

Office of the Information Commissioner

Guidance Note

Freedom of Information Act
2014 Section 28 – Meetings of
the Government

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Introduction

The Information Commissioner has prepared this Guidance Note in relation to section 28 of the Freedom of Information (FOI) Act 2014.

The Note is a short commentary on the interpretation and application of section 28 of the Act by the Commissioner. It is intended to provide a brief summary of the relevant issues relating to this provision.

This Note is intended to provide general guidance only and is not legally binding. The application of the provision in any particular case will always depend on the particular record(s) and the relevant facts and circumstances.

1.0 Section 28: Meeting of the Government - Overview

This Note explains how section 28 of the FOI Act 2014 protects certain records relating to Government meetings, often referred to as Cabinet records.

1.1 Background

1.1.1 Cabinet confidentiality has a constitutional dimension. Article 28.4.3° of the Irish Constitution provides that, with certain specified exceptions as determined by the High Court, the confidentiality of discussions at meetings of the Government shall be respected in all circumstances. Cabinet confidentiality extends to the content and details of discussions at meetings of the Government, but not to the decisions made or to the documentary evidence of those decisions (*Irish Press Publications Ltd and others v. The Minister for Enterprise & Employment and others* [2002] 4 I.R. 110).

1.1.2 The Cabinet Handbook provides details of the arrangements for Government meetings and the conduct of business at those meetings. When considering records related to the Cabinet process, the Handbook may serve as a useful reference. The Commissioner has had regard to the Handbook where relevant in some of his decisions. The Handbook is available on the website of the Department of the Taoiseach.

1.1.3 Section 28 is not a harm-based exemption. Thus, an FOI body does not have to justify a contention that release of a record would lead to particular consequences specified in the exemption provision. There is no 'public interest override' in this exemption.

1.1.4 Section 28 may be regarded as having two main parts, i.e. section 28(1) and section 28(2)

1.2 Section 28 (1)

1.2.1 Section 28(1) provides a discretionary exemption for certain records connected to Cabinet meetings. It applies to certain records submitted **to** the Government, certain records **of** the Government or certain records containing information **for** a member of the Government.

1.2.2 Sections 28(3), 28(4) and 28(5) relate to section 28(1) only; they do not relate to section 28(2). They apply in the following manner:

- Section 28(1) does not apply to records insofar as they contain factual information or to records relating to Government decisions more than five years old (section 28(3)).
- If an FOI body is exercising its discretion to make a decision to release a record to which paragraphs (a) or (b) of subsection (1) applies, it is required (in so far as practicable) to consult certain members of the Government who made the decision to which the record relates (section 28(4)).
- There is a 'neither confirm nor deny' provision for records to which subsection (1) applies (section 28(5)).

1.3 Section 28(2)

1.3.1 Section 28(2) is a mandatory exemption. It applies to certain records relating to discussions **at** a Cabinet meeting. It is concerned with the protection of Cabinet discussions or deliberations (as distinct from Government decisions).

1.3.2 As section 28(2) is a mandatory exemption which is not subject to the exclusions contained in section 28(3), it may be advisable to consider the application of section 28(2) before considering section 28(1). If section 28(2) applies to a record or part of a record, then it would no longer be necessary to consider the application of section 28(1) (and section 28(3)(4) or (5)) in relation to that record or that part of the record.

1.4 FOI History and Warning regarding Commissioner's Decisions

1.4.1 It should be noted that a reference to the Commissioner in the context of these decisions may include an officer to whom the function of making the decision had been delegated by the Commissioner.

1.4.2 Section 28 is broadly similar to the equivalent provision (section 19) of the 1997 Act **before** it was amended in 2003. However, it is **substantially** different from the equivalent provision post amendment in 2003.

1.4.3 This guidance note makes reference to previous decisions of the Commissioner where the applicability of section 19 was considered under the FOI Act 1997 or under the FOI Act 1997 as amended in so far as they remain relevant. To simplify matters for the reader, all references to section 19 in those decisions have been replaced by the equivalent section 28 provision of the FOI Act 2014 in this Guidance Note. Where this occurs, such references are denoted by an asterisk (*).

