

## Freedom of Information Schedule of Records - Summary of Decision Making

FOI Request Reference

FOI-P207-2023

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Rec. No.	No. of pages	Date of Record	Brief description of record	Decision	Basis for refusal - Exempt under FOI Act	Other
1	1		Agenda	Grant		
2	5		Minutes	Grant		
3	22		Slides	Grant		
4	21		Slides	Grant		
5	5		Template	Grant		
6	10		OIC Case	Grant		
7	10		OIC Case	Grant		



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Department of Public  
Expenditure and Reform

## **FOI – Inter-Departmental Working Group (IDWG)**

**Meeting 11<sup>th</sup> October 2023**

**2pm – 3.30pm**

### **Agenda**

- 1. Minutes of meetings 8th March and 7<sup>th</sup> June**
- 2. Training Framework**
- 3. Review Update**
- 4. Delegation Orders**
- 5. Redaction of Records**
- 6. OIC Cases on section 17(4)**
- 7. AOB**



## FOI – Inter-Departmental Working Group (IDWG)

Meeting 11<sup>th</sup> October 2023

Online: 2pm – 3.30pm

### Agenda

#### **1 Minutes of meetings of 8<sup>th</sup> March 2023 and 7<sup>th</sup> June 2023**

Minutes have been circulated and are subject to any changes by email to [CPU@per.gov.ie](mailto:CPU@per.gov.ie) before Friday 13<sup>th</sup> October. Departments are reminded that minutes will be released to external stakeholders on a routine basis.

#### **2 Training Framework**

A presentation on the new training framework was given by Adrian Reynolds, Category Specialist Higher in the Office of Government Procurement. The OGP is leading on the framework. The presentation gave an overview of the Freedom of Information Training Services Framework.

It outlined the benefits of using OGP frameworks, including access to experts such as industry professionals and barristers that can deliver virtual training. Given that the framework follows government procurement policies, there are also reduced risks for departments. As outlined at the meeting of 7<sup>th</sup> June 2023, it is the same lot structure as before, however under the new requirement, a provider can only win one of the two lots. This means that there are now two providers under the new training framework.

The costs of both lots, i.e. the introductory level training and the expert level training, are available on *Buyerzone* and can be accessed *via* the members' area of [www.foi.gov.ie](http://www.foi.gov.ie). These represent significant cost reductions if we are to consider the cost of a department getting FOI training outside the framework. Smaller organisations can apply to join training sessions with larger departments and benefit from economies of scale as open enrolment means that participation in a given training course is open to employees of more than one Framework Client. Intact training may also be available and this would be that participants in a given Training Course are employees from one Framework Client only.

It was explained that under Lot 1 the introductory training class-size can be from 10 to 25 people. Once above 15 people, there is the option of availing of cost savings. Decision-maker training and expert level training class size is up to 15 people. Lot 2 is the expert level training. This lot gives departments access to QQI Level-9 qualified solicitors and barristers. Classes can be online and target experts in the field.

Access to the training framework is *via* a Direct Drawdown mechanism. Framework clients must complete the Notification to Activate Services Form (NASF), which can be found on the *Buyerzone*, once members are registered. The NASF is the legal contract that, once signed, will allow the department to access the services. Keeping it easy and simple is a core design principle of the Framework and once the NASF has been completed by the body it is valid year-on-year as the prices are locked now for four years.

Departments are encouraged to contact CPU regarding the quality of the training, particularly for trends and questions regarding Lot 2 as this will be important for any future improvements.

### **3 Review Update**

Final deliberations on the Review are almost complete and it is expected to go to Government shortly. Departments are reminded that all submissions will be published, as was explicitly stated during the public consultation. Heads of Bills are to be anticipated subject to Government approval. Further engagement with stakeholders in relation to the Section 37(8) Regulations is likely to follow the review publication.

### **4 Delegation Orders**

An official performing a function under the 2014 Act – i.e. making a decision, carrying out an internal review, etc., must be delegated to do so under section 20. CPU reminded departments that appropriate delegation orders are required to be in place in each organisation, as otherwise decisions could technically be considered a deemed refusal under section 19 on the basis that the decision-maker was not delegated the appropriate powers and therefore the decision is not valid. The normal practice around deemed refusals would apply, e.g. regarding application fees.

Some bodies may still be operating based on delegations issued under the 1997 Act. It would be preferable in the interests of certainty to update the delegations. A template document has been circulated with the minutes. CPU signalled potential updates to the delegation orders in the near future.

It was also noted that a valid internal review can only be carried out at a higher grade than the decision-maker.

## **5 Redaction of Records**

There was a discussion around redaction tools, in light of instances where sensitive exempt information relating to third parties had been “unredacted” by requesters following release. There are no standard recommendations for departments as each department acquires their own redaction software. Particular issues were noted with Adobe Reader. Adobe Pro and Nitro Pro were seen by the group as more reliable providing that officers carry out quality control checks.

## **6 OIC Cases on section 17(4)**

CPU reminded departments of the Section 17(4) provision that was added in the 2014 Act. Section 17(4) allows for material to be compiled from existing electronic databases or spreadsheets that exist at the time of the request. It noted that FOI requests right of access to records held at time of request and that there is therefore, in general, no obligation to create a new record upon request. This is relevant as CPU has noted an increase in the number of requests requiring bodies to fill in very specific forms. The circumstances where Section 17(4) applies are fairly limited and in reality will usually effectively amount to taking an extract from an existing record rather than tailoring a report to the requester’s specifications.

On the requirements of compiling and creating a new document, CPU gave an overview of the recent case Company P and the HSE and the recent case of Mr X and Children’s Health Ireland. These cases centred on the interpretation of “reasonable steps”. In the case of Company P and the HSE, compiling the information would have involved data cleaning as well as a full manual review and it was considered that this went beyond “reasonable steps” and therefore Section 15(1)(a) applied. By contrast, in the Mr X and the CHI case, this involved a list of staff members who had made statements of interests rather than the actual statements of interest themselves. The OIC was not satisfied that “reasonable steps” had been taken in this instance to assess whether records exist or could be extracted. It was noted that a case relating to statements of interests is currently under appeal to the High Court.

## **7 AOB**

CPU indicated that the next network meeting will be in-person in Government Buildings on Upper Merrion Street, Dublin 2, on 6<sup>th</sup> December 2023.

