Decision of the Information Commissioner in his capacity as Appeal Commissioner on an appeal made under Regulation 10 of the European Communities (Re-Use of Public Sector Information) Regulations 2005 (as amended by the European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015 (the PSI Regulations)

Case RPSI/16/03

Date of decision: 27 January 2017

Appellant: Raidió Teilifís Éireann (RTÉ) (the appellant)

Public Sector Body: The Companies Registration Office (CRO)

Issue: Whether the CRO's decision to refuse the appellant's request to re-use a database of disqualified and restricted persons was in compliance with the PSI Regulations.

Summary of Commissioner's Decision: In accordance with Regulation 12(2) of the PSI Regulations, the Information Commissioner reviewed the decision of the CRO on the appellant's request.

The Commissioner found that the CRO was not justified in refusing the appellant's request on the basis of the reasons stated at first instance.

The Commissioner found that refusal of the appellant's request was otherwise justified on the basis that pursuant to Regulation 5(5)(b) there was no obligation on the CRO to adapt the database or to provide extracts from the database.

Accordingly, the Commissioner affirmed the CRO's decision to refuse the appellant's request.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal this decision to the High Court on a point of law from the decision, as set out in Regulation 15 of the PSI Regulations. Such an appeal must be initiated not later than eight weeks after notice of this decision was given to the person bringing the appeal.

Background to review

Particulars of the document requested

Under sections 823 and 864 and the Companies Act 2014, the Registrar of Companies must keep registers of persons subject to disqualification orders, and persons restricted in being appointed, or acting in certain functions, with regard to companies. Section 891 of the Companies Act provides that, on payment of the prescribed fee, any person may inspect any document which has been received and recorded by the Companies Registrar in pursuance of the 2014 Act.

The registers of disqualified and restricted persons (the registers) do not record information on a permanent basis. Sections 823 and 864 of the Companies Act 2014 provide that the Registrar of Companies must remove particulars of persons from the registers on expiry of the period of disqualification or restriction. Expiry dates recorded on the registers are subject to change where the Courts grant relief from restriction or disqualification.

The registers are stored on a single electronic database (the database), which holds particulars of approximately 4500 disqualified and restricted individuals. The CRO does not maintain physical versions of the registers. The database includes names, dates of birth, addresses, the legal basis for disqualification or restriction, and the beginning and end dates of disqualification or restriction. The database is not stored in an open format.

The database is updated on a daily basis by CRO staff, by means of a graphic user interface (GUI). On its website (www.cro.ie), the CRO provides a free online search page whereby members of the public can query the database. Search queries are limited to searches for names of individuals. No single query of the search page will return a complete list of all disqualified or restricted persons – the results of a single search will only ever reveal a partial extract of the database. The online search page does not have a public application programming interface (i.e. an interface allowing other software applications to interact with the database) or an export function for search results (although information can be copied directly from the search results page).

The appellant's request

On 5 September 2016 Conor Ryan, a RTÉ journalist, made a request to the CRO under the PSI Regulations. He requested release of "a complete electronic copy or negotiated extract of: The register of disqualified/restricted persons" for the purpose of re-use. The appellant specifically sought release of the document in open and machine-readable format such as a csv. In his request, the appellant contended that the database was being made available to third party suppliers in bulk format, and that such provision was anti-competitive and contrary to the PSI Regulations. The appellant stated that he would abide by any licencing restrictions required by the CRO in order to re-use the database.

In a decision of 5 October 2016, the CRO refused the appellant's request for re-use. The CRO stated that it does not supply a complete version of the database of disqualified and restricted persons to any third party. The CRO refused the appellant's request on the basis that the information contained in the database was publicly available through the search page. The appellant appealed the refusal of his request to my Office on 1 November 2016.

Regulations 5(4)(c) and 7(3) provide that when making a decision on a request, public sector bodies must ensure that requesters are informed of the available means of redress. It does not appear that the CRO informed the appellant of the availability of a right of appeal to my Office in this case. Although no detriment resulted from this failure on this occasion, I must emphasise the importance of this provision in every case.

