

DÁIL ÉIREANN

AN BILLE UM SHAORÁIL FAISNÉISE, 2013 —AN TUARASCÁIL

FREEDOM OF INFORMATION BILL 2013 —REPORT

Leasuithe Amendments

In page 9, line 14, to delete “Office” and substitute “office”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 9, line 27, after “that,” to insert “immediately”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 9, line 29, after “that,” to insert “immediately”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 10, lines 2 to 4, to delete all words from and including “appoint,” in line 2 down to and including line 4 and substitute “appoint.”

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 10, line 5, to delete “*Section 8* shall come into operation on such day or days” and substitute “*Section 8* shall come into operation 12 months from enactment or on such earlier day or days”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 10, line 29, after “that” to insert “immediately prior to enactment of this Act”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 10, line 33, after “that” to insert “immediately”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 10, line 35, to delete “or such other date as the Minister may by order appoint” and substitute “unless provision is made to the contrary by order under *section 6*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 10, lines 36 and 37, to delete “such prospective date as may be prescribed by order” and substitute the following:

“the date that the order prescribing the body under *section 7(1)* is made, other than where a later date is specified in that order”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 11, between lines 5 and 6, to insert the following:

““entity” means a person, body of persons, organisation or group;”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 13, to delete lines 25 and 26 and substitute the following:

“(I) in a case where the individual holds or held—

(A) office as a director of,

(B) a position as a member of the staff of, or

(C) any other office, or any other position, remunerated from public funds in, an FOI body, the name of the”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 14, line 21, after “services” to insert the following:

“and contract for services in this definition includes an administrative arrangement between an FOI body and another person”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 15, line 8, to delete “Subject to *section 6(7)(c)*” and substitute “Subject to *sections 6 and 7*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 15, line 15, after “incurred” to insert “by the Minister”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 15, to delete lines 25 and 26 and substitute the following”.

“Subject to this section, each of the following”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 15, line 30, after “established” to insert “(other than under the Companies Acts)”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 15, line 31, after “established” to insert “(other than under the Companies Acts)”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 16, between lines 7 and 8, to insert the following:

- “(2) (a) An entity specified in *Part 1* of *Schedule 1* (“the parent entity”) shall, subject to the provisions of that Part, be a public body for the purposes of this Act.
- (b) A subsidiary of a parent entity, or a body directly or indirectly controlled by a parent entity, shall be a public body for the purposes of this Act but only to the extent that the functions of the subsidiary or other body coincide with those functions of the parent entity that are subject to this Act.
- (3) An entity specified in *Part 2* of *Schedule 1*, a subsidiary of such an entity or a body directly or indirectly controlled by such an entity shall not be a public body for the purposes of this Act.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 17, line 4, after “entity” to insert “or a subsidiary of, or a body directly or indirectly controlled by, such an entity”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 17, line 6, after “or” to insert “to be exempted from the provisions of this Act, or”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 17, to delete lines 8 to 14 and substitute the following:

- “(b) An order made under *paragraph (a)* may—
- (i) specify the inclusion or exclusion of elements of—
- (I) the entity concerned, or
- (II) a subsidiary of, or a body directly or indirectly controlled by, the entity concerned,
- and
- (ii) specify a date, which shall not be a date later than 6 months from the date of such order, on which the entity, subsidiary, body, or element of a body, concerned shall become a public body.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 17, between lines 18 and 19, to insert the following:

- “(9) Where an order is proposed to be made under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a

resolution approving of the draft has been passed by each such House.

- (10) Where, after the passing of this Act, a company (within the meaning of the Companies Acts), or other body, becomes a public body within the meaning of *section 6(1)* (other than by virtue of an order made under *subsection (3)(b)* or *(7)(a)*), the obligations under this Act shall apply to that company or body, on and from a date that is not later than 6 months after it becomes a public body under this Act other than where the Minister makes an order under *subsection (3)(a)* declaring that *subsection (1)* shall not apply, in whole or in part, to the company or body concerned.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 18, between lines 21 and 22, to insert the following:

- “(8) Where an order is proposed to be made under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.
- (9) An order made under *subsection (1)* may specify a date, which shall not be a date later than 6 months from the date of such order, on which the entity concerned shall become a prescribed body.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 19, to delete lines 16 to 20 and substitute the following:

- “(2) A publication scheme shall include—
- (a) the classes of information that the FOI body has published or intends to publish,
 - (b) the terms under which it will make such information available and, where the material is not available without charge, the charge,
 - (c) a general description of its structure and organisation, functions, powers and duties, any services it provides for the public and the procedures by which any such services may be availed of by the public,
 - (d) a general description of the classes of records held by the body concerned, giving such particulars as are reasonably necessary to facilitate the exercise of the right of access,
 - (e) the—
 - (i) rules, procedures, practices, guidelines and interpretations used by the body, and
 - (ii) any precedents kept by the body,for the purposes of decisions, determinations or recommendations, under or for the purposes of any enactment or scheme administered by the body with respect to rights, privileges, benefits, obligations, penalties or other sanctions to which members of the public are or may be entitled or subject under the enactment or scheme,

