

**An Investigation into the operation of  
Section 10(1)(a) of the Freedom of Information  
(FOI) Acts, 1997 & 2003.**

An Investigation by the Information Commissioner  
into the manner in which public bodies have used  
Section 10(1)(a) of the Freedom of Information Acts, 1997 & 2003,  
to refuse FOI requests that involve searches for records.

A report in accordance with section 36(3) of the FOI Act, 1997

## **Foreword**

This is a report of an investigation which I carried out in accordance with section 36 of the Freedom of Information Acts, 1997 and 2003 (the Act) into the practices and procedures adopted by public bodies for the purposes of compliance with the provisions of that Act, and of enabling persons to exercise the rights conferred on them by the Act.

In particular, the report focuses on the manner in which public bodies have used section 10(1)(a) of the Act to refuse FOI requests that involve searches for records.

In accordance with section 36(5) of the Act, I am furnishing a copy of this report to the Minister for Finance and to each public body. A copy is also appended to my Annual report 2007, which, in accordance with normal practice, will be laid before each House of the Oireachtas.

Emily O'Reilly  
Information Commissioner  
February 2007

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## **Chapter One - Background and Summary of Recommendations**

## **1. Background and Summary of Recommendations**

### **1.1. - Background**

Since my Office was established in 1998, my predecessor and I have reviewed a number of cases where public bodies refused requests on the grounds that section 10(1)(a) of the FOI Act applied. Section 10(1)(a) provides that a head of a public body may refuse to grant a request for a record if

*"the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken".*

My approach to reviews of decisions taken to refuse requests under this provision has been to decide whether or not the steps taken by public bodies to locate the requested records have been reasonable. This approach has been supported by the courts. In the High Court case of *Matthew Ryan and Kathleen Ryan and the Information Commissioner (2002 No. 18 M.C.A.)* (which is available on this Office's website at [www.oic.ie](http://www.oic.ie)), Mr Justice Quirke said that the then Commissioner's role in such a case was *"... to review the decision of the Department and in doing so to have regard to the evidence which was available to the decision-maker and to the reasoning used by the decision-maker in arriving or failing to arrive at a decision."* Mr Justice Quirke said he accepted that the then Commissioner's role in relation to such a review involving searches for records did not require him to search for records.

Accordingly, when reviewing cases where a public body relies on section 10(1)(a) on the grounds that the requested records cannot be found or do not exist, my staff thoroughly assess how the public body searched for the records at issue, in the light of such matters as the records management practices that should pertain to those records and the steps taken to ensure that the records were not misfiled, before forming a view on the public body's contention that its searches have been reasonable. In a review where a public body has refused a record on the basis that it does not exist, my staff question the body's rationale for its decision before concluding whether

or not this is a reasonable position for the public body to have taken.

However, such reviews are only conducted upon application to my Office. In 2005, applications accepted by my Office amounted to only 2% of all FOI requests dealt with by public bodies in that year. It follows that the majority of cases in which a public body relied on section 10(1)(a) are not appealed to my Office and, thus, are not subject to a review.

Section 36(1) of the FOI Act requires me to keep the operation of the FOI Act under review. I may, subject to section 36(2) of the Act, carry out an investigation at any time 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, or with any particular provision of the Act.

Accordingly, I decided to review the practices and procedures employed by a representative sample of public bodies who had relied on section 10(1)(a) in decisions made in 2005, to ascertain whether they were justified in applying this provision to a selection of cases where the requester did not apply to my Office for a review of the body's decision. I felt that this would give me a valuable insight into issues such as whether or not those bodies were conducting searches for requested records, whether or not they were justified in saying the records did not exist, or whether or not they were notifying the requester of their rights of appeal.

In Chapter Two I set out the basis on which I selected 12 bodies for detailed scrutiny, and in Chapter Three I set out the findings of my investigation. Chapter Four sets out my ensuing recommendations which I feel should be of use, not only to those bodies whose procedures I examined, but to all bodies subject to the FOI Act.

## 1.2. - Summary of Recommendations

My recommendations can be summarised as follows:

- Every public body should draw up and implement a comprehensive records management

policy as a priority. Public bodies should ensure that their records management policies incorporate archiving of records. A verified listing should be kept of all archived records, and search mechanisms of the archives should be complete and reliable. Listings of records destroyed in accordance with a public body's records management policy should be retained indefinitely

- There should be consistency in searches for records by public bodies. A checklist should be used for this purpose. Templates of how/where searches are to be conducted should be prepared and made available to all staff, with steps taken to ensure that the procedures in the templates are adhered to. Details of searches conducted should be noted and retained on the FOI decision making file.
- Decision letters should always set out the requester's rights of review/appeal. Decision letters should always include detailed information relating to the nature of the searches carried out and of the locations searched.

Finally, I would like to thank those members of my staff who contributed to this report: Sean Garvey, Senior Investigator, Anne Moran and Des O'Neill, Investigators, as well as members of the OIC Support Unit. I would also like to thank the Liaison Officers of the bodies whose practices were investigated for the courtesy and assistance they gave to my staff when conducting their assessment.

## **Chapter Two - Methodology**

## **2. Methodology**

As set out in the previous chapter, my investigation set out to examine the extent to which a sample of public bodies conducted and documented their searches before relying on section 10(1)(a) of the FOI Act in a decision on a request, and the extent to which those bodies conducted and documented further searches before again deciding to rely on section 10(1)(a) in the internal review of such a decision.

In the first stage of the investigation, I sought and collated statistics pertaining to the reliance on section 10(1)(a) by a number of public bodies, namely those bodies listed in Tables 6-11 of Chapter 5 of my Annual Report for 2005 (a listing of these bodies is at Appendix II of this report). I excluded from my survey those bodies whose returns were not individually published in the Report, primarily those that received less than 3 requests in 2005. For my initial investigation at any rate, I felt that the low numbers of requests made to such bodies would not warrant an urgent examination of their practices in respect of the application of section 10(1)(a).

The Heads and FOI Officers of the selected bodies were informed in writing of my investigation and were requested to provide the data set out below within three weeks from date of the letter. A sample of the letter sent to the Heads is at Appendix I to this report). For each body, I asked:

i) How many requests were dealt with in 2005? <sup>1</sup>

<sup>1</sup>*This encompassed the total number of FOI requests (irrespective of the year in which the original FOI request was made) in which the initial decision was made in 2005. To avoid double counting, any cases where the requester exercised their right to internal review were counted as a single request, but both the original decision and internal review files relating to such cases were examined as part of the investigation. Cases that had been (or were being) reviewed by my Office were excluded from the investigation as the use of section 10(1)(a) in those cases was already subject to scrutiny by my Office during the normal process of conducting a review. Confining the questions to cases dealt with, rather than those requests received during 2005, was to ensure the survey focused on cases where a decision had been made, rather than cases that were still under consideration.*

ii) Of those requests dealt with,:

- in how many requests was section 10(1)(a) the only exemption used to refuse records?

- in how many requests was section 10(1)(a) used, along with other exemptions, to refuse records?

Given that this Office has already examined in detail how the Departments of Education & Science and Health & Children search for records of former residents of industrial schools (see page 21 of my Annual Report 2003), these Departments were requested to provide figures for the application of section 10(1)(a) to requests other than those cases. Also, only those local authorities named in Table 7 of the 2005 Annual Report were selected for survey, with returns for Town and Borough Councils being included in those for the Council areas within which they are situated (which is the way I report such activity in my Annual Report). While the Health Service Executive (HSE) is now a single public body, I decided to examine the reliance of section 10(1)(a) in each of the former Health Board areas, as well as by "HSE Corporate" (requests not made to the former Health Board areas, and which are of a corporate nature relating to the HSE).

The letters concerned were sent at the end of May 2006 to 173 bodies, with replies sought by 16 June 2006. On 21 June 2006, those 20 bodies that had not yet provided the requested data were given a written reminder and a further deadline of 5 July 2006, to provide the requested information. That reminder stated that any bodies that did not provide statistics on foot of that reminder would be named in my report, and that the files in a selection of them would be subject to further investigation by my Office. All these bodies replied to me by 5 July 2006.

From the figures supplied by the bodies, my staff calculated the percentage of requests dealt with in 2005 that had been in any way refused under section 10(1)(a) of the FOI Act. Appendix II gives a breakdown, by sector, of the extent to which the various surveyed bodies relied on this provision. (Column D of that table gives the proportion of requests that were refused by the

surveyed bodies in reliance on section 10(1)(a) only, while column G gives the proportion of refusals in reliance on section 10(1)(a) along with some other provision of the FOI Act).

A number of those bodies which had been initially surveyed were selected for examination of the relevant practices. In order to balance the requirement to select a range of bodies that is to some degree representative of public bodies generally, on the one hand, with the limited availability of resources on the other, 12 bodies were selected for further survey.

While I intended to survey the most frequent users of section 10(1)(a), I also included the most frequent users of section 10(1)(a) in each of the sectors covered by FOI (Government Departments; Local Authorities; Education Bodies; HSE and Health Service Providers; and Other Bodies). Eleven of the 12 bodies chosen were, in proportionate terms, the most frequent users of section 10(1)(a) according to the data supplied to me, and represented five of the six sectors covered by the FOI Act. To ensure that the survey included the remaining sector - the Health Service Executive - I selected the most frequent user of section 10(1)(a) therein i.e. the former South Western Area Health Board. Furthermore, as all bodies had replied to me, there was no need to implement a method of selecting for further scrutiny a number of those bodies that had failed to reply. Therefore, I am satisfied that the 12 bodies mentioned are reasonably representative of the use of section 10(1)(a) across the range of bodies subject to the FOI Act. The bodies are listed in Appendix IV.

I then advised the heads and FOI Officers of the 12 public bodies that their practices in application of section 10(1)(a) would be subject to further examination. They were asked to provide data on:

- (i) Their own role in dealing with FOI requests, specifically those involving section 10(1)(a);
- (ii) The reference numbers and names of all requests dealt with in 2005 and to which section 10(1)(a) was in any way applied and a breakdown of those requests into:
  - Information Type: personal, non-personal and mixed;
  - Requester Type: Journalists, Business, Oireachtas Members, Staff of Public Bodies,

## Clients of Public Bodies, Others

(iii) The physical location of the file (including the internal review file, if separate to the original decision making file).

A sample of the letter to the head of the bodies, and the letter to the FOI Officer, is included at Appendix III.

The FOI Officers were given two weeks to supply this information. Only one body did not supply the requested information within the deadline, but from my enquiries, I am satisfied that there was a genuine reason for this delay. The relevant information was subsequently provided.

The next step was to select an appropriate number of the relevant decision making files in each public body for inspection. I aimed to select a sample of files from each body for further review that was both representative of the totality of files worked on by each body and yet was manageable from the perspective of OIC resources.

I first eliminated from potential further scrutiny any cases in which the decision to apply section 10(1)(a) had been (or was) the subject of review by my Office (one in the case of Cappagh Hospital and one in the case of Clare County Council). These cases were excluded as they were already subject to detailed scrutiny by my Office in the ordinary course of completion of the two reviews in question.

Initially, I decided that 10% of the remaining relevant decisions would be an adequate number to examine. The Department of Education and Science had the highest number of cases in which section 10(1)(a) was relied on, 10% of which would result in 8 files being examined. However, I considered that 10% of the relevant cases decided upon by the remaining bodies would be statistically insignificant (10% of such cases would have meant an examination of one to four files in all cases other than the Department), and thus, I decided to examine 8 files in each of the bodies concerned. Thus, my staff examined 100% of files in 5 bodies that had less than 8

decisions in which section 10(1)(a) was relied upon; the Department of Education and Science had 10% of their relevant files examined; and the other six bodies had between 21% and 73% of their decision making files examined (Appendix IV sets out the relevant details).