Scope of review

As Information Commissioner, I am the designated "appeal commissioner" under the PSI Regulations. Regulation 12 provides that, on receipt of a valid request for an appeal under the PSI Regulations, I must carry out a review. Following this review, I may decide to affirm, vary or annul the decision under review.

The appellant confirmed to my Investigator that his request was for once-off release of the database for the purpose of re-use, and that he did not require ongoing access to the database.

Regulation 10(1)(a) of the PSI Regulations provides a right of appeal against a decision by a public sector body "to refuse to allow a requester to re-use a document". As I previously stated in my decision in *Vizlegal and the Patents Office* (RPSI/16/02), I consider that the right of appeal under Regulation 10(1)(a) includes decisions by public sector bodies on the format of documents under Regulations 5(5)(a) or 5(5)(b).

In the course of my review, I have considered the CRO's refusal to release the database for re-use, the obligation to release the database in an open and machine-readable format as required by Regulation 5(5)(a), the limitation of the PSI Regulations under Regulation 5(5)(b), and the application of Regulations 6 and 8 which govern charges and licences.

I have also had regard to submissions made to my Office by the parties as well as Department of Finance Circular 32/2005, Department of Public Expenditure and Reform Circulars 16/2015 and 12/2016, and the European Commission Notice "Guidelines on recommended standard licences, datasets and charging for the re-use of documents" (2014/C 240/01) (the EC Guidance) published in July 2014.

Analysis and Findings

The appellant's submissions

The appellant submitted that, pursuant to Regulations 5(1) and 5(5)(a), the CRO was obliged to release the database for re-use in open and machine-readable format. The appellant submitted that releasing the database in open and machine-readable format was a simple operation and not a disproportionate effort outside the scope of the PSI Regulations, as defined by Regulation 5(5)(b). The appellant raised a number of relevant technical queries.

The CRO's submissions

At first instance, the CRO refused the appellant's request on the basis that the database was publicly available. On appeal to my Office, the CRO sought to rely additionally on the limitations on re-use under Regulations 5(5)(a) and (b). The CRO submitted that it was not obliged to release the database in open and machine-readable format as this was not possible and would involve a disproportionate effort on its part. The CRO also submitted that for the

purposes of Regulation 5(5)(a) it was not appropriate to release the database in open and machine-readable format as this would result in the release of inaccurate and outdated information, contrary to the intention of the Companies Act 2014.

Relevant provisions of the PSI Regulations

As I previously stated in my decision in *Vizlegal and the Patents Office* (RPSI/16/02), a right of access to a document is an essential precursor to the right to re-use such a document. Rights of access to documents are primarily defined by national legislation, and not by the PSI Regulations. In the present case, an express legislative right of inspection is created by section 891of the Companies Act 2014.

Regulation 2(1) defines re-use as "the use by an individual or legal entity of the document for commercial or non-commercial purposes other than the initial purpose within the public task for which the document was produced". A "document" is defined as all or part of any form of document, record or data, whether in physical, electronic or other form.

Under Regulation 5(1)(a) of the PSI Regulations, an individual or a legal entity may make a request to a public sector body to release documents for re-use. Regulation 5(2) provides that on receipt of a request to re-use a document, a public sector body must allow the re-use of the document for commercial or non-commercial purposes in accordance with the conditions and time limits provided for by the PSI Regulations. Regulation 8 provides that a public sector body may allow re-use without conditions, or may impose conditions for re-use, including conditions under licence. Regulation 3(1) exempts certain documents from the scope of the PSI Regulations.

Regulation 5(5)(a) of the PSI Regulations provides that, where a public sector body makes a document available for re-use it is obliged make the document available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with its metadata, in compliance with formal open standards.

Regulation 5(5)(b) provides that nothing in the PSI Regulations requires a public sector body to create or adapt any document in order to comply with a request, or to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

Consideration of the CRO's first instance decision

Re-use involves the subsequent use of an accessible document outside of its public task. In refusing the appellant's request at first instance, the CRO sought to rely on the fact that the information in the database was publicly accessible. The decision-maker stated "Given that this information is already freely available from our website, I must refuse your request."