## Appendix 1 – Attendance

NAME	ORGANISATION
1 Niall Mulligan (Chair)	CPU
2 Ciara Morgan	CPU
3 Ciara Reddy	CPU
4 Niall Colbert	CPU
5 Aileen Parnell	Department of Public Expenditure, NDP Delivery and Reform
6 Aisling Penrose	Department of Rural & Community Development (DRCD)
7 Anthony Cummins	Department of An Taoiseach
8 Anthony Dowd	Department of Housing, Local Government and Heritage
9 Cathy	
10 Christina Kelly	
11 James Appleby	Department of Transport
12 James Hargis	Department of Finance
13 Keith	Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
14 Kevin Graham	
15 Kieran Harte	CSO
16 Leah Hensey	Houses of the Oireachtas Service
17 Linda Graham	Department of Health
18 Louise Keane	Department of Justice
19 Martina Dempsey	Department of Public Expenditure, NDP Delivery and Reform
20 Mary McCormick	

21 Michael Loughman	Department of Defence
22 Mick Baldwin	Department of Health
23 Miriam O'Reilly	
24 Orlaith Mannion	Department of Social Protection
25 Patricia O'Regan	Houses of the Oireachtas Service
26 Róisín Wiseman	Revenue
27 Seán O'Reilly	
28 Sheila Feeney	
29 Sinéad Beattie	
30 Sinéad Halpin	Department of Defence
31 Stephen Finlan	CSS
32 Susan McGowan	
33 Thomas Bellew	Department of Foreign Affairs
34 Ursula Dunne	
35 Adrian Reynolds (for Agenda Item 2 only)	Office of Government Procurement

### Apologies

NAME	ORGANISATION
- -	-



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Department of Public  
Expenditure and Reform

# Public Sector User Network

## 11<sup>th</sup> October 2023



Prepared by the Department of  
Public Expenditure and Reform  
[www.gov.ie](http://www.gov.ie)



# Housekeeping

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- Please mute mics when not speaking
- Once CPU has gone through updates for agenda items
- Chair will pause at regular intervals to check if anyone wants to speak, then call speakers in turn
- Those who have access to the Skype chat facility can use this to ask questions or indicate that they want to speak
- For those who don't have access to this, you can similarly email [cpu@per.gov.ie](mailto:cpu@per.gov.ie) as the meeting progresses

# Agenda

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- 1 Minutes of meeting 8<sup>th</sup> March**
- 2 Training Framework**
- 3 Review Update**
- 4 Delegation Orders**
- 5 Redaction of Records**
- 6 OIC Cases on section 17(4)**
- 7 AOB**

# Review Update

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- Final deliberations on the review report are underway
- Expect to go to Government shortly
- What next:
  - Report and submissions will be published once approved
  - Implementation process will commence
  - If approved, commence drafting legislation
  - Further consultation / engagement

# Delegation Orders

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- An official performing a function under the 2014 Act – i.e. making a decision, carrying out an internal review, etc., must be delegated to do so under section 20.
- The delegation can sometimes specify an individual, but more often delegates particular grades
- A valid internal review can only be carried out at a higher grade than the decision-maker

# Delegation Orders

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- Ideally, fresh delegation orders should have issued when the 2014 Act commenced, CPU engaged with the networks at the time on this
- Some bodies may still be operating based on delegations issued under the 1997 Act
- It would be preferable in the interests of certainty to update the delegations, but arguably older delegations may remain valid

# Delegation Orders

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- Where an official purports to carry out a function but they are not delegated to do so, the decision / internal review may be invalid
- Technically, this would be a deemed refusal under section 19, as no *valid* decision has issued in time
- The normal practice around deemed refusals would apply, e.g. regarding application fees

# Delegation Orders

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- Possible that further delegations will be required if/when the legislation is updated
- In general, updating delegations can be a useful exercise in terms of assessing how the FOI function is structured
- At a minimum it may be worthwhile to ensure that the necessary formalities have been complied with

# Redaction of Records

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- This issue comes up regularly at network meetings – it is not uncommon to find that requesters “un-redact” material that has been provided to them, sometimes accessing sensitive personal information of third parties
- OIC asked us to raise this again
- Important that redaction tools, particularly electronic ones, are permanent and irreversible



# Redaction of Records

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- No standard way of doing this – depends on the tools available
  - Can sometimes be necessary to print and use a black marker
  - When this is not possible and if other tools weren't available material could be overwritten or deleted then rendered to pdf
- Particular caution using Adobe Reader – the highlight tool only hides material, doesn't erase

# OLC Cases on s. 17(4)

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- Two recent cases provide an illustration of how s.17(4) works and its limits
- In general, the baseline position is that there is no obligation to generate a new record in response to an FOI request
- Relevant, e.g. where a requester provides a table to be filled in or asks for material in a very specific form

# OLC Cases on s. 17(4)

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- **s.17(4) allows for material to be compiled from existing electronic databases or spreadsheets that exist at the time of the request**
- **The circumstances where this is appropriate are fairly limited, however, and in reality will usually effectively amount to taking an extract from an existing record rather than tailoring a report to the requester's specifications**

# OLC Cases on s. 17(4)

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*“Under section 17(4), where a request relates to data contained in more than one record held on an electronic device by the FOI body concerned, the body must take reasonable steps to search for and extract the records to which the request relates. These steps are those that would involve the use of any facility for electronic search or extraction that existed on the date of the request and was used by the FOI body in the ordinary course. Where these reasonable steps result in the creation of a new record, that record is, for the purposes of considering whether or not such a new record should be disclosed in response to the request, deemed to have been created on the date of receipt of the request.”*

# HSE Case

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- Requester sought Covid related material, within a number of Dublin postcodes
- A previous request of this nature had been granted to this same requester
- The electronic record contained a “Post Code” free text entry, however this would require full manual review and data cleaning to be relied on
- OIC agreed that this went beyond “reasonable steps” and that section 15(1)(a) applied

# HSE Case

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- A previous request of this nature had been granted to this same requester
- The electronic record contained a “Post Code” free text entry, however this would require full manual review and data cleaning to be relied on
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# CHI Case

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- Requester sought information relating to statements of interests made by staff members
- Note: a previous case relating to statements of interests is currently under appeal to the High Court
- The OIC went ahead with this review, however, on the basis that it was concerned with administrative matters around gathering records rather than exemptions

# CHI Case

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- The record is described as a register of staff members who have made statements, rather than the statements themselves
- CHI argued that the record may be incomplete and prone to misinterpretation
- OIC took their usual position, that this in itself does not engage an exemption and the body should instead provide explanation / context with records if no other exemption applies



# CHI Case

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- **Ultimately, the OIC was not satisfied that “reasonable steps” had been taken in this instance to assess whether records exist or could be extracted.**
- **Annulled the 15(1)(a) decision and remitted to for a fresh decision-making process**
- **Facts of this case seem somewhat unusual, however, and the OIC’s position should not be overstated (c.f. HSE Case)**

