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FREEDOM OF INFORMATION ACT, 1997

AN ACT TO ENABLE MEMBERS OF THE PUBLIC TO OBTAIN ACCESS, TO THE GREATEST EXTENT POSSIBLE CONSISTENT WITH THE PUBLIC INTEREST AND THE RIGHT TO PRIVACY, TO INFORMATION IN THE POSSESSION OF PUBLIC BODIES AND TO ENABLE PERSONS TO HAVE PERSONAL INFORMATION RELATING TO THEM IN THE POSSESSION OF SUCH BODIES CORRECTED AND, ACCORDINGLY, TO PROVIDE FOR A RIGHT OF ACCESS TO RECORDS HELD BY SUCH BODIES, FOR NECESSARY EXCEPTIONS TO THAT RIGHT AND FOR ASSISTANCE TO PERSONS TO ENABLE THEM TO EXERCISE IT, TO PROVIDE FOR THE INDEPENDENT REVIEW BOTH OF DECISIONS OF SUCH BODIES RELATING TO THAT RIGHT AND OF THE OPERATION OF THIS ACT GENERALLY (INCLUDING THE PROCEEDINGS OF SUCH BODIES PURSUANT TO THIS ACT) AND, FOR THOSE PURPOSES, TO PROVIDE FOR THE ESTABLISHMENT OF THE OFFICE OF INFORMATION COMMISSIONER AND TO DEFINE ITS FUNCTIONS, TO PROVIDE FOR THE PUBLICATION BY SUCH BODIES OF CERTAIN INFORMATION ABOUT THEM RELEVANT TO THE PURPOSES OF THIS ACT, TO AMEND THE OFFICIAL SECRETS ACT, 1963, AND TO PROVIDE FOR RELATED MATTERS. [21st April, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

Citation and commencement.

1.—(1) This Act may be cited as the Freedom of Information Act, 1997.

(2) Subject to *subsection (3)*, this Act shall come into operation on the day that is one year after the date of its passing.

(3) *Subparagraph (3) of paragraph 1 of the First Schedule* shall come into operation on such day not later than 18 months after the passing of this Act as the Minister may appoint by order with the consent of the Minister for the Environment and *subparagraph (4)*

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of that paragraph shall come into operation on such day not later than 18 months after the passing of this Act as the Minister may appoint by order with the consent of the Minister for Health.

Interpretation.

2.—(1) In this Act, save where the context otherwise requires—

“commencement of this Act” means the time at which this Act (other than *subparagraphs (3) and (4) of paragraph 1 of the First Schedule*) comes into operation;

“the Commissioner” means, as the context may require, the office of Information Commissioner established by *section 33* or the holder of that office;

“determined” means determined by the Minister and, in relation to a form, means determined having had appropriate regard to the needs of requesters, and cognate words shall be construed accordingly;

“director” means a director (within the meaning of the Companies Acts, 1963 to 1990) but includes, in the case of a local authority or health board or any other public body that is not a company (within the meaning of the Companies Act, 1963) or, being a body, organisation or group (other than a company) specified in *subparagraph (b) (i), (c), (e), (f) or (g) of subparagraph (5) of paragraph 1 of the First Schedule*, stands prescribed for the time being pursuant to that subparagraph, a person who is a member of it or a member of any board or other body that controls, manages or administers it, and any cognate words shall be construed accordingly;

“enactment” means a statute or an instrument made under a power conferred by a statute;

“exempt record” means—

- (a) a record in relation to which the grant of a request under *section 7* would be refused pursuant to *Part III* or by virtue of *section 46*, or
- (b) a record that is created for or held by an office holder and relates to the functions or activities of—
 - (i) the office holder as a member of the Oireachtas or a political party, or
 - (ii) a political party;

“functions” includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

“give” includes send, whether by post or electronic or other means, and cognate words shall be construed accordingly;

“head” means head of a public body;

“head of a public body” means—

- (a) in relation to a Department of State, the Minister of the Government having charge of it,
- (b) in relation to the Office of the Tánaiste, the Tánaiste,

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- (c) in relation to the Office of the Attorney General, the Pr.I S.2 Attorney General,
- (d) in relation to the Office of the Director of Public Prosecutions, the Director of Public Prosecutions,
- (e) in relation to the Office of the Comptroller and Auditor General, the Comptroller and Auditor General,
- (f) in relation to the Office of the Ombudsman, the Ombudsman,
- (g) in relation to the Office of the Commissioner, the Commissioner,
- (h) in relation to the Office of the Civil Service Commissioners, the Civil Service Commissioners,
- (i) in relation to the Office of the Local Appointments Commissioners, the Local Appointments Commissioners,
- (j) in relation to the Office of the Houses of the Oireachtas, the Chairman of Dáil Éireann,
- (k) in relation to any other public body, the person who holds, or performs the functions of, the office of chief executive officer (by whatever name called) of the body;

“local authority” means a local authority for the purposes of the Local Government Act, 1941;