- (f) appropriate information in relation to the manner or intended manner of administration of any such enactment or scheme, referred to in *paragraph (e)*,
- (g) the names and designations of the members of the staff of the body responsible for carrying out the arrangements referred to in *paragraphs (c) and (d)* (unless the head of the body concerned reasonably believes that publication of that information could threaten the physical safety or well-being of the persons),
- (h) the address or addresses at which requests under *section 12* or applications under *section 9 or 10* should be given,
- (i) appropriate information concerning—
 - (i) any rights of review or appeal in respect of decisions made by the body (including rights of review and appeal under this Act), and
 - (ii) the procedure governing the exercise of those rights and any time limits governing such exercise,
 and
- (j) information in relation to such other matters (if any) as may be prescribed.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 24, line 35, to delete “by the FOI body concerned”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 27, line 20, to delete “makes an FOI request” and substitute “makes a request”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 27, to delete lines 33 and 34.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 43, to delete lines 3 to 41, to delete page 44, and in page 45, to delete lines 1 to 17 and substitute the following:

“Fees and charges

- 27. (1) Such amount as may be appropriate having regard to the provisions of this section shall be charged by the FOI body concerned under this subsection and paid by the requester concerned to the body in respect of the grant of an FOI request. The amount of a charge under this subsection shall be equal to the estimated cost of the search for and retrieval and copying of the record concerned by the FOI body concerned for the requester.
- (2) For the purposes of *subsection (1)* “search for and retrieval” includes time spent by the FOI body in—

- (a) determining whether it holds the information requested,
 - (b) locating the information or documents containing the information,
 - (c) retrieving such information or documents,
 - (d) extracting the information from the files, documents, electronic or other information sources containing both it and other material not relevant to the request, and
 - (e) preparing a schedule specifying the records for consideration for release.
- (3) For the purposes of *subsection (1)*—
- (a) the amount of the cost of the search for and retrieval of a record shall be calculated at the rate of such amount per hour as stands prescribed for the time being in respect of the time that was spent, or ought, in the opinion of the head concerned, to have been spent, by each person concerned in carrying out the search and retrieval efficiently,
 - (b) the amount of the cost of the copying of a record shall not exceed such amount (if any) as stands prescribed for the time being, and the determination of that amount shall be in compliance with any provisions standing prescribed for the time being in relation to such determination,
 - (c) subject to *subsection (12)* the total amount of a charge under *subsection (1)* shall not exceed such amount as stands prescribed for the time being as the appropriate maximum amount for search and retrieval and copying,
 - (d) there shall be no charge under *subsection (1)* if, in the opinion of the head concerned, the total amount of the charge would be less than such amount (if any) as stands prescribed for the time being as the appropriate minimum amount for search and retrieval and copying, and
 - (e) different maximum and minimum amounts may be prescribed under this subsection in respect of different public bodies or prescribed bodies and the power to prescribe such a maximum (in relation to any particular body) shall be exercised in a manner to take account of the greater amount that *subsection (12)* provides for the prescription of (in relation to that body) as concerns the overall ceiling limit.
- (4) Where the record or records concerned contains or contain only personal information relating to the requester concerned the charge under *subsection (1)* shall not be made, unless the grant concerned relates to a significant number of records, and in considering whether or not such a charge shall be made, the means of the requester shall be taken into account.
- (5) Subject to *subsection (3)*, where, in the opinion of the head concerned, the estimated cost, as determined by the head, of the search for and retrieval and copying of a record the subject of an FOI request is likely to exceed the appropriate minimum level as prescribed—
- (a) a deposit of such amount as may be determined by the head (not being less than

20 per cent of such cost) shall be charged by the FOI body concerned and paid by the requester concerned to the body,