1.4.4 While references in this Note are made to previous decisions of the Commissioner in so far as they remain relevant, it is possible that other parts of these decisions no longer represent the current position – this could be due to factors such as a change in the legislation or decisions of the Courts. Caution should be exercised in referring to any decision of the Commissioner relating to this provision that was made under the FOI Act 1997, or under the FOI Acts 1997 & 2003, to ensure that all parts of the decision being referred to remain relevant (including such decisions as are published on the OIC website).

2.0 Section 28(1) – Records to the Government, of the Government or for a Member of the Government

What the Act states:

28. (1) A head may refuse to grant an FOI request if the record concerned—

(a) has been, or is proposed to be, submitted to the Government for its consideration by a Minister of the Government or the Attorney General and was created for that purpose,

(b) is a record of the Government other than a record by which a decision of the Government is published to the general public by or on behalf of the Government, or

(c) contains information (including advice) for a member of the Government, the Attorney General, a Minister of State, the Secretary General to the Government for use by him or her solely for the purpose of the transaction of any business of the Government at a meeting of the Government.

2.0.1 Section 28(1) provides a discretionary exemption for certain records submitted **to** the Government, certain records **of** the Government or certain records containing information **for** a member of the Government.

2.0.2 Section 28(1) must be read subject to the provisions of section 28(3) which provides that section 28(1) does not apply to a record in certain circumstances. **Thus, where an FOI body is relying on section 28(1) for the refusal of a record, it is very important to go on to consider whether section 28(3) applies in relation the record concerned. See further below.**

2.0.3 As stated above, it may be advisable to consider the application of section 28(2) before considering section 28(1) in certain cases.

2.1 Section 28(1)(a) – Records to the Government

2.1.1 For section 28(1)(a) to apply, three requirements must be met. In order to be exempt from disclosure under this provision the record must fulfil the following three criteria, that the record –

- has been (or is/ was proposed to be) **submitted to the Government** for its consideration **and**
- has been (or is/ was proposed to be) submitted **by a Minister of the Government or the Attorney General and**
- was **created for the purpose of** submission to the Government for its consideration.

2.1.2 Section 28(1)(a) is concerned with the status of a record, i.e. its submission to the Government by a Minister or the Attorney-General for consideration and its creation for that purpose. This contrasts with section 28(1)(c) – see below – which is

more concerned with the contents and use of records. Records covered by section 28(1)(a) include formal Memoranda for Government and Aides Memoire.

Example : In Case 040097 a record referred to the contents of two Memoranda to Government. Parts of the record quoted from the Memoranda and other parts paraphrased and summarised the contents of them. However, the Commissioner found that section 28(1)(a)* was not concerned with the contents of a record unlike, for example, section 28(2)(a)*. He found that the record had not been submitted to the Government by a Minister or anyone else and was not created for that purpose. Section 28(1)(a) is concerned with the nature of the particular record, the circumstances of its creation and its subsequent use. The Commissioner found that the fact that the record quoted or paraphrased the contents of records that may be exempt under section 28(1)(a)* was irrelevant in considering whether section 28(1)(a)* applied.

Submitted to the Government

2.1.3 Has the record been, or is it or was it proposed to be, submitted to the Government for its consideration? A record should be considered carefully in this context. It is important to bear in mind that where a record does not meet this requirement, it may be exempt under another provision, e.g. section 28(1)(c).

Example # 1: The Commissioner found that a briefing note for a Minister on a Bill in the context of a Government meeting was not submitted to the Government, but rather to the Minister to enable him prepare for the Government meeting. (Case 98058).

Example # 2: The Commissioner found that a record which was addressed to the Minister for Justice, Equality and Law Reform and to an Assistant Secretary of the Department seeking approval to submit a memorandum to Government was submitted to the Minister as opposed to the Government (Case 98058).

Example # 3: The Commissioner found that a document headed Submission to the Government which was addressed to the Taoiseach certifying the urgency of having a Bill placed on the agenda of a particular Government meeting was not submitted to the Government but to the Taoiseach (Case 98058).

(Note, however, that some of these records were found to fall within section 28(1)(c)* - see below.)

2.1.4 Where records were prepared for submission to the Government, but were not actually submitted to Government, they are still covered by the exemption at section 28(1)(a).