As mentioned earlier, the Local Authorities' FOI Officers provided figures comprised of figures for their own local authority and any town or district councils that were within the Council area. Rather than examine the Local Authority sector based on a breakdown of City Council, County Council, Town Councils and Borough Council, I decided to examine the returns based on the composite figures supplied by the County Council FOI Officers.

Accordingly, Clare and Roscommon County Councils were highlighted as the most frequent users of section 10(1)(a). All the files for section 10(1)(a) refusals as listed by Roscommon County Council are for the County Council itself, as there were no such refusals listed by Town or Borough Councils in that area. The figure of 11 cases reported by Clare County Council included two involving Ennis Town Council. I selected the eight files for detailed scrutiny by conducting a random sample of 10 of the cases (one having been excluded on the basis that the adequacy of the searches concerned had been the subject of a review in my Office). This resulted in the two Ennis Town Council cases being selected, along with six from Clare County Council.

My Office wrote to the Head of each of the selected bodies (including Ennis Town Council) advising that my staff would contact their FOI Liaison Officers to arrange visits to examine the selected files. The Liaison Officers were also told that my staff would interview them, based on a questionnaire (as to how such records are stored and how searches are conducted) which the FOI Officers were asked to complete and return to my Office in advance of the inspections. A copy of the letter sent to the Heads is attached at Appendix III.

Two investigators from my Office, Ms Anne Moran and Mr Des O'Neill, visited the bodies, interviewed the officers and examined the files. The results of this work is outlined in Chapter Three.

**Chapter Three - Examination of the Selected Public Bodies &  
General Findings**

### **3. Examination of the Selected Public Bodies & General Findings**

In order to properly draw conclusions, and draft recommendations, based on the findings made pertaining to each of the relevant public bodies, I invited comments from the bodies concerned. The following descriptions of the position in the individual public bodies follow my consideration of any comments received.

Firstly, in overall terms, the investigation found that the examined public bodies are making genuine efforts to look for the records at issue, or to ascertain whether the records existed in the first place, before relying on section 10(1)(a) in their decisions. In some cases, detailed search protocols have been developed and are being implemented. Furthermore, I am pleased to note that a number of bodies replied that they had already modified their practices, on foot of comments made by my Investigators during their visits.

While I welcome and would encourage the positive attitudes of the bodies concerned, nonetheless, the purpose of an investigation such as this is to examine the position found on each public body as at the date of my Investigator's visits, and to report on such findings. In drawing conclusions and making recommendations based on the findings, as Information Commissioner, I want to encourage all public bodies to apply best practice, not only in respect of section 10(1)(a), but in respect of all provisions contained within the FOI Act. On that basis, I have presented recommendations in Chapter Four in the form of "the Information Commissioner's Guide to Standards of Best Practice for Public Bodies when dealing with FOI requests that involve searches for records". These actions, by their nature, encompass aspects of standard processing of FOI requests as well as specific search procedures.

Accordingly, I hope other public bodies will examine their own practices critically in the light of the findings, conclusions and recommendations in respect of the bodies under investigation, and make any improvements to their own practices that are necessary. Indeed, I may conduct similar investigations in years to come, in which case I may use the recommendations in this report as a benchmark against which to comment on the performance of other public bodies.

## 3.1. Examination of the Selected Public Bodies

### 3.1.1. Cappagh National Orthopaedic Hospital

#### *Background*

In Cappagh National Orthopaedic Hospital a random sample of 8 files was taken from a total of 22 files which were relevant to this investigation. Of the 8 files examined only 1 requester had sought an internal review. All but one of the sample related to records predating 31 December 1997.

The hospital maintains an electronic record of all patients on the Cappagh Patient Administration System (CAPAS). All patient medical records are kept in one of 3 locked Medical Chart rooms. The hospital has a comprehensive record management policy. The hospital retains all current files (files with a live episode in the previous 10 years) for a maximum of 20 years. In 2002 an extensive project to count and electronically record all medical files was completed. There was a major cull of files in 1977 but no record of destroyed charts was retained. Since 2004 a listing is retained of destroyed records. The original Theatre Registers from 1927 to date have been retained and are kept in a locked cupboard in the Theatre area. There is an electronic system (Cappagh Chart Tracer System - CCTS) used to track all file locations. When a chart is requested from the filing room it is logged out to a particular location and person. This person is then responsible for the chart until it is returned to the filing room or re-registered out to another person/location.

#### *Analysis*

Prior to and on conclusion of each search, the Decision Maker and FOI Liaison Officer meet to review the search process and efforts undertaken. A "Medical Records Search & Retrieval Form" and a cover sheet are completed and agreed by both the decision maker and liaison officer. Computer based searches are conducted using patient first name, surname, variations of names,

date of birth and unique patient "Personal Identity Number". All of the sampled files had a specific FOI request file which was located in the FOI Liaison Officer's office. All of the sample had completed evidence of areas searched (but not of how searches were conducted) on file. The initial search for records is conducted by the decision maker (Medical Records Officer) with the assistance of medical records staff as required. Internal review searches are carried out by the Chief Executive Officer's office. The results sheet for the searches is signed and dated by the searcher. This procedure was followed in all 8 cases sampled.

All but one of the decision letters refer to rights of review but no details are given as to the nature of the searches carried out nor of the locations searched.

Additional steps taken to locate records include contacts with long serving staff. In addition, the Medical Records Officer has been in position since the 1960s and assisted in drawing up the records management policy/system. Furthermore the former FOI Officer who had 43 years service in the hospital is still available to give additional assistance.

### *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. No record of destroyed charts was retained following a major cull of files in 1977, but it is noted that since 2004 a listing is retained of destroyed records.
2. While all of the sampled files contained information on areas searched, none had recorded how searches were conducted.
3. One of the decision letters did not contain information on the requester's rights to review.
4. The decision letters do not provide details on the nature of the searches carried out nor of the locations searched.
5. The former FOI Officer is still a source of records management assistance and the Hospital

refers to the officer concerned as necessary, as a further step in its search process.

### *Recommendations*

1. Although the Hospital records the areas searched, evidence of how searches were conducted should be recorded on the FOI files.
2. All decision letters should contain information on the requester's rights to review.
3. Decision letters should include background information and detail on the nature/type of the searches carried out and of the locations searched. This would present a more complete picture to FOI requesters of the efforts made to locate the requested records.

### 3.1.2. St Michael's Hospital, Dun Laoghaire

#### *Background*

In St. Michael's Hospital there were only 3 files which were relevant to this investigation. Of the 3 files examined no requester had sought an internal review. One of the 3 sampled files relates to records in respect of a competition for a post advertised in 1983, one file relates to statistical records from 2004, and one file relates to employment references received in 2005.

The hospital maintains an electronic record of all patients on the Patient Administration System (PAS). A unique identifier/life number (i.e. chart number) is generated when a patient first registers with St. Michael's Hospital. Prior to the 1980s a kardex system was used. The hospital retains paper files for 3 years since the last live episode. Older records are held on microfilm. The oldest paper records date back to 1998 and the oldest records held on microfiche date back to 1978. The hospital can retrieve records relating to patients from 1978 to date. Records pre-dating 1978 have been destroyed and no record was kept of what was destroyed. Other patient related records held are Casualty Department cards (held for 10 years from last live episode), birth register from 1962 to 1979, and, medical records relating to patients of the private hospital from 1979 to 1992 (when the private hospital closed). The hospital has a comprehensive record management policy and procedures in place. The hospital practice in relation to destruction of records is governed by the Dublin Hospitals Risk Management Forum Guidelines and the Policy for Health Boards on Records Retention (National FOI Liaison Group). The hospital has a permanent tracer card system in place for medical records and guidelines setting out search procedures for records. Computer based and manual searches are conducted using patient first name, surname, variations of names, address, date of birth and unique patient number.

#### *Analysis*

None of the 3 files in the sample related to medical records. In each case the FOI Liaison Officer contacted the relevant Department Head(s) for the records required. In the case of the FOI request

relating to an advertised post in 1983 it is the hospital's policy to hold recruitment and selection records for 1 year post C & AG audit or 1.5 years after expiry of any panel (whichever is the longest). No such records pre-dating August 2003 are in existence. In the case of the statistical records from 2004, the Financial Controller confirmed that one particular statistic was not generated by the Hospital. In the case relating to the employment references received only one such reference was on the personnel/HR file, there was no record of any other references received. All of the sampled files had a specific FOI request file which was located in the FOI Liaison Officer's office. All of the sample had responses on file from the relevant Department Heads but no evidence of areas searched nor of how searches were conducted. There are no templates of how searches should be carried out. All of the decision letters refer to rights of review but no information is given as to the locations searched.

### *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. The sampled files had no evidence of areas searched nor of how searches were conducted.
2. There are no templates of how searches should be carried out.
3. Decision letters do not contain information on the locations searched for records.

### *Recommendations*

1. Search efforts/steps should be recorded in detail on the FOI file
2. Templates of how/where searches are to be conducted should be prepared and made available to all staff.
3. Decision letters should include background information and detail on the nature/type of the searches carried out and of the locations searched. This would present a more complete picture to FOI requesters of the efforts made to locate the requested records.

### 3.1.3. The Rotunda Hospital

#### *Background*

In the Rotunda Hospital a random sample of 8 files was taken from a total of 38 files which were relevant to this investigation. Of the 8 files examined only 1 requester had sought an internal review and this was in respect of non release of third party personal information. Five of the 8 sampled files related to records from the 1940s, one file relates to records from the early 1950s, one file relates to records from 1982 and one file relates to records from 1995.

The hospital maintains an electronic record of all patients on the Patient Administration System (PAS). A unique identifier/life number (i.e. chart number) is generated when a patient first registers with the Rotunda Hospital. Prior to 1995 a Master Patient Index (kardex system) was used. The hospital can retrieve life numbers on patients from 1960 to date. Prior to this other records of registration used were the Labour Ward Delivery Books, Theatre Books, or, Porter's Lodge Book which date back to 1757. The hospital has comprehensive record management policy and procedures in place. No records are destroyed and the hospital retains all files as set out below:

Paediatric charts	<ul style="list-style-type: none"><li>● 1933 - 1950 limited amount held by off-site storage company</li><li>● 1951 - 2004 held by off-site storage company</li><li>● 2005 to date held in Rotunda Medical Record Library</li></ul>
Obstetric charts	<ul style="list-style-type: none"><li>● 1960 - 1980s Micro film on site (not all records microfilmed)</li><li>● 1971 - 2004 held by off-site storage company</li><li>● 2005 to date held in Rotunda Medical Record Library</li></ul>
Gynaecology	<ul style="list-style-type: none"><li>● 1960 - 2004 held by off-site storage company</li><li>● 2005 to date held in Rotunda Medical Record Library</li></ul>

Staff have access to records via the Medical Records Officer and only authorised personnel may access the archives/Medical record Library. All charts are tracked to the appropriate hospital staff responsible for them.

## *Analysis*

The FOI Administrator initiates searches by contacting Medical Records department, Social Work Department, National Archives and/or any other department/area which may be deemed necessary. It is then the responsibility of staff from the relevant area(s) to carry out the necessary searches on behalf of the FOI Administrator. In the hospital templates/checklists are used to ensure that all possible locations are searched. On conclusion of each search the chart locations and chart search forms are completed, signed and dated by the person carrying out the search. Where records cannot be located, 3 separate searches by different personnel are completed. The results sheet for the searches is signed and dated by each searcher. Finally, the supervisor in the relevant area signs off on the search and the completed forms are returned to the FOI Administrator.