- (b) the process of search for and retrieval of the record shall not be commenced by the body until the deposit has been paid, and
 - (c) the head shall, not later than 2 weeks after the receipt of the request aforesaid, cause a notice in writing for payment of the deposit to be given to the requester and the notice shall include an estimate of the length of time that the process of searching for and retrieving the record will occupy and a statement that the process will not begin until the deposit has been paid and that the date on which a decision will be made in relation to the request will be determined by reference to the date of such payment.
- (6) A head may reduce the amount of or waive a search and retrieval and copying charge or deposit under *subsection (1)* or *(5)* if, in his or her opinion, some or all of the information contained in the record concerned would be of particular assistance to the understanding of an issue of national importance.
- (7) In a case to which *subsection (5)* applies, the head concerned shall, if so requested by the requester concerned—
- (a) assist the requester if the requester wishes to amend or limit the request in order to reduce or eliminate the charges that arise or are likely to arise under *subsection (1)*,
 - (b) if amendments are specified under *paragraph (a)*, make such of them (if any) to the request as the requester may determine.
- (8) Where a deposit under *subsection (5)* is paid, the amount of the charge under *subsection (1)* payable in respect of the grant of the FOI request concerned shall be reduced by the amount of the deposit.
- (9) Where a deposit under *subsection (5)* is paid and, subsequently, the grant of the FOI request concerned is refused or is granted in relation to a part only of the record concerned, the amount of the deposit or, if a charge under this section is payable in respect of the grant, so much (if any) of that amount as exceeds the amount of the charge shall be repaid to the requester concerned.
- (10) Where a charge or a deposit under this section is paid, and subsequently, the charge or deposit is annulled or varied under *section 21, 22* or *24*, the amount of the charge or deposit so annulled or, as the case may be, any amount thereof in excess of the amount thereof as so varied shall be repaid to the requester concerned.
- (11) *Section 13(1)* shall be construed and have effect—
- (a) in relation to a case in which a deposit is payable under *subsection (5)*, as if the reference to 4 weeks were a reference to a period consisting of 4 weeks together with the period from the giving of the notice under *subsection (5)(c)* concerned to the requester concerned to the date of the receipt of the deposit,
 - (b) in relation to a case in which such a deposit is annulled following a review under *section 21* or *22* or an appeal under *section 24*, as if the reference to 4 weeks were

a reference to a period consisting of 4 weeks together with the period from the giving of the notice under *subsection (5)(c)* to the requester concerned to the date of the decision under *section 24* or, as the case may be, of the giving to the requester concerned of notice under *section 21* or *22* of the decision, and

- (c) in relation to a case in which an amendment pursuant to *subsection (7)* has the effect of eliminating such a deposit, as if the reference to the receipt of a request under that section were a reference to the making of the amendment.
- (12) (a) Where the amount of a search and retrieval and copying charge under *subsection (1)* exceeds or is likely to exceed the overall ceiling limit prescribed, under *paragraph (b)*, for the purposes of this subsection—
- (i) the body concerned shall so inform the requester,
 - (ii) the body shall assist the requester if the requester wishes to amend or limit the request in order to reduce the charges that arise or are likely to arise under *subsection (1)* to an amount less than or equal to the overall ceiling limit so prescribed,
 - (iii) if the requester does not amend or limit the request such that the charges that arise or are likely to arise under *subsection (1)* are reduced to an amount less than or equal to the overall ceiling limit so prescribed, the body may refuse the request, and
 - (iv) where the body decides to process the request, the requester shall be required to pay the full cost of the charges likely to be payable and *subsection (5)* shall apply.
- (b) There shall be prescribed for the purposes of this subsection an amount to be called, and in this section referred to, as the overall ceiling limit; and different such amounts may be prescribed for those purposes in respect of different public bodies or prescribed bodies.
- (13) (a) A fee of such amount (if any) as may be prescribed shall be charged by the FOI body concerned under this subsection and paid by the applicant concerned to—
- (i) the body in respect of an application under *section 21*, or
 - (ii) the Commissioner in respect of an application under *section 22*.
- (b) A fee under this subsection shall be paid at the time of the making of the application concerned and, if it is not so paid, the head concerned or, as the case may be, the Commissioner shall refuse to accept the application, and it shall be deemed, for the purposes of this Act, not to have been made.
- (c) Fees of different amounts may be prescribed under *paragraph (a)* in respect of different classes of applicant.
- (14) An FOI body shall endeavour to establish a facility by which payment or refund of any fees due under this Act may be made electronically.”

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 46, line 36, to delete “concerned”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 54, line 22, to delete “*Parts 1 or 2*” and substitute “*Part 1 or 2*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 61, lines 6 and 7, to delete “*Parts 1 or 2*” and substitute “*Part 1 or 2*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 64, to delete line 25 to 31 and substitute the following:

“(g) a record relating to an audit, inspection, investigation or examination carried out by the Comptroller and Auditor General under the Comptroller and Auditor General Acts 1923 to 1993, the Exchequer and Audit Department Acts 1866 and 1921, or any other enactment, other than—”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 64, line 32, to delete “review”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 64, lines 35 and 36, to delete “or the Office of the Information Commissioner”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 70, lines 21 and 22, to delete “paragraph (ap)” and substitute “paragraph (as)”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 70, to delete lines 23 to 29 and substitute the following:

“(as) for the purposes of contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013¹, or

(at) to the Information Commissioner that is required for the performance of that Commissioner’s functions under the *Freedom of Information Act 2014*.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