- The High Court case of *The Minister for Education & Science v The Information Commissioner* [2009] 1 I.R. 588 concerned a draft memorandum which was prepared by the Department for the purpose of discussing at Cabinet the contribution of religious congregations to the residential redress scheme. However, the draft memorandum was not in fact submitted to the Cabinet. McGovern J held that the memorandum was, at the time of its preparation, prepared and created for the purpose of submitting it to Government and, in the circumstances, was captured by section 19(1)(a) of

the FOI Act 1997 (which was the equivalent of section 28(1)(a) of the 2014 Act). He held that if a record came within the ambit of section 19, the FOI body was required to refuse a request. McGovern J expressed the view that if a document containing the Minister's advice to Government on an issue such as the issue in that case could be disclosed merely because it was not ultimately submitted to Cabinet, it would totally undermine the position of the Minister concerned and would have serious implications for Government.

Ministerial or Departmental Observations on Proposal to Government

2.1.5 The Commissioner has accepted that submissions from Ministers and/ or Departments made in response to another Department's invitation for observations on a draft Memorandum for Government are exempt under section 28(1)(a)*. In doing so, the Commissioner has had regard to the Cabinet Handbook which contains instructions for the preparation and submission of memoranda for Government.

Example: In Case 99450 the records held by the Department of Justice, Equality and Law Reform included draft and final observations from the Department of Finance on a draft memorandum for Government. Having referred to the Cabinet Handbook, the Commissioner concluded that the observations supplied by other Ministers or Departments form part of the material in any memorandum for Government. He was satisfied that the purpose of the draft and final observations was to have the draft memorandum re-drafted to reflect the views of the Minister for Finance (or in the absence of his approval, the views of his Department). He was satisfied that section 28(1)(a)* applied to the records in that they constituted a draft of part of the material contained in the memorandum for Government which was submitted to the Government for its consideration by a Minister of the Government and was created for that purpose. However, he also made it clear that not every comment from one Department to another is likely to meet the provisions of section 28(1)(a)*.

Submitted by a Minister or the Attorney General

2.1.6 Section 28(1)(a) can only apply to records submitted by a Minister of the Government or the Attorney General. In other words, the means by which the record is submitted to Government is relevant.

Example: In Case 98127 the record was prepared for a Cabinet Committee by a Strategy Group. The Commissioner found that the exemption in section 28(1)(a)* would have applied had the record been submitted to Government by a Minister, but this did not, in fact, occur. He explained that while this might seem a rather technical point, it is one which he could not ignore, given the clear wording of section 28(1)(a)*.

The Purpose for which the Record was Created

2.1.7 Was the record created for the purpose of submission to the Government for its consideration? A number of factors may be relevant in determining the purpose for which a record was created, including, for example, the time the record was created and circumstances relating to its creation.

Example: In Case 020277 the Commissioner noted that an Appendix to a submission to a Cabinet Sub-Committee was created before the date on which a meeting of the Committee had asked for a report. He also noted that the report to the Cabinet Committee stated that the Appendix was a paper which a Legal Issues Group asked a particular company to prepare. The Commissioner found that the purpose of the creation of the record was to allow for the Legal Issues Group to obtain a greater understanding of the issues concerned, as opposed to having been created for the purpose of its submission to the Government for their consideration by a Minister of the Government or the Attorney General.

2.1.8 Where records are copies of, or are very similar to, records which were prepared for a purpose other than submission to the Government, they may not be exempt under section 28(1)(a).

Example: In Case 030622 the Commissioner found that an appendix that was circulated with a Memorandum for Government was almost identical to a record which had previously been prepared apparently for the purpose of a presentation to the Minister. The Commissioner was not satisfied that the records were initially created for the purpose of submission to the Government and found that they were not exempt.

2.1.9 As stated above, where it has been shown that a record falls within section 28(1)(a), it is important to go on to consider whether section 28(3) applies. See further below.

2.2 Section 28(1)(b) - Records of the Government

2.2.1 Section 28(1)(b) exempts a record which is

- a record of the Government but
- is not a record by which a decision of the Government is published to the general public by or on behalf of the Government.

2.2.2 Records exempt under this provision include notes of a Government decision (see Case 120292).

2.2.3 The Commissioner does not accept that every record prepared by the Cabinet Secretariat is a Government record.

Example: In Case 98040 the Commissioner considered a list of provisional dates for Cabinet Meetings. He found that the record was prepared to allow meetings to be pencilled in in advance and was sent to the Taoiseach so that it could be checked against his diary. He found that disclosure of the date upon which a meeting of the Government is, or may be, held did not amount to a disclosure of a Government record and he decided that the record could not be withheld under section 28(1)(b)*.