“the Minister” means the Minister for Finance;

“Office”, in relation to a person, means the offices in which the administration and business relating to the functions of the person are carried on;

“office holder” means—

- (a) a person who is a Minister of the Government or a Minister of State, or
- (b) a member of either House of the Oireachtas who holds the office of Attorney General;

“personal information” means information about an identifiable individual that—

- (a) would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual, or
- (b) is held by a public body on the understanding that it would be treated by it as confidential,

and, without prejudice to the generality of the foregoing, includes—

- (i) information relating to the educational, medical, psychiatric or psychological history of the individual,
- (ii) information relating to the financial affairs of the individual,

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- (iii) information relating to the employment or employment history of the individual,
- (iv) information relating to the individual in a record falling within *section 6 (6) (a)*,
- (v) information relating to the criminal history of the individual,
- (vi) information relating to the religion, age, sexual orientation or marital status of the individual,
- (vii) a number, letter, symbol, word, mark or other thing assigned to the individual by a public body for the purpose of identification or any mark or other thing used for that purpose,
- (viii) information relating to the entitlements of the individual under the Social Welfare Acts as a beneficiary (within the meaning of the Social Welfare (Consolidation) Act, 1993) or required for the purpose of establishing whether the individual, being a claimant (within the meaning aforesaid), is such a beneficiary,
- (ix) information required for the purpose of assessing the liability of the individual in respect of a tax or duty or other payment owed or payable to the State or to a local authority, a health board or other public body or for the purpose of collecting an amount due from the individual in respect of such a tax or duty or other payment,
- (x) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name would, or would be likely to, establish that any personal information held by the public body concerned relates to the individual,
- (xi) information relating to property of the individual (including the nature of the individual's title to any property), and
- (xii) the views or opinions of another person about the individual,

but does not include—

- (I) in a case where the individual holds or held office as a director, or occupies or occupied a position as a member of the staff, of a public body, the name of the individual or information relating to the office or position or its functions or the terms upon and subject to which the individual holds or held that office or occupies or occupied that position or anything written or recorded in any form by the individual in the course of and for the purpose of the performance of the functions aforesaid,
- (II) in a case where the individual is or was providing a service for a public body under a contract for services with the body, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purposes of the provision of the service, or

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(III) the views or opinions of the individual in relation to a public body, the staff of a public body or the business or the performance of the functions of a public body; Pr.I S.2

“political party” means a party registered in the Register of Political Parties;

“prescribed” means prescribed by the Minister by regulations under *section 3*;

“public body” shall be construed in accordance with the *First Schedule*;

“record” includes any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Act, 1988) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing;

“request to which *section 29* applies” means a request under *section 7* to which *section 26 (3)*, *27 (3)* or *28 (5)* applies and which, apart from *section 29*, would fall to be granted;

“requester” means a person who makes a request under *section 7*;

“the right of access” shall be construed in accordance with *section 6*;

(2) A power conferred by this Act to draw up and publish guidelines or to make determinations shall be construed as including a power exercisable in the like manner to revoke or amend guidelines or determinations drawn up and published or, as the case may be, made under the power.

(3) Nothing in this Act shall be construed as prohibiting or restricting access by a public body to a record held by another public body.

(4) A reference in *section 7*, *8*, *14*, *17* or *18* in relation to a request under *section 7* or the receipt of such a request or to an application under *section 14 (2)*, *17 (1)* or *18 (1)*, to the head of a public body shall be construed as including a reference to the body and to any director or member of the staff thereof, and this Act shall, with any necessary modifications, apply and have effect accordingly.

(5) In this Act—

(a) a reference to records held by a public body includes a reference to records under the control of the body,

(b) a reference to a Part, section or Schedule is a reference to a Part or section of, or a Schedule to, this Act unless it is indicated that reference to some other provision is intended, and

(c) a reference to a subsection, paragraph, subparagraph, clause or subclause is a reference to a subsection, paragraph, subparagraph, clause or subclause of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

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- (d) a reference to any enactment is a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Regulations.

3.—(1) The Minister may—

- (a) by regulations provide, subject to the provisions of this Act, for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) in addition to any other power conferred on him or her to make regulations, make regulations generally for the purposes of, and for the purpose of giving full effect to, this Act,
- (c) if, during the first 3 years of application of this Act to a public body specified in *subparagraph (3), (4) or (5) of paragraph 1 of the First Schedule*, any difficulty arises in bringing this Act into operation in so far as it applies to that body, by regulations do anything which appears to be necessary or expedient for bringing this Act into operation in so far as it applies to that body and regulations under this paragraph may, in so far only as may appear necessary for carrying the regulations into effect, modify a provision of this Act if the modification is in conformity with the purposes, principles and spirit of this Act, and
- (d) if in any other respect any difficulty arises during the period of 3 years from the commencement of this Act in bringing this Act into operation, by regulations do anything which appears to be necessary or expedient for bringing this Act into operation and regulations under this paragraph may, in so far only as may appear necessary for carrying the regulations into effect, modify a provision of this Act if the modification is in conformity with the purposes, principles and spirit of this Act.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Where the Minister proposes to make regulations under *paragraph (c) or (d) of subsection (1) or for the purposes of paragraph 1 (5), or under paragraph 3, of the First Schedule*, he or she shall cause a draft of the regulations to be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

(4) Where the Minister proposes to make regulations under *subsection (1)(c)*, he or she shall, before doing so, consult with such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government in relation to the proposed regulations.