The CRO website includes a "Statement of Policy on Release of Data", which provides that requests for re-use will be processed in line with the PSI Regulations, subject to a standard licence. It does not appear from this statement that there is any pre-established right to re-use the database in question.

A right of access is required in order to re-use a document. However, just because a document is accessible, it does not mean that it can be re-used unconditionally. The CRO's

decision therefore failed to address the question of re-use of the database. In particular, the CRO's decision did not address the appellant's request to re-use a "complete electronic copy" of the database in open and machine-readable format, nor did it consider the conditions that should be imposed on re-use (if any).

Accordingly, I am not satisfied that the CRO was justified in refusing the appellant's request on the basis of the reasons stated at first instance.

Provision of the database to commercial third parties

In his request to re-use the database, the appellant noted that the registers of disqualified and restricted persons were available for purchase through private sector providers. The appellant submitted that commercial resellers had been provided with bulk access to the database by the CRO, thereby placing other parties at a competitive disadvantage. I note that Regulation 8 states that conditions for re-use must not be used to restrict competition. I also note that Regulation 6(2)(b) allows the adoption of different charging policies for commercial and non-commercial re-use.

The CRO informed my Investigator that it does not provide the database to private sector resellers to any extent, and it was not aware that the database was being sold until the appellant brought this fact to its attention. The CRO concluded that third parties had used the public web search to assemble versions of the database for resale. Since the commencement of this appeal, the CRO has implemented technical measures to prevent automated "scraping" of the public search page by third parties.

I accept the CRO's submission that it has not released the database for re-use in bulk format or otherwise licenced the content of the registers. While I do not doubt that certain persons may have assembled versions of the database for resale, I am satisfied that this did not take place with the knowledge of the CRO, or within the PSI Regulations. Accordingly, I make no findings with regard to Regulations 6 or 8 of the PSI Regulations.

Compliance with Regulation 5(5)(a) and 5(5)(b)

Regulation 5(5)(a) creates an obligation on public sector bodies to ensure that where documents are made available for re-use, standards which facilitate re-use are adhered to. However, this is a limited obligation, which is capable of being dislodged where re-use of a document in open and machine-readable format would not be "possible or appropriate", or where the limitations under 5(5)(b) apply. A requester does not need to request release of a document in open and machine-readable format – this is the prescribed standard for re-use, which must be observed unless it is not possible or appropriate to do so.

<u>Consideration of whether release in open and machine-readable format is possible</u>

The obligation under Regulation 5(5)(a) to release documents in open and machine-readable format does not apply where such release is not possible. Regulation 5(5)(b) clarifies what is meant by "possible" in this context by specifying that nothing in the PSI Regulations requires a public sector body to create or adapt any document in order to comply with a request, or to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

In a submission to my Office, the appellant contended that the CRO was likely to have existing processes to generate reports from the database, or to export information from the database. The appellant suggested that the existing code used to generate the web search queries could be modified to return a complete version of the database. The appellant also submitted that exporting information from a database by writing a query was generally regarded as a simple operation, and provided an illustrative example of a database query.

My Investigator met with the Registrar of Companies and CRO staff to discuss the technical details of the database, and put the appellant's queries to the CRO. My Investigator also liaised with my Office's ICT staff. The CRO contended that there is no pre-existing procedure or interface to allow it to simply export information from the database. In particular, the CRO stated that the GUI used to modify the database is very basic, and cannot be used to export copies of the database. The CRO stated that the most straightforward way to export a complete copy of the database would be to write a new export script. This script would query the database at a certain point in time and produce a static copy of the database, in open and machine-readable format. The CRO submitted that this process would require additional work to verify the accuracy of exported information. I am advised that the estimates of the work and cost involved are likely to be accurate.

The CRO stated that it currently employs three IT personnel. It submitted that none of its staff members had the appropriate database experience to develop the export script. The CRO stated that in order to meet the appellant's request, it would be necessary to retain the services of an external IT consultant. It estimated that it would take such a consultant approximately two days to develop, test and verify the database export process. The CRO stated that additional work would be required to draft an appropriate project specification. The CRO provided my Office with up to date cost information for such a project.