2.2.4 As stated above, where it has been shown that a record falls within section 28(1)(b), it is important to go on to consider whether section 28(3) applies. See further below.

2.3 Section 28(1)(c) - For a Member of the Government or Other Specified Person

2.3.1 In order for this exemption to apply :

- the record must contain information (including advice) for a member of the Government, the Attorney General, a Minister of State or the Secretary General to the Government and
- this information must be for use by that person **solely** for the purpose of the transaction of any business of the Government at a meeting of the Government.

2.3.2 Section 28(1)(c) is concerned with the contents and use of the record. The category of records covered by this exemption would include departmental briefing notes for individual ministers attending a Government meeting and notes prepared for the Secretary to the Government for the purposes of such a meeting and the agenda of such a meeting. The sole reason for the creation of such records is to assist the Government in the conduct of one or more of its meetings and the record ceases to have a purposeful existence after the conclusion of the meeting (see Cases 98127 and 020277).

Example # 1: In Case 98040 the Commissioner found that an Agenda for a Cabinet meeting was clearly prepared solely for the purpose of the transaction of the business of the Government at a meeting of the Government. He found that it was clearly prepared to assist the Government in the conduct of the meeting.

In the same case, however, the Commissioner found that there was no suggestion that a list of provisional dates for Cabinet meetings was prepared for a member of Government (or other specified person) for use solely for the purpose of the transaction of business of the Government **at a meeting of the Government**. He found that the only way it could fall within Section 28(1)(c)* would be if it were to be put before Cabinet for information, approval or decision.

Example # 2: In Case 98058 a record, which was prepared for the Law Society and contained legal advice the Society received on the Solicitors Amendment Bill, was submitted to the Assistant Secretary in charge of the relevant division in the Department of Justice, Equality & Law Reform. The Commissioner found that it was not prepared for use by the Minister solely for the transaction of business of the Government at a meeting of the Government, but rather to influence the Department in its preparation of the legislation.

2.3.3 In certain cases it may be clear that a record falls within section 28(1)(c). In other cases, it may be less clear cut and such cases will require careful consideration. For example, the information in a document submitted to the Cabinet or a Cabinet Committee will in many cases be intended for use only at the meetings of the Cabinet or the Cabinet Committee; however, that will not always be the case. A record may have another or different purpose.

Example # 1: In Case 98127 a Background Paper on Unemployment was prepared for the information of a Cabinet Sub-Committee. The Commissioner found that there was nothing either in its contents or in the circumstances of its

preparation to suggest that it was intended for use solely at meetings of the Sub-Committee. He found that, as an information paper, its purpose was to inform the members of the Sub-Committee for whatever purposes they thought fit and that its use could not be confined to the transacting of business of the Government at a meeting of the Government. He found that the nature of the process described by the Department which involved future discussions and negotiations with the social partners, made it unlikely that the members of the Cabinet Sub-Committee would not make use of the information in subsequent discussions and negotiations.

Example # 2: In Case 98058 the Commissioner found that a memorandum, the purpose of which was to get Ministerial approval of the circulation of a memorandum to Government, did not meet the sole purpose requirement of section 28(1)(c)*.

2.3.4 Section 19(1)(c) of the FOI Act 1997 originally included the sole purpose requirement similar to section 28 of the 2014 Act. Section 19 of the 1997 Act was amended by the 2003 FOI Amendment Act and the sole purpose requirement was changed to '*primarily* for the purpose of the transaction of any business of the Government'. Therefore, caution should be taken in considering any decision of the Commissioner made pursuant to the 1997 Act as amended.

2.3.5 As stated above, where it has been shown that a record falls within section 28(1)(c), it is important to go on to consider whether section 28(3) applies. See further below.

NOTE: The 1997 Act, both in its original form and as amended, included the Assistant Secretary to the Government as a person specified in subsection (1)(c). However, this has been removed in the 2014 Act.

3.0 Section 28(2) - Statements Made at a Meeting of the Government

What the Act states:

- 28(2)** A head shall refuse to grant an FOI request if the record concerned—
- (a) contains the whole or part of a statement made at a meeting of the Government or information that reveals, or from which may be inferred, the substance of the whole or part of such a statement, and
 - (b) is not a record—
 - (i) referred to in *paragraph (a) or (c) of subsection (1)*, or
 - (ii) by which a decision of the Government is published to the general public by or on behalf of the Government.