¹*OJ No. L 176, 20.06.2013, p.1*

In page 72, to delete lines 10 to 22 and substitute the following:

“(b) the Central Bank of Ireland, insofar as it relates to—

- (i) records held by it containing—
 - (I) confidential personal information relating to the financial or business affairs of any individual, or
 - (II) confidential financial, commercial or regulatory information relating to the business affairs of any person who holds or has held or who has applied for a licence, authorisation, approval or registration from the Central Bank of Ireland, or is otherwise regulated by the Central Bank of Ireland,

that the Central Bank of Ireland has received for the purposes of performing, or in the discharge of, any of its statutory functions (other than when that information is contained in records in summary or aggregate form, such that persons cannot be identified from the record), and

- (ii) records—
 - (I) held by the Central Bank of Ireland on the Central Credit Register established by it under section 5(1), or
 - (II) produced by the Central Bank of Ireland under section 30(1), of the Credit Reporting Act 2013 (No. 45 of 2013);
- (c) The Commission to Inquire into Child Abuse, in the performance of its functions under the Commission To Inquire Into Child Abuse Act 2000, other than insofar as it relates to records concerning the general administration of those functions;
- (d) the Office of the Commissioner for Environmental Information, in the performance of its functions under the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007), other than insofar as it relates to records concerning the general administration of those functions;”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 72, to delete lines 23 to 25.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 72, between lines 34 and 35, to insert the following:

- “(e) the Data Protection Commissioner, or an officer of the Commissioner, in relation to a record (save as regards a record concerning the general administration of the Office of the Commissioner);
- (f) the Director of Corporate Enforcement, or an officer of the Director, in relation to a record held or created under the Companies Acts (save as regards a record concerning the general administration of the Office of the Director);

- (g) education and training boards, insofar as it relates to any records that would enable the compilation of information (that is not otherwise available to the general public) concerning the comparative performance of schools in respect of the academic achievement of students enrolled therein, including, and without prejudice to the generality of the foregoing—
 - (i) the overall results in any year of students in a particular school in an examination or assessment, or
 - (ii) the comparative overall results in any year of students in different schools in an examination or assessment;
- (h) EirGrid plc, other than insofar as it relates to records held by it relating to its functions under its transmission system operator licence granted under section 14(1)(e) of the Electricity Regulation Act 1999;
- (i) ESB Networks Limited, other than insofar as it relates to records concerning its functions under its distribution system operator licence issued under Section 14(1)(g) of the Electricity Regulation Act 1999;”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 72, between lines 39 and 40, to insert the following:

- “(f) Gaslink Independent System Operator Limited, other than insofar as it relates to records held by it relating to its functions under its—
- (i) transmission system operator licence granted under section 16(1)(d), or
 - (ii) distribution system operator licence granted under section 16(1)(f),
- of the Gas (Interim) (Regulation) Act 2002 (amended by Regulation 41(b) of the European Communities (Internal Market in Natural Gas and Electricity) Regulations 2011 (S.I. No. 630 of 2011));”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 73, between lines 8 and 9, to insert the following:

- “(i) Iarnród Éireann, insofar as it relates to the operation of Rosslare Europort and its freight operations in the State;
- (j) the Office of the Information Commissioner, in the performance of its functions under this Act or under the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007), other than insofar as it relates to records concerning the general administration of those functions;”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 73, line 36, to delete “Road Traffic Acts 1961 to 2011” and substitute “Road Traffic Acts 1961 to 2014”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 75, between lines 7 and 8, to insert the following:

“(w) The Revenue Commissioners, in relation to a record that relates to the formation of an opinion under section 811 of the Taxes Consolidation Act 1997 that a transaction is a tax avoidance transaction, save as regards a record that was created before—

(i) the date on which an officer of the Revenue Commissioners has notified a person that the transaction is the subject of enquiry for the purpose of considering whether to give, in relation to it, a notice under that section 811 of an opinion to the foregoing effect, or

(ii) if it falls earlier than the foregoing date, the date on which a notification under section 811A of that Act was received by the Revenue Commissioners in relation to the transaction.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 75, between lines 12 and 13, to insert the following:

“(x) The Residential Institutions Redress Board, in the performance of its functions under the Residential Institutions Redress Act 2002, other than insofar as it relates to records concerning the general administration of those functions;

(y) The Residential Institutions Redress Review Committee, in the performance of its functions under the Residential Institutions Redress Act 2002, other than insofar as it relates to records concerning the general administration of those functions;”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 75, to delete lines 13 to 21.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 75, to delete lines 31 and 32.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 76, to delete line 6.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 76, between lines 7 and 8, to insert the following:

“Ervia”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 76, to delete line 13.

—An tAire Caiteachais Phoiblí agus Athchóirithe.