

Introduction

These *Questions for FOI Bodies* are a list of questions which may be relevant when the Information Commissioner is reviewing a decision made by an FOI body under the Freedom of Information (FOI) Act 2014.

The questions are primarily intended for use by the Office of the Information Commissioner (OIC) when seeking submissions from an FOI body in the course of a review of the body's decision.

The questions are not exhaustive; further or other questions may be asked. Equally, every question relating to a particular provision which is listed may not necessarily be relevant in a review of a decision pursuant to that provision. In some cases, for example, the information may be apparent from the records, from the decisions of the FOI body or from other information provided to the OIC.

The Information Commissioner has published a set of Guidance Notes on various provisions of the FOI Act 2014. Where an FOI body is relying on a particular provision of the FOI Act for its decision and where a Guidance Note has been published on that provision, the FOI body should have regard to that Guidance Note in the preparation of its submission to the Commissioner and in its replies to any questions asked by the OIC. In doing so, the FOI body should ensure that the Guidance Note concerned is the current version available on the website of the OIC at the time.

The questions are intended to provide general guidance only and are not legally binding.

Request for Access to a Record - Burden of Proof

Section 22(12) of the FOI Act 2014 provides that, in a review by the Commissioner of a decision of an FOI body, a decision to refuse to grant an FOI request (for access to a record under section 12 of the Act) shall be presumed not to have been justified unless the FOI body shows to the satisfaction of the Commissioner that the decision was justified. Thus, the onus rests with the FOI body to show to the satisfaction of the Commissioner that such a decision to refuse to grant an FOI request for access to a record was justified. It is important that FOI bodies bear this in mind where their decision was to refuse access to records.

The particular requirements to be met or the test to be applied for the application of any exemption may be found in the language of the exemption itself. Where any of the questions set out in this document relate to a decision of an FOI body to refuse to grant an FOI request for access to a record and the question(s) ask an FOI body to explain something or show something to the Commissioner, such matters should be explained or shown "to the satisfaction of the Commissioner" (section 22(12) of the FOI Act refers).

NOTE: On 25 September 2020 the Supreme Court delivered its judgments in the cases of *The Minister for Communications, Energy and Natural Resources v The Information Commissioner* and *University College Cork v The Information Commissioner*. These judgments have implications for the Commissioner's reviews of decisions by FOI bodies and are being carefully considered by the Commissioner. The guidance provided here is subject to the implications of these judgments and users of this guidance should bear this in mind.