

**Review of the Operation of the Freedom of Information Act  
since the  
Amendment of the Act and the Introduction of Fees  
Methodology**

**Information Required**

While the list is not exhaustive the type of information required included:

- Have the number of requests fallen off
- Are some public bodies affected more than others
- What categories of requester has been affected
- Are search and retrieval fees being charged more consistently and at a higher level
- Are more requests under particular sections (e.g. ss 19,20,24) being refused and not being appealed
- Use of s.20 certificates
- Are fees, in conjunction with non-reply being used as a filter
- What is the affect on the personal/non-personal/mixed balance of requests
- Has the FOI function been downgraded

Some of the answers to these questions came from the investigation while others were sourced from OIC internal databases.

**Data Needed**

To answer these questions the following data requirements were identified for each month (where appropriate) from 1 January 2002 to 31 December 2003, and, in some cases to 31 March 2004.

Requester

- Date of Request
- Requester Category Totals
- Number of requests
- Type of request
- Date of Internal Review Appeal
- Number of internal review appeals
- Type of internal review appeal

Outcome of Requests/Appeals

- Number of requests granted/refused
  - Exemptions claimed for requests not granted
- Number of internal review appeals refused
  - Exemptions claimed for appeals not granted

Public Body

- Decision letter not issued
- Internal review decision not issued
- Search and retrieval fees charged
  - Amount of fees/No. of occurrences

Appropriate use of class exemptions, specifically

sections 19, 20 and 24

Quality of decisions

Use of section 20 certificates

Resource/Status of FOI Units

#### OIC

Date of Application to OIC

Number of applications for review to OIC

Type of application

Number of withdrawn applications as a result of fee

Number of amended applications to OIC as a result of fee (from mixed to personal)

#### Literature Review

Overseas studies on impact of similar changes

## Sources of Information

| <u>Requester</u>   | <u>Source</u>               |
|--|-----------------------------|
| Date of Request  | Public Body                 |
| Requester Category Totals  | Public Body (Monthly)       |
| Number of requests   | Public Body (Monthly)       |
| Type of request  | Public Body (Monthly)       |
| Date of Internal Review Appeal   | Public Body                 |
| Number of internal review appeals  | Public Body (Monthly)       |
| Type of internal review appeal   | Investigation               |
| <u>Outcome of Requests/Appeals</u>   |                             |
| Number of requests refused   | Public Body (Monthly)       |
| Exemptions claimed for requests refused                                    | Investigation               |
| Number of requests part-granted  | Public Body (Monthly)       |
| Exemptions for requests part-granted                                       | Investigation               |
| Number of internal review appeals not granted                              | Investigation               |
| Exemptions claimed for appeals not granted                                 | Investigation               |
| <u>Public Body</u>   |                             |
| Decision letter not issued   | Public Body                 |
| Internal review decision not issued  | Investigation               |
| Search and retrieval fees charged  | Public Body                 |
| Amount of fees/No. of occurrences  | Investigation               |
| Appropriate use of class exemptions,<br>specifically:                      | Investigation               |
| sections 19, 20 and 24   |                             |
| Quality of decisions   | Investigation               |
| Use of section 20 certificates   | Investigation/Public Bodies |
| Resource/Status of FOI Units   | Interview with FOI Unit     |
| <u>OIC</u>   |                             |
| Number of applications for review to OIC                                   | OIC Database                |
| Type of application  | OIC Database                |
| Number of withdrawn applications due to fee                                | OIC Database                |
| Number of amended applications due to fee<br>i.e. (from mixed to personal) | OIC Database                |

## Literature Review

## **Public Bodies**

### General Quantitative Data

On 12 December, 2003 the following bodies were written to, having been selected as representing a broad enough range to provide a reasonably representative set of quantitative data to track what happened to requests between January 2002 and 31 December 2003/31 March 2003:

All Government Departments, Office of Public Works, Revenue Commissioners, Civil Service and Local Appointments Commission, Offices of Houses of the Oireachtas, Ombudsman, RTE, Health and Safety Authority, Mater Misericordiae University Hospital, Adelaide and Meath Hospital, Southern Health Board, Western Health Board, East Coast Area Health Board, Cork County Council, Dublin City Council, Kerry County Council, Mayo County Council, Fingal County Council, University College Dublin, National University of Ireland Maynooth, Dublin Institute of Technology, Galway/Mayo Institute of Technology and the Athlone Institute of Technology.

The letter requesting these details read as follows:

*Dear*

*The Information Commissioner is empowered under section 36 of the Freedom of Information Act to carry out an investigation into "the practices and procedures adopted by public bodies generally or any particular public body or public bodies for the purposes of compliance with the provisions of the Act generally ..... and for the purposes of enabling persons to exercise the rights conferred by this Act .... and to prepare a report".*

*The Commissioner has decided to initiate such an investigation in relation to a number of public bodies including [name of body]. As a first step, she intends to collate statistics relating to FOI requests received by public bodies, broken down by month, covering the period 1 January 2002 to 31 December 2003. I do not believe that this request will have significant resource implications for [name of body] as it requires only a disaggregation of the statistics which you currently provide on an annual basis. An Investigator from this Office will contact your FOI Liaison Officer in this regard in the very near future.*

*In addition, it is the Commissioner's intention to examine in some detail the procedures and practices for dealing with FOI requests in a sample of public bodies. If it is decided to include your [public body] in the sample I will write to you again to explain the scope of the investigation.*

*The Commissioner intends to publish the investigation report sometime in mid-2004 when it will be presented to the Oireachtas, the Minister for Finance and the public bodies concerned in accordance with section 36(5) of the FOI Act. She would be obliged to have your [public body's] full co-operation in the matter.*

*Yours sincerely,*

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*Pat Whelan*

*Director General*

### Qualitative Data

A smaller sample was selected to provide the more qualitative data required by way of additional information and to select a stratified random sample of cases for investigation:

Department of Finance, Department of Taoiseach, Department of Foreign Affairs, Department of Justice, Equality and Law Reform, Department of Social and Family Affairs, Department of Enterprise, Trade and Employment, Department of Health and Children (excluding child care records), Department of Communications, Marine and Natural Resources, Health and Safety Authority, Mater Misericordiae University Hospital, Adelaide and Meath Hospital, Southern Health Board, East Coast Area Health Board, Dublin City Council, Mayo County Council, University College Dublin and Athlone Institute of Technology.

## **Sample Used**

A simple random sample was judged insufficient as there were a wide range of variables that we wished to identify in the investigation. It is possible, for example, that a random sample would not have produced any journalist or business requests. As such a stratified random sample was viewed as the best option.

The key identifiers for representation in this type of a sample should be:

Date of Request/Appeal (before/after April/June),  
Type of Request (personal, non-personal, mixed),  
Type of Requester.

The following table illustrates how this worked in practice:

**Department of Enterprise, Trade and Employment**

In 2002 this Department received 205 FOI requests.

Request Types

Personal (6%)    Non-personal (91%)    Mixed (3%)

A sample size of 10% would mean that the sample should comprise the following request types: 1 personal, 19 non-personal and 1 mixed.

Requester Types

Using the same approach, the sample for personal requests comprised the appropriate percentage of requester types (e.g. journalists, business, etc.)

The cases chosen for the sample were picked at random from a table of random sample numbers.

**Interviews with FOI Officers**

Structured interviews with directly comparable answers were used.