Computer based and manual searches are conducted using patient first name, surname, variations of names, address, date of birth, date of delivery and unique patient number. Searches in the off-site storage company are the responsibility of the storage company, which signs off on the results of the searches conducted there. All of the sampled files had a specific FOI request file which was located in the FOI Liaison Officer's office. All of the sample had completed evidence of areas searched (but not of how searches were conducted) on file. The prescribed procedure was followed in all 8 cases sampled. Hospital internal review procedure provides for searches to be carried out using the same 3 search procedures and checklists as the initial searches but the one internal review case relevant to this investigation was in relation to withheld information and therefore not a search issue.

All of the decision letters refer to rights of review and some (though not detailed) information is given as to the locations searched.

## *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. The sampled files describe the areas searched but do not contain evidence of how searches were conducted. The Hospital says that, since my Investigator's visit, in order to improve its processes, the FOI Administrator has taken over responsibility for this task from the Medical Records Officer.
2. Decision letters do not contain detailed information on the locations searched for records. While the Hospital feels that this would be cumbersome, and that requesters might be concerned by the nature of some areas that may be searched (to rule out the possibility of the requested records having been misfiled), I consider that this must be weighed against the concerns the requesters might have over the searches having been inadequate. However, the Hospital says that it will endeavour to include more information in its letters to requesters.

## *Recommendations*

1. Evidence of how searches were conducted as well as the areas searched should be recorded on the FOI files.
2. Decision letters should include background information and detail on the nature/type of the searches carried out and of the locations searched. This would present a more complete picture to FOI requesters of the efforts made to locate the requested records.

### 3.1.4. Department of Education and Science (Special Education Section)

#### *Background*

The Department has a records management policy (Records and Information Management and Retention Policy) and "good practice" guidelines for both paper and electronic records. The former covers the retention of all official documentation and the latter deal with various matters, including the storage and retrieval of inactive or archived files. These documents are circulated to all staff and are available electronically in the intranet. While there is no central register of files, with sections mainly using Excel to keep track of files, I understand that it is intended to implement a Department-wide system in the near future.

When an FOI request is submitted to the Department, the FOI Unit assesses it, sends it to the appropriate section or sections within the Department, and appoints a decision maker to co-ordinate various aspects of a request (if necessary).

I understand that the Department's Special Education Section does not expect to hold many references to individuals with special needs who attended "special schools" . It says that requests made by the schools to the Department for further staff, or records on transport files, might contain some references to students. More recently, the Department could hold psychological reports or placement files on pupils. A number of other sections within the Department might also have references to such pupils i.e. the Inspectorate, Primary Admin I and II, Litigation, School Transport, Legal Services and the National Education Psychological Service.

I understand that when the Department began receiving requests for records of former residents of institutions which are covered by the Redress Board, Special Education Section retrieved the files pertaining to such schools from the archives and created a spreadsheet containing all the student names therein. Thus, when the Section searches for references to former pupils of these schools, it checks this database only, based on the first initial of the surname (maiden name in the case of a married woman). A Clerical Officer (CO) conducts this search, which is then checked by an Executive Officer (EO), both of whom sign a printout to this effect. When the search of the database highlights a reference to a requester in a file, the Section retrieves the specified file (or

files).

Eight files were chosen, by random sampling, from the 84 cases in which the Department relied on section 10(1)(a) in 2005. All concerned decisions issued by Special Education Section. No internal reviews of any of the decisions were sought. All of the requests have a specific FOI request file, which are retained in the Special Education Section for six months, after which they are sent to the FOI Unit.

### *Analysis*

In two cases, the Department said that it did not have responsibility for the school at the time the requesters had attended it. Accordingly, I accept its position that it would not have had records. I also note that the Department contacted the institution concerned to establish how requesters might obtain information.

The remaining six files examined concerned requests for records of attendances at "special schools" by persons with special needs. Each of the six files contains a listing of all such sections within the Department, other than Special Education Section, that might hold records. They contain a copy of the letter sent to these sections, and details of when they replied. The files also contain a printout (signed by both the CO and EO) from the database which states that, having searched the list of names associated with the schools concerned, no documentation was found.

Replies from the other sections generally say that they hold no records pertaining to the requester. Some say that the relevant section has conducted searches, some do not. However, none of the replies (with the exception of one from Litigation Section on one file which said that a particular database and schedules of particular files were examined) outline how searches were conducted.

The decision letters (issued by Special Education once all other sections have replied) give rights of appeal. I note that the decision letters do not describe the searches conducted by the various sections. However, they all give contact points for the schools concerned, that might help in finding relevant records.

### *Findings*

Subject to the comments following, the files examined under this investigation were in order.

1. The Department does not yet have an electronic file registry, although I understand that it is intended to introduce one soon.
2. There are no detailed records on file of the searches conducted by sections other than Special Education Section. Some sections did not confirm that they had actually searched for relevant records.
3. The decision letters do not describe the searches conducted by the various sections with the Department that might hold the requested records.
4. The Department took steps to assist requesters even though it did not hold the requested records.

### *Recommendations*

1. The electronic file registry system described by the Department should be implemented as a priority, and steps taken to ensure staff members use it when registering files. The Department has acknowledged the importance of this registry system, but draws attention to the fact that, due to EU tendering requirements, it is unlikely to be in place before 2008. However, the Department says that it has employed a consultant to advise it on an IT strategy for procuring such a system, and says it plans to begin the EU tendering process as soon as possible.
2. Decision letters should provide details of the searches conducted by all sections within the Department. When providing results of searches to Special Education Section, other sections should confirm they conducted such searches and provide details of how, and where, they searched for relevant records. The Department says it will put procedures in place to ensure that all sections are aware that they must document how they conduct searches for records and that these details must be included in decision letters. It says it will also conduct periodic audits to ensure these procedures are complied with.

### 3.1.5. Waterford Institute of Technology

#### *Background*

The Institute's records retention policy is, generally speaking, to retain current records in the appropriate office until space runs out, when they are sent to the archives. The documented Records Management Practices applicable to records in the Archive Centre have been issued to all administrative offices and are available from the FOI office, and will be available on the Institute's intranet when this has been finalised.

A section in the Student Information Handbook gives information on how to make an FOI request, on internal review and OIC review, as well as on Higher Court appeals and fees. The recently upgraded Institute website has a link on its home page to a dedicated Institute FOI website.

Although strictly speaking outside the scope of my investigation, my Investigator noted that the Institute had adopted the approach of not issuing acknowledgement letters to requests by students for marking schemes, where the FOI Officer has personally explained the FOI process and rights of appeal to such requesters. Where the FOI Officer does not meet the requester, an acknowledgement is sent, however.

While the FOI Officer does not conduct searches for records and is not the decision maker, she gives general suggestions when a decision maker tells her that files/records cannot be found, and recently devised a checklist to assist decision makers in this situation. The checklist gives examples of steps that might be taken to search for records such as searching electronic records; contacting appropriate staff; physical searches of cabinets files, desk tops, diaries, etc and getting written confirmation from staff that such searches have been done. The checklist also asks the decision maker to set out what steps he or she took to look for records.

Eight files were chosen, by random sampling, from the 22 cases in which the Institute relied on section 10(1)(a) in 2005. No internal reviews of any of the decisions were sought. All of the

requests have a specific FOI request file, which are kept in the FOI office.

### *Analysis*

In five cases, the request was refused on the grounds that the records (of certain marking schemes) did not exist. However, there are no details on the FOI file of contacts made with the relevant lecturers to establish whether the records existed, nor of the replies.

A sixth request sought details of exam scripts in a particular course. The Institute took a broad view of this request and assumed that the student also wished to examine a portfolio submitted as a course requirement. The Institute was unable to locate the portfolio, which resulted in the partial refusal of the request on the grounds of section 10(1)(a). However, I understand that when the requester came in to view the other scripts he did not mention the portfolio. It may be that he never intended to request it in the first place, and, as he did not refer to the portfolio when viewing the scripts, further searches were not conducted. The Institute said that, while its normal policy is to clarify the scope of a request in cases where the requests are ambiguous, there is no evidence on file that this was done in this case. Also, the decision making file does not contain details of the searches that were conducted for the portfolio up to that point. The application of section 10(1)(a) on a seventh file relates to records of a shortlist for interview. There are no records on file pertaining to the steps taken by the decision maker to establish whether or not such records existed. In respect of the final file, a limited number of records were located on a staff member's pc, which show that particular staff were contacted to establish if they held records of relevance to the request. The staff member's pc also contained some replies to those queries. However, these records had not been added to the FOI file by the decision maker. There are no other records available showing other searches conducted.

Decision letters were issued in seven out of eight cases, all of which refer to internal review. The eighth case involved the request for access to exam scripts, and a decision letter did not issue. However, the acknowledgement letter to that requester (on file) outlined the rights of appeal. The

decision letter in four cases did not refer to refused records, although the attached schedule did. "Cut and paste" errors are present in two of those decision letters - however, the FOI Officer had noticed these errors prior to my Investigator's visit and says that she has taken steps to prevent this recurring. A further decision letter says that full access is being granted to records that, according to the schedule, are being refused. Another letter does not quote section 10(1)(a) although it is clear from the information in the decision letter that this is the applicable provision.

### *Findings*

Subject to the following comments, the files examined under this investigation were in order.

1. While there are records management practices in place for archived records, there are none for current records.
2. While, strictly speaking, outside the scope of my investigation, the FOI requests were not acknowledged in all cases.
3. Five files did not contain details of contacts made by the decision maker with relevant staff to establish whether particular records existed, nor were there records of replies as to why the records did not exist.
4. A further file did not contain details of why particular records did not exist, albeit the decision maker knew from his other responsibilities within the Institute as to why this was the case. While this is understandable, a note should have been inserted on file specifying the basis on which the decision maker was aware that relevant records did not exist.
5. One file did not set out the searches conducted for a particular record. Furthermore, no decision letter issued in this case (the request was for inspection of records).
6. Records of searches conducted in one case were not added to the FOI file, and it would appear

that records of some searches conducted in that case were not retained.

7. Two decision letters contained "cut and paste" errors. The decision letter in four cases did not refer to withheld records although the schedule did. A further decision says that full access is being granted to records that, according to the schedule, are being withheld. Another does not quote section 10(1)(a) (although it is clear from the tenor of the decision letter that this is the applicable provision).

8. There is no evidence on file that the scope of a request was clarified in one case where the request was slightly ambiguous.

### *Recommendations*

1. The Institute should develop a records management policy for current records, and ensure its record management policy for current and archived records are added to the intranet once this has been developed.

2. While strictly outside the scope of my investigation, all FOI requests should be acknowledged to requesters. If it is the case that this causes confusion amongst requesters, the Institute should examine the text of the letters to ascertain where such confusion arises, and should amend the acknowledgement letters accordingly. The Institute has said that, since my Investigator's visit, acknowledgement letters have been issued to all requests.

3. Decision makers should record on file the searches they conducted (or the searches conducted by other staff on their behalf) for relevant records. They should also retain records of contacts made with staff to ascertain if particular records exist, and the ensuing replies. The checklist developed by the Institute should be included in all files forwarded to decision makers, and should be made available on the intranet once it has been completed. The Institute says that the checklist is being sent to all Decision Makers, and appears to be working well, with the checklist

being returned to the FOI office with the relevant copies of emails etc attached.