My Investigator discussed the CRO's submissions with the Head of ICT with my Office, who confirmed that it would take an external consultant approximately two days to complete the project.

Regulation 5(5)(b) excludes from the scope of the PSI Regulations certain tasks (the creation or adaptation of documents, or the provision of extracts of documents) where this would involve a "disproportionate effort, going beyond a simple operation". For this Regulation to apply, I must first be satisfied that the actions involved go beyond a simple operation. I must subsequently be satisfied that the effort required to adapt, create or provide extracts from the document in question is not a disproportionate effort. When assessing the proportionality of an effort in this respect, I consider it appropriate that I should have regard to the resources available to the public sector body concerned, (including personnel, expertise and funding).

In the present case, it was perhaps not unreasonable for the appellant to assume that the CRO could easily create copies of its own database. However, the CRO contends that it lacks such a facility, or the expertise to develop such a facility. I accept the CRO's submission in this regard. I also accept the CRO's submission that adapting or providing extracts from the database in open and machine-readable format would require the work of an external consultant for two days, at a cost to the organisation.

On the facts of this particular case, and having had regard to the resources available to the CRO and the cost of retaining an external IT consultant, I am satisfied that, for the purposes of Regulation 5(5)(b), the CRO is not obliged to create a copy of the database or to adapt the

database, or to provide extracts of the database in order to comply with Regulation 5(5)(a), as this would involve a disproportionate effort on the part of the CRO, going beyond a simple operation.

Consideration of whether release in open and machine-readable format is appropriate

In addition to the above submissions, the CRO contended that release of the database in open and machine-readable format would not be appropriate. In particular, the CRO stated that release of bulk versions of the database as static information would undermine the legislative scheme of the Companies Act 2014, which requires the deletion of outdated particulars from the registers. The CRO submitted that the Companies Act 2014 was designed to balance the public's right to information with the rights of the individuals who are restricted or disqualified.

The CRO also stated that if static versions of the database were disseminated, the publication of outdated information could be detrimental to the interests of persons no longer subject to disqualification or restriction. The CRO drew my attention to ongoing proceedings before the Court of Justice of the European Union in *Camera Di Commercio, Industria, Artigianato E Agricoltura Li Lecce v Salvatore Manni* (C-398/15). This case concerns a register of company information in the context of the "right to be forgotten" and Directive 95/46/EC (the Data Protection Directive). The CRO stated that the "right to be forgotten" of persons was the basis for the removal of expired disqualifications and restrictions from the registers.

I acknowledge that the CRO has raised important considerations with regard to the processing of personal data and the accuracy of the database. The CRO contended that these issues could not be adequately remedied by attaching conditions on release for re-use. For my part, I am not entirely convinced that the CRO's obligations under national and European law preclude any possible re-use of the database in open and machine-readable format. The CRO is entitled under Regulation 8 to apply appropriate conditions on re-use of the database. I note that the appellant stated in his initial request that he had "no difficulty with the CRO seeking to put limits on the use of the database by way of licence". I also note that the Data Protection Acts 1988 and 2003 make specific allowance for processing of personal data for journalistic purposes in certain circumstances.

Notwithstanding this, in circumstances where this appeal is otherwise determined by the application of Regulation 5(5)(b), I make no finding on whether compliance with Regulation 5(5)(a) would be appropriate.

Decision

In accordance with Regulation 12(2) of the PSI Regulations, I have reviewed the decision of the CRO on the appellant's request.

I find that the CRO was not justified in refusing the appellant's request on the basis of the reasons stated at first instance.

Notwithstanding this, I find that refusal of the appellant's request is otherwise justified on the basis that pursuant to Regulation 5(5)(b), there is no obligation on the CRO to adapt or to provide extracts from the database.

Accordingly, I affirm the decision of the CRO to refuse the appellant's request.

Right of Appeal

A party to this appeal or any other person affected by this decision may appeal this decision to the High Court on a point of law from the decision, as set out in Regulation 15 of the PSI Regulations. Such an appeal must be initiated not later than eight weeks after notice of this decision was given to the person bringing the appeal.

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Peter Tyndall
Information Commissioner
27 January 2017