# OLC Cases on s. 17(4)

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- s. 17(4) is a somewhat confusing and arguably unnecessary exception to the general position in relation to creating a new record
- It applies where information can be taken from one or more electronic sources through “reasonable steps”
- This will involve using tools and systems that are available at the time of the request and does not require, e.g. consultants or custom software

# OLC Cases on s. 17(4)

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- Bodies are not required to exercise judgment in compiling information from various sources into a new database or report
- In reality, all that is involved is taking extract(s) from existing record(s), unclear what value is added by deeming this to be a “new record”
- As such bodies this provision does not alter the principle that FOI doesn’t require creation of a new record where none previous existed

# AOB

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# Next Network Meeting

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Department of Public  
Expenditure and Reform

- Next meeting is scheduled to be in person for 6<sup>th</sup> December



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# Freedom of Information Training

**Adrian Reynolds - Category Specialist Higher**

**PSUN/IDWG Network Meeting  
Wednesday, 11<sup>th</sup> October 2023**



# Presentation Overview

- Introduction
- Benefits of using OGP Frameworks
- Freedom of Information Training Services Framework Overview
- Direct Drawdown Guidance
- Future Requirements?
- Q&A

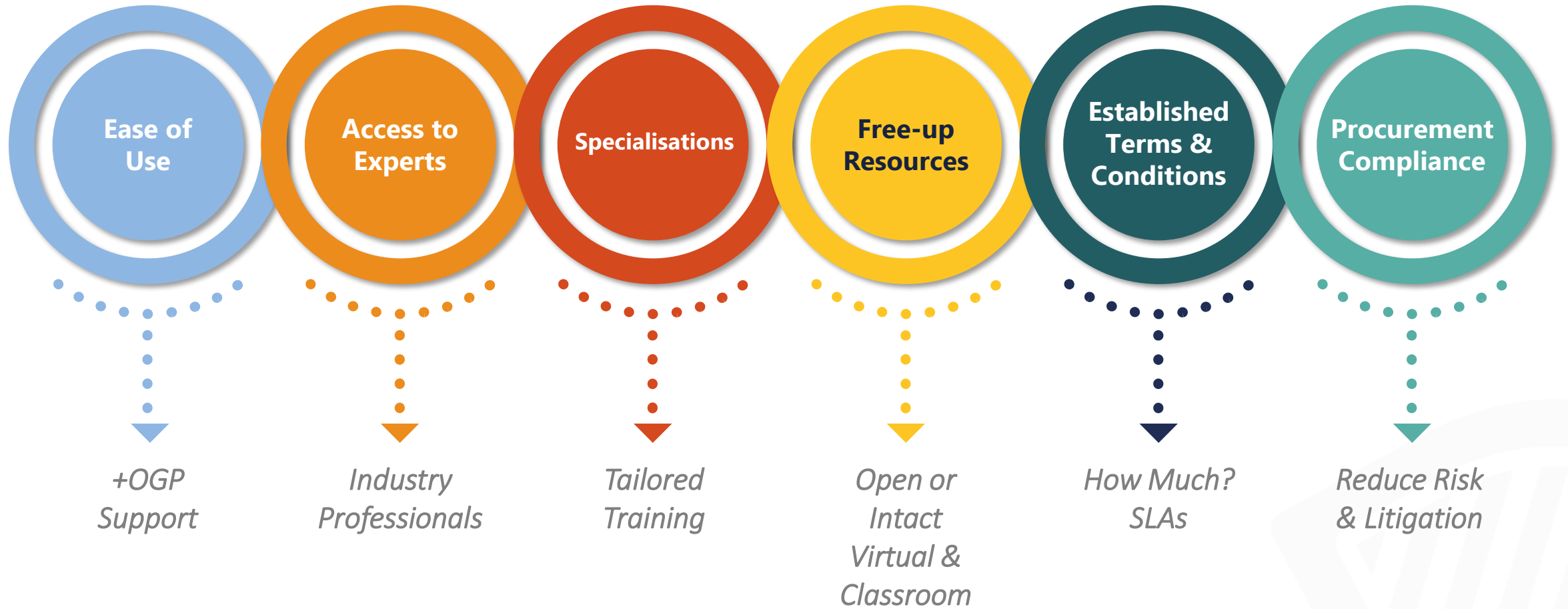


# Benefits of using OGP Frameworks

*Professionalism & Expertise*



# Benefits of Using our Training Solutions



# Freedom of Information Training Services

*Enhancing Transparency Across the Public Sector*

# Freedom of Information Training Services

- The Freedom of Information (FOI) **Central Policy Unit** (DPENDPR) is responsible for the requirements relevant to the **Freedom of Information Act 2014**.
- This Act gives individuals the right to access records held by FOI bodies.



# Freedom of Information Training Services

- **To ensure compliance** with this Act, there is an ongoing need for FOI training services.
- Currently there is an ongoing review and expected change to legislation.
- The Review of the Freedom of Information Act Consultation document shows that there is room for significant growth in FOI requests from a number of sectors.



# Freedom of Information Training Services

Lot 1

- Public Access to Information - Support and Administration
- Decision Maker Training

Lot 1

- Introductory Level Training

Lot 1

- Requirement for both **virtual and face-to-face classroom** to cater for larger open and intact groups.

Lot 1

- To **future-proof** the Framework, a design, create, and deliver component has been included.

# Freedom of Information Training Services



Lot 2

- **Expert Level Training**

Lot 2

- Considered a **higher level of training**, delivered by trainers with professional expertise.

Lot 2

- Requirement for **virtual training delivery** as participant numbers are generally smaller.

Lot 2

- To **future-proof** the Framework, a design, create, and deliver component has been included.

# How Does The Pricing Work? - Lot 1

Lot 1: CATEGORY A - PUBLIC ACCESS TO INFORMATION - SUPPORT AND ADMINISTRATION		
Training	Unit Rate Per 10-15 Participants One [1] day Training Session Ex. Vat	Unit Rate Per 16-25 Participants One [1] day Training Session Ex. Vat
Classroom Delivery of Training at Framework Client Facility Dublin		
Classroom Delivery of Training at Framework Client Facility Nationwide (excl. Dublin)		
Classroom Delivery of Training at Service Provider Training Facility Nationwide		
Virtual Delivery of Training		
Design, Develop & Deliver (Revised FOI Legislation and updating of previously developed modules)		

# How Does The Pricing Work? - Lot 1

<b>Lot 1: CATEGORY B - DECISION MAKER TRAINING</b>		
<b>Training</b>	<b>Unit Rate Per 10-12 Participants Two [2] day Training Session Ex. Vat</b>	<b>Unit Rate Per 13-15 Participants Two [2] day Training Session Ex. Vat</b>
<b>Classroom Delivery of Training at Framework Client Facility Dublin</b>		
<b>Classroom Delivery of Training at Framework Client Facility Nationwide (excl. Dublin)</b>		
<b>Classroom Delivery of Training at Service Provider Training Facility Nationwide</b>		
<b>Virtual Delivery of Training</b>		
<b>Design, Develop &amp; Deliver (Revised FOI Legislation and updating of previously developed modules)</b>		