4. Where a decision maker may conclude that particular records do not exist (for example, from his or her other responsibilities within the body), a note describing the basis for this conclusion should be placed on file.

5. Rather than assuming that a particular interpretation of a request is the intended one, the Institute should ensure that, in all cases, it clarifies matters with the requester first.

6. Where a request is submitted under FOI, a decision letter should always issue, even where access by inspection was sought and granted.

7. Particular attention should be paid to the standard of decision letters:

- Details of searches conducted for relevant records should be added to decision letters, as should reasons as to why records do not exist.
- Care should be taken to ensure that "cut and paste" errors do not occur.
- Records that are being withheld should be clearly identified on the decision letter as well as on the schedule, with the appropriate exemption also referred to in the decision letter.
- Decision makers should bear in mind that an inability to release records due to non-existence is not the same as granting the request in full, regardless of the fact that all records in the possession of the Institute are being released.

The Institute says that, following on from my Investigator's visit, it has reminded Decision Makers to be more mindful of "cut and paste" errors. In respect of the fourth bullet point, it also says that the checklist referred to above has been modified to remind Decision Makers of the significance of this issue.

### 3.1.6. St. Mary's Hospital & Residential School, Baldoyle

#### *Background*

In St Mary's a random sample of 8 files was taken from a total of 12 files which were relevant to this investigation. Of the 8 files examined no requester had sought an internal review. All of the 8 sampled files relate to Redress Board Applicants seeking information as to whether or not they had been patients/attended the school. In no case were medical records located but entries on the old school rolls were found.

St. Mary's has never had a documented records management Policy. Records management has been operated on a custom and practice basis and the holding of files is the responsibility of the Matron, now known as the Director of Services. The current Director of Services has been in a management position in St. Mary's since 1977 and has been the Director of Services since the early 1980s. Therefore she has an intimate knowledge of all records retained by St. Mary's. The original school attendance rolls are available from 1955 to date and hospital/medical records from 1977 to date. If there is a medical record then each child has a unique file, classified by name and date of birth. A major clear out of files took place in the mid 1980s and no record was kept of the records destroyed at that time. There is no register of files. All files are retained for a minimum of 10 years. All files are stored in a secure locked medical records store room. The FOI Co-ordinator has attended training courses provided by an external FOI Specialist.

#### *Analysis*

In each of the 8 cases in the sample the FOI Co-ordinator contacted the Director of Services for the records required. When necessary the Director of Services also requests the School Principal to search the old school rolls. All of the sampled files had a specific FOI request file which was located in the FOI Liaison Officer's office. Manual searches are conducted using first name, surname, variations of names, Irish version of name, address, date of birth and childhood address (if known), but, while there is evidence that the Director of Services conducted a search in each

case, there is no detailed evidence of the actual searches conducted. All of the sample had responses on file from the Director of Services but there is no specific evidence of searches having been completed bar a search result/completion date. There are no templates of how searches should be carried out.

None of the decision letters refer to rights of review, however, St. Mary's has undertaken to remedy this deficiency in future decision letters.

### *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. There is no documented records management policy.
2. There is a heavy dependency on the knowledge/familiarity with the files of the current Director of Services which could be lost were she to be no longer in post.
3. There is no register of files. However, in reply, I was advised that a register is currently being prepared of St Mary's Hospital files (see note below).
4. No record was kept of the records destroyed in the major clear out of files that took place in the 1980s.
5. The search efforts are not recorded in detail.
6. There are no templates of how searches should be carried out.
7. The inclusion in decision letters of information relating to the nature of the searches carried out or the locations searched would be of assistance to requesters.
8. Decision letters do not always refer to rights of appeal.

### *Recommendations*

1. The hospital should draw up and implement a comprehensive records management policy as a priority.
2. Efforts should be made to distil the knowledge of/familiarity with the retention and storage of files throughout the organisation to avoid over dependency on any one person.
3. A register of all files should be prepared so that the hospital has a complete listing of all records in its possession.
4. Search efforts/steps should be recorded in detail on the FOI file
5. Templates of how/where searches are to be conducted should be prepared and made available to all staff.
6. Additional background information and detail, as to the nature/type of the searches carried out and of the locations searched, should be included in the decision letters.
7. Decision letters must always inform requesters of their rights of appeal.

I have been asked to point out that the services provided by St Mary's Hospital were transferred to St Michael's House from 1 October 2006. Accordingly, the appropriate FOI personnel in St Michael's House should examine the recommendations pertinent to St Mary's Hospital for relevance to its own particular circumstances. St. Mary's Hospital has agreed to contact St. Michael's House in relation to this matter.

### 3.1.7. Commission for Communications Regulation (ComReg)

#### *Background*

In ComReg 6 files were taken from a total of 6 files which were relevant to this investigation. Of the 6 files examined only 1 requester had sought an internal review (in relation to exemption of a record located under section 27 of the FOI Act). Two of the 6 sampled files relate to records relating to licensing, two files relate to consumer complaints, one file relates to postal service issues and one file relates to the location of phone masts.

ComReg has a records management policy available to all staff on the intranet. All records since 2000 are retained in electronic format. Pre 2000 records are held in paper based files. ComReg has an on-site archive (which mainly holds licence agreements). There is also an off-site archive and records in the archive are boxed, boxes are bar-coded, and, a list is maintained on the computer system. Every file/record is electronically tracked and all records are scanned onto computer. The physical location of every file is tracked and there is a designated officer in every division/department/area with the responsibility to ensure that all records are tracked on the system. All the organisation's work on any file is computer based in order to easily track what officer is working on a particular file/project/complaint/area and where a file is located. It also operates an effective request tracking system which provides for accurate checking on the current status of any request at any time, and undertakes quality assessment at the end of each request in the context of identifying any remedial procedural action that may be required. There are a total of 13 decision makers spread throughout the organisation and these have all received training in FOI. All staff members receive some training in FOI at induction.

#### *Analysis*

In each of the 6 cases in the sample the FOI Office contacted the relevant Department Head(s) for the records required. All of the sampled files had a specific electronic FOI request file which was located in the FOI Liaison Officer's office. All of the sample had responses on file from the

relevant Department Heads but the quality of the recording of the search efforts varied between decision makers. However, I understand that in every case there had been discussions between the relevant Department Head and the FOI Liaison Officer. The conclusions of such discussions should be recorded and filed on the FOI request file. Each request, when assigned to a decision maker, is accompanied by a procedures document/checklist for the FOI decision maker to follow. In each of the sampled files the records sought had never been created and, therefore, did not exist.

All of the decision letters examined refer to rights of review. The inclusion of some additional background information and detail, as to the nature of the searches carried out or of the locations searched, in the decision letters would present a more complete picture to FOI requesters of the efforts made to locate the requested records.

### *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. Not all decision makers record the search efforts in detail, with the quality of the recording of the search efforts varying between decision makers.
2. The inclusion in decision letters of information relating to the nature of the searches carried out or the locations searched would be of assistance to requesters.
3. The conclusions of discussions between the FOI liaison officer and the decision maker are not always recorded on the FOI request file.

### *Recommendations*

1. Search efforts/steps should be recorded in detail on the FOI file
2. Additional background information and detail, as to the nature/type of the searches carried

out and of the locations searched, should be included in the decision letters

3. The conclusions of discussions between the FOI liaison officer and the decision maker should be recorded and filed on the FOI request file.

### 3.1.8. Dublin City University (DCU)

#### *Background*

In DCU all 6 files which were relevant to this investigation were taken, none of which involved an application for internal review. One of the 6 sampled files relates to records of a financial nature relating to staff costs, three files relate to minutes of the Academic Promotions Committee (all three were submitted by the same requester - essentially, three requests for the same document, \* below refers), one file relates to records of an individual's promotion and one file relates to a student assessment. Each request was partially granted, with one document being refused in reliance on section 10(1)(a) in each case.

DCU has a records management policy available to all staff on the university's website. The HR record management practices are documented and held centrally on a shared Hard Drive called the L drive. Procedures for archiving and retrieving HR records are available to all staff within HR via the shared drive. In practice, the staff in the HR general office take responsibility for archiving material and ensuring that records of archived material are kept up to date. The records management practices are documented by each unit for administrative reasons as file types are not the same in each unit. Records Management Training was provided for 35 university administrative staff via external consultants.

#### *Analysis*

In each of the 6 cases in the sample the FOI Office contacted the relevant Department Head(s) for the records required. All of the sampled files had a specific electronic FOI request file which was located in the FOI Liaison Officer's office. All of the sample had responses on file from the relevant Department Heads but the quality of the recording of the search efforts varied between decision makers. However, I understand that in every case there had been discussions between the relevant Department Head and the FOI Liaison Officer. The conclusions of such discussions should be recorded and filed on the FOI request file. There are no templates of how searches

should be carried out. In the case of four of the sampled files the records concerned had never been created\*, in the case of one file the records had been destroyed in accordance with the university's policy (but there was no evidence on file of searches made/confirmation of destruction) and in the case of one file there was no evidence on file of the searches carried out.

In the case of the sampled file relating to records of a financial nature relating to staff costs, the Finance Officer confirmed that staff costs had never been broken down into the categories requested. In respect of the three files\* relating to minutes of the Academic Promotions Committee, the Deputy President confirmed that it was not the practice to take minutes of such meetings (this practice has since changed). The one file relating to records of an individual's promotion had been archived in line with the university's archiving procedures but a search of the archives failed to locate the records. The University has no explanation for this failure in its procedures. Finally, the records relating to a student assessment had been destroyed in line with the university's record management policy.

### *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. The quality of the recording of the search efforts varied between decision makers.
2. Not all decision makers record the search efforts in detail.
3. The conclusions of discussions between the FOI liaison officer and the decision maker are not always recorded on the FOI request file.
4. There are no templates of how searches should be carried out.
5. The inclusion in decision letters of information relating to the nature of the searches carried out or the locations searched would be of assistance to requesters.
6. The University was unable to explain why a search of the archives failed to locate records

that had been archived in line with the University's archiving procedures

*Recommendations*

1. Search efforts/steps should be consistent for requests and recorded in detail on the FOI file.
2. The conclusions of discussions between the FOI liaison officer and the decision maker should be recorded and filed on the FOI request file.
3. Templates of how/where searches are to be conducted should be prepared and made available to all staff.
4. Decision letters should include background information and detail on the nature/type of the searches carried out and of the locations searched.
5. The University should ensure that a verified listing is kept of all archived records, and that search mechanisms of the archives are complete and reliable so that there can be certainty that all archived records are accessible if required in the future.

### 3.1.9. IDA Ireland (IDA)

#### *Background*

In the IDA the 2 files relevant to this investigation were examined. Of these, only 1 requester had sought an internal review (in relation to non-release of a record located). One of the 2 sampled files relates to records of grants received (from a foreign government) by a client company, and, the other relates to reasons why a company choose not to locate in Ireland.

IDA has a documented Records Management and Filing Policy. All records are scanned onto computer and available to all staff. Records for the previous 9 years are available on computer - earlier records are no longer available. All correspondence/communication with clients/companies are filed in a "Company Information System", CIS, which contains (in electronic format) all/every communication with any particular company (Filed by Company name). Staff are continually advised of the need to adhere to the prescribed records management practices and the IDA's internal auditor also carries out periodic audits to ensure compliance. All decision makers and internal reviewers in IDA undergo an FOI training course (either internally or externally). The FOI Liaison Officer provides ongoing support and advice.