3.0.1 Section 28(2) is a mandatory exemption. It is concerned with the protection of Cabinet discussions or deliberations at Government meetings, as distinct from Government decisions. As stated above (paragraph 1.1), Article 28.4.3° of the Constitution provides for the confidentiality of discussions at meetings of the Government.

Example: In Case 030361 the Commissioner found that the full text of an informal Government decision which was included in certain records referred to a proposal in a Government Memorandum, which formed the basis for a discussion of a Cabinet meeting. He accepted that the full text of the Government decision in these records contained information from which the substance of a statement made at a Cabinet meeting might be inferred, and he found that section 28(2)(a)* applied. However, he found that other records included only a brief reference to the Government decision that was not derived from the Government Memorandum and did not reveal any information concerning the actual Cabinet discussion and he was not satisfied that section 28(2)* applied.

3.0.2 An FOI body relying on section 28(2) for its refusal to grant access to a record must show that the record concerned contains a statement made at a Government meeting or contains information which reveals the substance of such a statement or from which such a statement may be inferred.

Example # 1: In Case 030714 the Department of Finance argued that a deletion which it had made to a record related to a past discussion at cabinet. However, the Commissioner found that the content of the deleted text did not support such an argument.

Example # 2: In Case 100171 the Commissioner found that the records at issue were created in advance of the Cabinet meetings to which they pertained. He found that they reflected the positions that were taken by the Ministers prior to the relevant Cabinet meetings, but they did not record the actual discussions that subsequently took place, nor for the most part did they contain information that revealed, or from which might be inferred, the substance of the whole or part of any statement that was made at the actual meetings. With certain limited exceptions, he found that section 28(2)* did not apply to the records concerned.

3.0.3 It is important also to consider the provisions at section 28(2)(b). Records falling within sub-paragraphs (i) or (ii) of section 28(2)(b) are excluded from the exemption at section 28(2); thus, the exemption at section 28(2) does not apply to such records.

3.0.4 Unlike section 28(1), the protection provided by section 28(2) is of indefinite duration. Also, the exclusion for factual information (at section 28(3)(a)) does not apply.

4.0 Section 28(3) - Situations Where Section 28(1) Does Not Apply

What the Act States:

28 (3) Subject to this Act, *subsection (1)* does not apply to a record referred to in that subsection—

- (a) if and in so far as it contains factual information relating to a decision of the Government that has been published to the general public, or
- (b) if the record relates to a decision of the Government that was made more than 5 years before the receipt by the head concerned of the FOI request concerned.

4.0.1 This provision operates to exclude certain information from being exempt under section 28(1).

4.1 Section 28(3)(a) – Factual Information relating to a Published Decision

4.1.1 Information that would otherwise be exempt **is not exempt** where the information concerned

- is factual information **and**
- relates to a decision of the Government that has been published to the general public.

4.1.2 Thus, information which meets both of these criteria may not be refused under section 28(1). For example, information does not fall within section 28(3) solely by reason of being in public domain. Information falls within this exclusion only where both these criteria are met.

Factual Information

4.1.3 Where section 28(1) applies to a record, the FOI body should consider the contents of the record carefully with a view to identifying any factual information contained in it. The Cabinet Handbook (2006) states that every Memorandum for Government should present factual information so that it can be easily extracted for Freedom of Information purposes.

4.1.4 Records may contain a mixture of information, including for example, fact, opinion, interpretation, proposal and recommendation. The Commissioner will, where necessary, carry out an analysis of the record concerned to establish the extent of any factual information. The Commissioner interprets the words "*if and in so far as it [the record] contains factual information*" as meaning that it was envisaged that exempt material could be withheld from a document without also withholding factual information.

4.1.5 The term 'factual information' is defined in section 2 of the Act as including information of a statistical, financial, econometric or empirical nature, together with any analysis thereof.

4.1.6 The Commissioner takes the view that the use of the word "includes" in the definition of factual information means that while information of a statistical etc. nature should be regarded as factual, regard must also be had to the ordinary meaning of the term when considering its scope. The Commissioner considers that factual information would generally include, for example, material presented to provide a factual background to the central topic in a record. He also takes the view that factual information is distinguishable from information in the form of proposal, opinion or recommendation (see Cases 030414 & 030714).