# How Does The Pricing Work? - Lot 2

Lot 2: EXPERT LEVEL TRAINING (STANDARD MODULES 1 - 16 & REPEAT MODULE 18)			
Training	Content Development Unit Rate Half [0.5] Day Ex. Vat	Unit Rate Per 5-10 Participants Half [0.5] day Training Session Ex. Vat	Unit Rate Per 11-15 Participants Half [0.5] day Training Session Ex. Vat
Virtual Delivery of Training			
Design, Develop & Deliver (Revised FOI Legislation and updating of previously developed modules)			

# How Does The Pricing Work? - Lot 2

Lot 2: EXPERT LEVEL TRAINING (NON STANDARD MODULE 17)			
Training	Content Development Unit Rate Half [0.5] Day Ex. Vat	Unit Rate Per 5-10 Participants Half [0.5] day Training Session Ex. Vat	Unit Rate Per 11-15 Participants Half [0.5] day Training Session Ex. Vat
Content Development (Ref Section A1.3.1)			
Virtual Delivery of Training			
Design, Develop & Deliver (Revised FOI Legislation and updating of previously developed modules)			

# Direct Drawdown Guidance

*How to Access*

# How to Access

## Accessing Training Services

Keeping it easy and simple is a core design principle of our Frameworks.

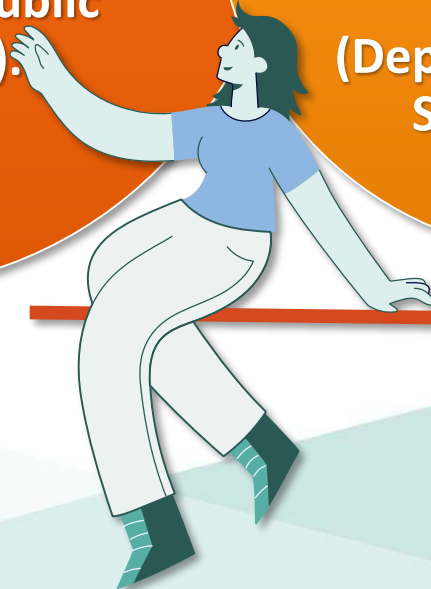
Most Service Providers can accommodate 'Open Enrolment' and 'Intact' Training Courses as requested by the Framework Client.

## Open Enrolment

Participation in a given training course is open to employees of more than one Framework Client (Department / Public Service Body).

## Intact Enrolment

Participants in a given Training Course are employees from one [1] Framework Client only (Department / Public Service Body).



# Direct Drawdown Guidance

The Direct Drawdown mechanism is the easiest way to access our training services.

- Framework clients must complete the Notification to Activate Services Form (**NASF**), which can be found on the **Buyerzone**.
- All of our Frameworks have **User Guides** to answer specific queries.



# Direct Drawdown Guidance

- The NASF is not a booking form - it is your **legally binding contract** with the service provider.
- Once the NASF is signed, you can then proceed to drawdown the services.
- **One NASF** will suffice over the term of the framework for clients who have any repeat requirements.

# Future Requirements

# Future Requirements?

- Check for existing arrangements which can be found on the **Buyerzone**.
- If you cannot find what you need please contact **OGP Support**.
- Additionally, engage with your assigned **OGP KAM** for further discussion/direction.







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Rialtas na hÉireann  
Government of Ireland

# Thank You!





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## Delegations under the Freedom of Information Act 2014

### Notes:

1. Section 20 of the FOI Act 2014 allows the head of a public body to delegate in writing to a member of staff of the public body any of the functions of the Head under the Act, other than those functions conferred under section 20 and section 34. In effect, this allows the decision-making functions in respect of FOI requests to be delegated.
2. The CPU has been advised that new delegation arrangements should be made under the FOI Act 2014 to replace any delegations that may have been made under the 1997 Act.
3. Delegations may be to named individuals or to particular staffing grades within the public body. If delegations are made to named individuals, a new delegation must be made each time staff members change and the previous delegation must be revoked in writing. By making a delegation on the basis of grading, the need to change delegations each time a staff member changes is avoided.
4. Delegation of internal review decision-making functions must be to persons or grades which are of higher rank than that of the original decision maker.
5. There is no obligation on the head of a public body to delegate these functions. If these functions are not delegated, however, the head must fulfil these functions himself or herself.
6. If a head delegates the primary decision making functions, but not internal review functions, any internal review will fall to be carried out by the head.
7. If the head does not delegate the primary decision making function, any decisions on requests will fall to be decided by the head himself or herself. In this case, any appeal of a primary decision must be made directly to the Information Commissioner - there can be no internal review process.
8. Delegations must be revoked in writing.
9. The following pages provide a template delegation. **The text should be adapted as required.**

**Delegations**  
**under the**  
**Freedom of Information Act**  
**2014**

**Freedom of Information Act 2014**  
**Delegation under Section 20**

I, [insert name], [insert title – Minister, Chief Executive etc. as appropriate], and Head of [insert name of organisation], a public body within the meaning of the Freedom of Information Act 2014, hereby make the following delegations under section 20 of the Act:

to each grade [person] (delete as appropriate) specified in Part 1 of Appendix 1 attached, the functions specified in Part 2 of that Appendix

and

to each grade [person] (delete as appropriate) specified in Part 1 of Appendix 2 attached, the functions specified in Part 2 of that Appendix.

subject to the exceptions indicated [delete if there are no exceptions indicated in the Appendices]

Signed .....

Dated .....

[Name in block letters]

[Title or position]

[Public body]

## **Appendix 1 (Primary Decision Makers)**

### **Part 1 – Grades [or Names] (delete as appropriate)**

Insert grade(s) of primary decision makers [or insert name(s) of primary decision maker(s)]

### **Part 2 - Functions or Records**

List functions to be delegated here e.g. “all functions of the [insert title – Minister, Chief Executive etc. as appropriate] under the Freedom of Information Act 2014, other than those provided for in section 21 of the Act.”

This delegation does not apply in respect of the following records: [If there are exceptions to the delegation these should also be noted here, otherwise delete this portion]

## **Appendix 2 (Internal Review Decision Makers)**

### **Part 1 – Grades [or Names] (delete as appropriate)**

Insert grade(s) of internal review decision makers [or insert name(s) of internal review decision maker(s)]

### **Part 2 - Functions or Records**

List functions to be delegated here e.g. “all functions of the [insert title – Minister, Chief Executive etc. as appropriate] under the Freedom of Information Act 2014.”