#### *Analysis*

In each of the 2 cases in the sample the FOI Office contacted the relevant Department Head(s) for the records required. Both sampled files had a specific electronic FOI request file which was located in the FOI Liaison Officer's office. Both had responses on file from the relevant Department Heads but the quality of the recording of the search efforts varied between decision makers. However, I understand that in every case there had been discussions between the relevant Department Head and the FOI Liaison Officer. The conclusions of such discussions should be recorded and filed on the FOI request file. Furthermore, I understand that it is the relevant department/division's responsibility to retain details of the searches undertaken. There

are no templates of how searches should be carried out.

In the case of the sampled file relating to records of grants received (from a foreign government) by a client company, the relevant department head confirmed that the IDA never had any knowledge of what (if any) grants were received by its client from another foreign government. In respect of the other file the information requested was not on file.

The two decision letters examined refer to rights of review. The inclusion of some additional background information and detail, as to the nature of the searches carried out or of the locations searched, in the decision letters would present a more complete picture to FOI requesters of the efforts made to locate the requested records.

### *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. Not all decision makers record the search efforts in detail, with the quality of the recording of the search efforts varying between decision makers.
2. There are no templates of how searches should be carried out. The IDA has commented that the two cases examined dated from 2005, and that it subsequently introduced a "Search & Retrieval Form" that all departments must sign to verify the nature of the search carried out and the locations searched for relevant records.
3. The conclusions of discussions between the FOI liaison officer and the decision maker are not always recorded on the FOI request file.

### *Recommendations*

1. Search efforts/steps should be recorded in detail on all FOI files, with the "Search & Retrieval Forms" being completed to the highest degree possible.

2. The conclusions of discussions between the FOI liaison officer and the decision maker should be recorded and filed on the FOI request file. I note that the IDA has said that it will record details of such discussions in future.

### 3.1.10. Roscommon County Council

#### *Background*

The Council does not have a records management policy at present. However, I understand that it intends to develop such a policy in the light of recommendations in the forthcoming National Records Management Policy for Local Authorities. The development of this national policy is the responsibility of the Local Government Management Services Board and it is my understanding that it is expected that the final development and implementation of the policy will be completed in the next 12 months. At present, it is the responsibility of the Head of each Department or Section within the Council to determine record management practices for their functional areas.

The Council relied on section 10(1)(a) in six cases in 2005, all of which were examined in the course of the review. The Council was satisfied that the records at issue in each case did not exist. Three decisions were refused in full on that basis, while the other three were partially refused. No internal reviews of any of the decisions were sought. All of the requests had a specific FOI request file which was located in the FOI Liaison Officer's office (who is also the decision maker).

#### *Analysis*

Each file shows that the FOI Officer contacted the relevant areas within the Council that should, or might, hold relevant records.

One reply says that a former staff member was contacted at the behest of the requester and that all records were checked, although it stops short of describing those searches to the FOI Officer. Another case has no reply from the relevant section on file, although the decision letter indicates that information from the relevant section had been received. A further case involved replies from two sections of the Council. A reply from one section has attached to it those records located therein, but does not comment on whether the section had located all records it should hold pertaining to the requester, nor does it give details of searches conducted. There is no record of reply from other relevant section on file, although I understand staff from the section provided

the records directly to the FOI Officer. Again, however, there are no details from that section as to whether it had located all relevant records it should hold, nor are details of searches provided.

On a further file, there is a note of the FOI Officer having spoken to particular staff members who confirmed that the requested records did not exist. In another case, a reply from the relevant section required clarification, which was sought and received by the FOI Officer. However, there is no note of this on file.

One element of the sixth request appeared to my Investigator to be broader than as interpreted by the Council. Although it could be argued that interpretation of requests is strictly speaking outside the terms of reference of my investigation, this issue relates to the proper processing of a request that involved a search for records. Therefore, I think it appropriate to include it under the scope of this investigation. While I appreciate the Council's position that the overall tenor and content of the request supported its narrower interpretation, nonetheless I feel that clarification should have been sought.

All decision letters give rights of internal review, and in case where records do not exist, the decisions give brief details as to why this is the case. In two cases, however, while the decisions say that a physical search was conducted of all relevant areas in which the records might be held, no details are given as to the nature of those searches.

### *Findings*

Subject to the comments following, the files examined under this investigation were in order.

1. There is no written records management policy for current records, albeit it is noted that the Council is awaiting recommendations in the National Records Management Policy for Local Authorities.
2. The Council took a narrow interpretation of one request. While I can appreciate why the Council took a particular view of one element of the request in the light of its overall tenor and

content, nevertheless there should be direct contact with the requester where clarification is an issue.

3. Two files did not contain details of the searches conducted by the relevant section within the Council. One of these required searches to be conducted by two sections within the Council and while one such section replied in writing, the other did not. Neither section comments as to whether it considered it had located all records of relevance to the request.

4. A further file, separate to the one mentioned at point 2. above, did not have a written reply from the relevant section on file, although the decision letter indicates a reply was received. The Council says that verbal confirmation had been received in this case. The Council has asked me to point out that in three of the cases under review, it was in their view clear from the outset that the requested records could never have existed. In order to be in a position to justify this conclusion, I expect that bodies would retain records of how it was established that the records concerned never existed.

5. The FOI Officer sought clarification as to a reply received from one section but there is no note of that clarification on file. The Council says that the original response from the section concerned adequately reflected the latter's position that no records existed. It says that the verbal response received by the FOI Officer to the clarification sought confirmed the original position of the section concerned and hence it considers that no further record was necessary. I disagree with this view. While it may be the case that the records at issue never existed, I consider that if an FOI Officer feels he or she must clarify a response from a section, a written record of the clarification sought and reply received should be retained on file.

6. Two decision letters did not outline the searches conducted for the requested records.

### *Recommendations*

1. The Council should ensure that the National Records Management Policy for Local Authorities policy is implemented and that it leads to the development of, and adherence by staff

to, a written records management policy for current records.

2. Rather than assuming that a particular interpretation of a request is the intended one, the Council should clarify matters with the requester first.

3. The following aspects of searches for records should be included on the FOI file:

- Individual sections within the Council should document the searches conducted, and should provide such details in writing to the decision maker. Details provided verbally should be subsequently confirmed in writing.
- All replies should set out clearly whether or not all records of relevance to a request have been located;
- Explanations should be provided where it is concluded that no records exist;
- Where clarification is sought and received by the decision maker/FOI Officer as to replies received from various sections, a note of that clarification should be retained on file.

4. Decision letters should describe the searches conducted by various sections within the Council.

### 3.1.11. Health Service Executive - South Western Area<sup>2</sup>

#### *Background*

In the HSE a random sample of 8 files was taken from a total of 16 files which were relevant to this investigation. Of the 8 files examined only 1 requester had sought an internal review. Two of the 8 sampled files relate to records from Central Childcare (records from Trudder House), three files relate to records from Child & Adolescent Psychiatric Services, one file relates to records from Kildare/West Wicklow Community Services (placement in County Home in 1940s) and two files relate to Primary Care area (GMS Payments).

The HSE has comprehensive policy documents relating to record retention, storage and destruction. There is a procedures manual for the processing of FOI requests (the fifth edition of which was published in January 2004 to incorporate changes brought about by the Freedom of Information (Amendment) Act, 2003) which was distributed in hard copy format to all relevant personnel in 2004, is available on the HSE's intranet site, and is referred to at all training sessions. This includes the section from the Central Policy Unit manual dealing with "Administrative Reasons for Refusing Requests", as well as a section on template letters, which provides an example of what should be included in a letter when section 10(1)(a) is being invoked.

In 2004 the HSE South Western Area Central FOI office created a staff handbook "Guidelines for Record Management and Record Keeping". This handbook was distributed to all areas of the then South Western Area Health Board and has been subsequently referred to in Freedom of Information and/or Data Protection training. The handbook covers: Records Management Strategy, Records Management Policy, Record Life Cycle, Definition of a file, Requirements of a good filing system, Record Creation, File classification types, Record Maintenance, Record Management, Good practice recommendations, File destruction policy, and, Computer based policy.

<sup>2</sup> covering Kildare, West Wicklow, Dublin South City, Dublin South West and Dublin West.

The record management practices for this area of the HSE are set out in the above document and were brought to the attention of all relevant staff when the document was being distributed. Record Management issues are also dealt with in the document "Policy for Health Boards on Record Retention Periods" created by the National Freedom of Information Liaison Group (Health Boards) in October 1999. Both of these documents are available on the HSE intranet site and staff are expected to conform to these guidelines. The ultimate responsibility for ensuring that the above policies with regards to record management are fully implemented lie with local management.

The Health Act 2004 established the Health Service Executive from the 1st January 2005. There have been structural changes throughout the Health Service Executive since that date, but the re-structuring of the area of corporate services which includes Freedom of Information has not yet been completed.

### *Analysis*

In each of the 8 cases in the sample the Central FOI Office contacted the relevant Department Head(s) for the records required. All of the sampled files had a specific FOI request file which was located in the FOI Liaison Officer's office. All of the sample had responses on file from the relevant Department Heads but the quality of the recording of the search efforts varied between decision makers. There are no templates of how searches should be carried out.

In the case of the two files relating to records from Central Childcare (records from Trudder House) there were details on the FOI file of searches carried out. The three files relating to records from Child & Adolescent Psychiatric Services and the one file relating to records from Kildare/West Wicklow Community Services (placement in County Home in 1940s) also had some details of searches carried out on file. The two files relating to GMS payments had no evidence of searches carried out (as the records of payments made had not, at the time of the FOI request, been compiled).

All (except the cases relating to records from Child & Adolescent Psychiatric Services) of the decision letters refer to rights of review but little or no information is given as to the locations searched. In the case of the three FOI files relating to records from Child & Adolescent Psychiatric Services the original decision letters did not refer to rights of appeal. However, I note that prior to my Investigator visiting the HSE this deficiency in the decision letters was noted and the HSE re-issued the decision letters including the rights of appeal and additional details relating to the manner/locations in which the searches had been carried out.

### *Findings*

Subject to the comment following, the files examined under this investigation were in order:

1. The quality of recording of search efforts varied between decision makers, search efforts are not always recorded in detail, and there are some inconsistencies and lack of standardisation in approach to searching. The HSE supplied this Office with a copy of a memorandum issued to all FOI decision makers and support staff on foot of my Investigator's visit. It instructed staff to seek further information from a requester in a case where a record cannot be found; set out what steps a reasonable search might include; instructed staff to document the search and convey those details in the decision letter; and to include details of review rights in the decision letter.
2. In two cases, there was no evidence of any search being carried out, but the reason for this (relevant records had not been compiled) was recorded on file.
3. There are no templates of how searches should be carried out.
4. Decision letters do not always include information relating to the nature of the searches carried out or the locations searched.
5. Three decision letters did not refer to rights of review. The HSE says that that review rights are emphasised at all stages of an FOI officer's training, and that steps have been taken to

ensure there is no recurrence. As noted earlier, amended decision letters giving rights of appeal were issued prior to my Investigator's visit, and the memo to all relevant staff, issued subsequent to that visit, also reminded all relevant staff of this requirement.

### *Recommendations*

1. Search efforts/steps should always be recorded in detail on the FOI file.
2. Templates of how/where searches are to be conducted should be prepared and made available to all staff.
3. Decision letters should include background information and detail on the nature/type of the searches carried out and of the locations searched, including the basis on which conclusions are reached that records do not exist or cannot be found.
4. Decision letters must always refer to rights of appeal.
5. The re-structuring of the corporate services area of the HSE, including the FOI function, should be completed as a priority.

