madam,

I refer to your application for a review of the decision of the Dublin Returning Officer (the Officer), a position held by [X], to refuse your request for information under the Freedom of Information Act 2014 (the FOI Act) on the ground that the Officer 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, your client sought records from the Officer in relation to the provision of tables/chairs for Dublin count centres in respect of the referendums in May 2015. Generally speaking, the referendum Local Returning Officer is the person who is the Dáil election Returning Officer for a constituency. That person is usually the relevant county/city sheriff or county registrar. The Returning Officer, [X], is also the Dublin County Sheriff, but the request was not made to him in that capacity. I am informed that the legal position relating to the Local Returning Officer in respect of a Referendum is as follows:

[X] was a Local Returning Officer for the Referendums in May 2015 by virtue of section 15(1) of the Referendum Act 1994, insofar as that Act states that "the person who would be the returning officer at a Dáil election in a constituency" shall be the returning officer at a referendum in that constituency. Section 15(2) of the Act provides that the Minister shall appoint a person to be the local returning officer if the person who would be the returning officer at a Dáil election in a constituency is unavailable.

The Dublin County Dáil election Returning Officer is established by Section 30(2) of the Electoral Act, 1992, insofar as that section provides that the returning officer shall be the "appropriate officer" which is set out at section 30(1)(a) of that Act as the relevant County/City Sheriff or County Registrar. Section 30(2)(a)(ii) provides that in any other case, the Minister may appoint someone to be returning officer. The Dublin County Sheriff is appointed by the Government under section 12(3)(a) of the Court Officers Act 1945 (as amended by section 6 of the Court Officers Act 1951).

In my view, only sections 6(1)(b) and 6(1)(c) are of relevance to the question of whether the Referendum Returning Officer is a public body for the purposes of the Act. While it appears that the County Sheriff is a public body for FOI purposes under section 6(1)(b), as he is appointed under section 12(3)(a) of the Court Officers Act 1945 as amended, it is not clear to me that the Referendum Returning Officer is a public body under section 6(1)(b). It seems to me that the County Sheriff holds the role of Referendum Returning Officer in an ex-officio capacity, and as such, the Returning Officer role is a statutory function fulfilled by another entity, rather than an entity established by an enactment. Accordingly, I consider that section 6(1)(b) does not apply.

Similarly, it seems to me that the legislation appoints County Registrars and Sheriffs to act as Returning Officers for the purpose of elections and/or referendums, and these roles do not exist outside of election or referendum periods. Furthermore, no Government or Minister past or present was responsible for the establishment of the role of Returning Officer in this case. Therefore, I consider that section 6(1)(c) does not apply. Accordingly, I find that the Referendum Returning Officer is not a public body for the purposes of the FOI Act and that it was justified in refusing to process your FOI request.

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Yours sincerely,

Stephen Rafferty
Senior Investigator