# Company P and Health Service Executive

[Home \(/\)](#) | [Decisions \(/decisions/\)](#) | [Company P and Health Service Executive](#)

**CASE NUMBER: OIC-132996-W9H2W9, OIC-132990-Y9D7T0**

Whether the HSE was justified in refusing, under section 15(1)(a) of the FOI Act, the applicant's request for records containing numbers of Covid-19 cases reported in specified locations between March and June 2020

19 September 2023

## Background

This decision is a composite decision in respect of two requests the applicant company made to the HSE through its legal representatives. For convenience, I will refer in this decision to communications with the applicant as including communications with the applicant's legal representatives.



For the purposes of this decision, it is relevant to note that I issued a decision on 19 December 2022 following my review of two decisions taken by the HSE on requests made by the same applicant company for certain details of recorded and reported Covid-19 cases within a one-mile radius of a number of specified Eircodes on six specified dates during the period March 2020 to June 2020. In my decision (Cases OIC-127853/OIC-127844), I found that the HSE was justified in refusing the requests under section 15(1)(a) of the FOI Act on the ground that the records sought did not exist.

The requests that are the subject of this review were for details of the numbers of Covid-19 cases recorded for six specified dates between March 2020 and June 2020 for eight specified areas identified by Eircode routing keys (the first 3 characters of an Eircode) and eight specified Dublin postal districts. The information sought comprised;

(i) the cumulative number of Covid-19 cases now known to have been in existence as of each of the relevant dates, including, for example, those who may have been awaiting test results on each of the relevant dates but whose test results subsequently confirmed that the individual(s) had contracted Covid-19 as of each of the relevant dates, and

(ii) the cumulative number of reported confirmed Covid-19 cases known to have been in existence on each of the relevant dates, excluding, for example, Covid-19 cases which had not been confirmed as of each of the relevant dates.

In its decisions of 22 August 2022, the HSE's Health Protection Surveillance Centre (HPSC) refused both requests under section 15(1)(a) of the FOI Act on the ground that the records sought do not exist. The applicant sought internal reviews of those decisions on 5 September 2022, following which the HSE affirmed its refusal of the requests under section 15(1)(a). On 7 December 2022, the applicant applied to this Office for a review of the HSE's decisions.

I have now completed my review in accordance with section 22(2) of the FOI Act. In carrying out my review, I have had regard to the correspondence between the applicant and the HSE as outlined above and to the correspondence between this Office and both parties on the

matter.

## Scope of Review

This review is concerned solely with whether the HSE was justified in its decision to refuse, under section 15(1)(a) of the FOI Act, the applicant's request for certain statistical information relating to number of recorded and reported Covid-19 cases within the areas specified on the dates specified, on the ground that the records sought do not exist.

## Analysis and Findings

Section 15(1)(a) of the FOI Act provides that a request for access to records may be refused if the records sought either do not exist or cannot be found after all reasonable steps to ascertain their whereabouts have been taken.

It is important to note at the outset that while the purpose of the Act is to enable members of the public to obtain access to information held by public bodies, the mechanism for doing so is by accessing records held by those bodies. In other words, a person wishing to obtain information from a public body must make a request for records that contain the information sought. Requests for information, as opposed to requests for records, are not valid requests under the Act, except to the extent that a request for information can reasonably be inferred to be a request for a record containing the information sought.

It is also important to note that the Act does not require FOI bodies to create records to provide the information sought if none exist, apart from a specific requirement, under section 17(4), to extract records or existing information held on electronic devices. Section 17(4) provides as follows:

Where an FOI request relates to data contained in more than one record held on an electronic device by the FOI body concerned-

- a. subject to paragraph (b), the FOI body shall take reasonable steps to search for and extract the records to which the request relates, being steps that involve the use of any facility for electronic search or extraction that existed on the date of the request and was used by the FOI body in the ordinary course, and

b. if the reasonable steps referred to in paragraph (a) result in the creation of a new record, that record shall, for the purposes of considering whether or not such new record should be disclosed in response to the request, be deemed to have been created on the date of receipt of the FOI request.

If an FOI body does not hold a record containing the information sought and cannot search for and extract the electronically held records by taking reasonable steps, it is entitled to refuse the request under section 15(1)(a). The issues I must consider, therefore, are;

- whether the HSE holds records containing the specific information sought, and if not,
- whether the information sought is contained in more than one record held on an electronic device by the HSE that it can search for and extract by taking reasonable steps as defined in section 17(4).

It is not disputed that the HSE holds data on Covid-19 cases and that it can provide certain information along certain geographical breakdowns. Its position, however, is that it does not hold records that contain the specific data sought and that it cannot extract the relevant records by using any facility for electronic search or extraction that existed on the date of the request and was ordinarily used by it.

In its application for internal review, the applicant said the HSE and the HPSC maintain detailed records of the number of Covid-19 cases in Ireland, including the dates on which those cases were confirmed and the location of those cases. It referenced certain previously published information on Covid-19 cases that contain details of the locations of the cases, including detailed maps on which the location of individual cases is highlighted. It said one of the data points provided in respect of all Covid-19 cases (including both self-reported cases reported on the Antigen Positives Portal and cases confirmed following testing administered by the HSE) is the Eircode associated with the individual. It said it understands that this is what allows the HSE to maintain such detailed records of the location of cases.

The applicant also noted that Ireland's Covid-19 Data Hub contains detailed interactive maps showing breakdowns of case numbers by county and by local electoral area (LEA). It said it is possible to search an Eircode to find out what LEA the Eircode is located within. It said this

map, which is based on the HSE's data, therefore contains the dates and locations of Covid-19 cases in Ireland and that this is what the requests sought.

The applicant further noted that the HPSC maintains the Computerised Infectious Disease Reporting (CIDR) database and that in response to a separate request made on 8 June 2020, the HSE previously provided details of the number of cases within particular defined geographic areas on a specified date in 2020 with the breakdown being by reference to specified counties and by specific Dublin postcodes. It said that in its response to that earlier request, the HSE said the data furnished had been extracted from the CIDR system at the HPSC.

In its internal review decision, the HSE said Eircode routing key area is not a field within CIDR. It said that for Covid-19, the postcode field was used in some cases to record Eircodes. It said, however, that the postcode field is a free text field and includes data in a variety of formats and is not a mandatory field. It said the records requested cannot therefore be produced in a manner which can be easily and reliably extracted. It said that to produce data by Eircode routing key area from existing geographic data, the HPSC would require data to be imported from CIDR into another software package and code written to extract cases based on certain text within the relevant geographic data field.