### 3.1.12. Clare County Council and Ennis Town Council

#### 3.1.12.1. Clare County Council

##### *Background*

The Council has a records management and archives policy that applies to semi-current and non-current records. While there is no formal records management policy in respect of current records, all sections have regard to the National Retention Policy for Local Authority Records, which is available on its intranet. Furthermore, the National Records Management Policy for Local Authorities will be piloted in the Council which will address the need for a records management policy for current records. (The development of the national policy is the responsibility of the Local Government Management Services Board and it is my understanding that it is expected that the final development and implementation of the policy will be completed in the next 12 months). Sections within the Council tend to send a large proportion of current files straight to the records centre (archive) due to lack of storage space in offices. Such current records are stored within the record centre in accordance with the National Retention Policy for Local Authority Records.

When dealing with an FOI request, the FOI Officer conducts preliminary work, such as ensuring all relevant fees have been paid and (if necessary) seeking any clarification as to the scope of the request. She also retains a file of all paperwork concerning the processing of the FOI request itself. The decision maker retains a further file, bearing the reference number assigned by the FOI officer, which contains details of the searches conducted.

In this case, my staff examined six of the nine files in which the Council relied on section 10(1)(a) in 2005, having excluded one request the decision on which had been appealed to my Office. An application for internal review had been made in respect of one of the six cases.

##### *Analysis*

Each file shows that the FOI Officer contacted the relevant areas within the Council that should,

or might, hold relevant records. Three of the files show liaison by the FOI Officer with staff of the Council on various aspects of the requests at issue, and a further file shows efforts by the FOI Officer and other staff within the Council to respond to a query raised by the requester that was not within the scope of the original request.

Turning to the files held by the decision maker, I note that one in particular shows that the Council went to great efforts to provide a requester with sensitive family information. Five files show the decision makers requesting various Council staff, as well as external parties such as solicitors and project managers, to confirm whether they hold records of relevance to the particular request. (While the sixth file does not have any record of the appropriate person being asked to forward the relevant records, their reply is on file). In general, the responses (all on file) were to the effect that records could not be found, or that they did not exist. Some replies give reasons as to why requested records do not exist; others do not. None specify the extent to which the searches were conducted for particular records (if searches were required).

As noted, one requester sought an internal review of the decision to apply section 10(1)(a). The internal reviewer, however, did not review the searches but relied on another exemption in the FOI Act to refuse access to the record.

All six decision letters give rights of appeal. Four refer to searches and generally say that physical searches had been conducted of relevant areas within the Council, that searches were conducted of relevant databases, or individual staff that may have dealt with the records had been interviewed. However, the precise details of those manual and electronic searches, or of which staff in what sections of the Council were interviewed were not detailed. Two decision letters explain why particular records do not exist; however, in two of the other four cases it is possible that the requested records did not exist but no reference to this is made in the decision and while the third says that the records sought do not exist, no explanation is given as to why this is the case.

## *Findings*

Subject to the following comments, the files examined in my investigation were in order.

1. There is no finalised written records management policy for current records, albeit the Council has stated that the piloting of the National Records Management Policy for Local Authorities in the Council will rectify this situation. The Council says that its involvement at a national level in respect of this project means that work on formulating a policy for current records has been ongoing for the last two years.
2. One file does not contain a record of the appropriate person in the Council being contacted, although their response is on file.
3. Not all of the files explain why the requested records do not (or might not) exist and neither do all the decision letters (where appropriate).
4. None of the files describe the extent to which searches were conducted, nor do the decision letters.
5. An internal review, sought on the basis that the requester was not satisfied with the adequacy of the searches, did not address this issue. Instead, a provision was applied to a record that was not actually in the possession of the Council at the time of making that internal review decision. While the internal reviewer may have been correct in that view (the investigation did not assess this), to my mind one cannot consider the application of a provision of the FOI Act to a record that is not in one's possession.
6. The Council took steps to assist a requester even where the information being sought was outside the scope of the original request.

## *Recommendations*

1. The Council should ensure that the participation in the records management pilot project leads to the finalisation of, and adherence to, a written records management policy for current records.

2. Records should be retained on file of contacts made with relevant persons or sections within the Council, and of their replies as to whether and why records do not exist, or as to the searches they conducted.

3. The searches conducted by various sections within the Council should be described on the FOI files and in the decision letters. They should also set out why records are not likely to exist, where this is appropriate.

4. Where an internal review application is made on the basis that it is contended that the searches were inadequate, the review should assess the steps taken to look for the record(s) to date. Accordingly, a review of the searches should be conducted. It is only on completion of the review search that it may be in order for the internal reviewer to consider whether, even if the record had been found, it may be exempt under another specified provision.

### 3.1.12.2. Ennis Town Council

#### *Background*

Sections within the Council apply their own (undocumented) record retention policies to current records. Details of the filing system are recorded electronically on shared drives for each section, which is managed by the Town Clerk's Office, which has access to all shared drives. The National Retention Policy for Local Authorities is available on the staff intranet, and the Council intends to develop formal record management policies once the National Records Management Policy for Local Authorities has been issued. The development of this national policy is the responsibility of the Local Government Management Services Board and it is my understanding that it is expected that the final development and implementation of the policy will be completed in the next 12 months.

When dealing with an FOI request, the FOI Officer sends the request to the relevant section head and deals with any queries he or she may have. Searches are conducted by staff within the

relevant section.

In this case, my staff examined both files in which the Council relied on section 10(1)(a) in 2005. No applications for internal review had been made in respect of them. The files are retained by the FOI Officer.

### *Analysis*

One file shows that the FOI Officer contacted the relevant areas within the Council that should, or might, hold relevant records. It also contains a reply which sets out why certain requested records do not exist, and the ensuing decision letter sets out why this was the case. The other file does not show details of how the decision maker arrived at the conclusion, and the explanation as set out in the decision letter, that particular records do not exist. However, the decision maker had actually dealt with the substantive matter the subject of the request (a HR matter) and was in a position to know whether the records existed without reference to anyone else.

Both decisions set out rights of appeal and set out why the requested records were refused on the basis that they do not exist.

### *Findings*

Subject to the following comment, the files examined under this investigation were in order.

1. The Council does not have a written records management policy.
2. One file, of the two examined, did not contain details of how the decision maker arrived at the conclusion that section 10(1)(a) applied, in that records did not exist.

### *Recommendations*

1. A records management policy should be developed, documented, and implemented, in the

light of the National Records Management Policy for Local Authorities.

2. A note setting out how particular decision makers may conclude that particular records do not exist (for example, from his or her other responsibilities within the body), should be placed on the FOI decision making file.

## 3.2. General Findings

### Interpreting Requests

- In one instance a public body took a narrow interpretation of a request without contacting the requester for clarification.
- In some instances the public body took steps to assist requesters even though it did not hold the requested records.

### Search Template

- Many of the bodies examined had no templates of how searches should be carried out.

### Undertaking records search

- In some cases there is no written/documented records management policy. Certain local authorities are awaiting recommendations in the National Records Management Policy for Local Authorities which is being developed by the Local Government Management Services Board and to be fully implemented during 2007.
- The conclusions of discussions between the FOI liaison officer and the decision maker, if any, are not always recorded on the FOI request file.
- One body was unable to explain why a search of the archives failed to locate records that had been archived in line with the body's archiving procedures

### Recording search (including details of contacts)

- The quality of recording of search efforts varied between decision makers, with search efforts not always recorded in detail, and there are some inconsistencies and lack of standardisation

in approaches to searching.

- Five files did not contain details of contacts made by the decision maker with relevant staff to establish whether particular records existed, nor were there records of replies as to why the public body concluded that the records did not exist.
- Not all of the sampled FOI files contained information on areas searched, or had recorded evidence of how searches were conducted.
- In two cases, there was no evidence of any search being carried out, but the reason for this (relevant records had not been compiled) was recorded on file.
- Not all of the files explain why the requested records do not (or might not) exist. In one case, while it was clear the decision maker knew from his other responsibilities within the body as to why this was so, this fact was not recorded on file.
- Some files did not contain confirmation from the queried sections of the body that they had actually searched for relevant records. In some cases the relevant section did not comment as to whether it considered it had located all records of relevance to the request.
- One file does not contain a record of the appropriate person in the body being contacted, although their response is on file.

## Destruction of records

- In a number of instances no listing of destroyed records was retained following a major cull of files in the past. However, in one body since 2004 a listing is retained of destroyed records.
- In some cases, there is a heavy dependency on the knowledge/familiarity with the files of the

current/former employees which could be lost were these people to be no longer available.

## Decision Letters

- Decision letters do not always include detailed information relating to the nature of the searches carried out nor the locations searched. The inclusion in decision letters of such information would be of assistance to requesters.
- Decision letters do not always refer to rights of review/appeal.
- Two decision letters contained "cut and paste" errors.
- In four cases the decision letter did not refer to withheld records although the schedule did. A further decision letter informs the requester that full access is being granted to records that, according to the schedule, are being withheld.
- One decision letter does not quote section 10(1)(a) (although it is clear from the tenor of the decision letter that this is the applicable provision).
- Some decision letters did not explain the basis on which the public body concluded that the requested records did not exist.
- The FOI requests were not acknowledged in all cases.
- In one case no decision letter issued.

## Internal review

- An internal review, sought on the basis that the requester was not satisfied with the adequacy of the searches, did not address the search issue. Instead, the public body decided that a record that was not actually in its possession at the time of making that internal review

decision would be exempt if it were. While the internal reviewer may have been correct in that view (the investigation did not assess this), the FOI Act does not provide for the application of an exemption provision to a record that is not held by or under the control of the public body.

**Chapter Four - Recommendations: The Information**  
**Commissioner's Guide to Standards of Best Practice for Public**  
**Bodies when dealing with FOI requests that involve searches for**  
**records**

#### **4. Recommendations: The Information Commissioner's Guide to Standards of Best Practice for Public Bodies when dealing with FOI requests that involve searches for records.**

##### Records Management - general

- Every public body should draw up and implement a comprehensive records management policy as a priority. At a minimum a register of all files should be prepared so that each body has a complete listing of all records in its possession.
- The pilot records management project in Local Authorities which is being developed by the Local Government Management Services Board should be evaluated and fully implemented in all Local Authorities during 2007.
- Public bodies should ensure that their records management policies incorporate archiving of records. A verified listing should be kept of all archived records, and search mechanisms of the archives should be complete and reliable so that there can be certainty that all archived records are accessible if required in the future.

##### Destruction of records

- Listings of records destroyed in accordance with a public body's record management policy should be retained indefinitely
- Efforts should be made to distil the knowledge of/familiarity with the retention and storage of files throughout an organisation to avoid over-dependency on any one person.

## Interpreting Requests

- Where a request is unclear, bodies should not assume for themselves what a requester is seeking but should instead clarify the matter with the requester, and seek written confirmation of the clarified request.

## Search Template

- Templates of how/where searches are to be conducted should be prepared and made available to all staff, with steps taken to ensure that the procedures in the templates are adhered to.

## Undertaking and Recording searches (including details of contacts)

- There should be consistency in searches for records by public bodies. It is recommended that a checklist could be used for this purpose. The checklist would include the following steps that might be taken to search for records such as:

searching electronic records;

contacting appropriate staff;

physical searches of cabinets files, desk tops, diaries, etc;

getting written confirmation from staff that such searches have been done; and,

asking the decision maker to set out what steps he or she took to look for records.