Relating to a decision of the Government that has been published

4.1.7 In considering whether a decision of the Government has been published a number of factors may be relevant. Has there been an announcement of the decision of the Government in a press release? Has the Government's actions or the actions of one of its Ministers had the effect of making the decision known generally? Factors taken into account by the Commissioner in this regard have included a speech given by the relevant Minister and a press release which had the effect of publishing the substance of the decision to the general public.

Example # 1: In Case 98058 the Commissioner found that a Press Release approved by the Government and the actions of the Minister in publishing the Solicitors Amendment Bill and introducing it to the Seanad had the effect of making the decision generally known to the public or publishing that decision to the general public.

Example # 2: In Case 98060 the records related to a European Convention and Protocol. The Commissioner found that, although no specific publication of the decision was brought to his attention, the fact that the Minister signed the Convention and Protocol made the general public aware that he had been authorised by the Government to do so. Therefore the FOI body was not entitled to refuse to release the record under section 28(1)*.

4.2 Section 28(3)(b) – Government Decision more than 5 Years Previously

4.2.1 The effect of this provision is that the exemption at section 28(1) does not apply to records relating to a decision of the Government that was made more than five years before receipt of the FOI request. Thus, such records may not be refused under section 28(1).

Example: In Case 100171 the Commissioner commented that Memoranda for Government and briefing notes were the type of records that were intended by the Oireachtas to fall for release under section 28(3)(b)* at the expiration of the [then] 10-year** period of protection for records relating to meetings of Government.

(**Under the 1997 Act, as amended in 2003, the period of exemption was ten years.)

5.0 Section 28(4) - Consultations prior to Release

What the Act States:

28 (4) A decision to grant an FOI request in respect of a record to which *paragraph (a) or (b) of subsection (1)* applies shall not be made unless, in so far as it is practicable to do so, the head concerned has, prior to the making of the decision, consulted in relation to the request with—

(a) the leader of each political party to which belonged a member of the Government that made any decision to which the record relates, and

(b) any member of the Government aforesaid who was not a member of a political party.

5.0.1 Section 28(1) is a discretionary provision. Where an FOI body is contemplating exercising its discretion to make a decision to release a record which falls within paragraph (a) or (b) of section 28(1), section 28(4) must be considered. This requires that, insofar as it is practicable to do so and prior to making its decision, the FOI body consults:

- the leader of each political party to which a member of the Government that made the decision to which the record related belonged and
- any member of that Government who was not a member of a political party.

6.0 Section 28(5) Neither Confirm nor Deny

What the Act states :

28(5) Where an FOI request relates to a record to which *subsection (1)* applies, or would, if the record existed, apply, and the head concerned is satisfied that the disclosure of the existence or non-existence of the record would be contrary to the public interest, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.

6.0.1 This is called a 'neither confirm nor deny' provision. It may be relied on where section 28(1) applies to the record or would apply to the record if the record existed. It is appropriate where it is the disclosure of the existence or non-existence of the record – as opposed to disclosure of the contents of the record – that would be contrary to the public interest. Where this is the case, subsection (5) provides for the refusal of a request for access to such a record and for the refusal to disclose whether or not such a record exists.

7.0 Section 28(6) - Definitions

What the Act states:

28 (6) In this section—

“decision of the Government” includes the noting or approving by the Government of a record submitted to them;

“record” includes a preliminary or other draft of the whole or part of the material contained in the record;

“Government” includes a committee of the Government, that is to say, a committee appointed by the Government whose membership consists of—

(a) members of the Government, or

(b) one or more members of the Government together with either or both of the following:

(i) one or more Ministers of State;

(ii) the Attorney General.

7.1 ‘Record’

In Case 98058, the records included various drafts of a memoranda for the Government. The Commissioner accepted that the final version of the memorandum had been submitted by the Minister to the Government for its consideration and that it was created for that purpose. The draft memoranda were included as memoranda for the purpose of the Commissioner’s decision under section 28(1)(a)* of the Act.

7.2 ‘Government’

In Case 98127 the Commissioner accepted that a Cabinet Committee on Social Inclusion whose membership comprised the Taoiseach, the Tánaiste, various Ministers and Ministers of State and the Attorney General complied with this definition of “Government”.