In its application to this Office, the applicant said records of identical information were provided on foot of the earlier request, the only difference being the reference dates. It provided a copy of the decision it had received on that request which contains details of the number of confirmed Covid-19 cases on or before a specified date, broken down in that case by Dublin postcode. It suggested the information had been extracted swiftly and with ease as the decision indicates that the request was received on 8 June 2020 and that the relevant data "was extracted from CIDR June 9th at 12:30 pm".

In response to the HSE's comment that the postcode field is a free text field and includes data in a variety of formats, the applicant further suggested that straightforward searches could be carried out using Microsoft Excel to gather the records of cases within the relevant postal district in light of the limited number of possible variations of postcodes that might be used, e.g. "Dublin 1", "D1", or "D01".

The applicant again also referenced the various publications and reports it had referenced in its application for internal review. It highlighted that one of the particular data points provided in respect of all Covid-19 cases is the Eircode associated with the individual. It said Eircodes in Dublin largely correspond to the different Dublin postal districts. It said this suggested that records of the Dublin postal district in which Covid-19 cases are located are maintained by HPSC.

Further to this, the applicant made reference to the self-reporting facility on the HSEs website which includes the individual's Eircode as a field to be completed. It said that the field/box in question only allowed Eircodes to be entered in two formats which the applicant said is completely at odds with the statement in the Internal Review that this data is maintained in 'a variety of formats' and it therefore 'cannot be produced in a manner which can be easily and reliably extracted'. The applicant went on to say that entering something other than a valid Eircode into this field results in an error message stating 'Eircode is invalid', which it interprets to mean that this is not a 'free text field'.

In its submissions to this Office, the HSE explained that while it has data of Covid-19 cases, it refused the applicant's requests under section 15(1)(a) on the grounds that it does not hold records that match the requests. It said CIDR includes the following address fields:

- Address Line 1
- Address Line 2
- Suburb
- Town
- County
- Postcode

It said the postcode is filled manually by surveillance staff, or filled through a process which transfers Eircodes from the CovidCare tracker to CIDR. It reiterated that the postcode field on CIDR is not mandatory and is a free text field. It said data in the field can take a variety of formats and data entered does not always correspond with a Dublin postal district or an

Eircode. It said that similarly, in the CovidCare tracker, the Eircode field is free text and can take a variety of formats e.g. mix of upper and lower case, spaces between characters. It said examples of the variety of entries in this field include: 'DX', 'Dublin', 'Dublin X', 'Finglas', 'DOX YZWW', 'd0Xyzwv', and blanks. It said the Dublin post code may be included in any of the address fields from 'Address Line 1' to 'Town' as these are all free text fields.

The HSE added that for cases that do have an Eircode in the postcode field, the following steps would be required to create the record sought:

- Extract file from CIDR
- Import file to another programme
- Either:
  - Generate new variable based on the first 3 characters of data in the 'Postcode' variable; validate and clean this new variable due to the variety of formats the data can hold; analyse to count number of cases notified for each of the relevant dates and codes in the request, or
  - Generate new variable and write code to select cases that have the corresponding characters e.g. "XYZ" to the request; validate and clean this new variable due to the variety of formats the data can hold; analyse to count number of cases notified for each of the relevant dates in the request

The HSE said the above steps are not carried out as part of routine HPSC work and the HPSC does not consider them to be reasonable steps to respond to an FOI. It said, in particular, that the validation and cleaning required would be considerable.

When specifically asked about the details entered on the self-reporting facility, the HSE stated that this portal is not under the governance of the HPSC and the original request related to cases which are held on CIDR by the HPSC.

When asked to comment on the applicant's suggestion that the information for the earlier request had been extracted swiftly and with ease, the HSE commented that the date of the previous request would have involved approximately 1,700 cases whereas the relevant dates in the latest requests would involve approximately 25,000 cases and the cleaning step

described above would be far more onerous and go beyond reasonable steps. As such it refused this request under section 15(1)(a) of the FOI Act on the grounds that it would require work beyond what could be considered reasonable steps under section 17(4) of the Act.

When asked if it considered the steps taken to fulfil the June 2020 request to be reasonable, the HSE said that it now did not consider them reasonable, going on to say that it was early in the Covid pandemic and it was not as experienced in answering FOIs as it is now. The HSE said it now understands that the steps involved are too onerous and time consuming to be considered reasonable.

In correspondence with this Office, the applicant stated that he believes the HSE is required to provide copies of any records of Covid-19 cases within the relevant areas as of the relevant dates which it does hold even if, by reason of limitations in the manner in which such data was reported to the HSE, such records may not constitute a fully comprehensive catalogue of all cases which may potentially have existed within the relevant parameters. The Investigator contacted the HSE in relation to this and while the HSE confirmed it was able to produce the records it does hold, it was able to provide Covid-19 case numbers on a national level and not broken down as per the applicant's request. The Investigator informed the applicant of this and advised him that as he felt this did not address the original request he would be progressing to a decision. The applicant reiterated his stance that the HSE should be able to produce more detailed records in a manner similar to that which was produced for the earlier FOI request from 8 June 2020.

Having regard to the submissions of the HSE, I am satisfied that it does not hold records containing the specific information sought. On the matter of whether the information sought is contained in more than one record held on an electronic device by the HSE that it can search for and extract by taking reasonable steps as defined in section 17(4), I am satisfied that it is not. Having regard for the HSE's submissions regarding the steps required to create records in order to grant the applicant's request, I am satisfied the processing of the information that would be required to do so would involve steps that go beyond the use of any facility for electronic search or extraction that existed on the date of the request and that was used by the FOI body in the ordinary course.

Accordingly, I find that the HSE was justified in refusing the applicant's requests under section 15(1)(a) of the FOI Act on the grounds that the records sought do not exist and that it is not required to search for and extract the records pursuant to section 17(4) as to do so would go beyond the taking of reasonable steps.

## Decision

Having carried out a review under section 22(2) of the FOI Act, I hereby affirm the HSE's decision in this case. I find the HSE was justified in refusing, under section 15(1)(a) of the FOI Act, the applicant's requests for records relating to the numbers of Covid-19 cases within certain Eircodes/Dublin postal districts on the basis that the records as sought do not exist.

## Right of Appeal

Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.