- Details of searches conducted should be noted and retained on the FOI decision making file, including the following:

the conclusion of discussions between the FOI liaison officer and the decision maker;

details as to how it is decided that certain sections of the public body should be searched and not others;

details on who was contacted regarding searches, and the responses from those people regarding the outcome of the search;

details of the areas searched;

evidence of how searches were conducted;

the basis for concluding that a search is not necessary (where relevant); and

the basis for concluding that the requested records do not exist (where relevant)

## Decision Letters

- Particular attention should be paid to the standard of decision letters.
- Decision letters should always set out the requester's rights of review/appeal.
- Decision letters should always include detailed information relating to the nature of the searches carried out and of the locations searched. The inclusion of additional background information and detail, as to the nature of the searches carried out or of the locations searched, in the decision letters presents a more complete picture to FOI requesters of the efforts made to locate the requested records.
- Care should be taken in decision letters to ensure that all refused records are referred to.

- There should be consistency in content between the decision letter and the record schedule, with both referring to the same records and listing the same decision for each record.
- It is not correct to say that the request is being granted in full in cases where the decision is that requested records cannot be found or do not exist, although all other records (relevant to a request) in the possession of the body are being released.
- Where a decision states that records cannot be found, section 10(1)(a) should be quoted in the decision letter and counted as such for statistical purposes.
- Decision letters should always explain the basis on which the public body concluded that the requested records did not exist or could not be found.
- FOI requests should be acknowledged in all cases.
- A decision letter should always issue for all FOI requests, even where access by inspection was sought and granted.

### Internal review

- Where an internal review application is made on the basis that it is contended that the searches were inadequate, the review should assess the steps taken to look for the record(s) to date. Accordingly, a review of the searches should be conducted. It is only on completion of the review search that it may be in order for the internal reviewer to consider whether, even if the record had been found, it may be appropriate to exempt it under another specified provision.

**Appendix I - Initial Letters to Heads and Liaison Officers of Public  
Bodies**

## Appendix I - Initial Letters to Heads and Liaison Officers of Public Bodies

### (i) TO HEAD OF PUBLIC BODY

Dear

#### Investigation under section 36 of the Freedom of Information Act

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 the use of section 10(1)(a)<sup>1</sup> by a number of public bodies including the [name of body]. As a first step, she intends to collate statistics relating to FOI requests received by public bodies covering the period 1 January 2005 to 31 December 2005. This will require a disaggregation of the statistics which you currently provide on an annual basis as set out below:

1	Total number of FOI requests in which initial decision was made in 2005 <sup>2</sup>	
2	Number of FOI requests in which initial decision was made in 2005 where <u>only</u> exemption claimed was section 10(1)(a)	
3	Number of FOI requests in which initial decision was made in 2005 where exemption claimed was section 10(1)(a) plus other exemption(s)	

<sup>1</sup> Section 10(1)(a) provides for refusal of a request when "the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken".

<sup>2</sup> Total number of FOI requests (irrespective of the date of the original FOI request) in which initial decision was made in 2005. This figure does not include Internal Review decisions.

I would be grateful if you could supply this information (even if there is a nil return) to Mr Frank Forde or Mr David Stone by **Wednesday, 14 June 2006**. In addition, it is the Commissioner's

intention to examine in some detail in a sample of public bodies the procedures and practices for dealing with FOI requests where records were refused under section 10(1)(a). If it is decided to include the [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 by end-2006 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. In view of the tight deadline the Commissioner would be obliged to have your [public body's] full co-operation in the matter.

If you have any questions in relation to the above please contact Mr Frank Forde or Mr David Stone in this Office at email [info@oic.gov.ie](mailto:info@oic.gov.ie) or telephone (01) 639 5689.

Yours sincerely,

---

Pat Whelan  
Director General

(ii) TO FOI LIAISON OFFICER OF PUBLIC BODY

Dear

Investigation under section 36 of the Freedom of Information Act

Attached please find a reminder letter sent today to the [job title of Head] of [name of public body] concerning the above Investigation by the Information Commissioner. Please note the date by which your response is required.

If you have any questions in relation to the above please contact Mr Frank Forde or Mr David Stone in this Office at email [info@oic.gov.ie](mailto:info@oic.gov.ie) or telephone (01) 639 5689.

Yours sincerely,

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Sean Garvey  
Senior Investigator

**Appendix II - Table Summarising the Usage of Section 10(1)(a) by  
the Surveyed Bodies**

**Appendix II - Table Summarising the Usage of Section 10(1)(a) by the Surveyed Bodies (Bodies selected for examination in bold)**

**(i) Civil Service**

A	B	C	D	E	F	G
Civil Service Department	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a) [C/ B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part. [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part [(C+E)\B* 100]
Department of Education and Science (excluding requests concerning industrial schools)	190	84	44.21%	0	84	44.21%
Department of Social and Family Affairs	433	39	9.01%	1	40	9.24%
Department of Justice, Equality and Law Reform	425	25	5.88%	7	32	7.53%
Department of Health and Children (excluding requests concerning industrial schools)	227	13	5.73%	1	14	6.17%
Defence Forces	238	13	5.46%	2	15	6.30%
Department of Agriculture and Food	171	28	16.37%	10	38	22.22%
Department of Communications, Marine and Natural Resources	130	16	12.31%	1	17	13.08%
Department of the Environment, Heritage and Local Government	121	9	7.44%	0	9	7.44%
Office of the Revenue Commissioners	125	20	16.00%	2	22	17.60%
Department of Finance	87	7	8.05%	1	8	9.20%
Department of Enterprise, Trade and Employment	87	2	2.30%	5	7	8.05%
Department of Transport	50	7	14.00%	1	8	16.00%
Department of Arts, Sport and Tourism	73	3	4.11%	0	3	4.11%
Office of Public Works	58	2	3.45%	3	5	8.62%
Department of the Taoiseach	57	12	21.05%	0	12	21.05%
Public Appointments Service	49	3	6.12%	0	3	6.12%
Department of Foreign Affairs	32	1	3.13%	1	2	6.25%

## **(i) Civil Service (2)**

A	B	C	D	E	F	G
Civil Service Department	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a)  [C/ B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part.  [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part  [(C+E)\B* 100]
Department of Defence	29	1	3.45%	0	1	3.45%
Department of Community, Rural and Gaeltacht Affairs	30	2	6.67%	0	2	6.67%
Office of the Houses of the Oireachtas	14	0	0.00%	0	0	0.00%
Office of the Director of Public Prosecutions	12	1	8.33%	0	1	8.33%
Office of the Commissioner of Valuation and Boundary Survey of Ireland	12	1	8.33%	0	1	8.33%
Central Statistics Office	3	0	0.00%	0	0	0.00%
Office of the Director of Corporate Enforcement	3	0	0.00%	0	0	0.00%
Office of the Attorney General	3	0	0.00%	0	0	0.00%
Office of the Chief State Solicitor	2	0	0.00%	0	0	0.00%
Office of the Comptroller and Auditor General	2	0	0.00%	0	0	0.00%
Ordnance Survey Ireland	2	0	0.00%	0	0	0.00%
Office of the Appeals Commissioner for the Tax Acts	1	0	0.00%	0	0	0.00%
Office of the Director of Consumer Affairs	1	0	0.00%	0	0	0.00%
Office of the Registrar of Friendly Societies	0	0	0.00%	0	0	0.00%

## **(ii) Local Authorities**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>
Local Authority	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a)  [C/ B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part.	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part  [(C+E)B* 100]
Dublin City Council	133	13	9.77%	2	15	11.28%
Cork County Council	104	5	4.81%	5	10	9.62%
Galway County Council	81	12	14.81%	1	13	16.05%
Fingal County Council	74	2	2.70%	0	2	2.70%
Dún Laoghaire - Rathdown	69	5	7.25%	0	5	7.25%
Louth	71	1	1.41%	0	1	1.41%
Kerry	64	5	7.81%	1	6	9.38%
<b>Clare</b>	47	6	12.77%	5	11	23.40%
South Dublin County Council	47	3	6.38%	1	4	8.51%
Wicklow	31	4	12.90%	2	6	19.35%
Donegal	42	3	7.14%	3	6	14.29%
Wexford	42	4	9.52%	5	9	21.43%
Mayo	40	8	20.00%	0	8	20.00%
Cork City Council	33	4	12.12%	0	4	12.12%
Galway City Council	39	4	10.26%	3	7	17.95%
Meath	42	4	9.52%	1	5	11.90%
Tipperary SR	31	3	9.68%	0	3	9.68%
Sligo	29	3	10.34%	3	6	20.69%
Limerick County Council	27	1	3.70%	1	2	7.41%
Tipperary NR	27	2	7.41%	0	2	7.41%
Offaly	24	1	4.17%	0	1	4.17%
<b>Roscommon</b>	19	5	26.32%	1	6	31.58%
Leitrim	14	0	0.00%	0	0	0.00%
Laois	14	0	0.00%	0	0	0.00%
Kildare	19	3	15.79%	0	3	15.79%
Limerick City Council	19	0	0.00%	0	0	0.00%
Waterford County Council	18	1	5.56%	2	3	16.67%
Kilkenny	18	1	5.56%	0	1	5.56%
Monaghan	14	0	0.00%	0	0	0.00%
Waterford City Council	14	0	0.00%	0	0	0.00%
Westmeath	12	0	0.00%	0	0	0.00%
Longford	10	1	10.00%	0	1	10.00%
Carlow	7	1	14.29%	0	1	14.29%
Cavan	4	0	0.00%	0	0	0.00%

### **(iii) Health Service Executive**

A	B	C	D	E	F	G
Health Service Executive (by former Health Board area)	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a) [C/ B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part. [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part [(C+E)\B* 100]
Southern	675	48	7.11%	16	64	9.48%
West	534	26	4.87%	0	26	4.87%
South East	437	28	6.41%	1	29	6.64%
North West	318	11	3.46%	4	15	4.72%
Northern Area	334	48	14.37%	0	48	14.37%
North East	344	31	9.01%	5	36	10.47%
Mid West	384	44	11.46%	3	47	12.24%
Midland	185	22	11.89%	3	25	13.51%
<b>South West</b>	80	16	20.00%	0	16	20.00%
East Coast	98	14	14.29%	5	19	19.39%
HSE National Requests	29	1	3.45%	0	1	3.45%

**(iv) Voluntary Hospitals, Mental Health Services and Other Related Agencies**

A	B	C	D	E	F	G
Public Body	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a)  [C/ B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part.  [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part  [(C+E)\B* 100]
Mater Misericordiae Hospital	202	9	4.46%	2	11	5.45%
Beaumont Hospital	143	11	7.69%	0	11	7.69%
St James Hospital	119	11	9.24%	0	11	9.24%
Mercy Hospital, Cork	117	3	2.56%	0	3	2.56%
St Vincent's University Hospital	105	4	3.81%	0	4	3.81%
Brothers of Charity, Galway	65	0	0.00%	0	0	0.00%
Tallaght Hospital (Adelaide and Meath Hospital, Incorporating the National Children's Hospital)	106	5	4.72%	0	5	4.72%
<b>Rotunda Hospital</b>	101	28	27.72%	10	38	37.62%
South Infirmary - Victoria Hospital, Cork	95	2	2.11%	0	2	2.11%
Our Lady's Hospital for Sick Children, Crumlin	73	8	10.96%	0	8	10.96%
The Children's Hospital, Temple Street	73	11	15.07%	0	11	15.07%
Hospitaller Order of St John of God	49	4	8.16%	0	4	8.16%
Royal Victoria Eye and Ear Hospital	63	9	14.29%	0	9	14.29%
National Maternity Hospital, Holles Street	55	2	3.64%	1	3	5.45%
Coombe Women's Hospital	38	4	10.53%	0	4	10.53%
St John's Hospital, Limerick	53	2	3.77%	0	2	3.77%
Cappagh National Orthopaedic Hospital, Dublin	36	22	61.11%	0	22	61.11%
Daughters of Charity Services	34	0	0.00%	0	0	0.00%
Brothers of Charity, Cork	26	2	7.69%	0	2	7.69%
<b>St Mary's Hospital, Baldoyle</b>	28	12	42.86%	0	12	42.86%

