

Our Reference: 170553

16 April 2018

Dear Ms X

I refer to your correspondence with this Office concerning the request you submitted to SAGE - Support and Advocacy Service (SAGE) under the Freedom of Information Act 2014 (the FOI Act) for records relating to you. As you know, SAGE has argued that it is not a public body for the purposes of the FOI Act. Having considered the matter, I am satisfied that SAGE is not a public body for the purposes of the Act, for the reasons I have set out below.

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.

I am informed that SAGE was established as a subsidiary of the national voluntary organisation Third Age in 2014. A programme had been established in 2006, funded by the HSE and developed under the auspices of the National Advocacy Programme Alliance (NAPA), to act as an advocacy service for older people in nursing homes. NAPA acted as an advisory group to the HSE.

Following an evaluation of the programme in 2011, it was recommended that the service which was being provided by trained volunteer advocates should be developed independently of the HSE. In 2012, Third Age was asked to manage the service following a call for expressions of interest across the sector. The Third Age National Advocacy Programme continued to receive

funding from Atlantic Philanthropies. In 2014 SAGE was established as a subsidiary of Third Age and funding was put on a firmer footing and the HSE and Atlantic Philanthropies agreed a four year funding programme of €500,000 each.

According to its website, funding from Atlantic Philanthropies ended in 2017, and SAGE Advocacy was incorporated in September 2017 and is now registered as a charity with the Charities Regulatory Authority.

For SAGE to be a public body for the purposes of the Act, it must come within one or more of the categories (a) to (h) as described above. I am satisfied that only category (f) is of potential relevance in this case and that none of the other categories apply. Category (f) covers bodies that are directly or indirectly controlled by bodies that fall within one or more of categories (b), (c), (d) or (e). I have therefore considered whether SAGE is directly or indirectly controlled by the HSE.

Having done so, I am satisfied that it is not. While SAGE may well receive the majority of its funding from the HSE, it is accountable to the HSE only in terms of financial governance for the funding received. It is a limited liability company with its own constitution setting out its objects and powers, and is controlled by a board of 12 members, of which 3 are directors (trustees) and none of whom have any connection with the HSE. It is registered as a charity with the Charities Regulatory Authority.

It seems to me that SAGE is a charitable organisation that has agreed to provide a specific service, in accordance with a service arrangement, that serves the joint objectives of SAGE and of the HSE, and is funded accordingly. However, in my view there is nothing to stop SAGE from withdrawing the service and taking an alternative approach in order to achieve its objectives. Indeed, SAGE was chosen to provide the relevant service independent of the HSE. I am satisfied, therefore, that SAGE is not, nor was it intended to be, under the direct or indirect control of the HSE and I find that it does not come with category (f) of section 6(1).

In your submission of 13 December 2017 to this Office, you referred to the fact that SAGE appeared to engage with you in relation to your FOI request as if it was subject to the FOI Act. While this is unfortunate, it does not alter the fact that it must come within the definition of a public body to be considered such.

[]

Yours sincerely,

Stephen Rafferty,
Senior Investigator