**Stephen Rafferty**  
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# Mr X and Children's Health Ireland

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**CASE NUMBER: OIC-138144-SOZ7S3**

Whether CHI was justified in refusing access, under section 15(1)(a) of the FOI Act, to certain statistical information relating to statements of interests

19 September 2023

## Background

By way of background, HSE employees remunerated at or above a certain salary scale are subject to certain requirements under the Ethics Act 1995, as amended (the Ethics Act). Relevant employees must provide written statements of their interests, and the interests of their spouse, civil partner, child or a child of their spouse, which could materially influence the employees in the performance of their functions. Someone who has no registrable interests can submit a "nil statement". I understand that the same applies to staff working for CHI which, according to its website, was established to govern and operate paediatric services in Dublin as a single service across existing locations at Crumlin, Temple Street and

Tallaght, in preparation for the transition to new facilities at the two Paediatric Outpatient and Urgent Care Centres at Connolly and Tallaght Hospitals and the new children's hospital on a campus shared with St James's Hospital.

On 26 August 2022, the applicant made a three-part request to CHI in respect of each year from 2015-2021, seeking information relating to consultants at Temple Street and Crumlin Children's Hospitals, as follows:

1. The number of statements of interests submitted by consultants employed by CHI at each hospital.
2. The number of nil statements submitted by consultants employed by CHI at each hospital.
3. The number of consultants employed at each hospital who submitted neither a statement of interests nor a nil statement.

The applicant confirmed that he was not seeking copies of the actual statements or the registers used to record receipt/non-receipt of statements. He also stated that he was not seeking access to the personal information of any individuals. The applicant said that he solely sought "certain basic statistics" relating to a statutory obligation under the Ethics Act.

CHI did not issue a decision on the applicant's request within the statutory timeframe. Accordingly, on 3 January 2023, the applicant sought an internal review of CHI's deemed refusal of his request.

On 6 March 2023, as CHI again failed to issue a decision within the statutory timeframe, the applicant sought a review by this Office of the deemed refusal of his request. On 26 April 2023, on foot of correspondence from this Office, CHI issued a letter to the applicant wherein it refused his request under section 15(1)(a) of the FOI Act.

On 10 May 2023, the applicant applied to this Office for a review of CHI's decision.

I have now completed my review in accordance with section 22(2) of the FOI Act. In carrying out my review, I have had regard to the applicant's comments in his application for review and to the submissions made by the FOI body in support of its decision. I have decided to conclude this review by way of a formal, binding decision.

## Scope of Review

This review is solely concerned with whether CHI was justified in refusing access, under section 15(1)(a) of the FOI Act, to certain statistical information relating to statements of interests.

## Preliminary Matters

Before I address the substantive issues arising, I would like to make a couple of preliminary comments.

First, it seems to me that the manner in which CHI dealt with the applicant's request was wholly unsatisfactory. It appears that CHI made no effort to process his request until it was contacted by this Office.

In addition, during the course of this review, CHI provided conflicting statements and submissions to this Office. For instance, it initially stated that it made a lengthy submission to this Office in relation to a previous application for review by the same applicant concerning similar matters. However, it subsequently transpired that there had been no such application or submission made to this Office. In addition, CHI stated that it had previously released redacted versions of statement of interests registers for 2019 and 2020 to the applicant, however it later clarified that only the 2020 register had been.

I note that in its submissions to this Office, CHI referred to difficulties arising due to staff changes and the records in question being held in different CHI offices. However, as noted in this Office's previous decision in case Mr Y and Children's Health Ireland (OIC-132665-J9G7M0 (<https://www.oic.ie/decisions/mr-y-and-childrens-health/>)), all records held by Crumlin Children's Hospital and Temple Street Hospital were transferred to CHI on commencement of the relevant part of the Children's Health Act 2018, i.e. on 1 January 2019.

As such, I would expect CHI to have appropriate records management practices in place so that FOI requests for records relating to the period before (or since) relevant records were transferred could be processed efficiently.

Furthermore, as CHI should be aware, there is a significant amount of guidance and support material available to FOI bodies to assist them in meeting their statutory obligations under the FOI Act. This Office publishes comprehensive guidance notes and sample questions to assist FOI bodies in decision-making on our website: [www.oic.ie](http://www.oic.ie) (<http://www.oic.ie/>). All of the decisions issued in respect of our reviews are also published on the website. The Central Policy Unit of the Department of Public Expenditure, NDP Delivery and Reform also publishes guidance documents, training manuals, and a Code of Practice at <https://foi.gov.ie/> (<https://foi.gov.ie/>). I would also expect CHI to ensure that future FOI requests are processed efficiently and in line with the requirements of the FOI Act.

In its submissions to this Office, CHI referred to a previous decision of this Office, namely *Mr N and Health Service Executive* (OIC case OIC-124624-M7Z3K8), which concerned a request for records relating to statements of interests. That decision was appealed to the High Court by the HSE on 31 January 2023. CHI argued that this Office should await the outcome of the High Court appeal before proceeding to determine this review, which it believed to concern, wholly or partially, an issue that is awaiting clarification and determination by the High Court.

I note, however, that in OIC case 124624, the HSE refused a request under sections 41(1) and 35(1)(b) of the FOI Act, while this review is solely concerned with CHI's refusal under section 15(1)(a). Furthermore, the applicant in this case is solely seeking access to statistical information relating to statements of interests and nil statements. The case which has been appealed to the High Court concerns a refusal to provide access to copies of registers recording the submission of statements of interest, including the names of submitters/non-submitters. The applicant in this case has expressly removed such information from the scope of this review. In the circumstances, I am satisfied that the cases can be sufficiently distinguished such that it is appropriate to continue with the current review.

Lastly, it is important to note that section 22(12)(b) of the FOI Act provides that when the Commissioner reviews a decision to refuse a request, there is a presumption that the refusal is not justified unless the public body shows to the satisfaction of the Commissioner that the decision was justified. Therefore, in this case, the onus is on CHI to satisfy me that its decision is justified.

## Analysis and Findings

Essentially, CHI's position appears to be that the applicant's request is not a valid request under the FOI Act, as he sought access to specific statistical information which it considers not to fall within the definition of "record" in section 2, and/or that no record exists containing the precise information sought and that the FOI Act does not require CHI to create a new record.

### **Whether the request is valid**

Section 12(1) of the FOI Act provides that a request must contain sufficient particulars in relation to the information concerned to enable the record to be identified by the taking of reasonable steps. As such, if a requester wishes to obtain information from a public body, s/he should seek access to records that hold such information and should include sufficient details in the request to allow the public body to identify the records sought.

Furthermore, while the purpose of the FOI Act is to enable members of the public to obtain access to information held by public bodies, the mechanism for doing so is by accessing records held by those bodies. A person wishing to obtain information from a public body must make a request for records that contain the information sought. Requests for information or for answers to questions, as opposed to requests for records, are not valid requests under the Act, except to the extent that a request for information or for an answer to a question can reasonably be inferred to be a request for a record containing the information or answer sought.