**(iv) Voluntary Hospitals etc. (2)**

A	B	C	D	E	F	G
Public Body	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a)  [C/ B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part.  [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part  [(C+E)\B* 100]
Brothers of Charity, Limerick	16	1	6.25%	0	1	6.25%
St Vincent's Hospital, Fairview	12	2	16.67%	0	2	16.67%
National Rehabilitation Hospital, Dun Laoghaire	10	0	0.00%	0	0	0.00%
Stewarts Hospital	9	0	0.00%	0	0	0.00%
Sunbeam House Services	8	0	0.00%	0	0	0.00%
Brothers of Charity, Waterford	7	0	0.00%	0	0	0.00%
COPE Foundation	7	0	0.00%	0	0	0.00%
Sisters of Charity of Jesus and Mary	6	1	16.67%	0	1	16.67%
<b>St Michael's House</b>	6	0	0.00%	0	0	0.00%
Food Safety Authority of Ireland	5	0	0.00%	0	0	0.00%
St Patrick's Hospice, Cork	5	0	0.00%	0	0	0.00%
St Lukes Hospital, Rathgar	7	0	0.00%	0	0	0.00%
<b>St Michael's Hospital, Dun Laoghaire</b>	5	3	60.00%	0	3	60.00%
Enable Ireland	5	0	0.00%	0	0	0.00%
Central Remedial Clinic	5	0	0.00%	0	0	0.00%
Dublin Dental School and Hospital	3	0	0.00%	0	0	0.00%
Incorporated Orthopaedic Hospital, Clontarf	3	0	0.00%	0	0	0.00%
Cheshire Ireland, Dun Laoghaire	3	0	0.00%	0	0	0.00%
National Association for the Deaf	3	0	0.00%	0	0	0.00%

### (v) Third Level Education Bodies

A	B	C	D	E	F	G
Third Level Education Body	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a) [C / B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part. [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part [(C+E)\B* 100]
University College Dublin	53	7	13.21%	5	12	22.64%
Dublin University, Trinity College	55	6	10.91%	2	8	14.55%
University College Cork	54	3	5.56%	0	3	5.56%
<b>Waterford Institute of Technology</b>	51	22	43.14%	0	22	43.14%
University of Limerick	61	5	8.20%	4	9	14.75%
Sligo Institute of Technology	30	0	0.00%	2	2	6.67%
National University of Ireland, Galway	28	0	0.00%	0	0	0.00%
Dublin Institute of Technology	48	7	14.58%	4	11	22.92%
<b>Dublin City University</b>	19	2	10.53%	5	7	36.84%
Galway-Mayo Institute of Technology	9	1	11.11%	1	2	22.22%
Athlone Institute of Technology	11	1	9.09%	1	2	18.18%
Institute of Technology, Carlow	6	0	0.00%	0	0	0.00%
Limerick Institute of Technology	10	0	0.00%	0	0	0.00%
Higher Education Authority	8	1	12.50%	0	1	12.50%
St Patricks College, Drumcondra	8	1	12.50%	0	1	12.50%
National University of Ireland, Maynooth	9	0	0.00%	0	0	0.00%
Cork Institute of Technology	2	0	0.00%	0	0	0.00%
Institute of Technology, Tralee	5	0	0.00%	0	0	0.00%
Dundalk Institute of Technology	4	0	0.00%	0	0	0.00%
Letterkenny Institute of Technology	5	0	0.00%	0	0	0.00%
Tipperary Institute	3	0	0.00%	0	0	0.00%
Institute of Technology, Blanchardstown	3	0	0.00%	0	0	0.00%
Dun Laoghaire Institute of Art, Design and Technology	3	0	0.00%	0	0	0.00%
Institute of Technology, Tallaght	3	0	0.00%	0	0	0.00%
Mary Immaculate College, Limerick	3	0	0.00%	0	0	0.00%

## (vi) Other Bodies

A	B	C	D	E	F	G
Public Body	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a) [C / B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part. [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part [(C+E)\B* 100]
Health and Safety Authority	195	2	1.03%	10	12	6.15%
Social Welfare Appeals Office	56	0	0.00%	1	1	1.79%
Land Registry and Registry of Deeds	46	0	0.00%	0	0	0.00%
RTE	46	3	6.52%	0	3	6.52%
FAS	43	6	13.95%	1	7	16.28%
Chief Medical Officer for the Civil Service	33	0	0.00%	0	0	0.00%
Broadcasting Commission of Ireland	25	0	0.00%	0	0	0.00%
Environmental Protection Agency	21	1	4.76%	2	3	14.29%
The Courts Service	21	2	9.52%	0	2	9.52%
Probation and Welfare Service	18	0	0.00%	0	0	0.00%
National Roads Authority	19	0	0.00%	1	1	5.26%
Arts Council	14	1	7.14%	0	1	7.14%
<b>Commission for Communications Regulation</b>	14	4	28.57%	2	6	42.86%
Blood Transfusion Service Board	11	2	18.18%	0	2	18.18%
Irish Medicines Board	10	1	10.00%	0	1	10.00%
An Bord Pleanála	7	0	0.00%	1	1	14.29%
Teagasc	9	1	11.11%	0	1	11.11%
Fáilte Ireland	6	0	0.00%	0	0	0.00%
Irish Sports Council	8	0	0.00%	0	0	0.00%
<b>IDA Ireland</b>	6	1	16.67%	1	2	33.33%
Legal Aid Board	4	0	0.00%	0	0	0.00%
Forfas	5	0	0.00%	0	0	0.00%
Shannon Free Airport Development Ltd	5	0	0.00%	0	0	0.00%
Board of National Library of Ireland	5	0	0.00%	0	0	0.00%
National Disability Authority	0	0	0.00%	0	0	0.00%

**(vi) Other Bodies (2)**

A	B	C	D	E	F	G
Public Body	No. of Decisions Made In 2005	No. of Decisions Where Only Exemption Claimed is Section 10(1)(a)	Percentage of Decisions Where Only Exemption Claimed is Section 10(1)(a) [C/ B * 100]	No. of Decisions Made Where Section 10(1)(a) is Relied On Along with Another Exemption	Total No. of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part. [C + E]	Percentage of Decisions Where Section 10(1)(a) is Relied on in Whole or in Part [(C+E)\B* 100]
National Gallery of Ireland	4	0	0.00%	0	0	0.00%
Campus & Stadium Ireland Development Ltd	3	0	0.00%	0	0	0.00%
Southern Regional Fisheries Board	3	0	0.00%	0	0	0.00%
South Western Regional Fisheries Board	3	0	0.00%	0	0	0.00%
Companies Registration Office	3	0	0%	0	0	0%
Competition Authority	1	0	0.00%	0	0	0.00%

**Appendix III - Letters to Heads and FOI Officers of Selected Bodies**

## **Appendix III - Letters to Heads and FOI Officers of Selected Bodies**

### TO HEAD OF PUBLIC BODY

Dear

#### Investigation under section 36 of the Freedom of Information Act

I refer to previous correspondence concerning the above Investigation by the Information Commissioner in relation to the use of section 10(1)(a) by public bodies. As already advised to you, it is the Commissioner's intention to examine in some detail in a sample of public bodies the procedures and practices for dealing with FOI requests where records were refused under section 10(1)(a).

The Commissioner has decided to include the [public body] in the sample and this Office will be writing to your FOI Liaison Officer [name] to explain the scope of the investigation. The [public body] has been selected for investigation as it is one of the top 12 bodies that have, proportionately, relied most on section 10(1)(a) in initial decisions made in 2005 (whether in whole or in part).

The Commissioner intends to publish the investigation report by end-2006 when it may, if considered appropriate, be presented to the Oireachtas, the Minister for Finance and the public bodies concerned in accordance with section 36(5) of the FOI Act. In view of the tight deadline the Commissioner would be obliged to have your [public body's] full co-operation in the matter.

If you have any questions in relation to the above please contact Mr Frank Forde or Mr David Stone in this Office at email [info@oic.gov.ie](mailto:info@oic.gov.ie) or telephone (01) 639 5689.

Yours sincerely,

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Pat Whelan  
Director General

TO FOI LIAISON OFFICER OF PUBLIC BODY

Dear

Investigation under section 36 of the Freedom of Information Act

I refer to previous correspondence concerning the above Investigation by the Information Commissioner in relation to the use of section 10(1)(a) by public bodies. As already advised to you, it is the Commissioner's intention to examine in some detail in a sample of public bodies the procedures and practices for dealing with FOI requests (in which initial decision was made in 2005) where records were refused under section 10(1)(a).

[Head of Public Body] has been notified of the Commissioner's decision to include the [public body] in the sample and a selected number of relevant FOI files in [public body] will now be subject to further scrutiny. The [public body] has been selected for investigation as it is one of the top 12 bodies that have, proportionately, relied most on section 10(1)(a) in initial decisions made in 2005 (whether in whole or in part).

As a first step, you are requested to provide this Office with the following data:

- (i) The role of the FOI Liaison Officer in dealing with FOI requests that involve section 10(1)(a);
- (ii) The reference numbers and names of all requests in which an initial decision was made in 2005 in which section 10(1)(a) was in applied in whole or in part [to exclude internal review decisions];
- (iii) A breakdown of the requests listed at (ii) into:
  - Information Type: personal, non-personal and mixed;
  - Requester Type: Journalists, Business, Oireachtas Members, Staff of Public Bodies, Clients of Public Bodies, Others
- (iv) The physical location of the file (including the internal review file, if separate to the original decision making file)

I would be grateful if you could supply this information to Mr Frank Forde or Mr David Stone by **Wednesday, 26 July 2006**. The Commissioner intends to publish the investigation report by end-2006 when it may, if considered appropriate, be presented to the Oireachtas, the Minister for Finance and the public bodies concerned in accordance with section 36(5) of the FOI Act. In view of the tight deadline the Commissioner would be obliged to have your full co-operation in the matter.

If you have any questions in relation to the above please contact Mr Frank Forde or Mr David Stone in this Office at email [info@oic.gov.ie](mailto:info@oic.gov.ie) or telephone (01) 639 5689.

Yours sincerely

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Seán Garvey  
Senior Investigator

**Appendix IV**  
**Percentage of Section 10(1)(a) Refusals Examined for selected**  
**bodies.**

**Appendix IV - Percentage of Section 10(1)(a) Refusals Examined for selected bodies.**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Public Body</b>	<b>Total Number of FOI requests refused in whole or in part in reliance on section 10(1)(a)</b>	<b>No. of Cases Examined</b>	<b>Percentage of Refusals Examined</b>
Cappagh National Orthopaedic Hospital, Dublin	22	8	36
St Michael's Hospital, Dun Laoghaire	3	3	100
Rotunda Hospital	38	8	21
Department of Education and Science (excl. industrial schools)	84	8	10
Waterford Institute of Technology	22	8	36
St Mary's Hospital, Baldoyle	12	8	67
Commission for Communications Regulation	6	6	100
Dublin City University	6	6	100
IDA Ireland	2	2	100
Roscommon County Council	6	6	100
HSE South West	16	8	50
Clare County Council (incl figures for Ennis Town Council)	11	8	73