In its submissions to this Office, CHI stated that a right of access under section 11 of the FOI Act only arises in relation to records. It contended that the applicant had not sought access to any record as defined in section 2, nor to any part or extract of any record. CHI also argued

that “[s]tatistics are not records”. It referred to a decision from this Office - OIC Case 010072 *Mr X and the Children’s University Hospital Temple Street* (<https://www.oic.ie/decisions/d010072-Mr-X-and-the-Childrens-Univ/>) (available on our website at [www.oic.ie](http://www.oic.ie/) (<http://www.oic.ie/>)) which predates the FOI Act 2014 - in support of its position that it was not required to create a record to respond to the applicant’s request. In that case, the then Commissioner found that the FOI Act provides for a right of access only to records which already exist and stated that the Act did not require the creation of records in order to grant a request. I shall consider this in more detail below. CHI appeared to be of the view that as it was not required to create new records to address an FOI request and as the applicant had specifically stated that he was not seeking copies of statements of interests, nil statements, or of any registers used to record these statements, that he had essentially confirmed that his request was invalid under the FOI Act.

I have carefully considered the applicant’s request in this case and CHI’s arguments set out above. I am satisfied that the applicant’s comments regarding not seeking copies of various records could be reasonably interpreted to mean that he was not seeking access to details of the interests actually declared by identifiable consultants. While I accept that the applicant said he was looking for statistical information, it seems clear to me that he was essentially seeking information which is contained in records held by CHI.

In the circumstances, I am satisfied that CHI could reasonably have been expected to treat the request as a request for records that contain the information sought by the applicant and that the applicant’s request constitutes a valid request under the FOI Act. I am also satisfied that the applicant’s request contained enough particulars to allow CHI to identify the records concerned. Furthermore, if it was unclear to CHI how to proceed with the request, I would have expected it to contact the applicant in order to clarify matters.

**Section 15(1)(a) – whether records exist and Section 17(4) – extraction of information held electronically**

Notwithstanding CHI’s view that the applicant’s request was invalid, it also refused the request on the basis that he was not seeking access to records which currently existed, but that he sought the creation of a new record, which it contended it was not required to do.

Section 15(1)(a) of the FOI Act provides for the refusal of a request where the records sought do not exist or cannot be found after all reasonable steps to ascertain their whereabouts have been taken. In such cases, the role of this Office is to review the decision of the FOI body and to decide whether that decision was justified. This means that I must have regard to the evidence available to the decision maker and the reasoning used by the decision maker in arriving at his/her decision and I must assess the adequacy of the searches conducted by the FOI body in looking for relevant records.

It is important to note that, with one exception, the FOI Act does not require FOI bodies to create records to provide information sought. The exception is set out in section 17(4) of the Act. Under section 17(4), where a request relates to data contained in more than one record held on an electronic device by the FOI body concerned, the body must take reasonable steps to search for and extract the records to which the request relates. These steps are those that would involve the use of any facility for electronic search or extraction that existed on the date of the request and was used by the FOI body in the ordinary course. Where these reasonable steps result in the creation of a new record, that record is, for the purposes of considering whether or not such a new record should be disclosed in response to the request, deemed to have been created on the date of receipt of the request.

I outlined above that HSE employees remunerated at or above a certain salary scale are subject to certain requirements under the Ethics Act. During the course of the review, CHI confirmed that it holds some limited registers relating to those requirements. For instance, it said that it holds a spreadsheet for 2018 and registers of 2019 and 2020 returns, and that the latter was released to the applicant on foot of a previous request. However, its position was that, due to staff changes, records containing the information sought either did not exist, or where they existed, were incomplete.

The FOI Act provides for a right of access to records held by public bodies unless they are otherwise exempt from release. While I note CHI's arguments that the records concerned are incomplete, there is nothing in the Act which allows an FOI body to refuse to grant access to a record based solely on the fact that the information in the record is incomplete, inaccurate or potentially misleading. As this Office has found on many occasions, the possibility of information being misunderstood could rarely, if ever, be a good cause for refusing access to



the records. Such an argument suggests that the FOI body may be incapable of explaining its records to the public and may be unable to present information to the public in a way which will allow any objective observer to draw accurate and balanced conclusions.

Moreover, while CHI provided this Office with some details of searches it undertook in an effort to locate records, it appears to have carried out those searches on the understanding that it was not obliged to create a new record. As noted above, in its submissions to this Office, CHI relied on OIC Case 010072 in support of its argument that it was not required to create a new record. That case concerned a request for access to certain statistical information relating to a particular unit of the hospital in question. The FOI body's position in that case was that it did not collate statistics in the manner sought by the applicant. While it was not disputed in that case that the FOI body held records containing the information sought, it would have been necessary to manually collate and cross-reference data from different sources and create a new record in order to grant parts of the applicant's request. However, while the Commissioner affirmed the FOI body's refusal of the applicant's request in that case, it is important to note that her decision was made under the Freedom of Information Acts 1997 and 2003, rather than the 2014 Act.

Prior to the introduction of the FOI Act 2014, a public body was entitled to refuse a request for information that was held in two or more electronic records on the ground that the extraction and compilation of the data would result in the creation of a new record. The introduction of section 17(4) in the FOI Act 2014 allowed for the extraction of such data and for the resultant record to be regarded as a record that existed when the request for such data was made. The essential purpose of section 17(4) is to ensure that an FOI body cannot refuse a request for information that is contained within a number of electronically held records, based solely on an argument that the extracted output would comprise a new record and that the FOI Act does not require the creation of a new record.

It is not clear to me from CHI's submissions, or from its reliance on the 2005 decision in OIC case 010072, that CHI considered section 17(4) of the FOI Act in respect of the limited registers it holds. Nor is it clear to me from CHI's submissions that reasonable searches were carried out in this case, despite repeated requests from this Office to clarify the matters at

issue. Furthermore, it is clear that CHI holds at least some records which expressly capture the information sought in this case. In the circumstances, I am simply not in a position to find that CHI took reasonable steps to locate the records sought.

Accordingly, I find that CHI was not justified in refusing the applicant's request under section 15(1)(a) of the FOI Act. I consider that the most appropriate course of action to take is to annul CHI's decision in its entirety, the effect of which is that CHI must consider the applicant's request afresh and make a new, first instance, decision in accordance with the provisions of the FOI Act. In processing the request afresh, I would expect CHI to have regard to comments above in relation to its obligations under section 17(4). The applicant will have a right to an internal review and a review by this Office if he is not satisfied with the CHI's decision.

## Decision

Having carried out a review under section 22(2) of the FOI Act, I hereby annul CHI's decision to refuse the applicant's request under section 15(1)(a) of the FOI Act. I direct CHI to conduct a fresh decision-making process in relation to the request.

## Right of Appeal

Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.

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**Investigator**



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