(5) Regulations prescribing a body, organisation or group (“the body”) for the purposes of *paragraph 1 (5) of the First Schedule* may provide that this Act shall apply to the body only as respects specified functions of the body, and this Act shall apply and have effect in accordance with any such provision.

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(6) Every regulation under this Act (other than a regulation referred to in *subsection (3)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder. Pr.I S.3

4.—(1) A head may delegate in writing to a member of the staff of the public body concerned any of the functions of the head under this Act (other than this section and *section 25*). Delegation of certain functions of heads.

(2) A delegation under *subsection (1)* (“a delegation”) may—

(a) relate to functions generally or specified functions or be in respect of records generally or specified classes of records or specified records, and

(b) be to a specified member or specified members of the staff of the public body concerned or to such members who are of a specified rank or grade or of a rank or grade not lower than a specified rank or grade,

and may delegate different functions or classes of function to different such members or classes of members.

(3) A delegation may be revoked in whole or in part or amended in writing by the head for the time being of the public body concerned.

(4) A delegation shall operate, so long as it continues in force, to confer on and vest in the person concerned the function or functions delegated by the delegation.

(5) The head concerned shall cause notice of a delegation or of a revocation or amendment under *subsection (3)* to be published in *Iris Oifigiúil* not later than 4 weeks after the making of the delegation, revocation or amendment, as the case may be.

(6) References in this Act to a head shall be construed, where appropriate having regard to the context and any delegation under this section, as including references to any person to whom functions stand delegated by the delegation.

5.—The expenses incurred in the administration of this Act shall be paid out of moneys provided by the Oireachtas and the expenses incurred by any other Minister of the Government in the administration of this Act shall, to such extent as may be sanctioned by the Minister, be paid out of moneys provided by the Oireachtas. Expenses.

PART II

ACCESS TO RECORDS

6.—(1) Subject to the provisions of this Act, every person has a right to and shall, on request therefor, be offered access to any record held by a public body and the right so conferred is referred to in this Act as the right of access. Right of access to records.

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(2) It shall be the duty of a public body to give reasonable assistance to a person who is seeking a record under this Act—

- (a) in relation to the making of the request under *section 7* for access to the record, and
- (b) if the person has a disability, so as to facilitate the exercise by the person of his or her rights under this Act.

(3) The Minister shall, after consultation with such other (if any) Ministers of the Government as he or she considers appropriate, draw up and publish to public bodies guidelines in relation to compliance by public bodies with *subsection (2)(b)*, and public bodies shall have regard to any such guidelines.

(4) The records referred to in *subsection (1)* are records created after the commencement of this Act and—

- (a) records created during such period (if any), or after such time (if any), before the commencement of this Act, and
- (b) records created before such commencement and relating to such particular matters (if any), and
- (c) records created during such period (if any) and relating to such particular matters (if any),

as may be prescribed, after consultation with such Ministers of the Government as the Minister considers appropriate.

(5) Notwithstanding *subsections (1)* and *(4)* but subject to *subsection (6)*, where—

- (a) access to records created before the commencement of this Act is necessary or expedient in order to understand records created after such commencement, or
- (b) records created before such commencement relate to personal information about the person seeking access to them,

subsection (1) shall be construed as conferring the right of access in respect of those records.

(6) *Subsection (5)* shall not be construed as applying, in relation to an individual who is a member of the staff of a public body, the right of access to a record held by a public body that—

- (a) is a personnel record, that is to say, a record relating wholly or mainly to one or more of the following, that is to say, the competence or ability of the individual in his or her capacity as a member of the staff of a public body or his or her employment or employment history or an evaluation of the performance of his or her functions generally or a particular such function as such member,
- (b) was created more than 3 years before the commencement of this Act, and
- (c) is not being used or proposed to be used in a manner or for a purpose that affects, or will or may affect, adversely the interests of the person.

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(7) Nothing in this section shall be construed as applying the right of access to an exempt record. Pr.II S.6

(8) Nothing in this Act shall be construed as prohibiting or restricting a public body from publishing or giving access to a record (including an exempt record) otherwise than under this Act where such publication or giving of access is not prohibited by law.

(9) A record in the possession of a person who is or was providing a service for a public body under a contract for services shall, if and in so far as it relates to the service, be deemed for the purposes of this Act to be held by the body, and there shall be deemed to be included in the contract a provision that the person shall, if so requested by the body for the purposes of this Act, give the record to the body for retention by it for such period as is reasonable in the particular circumstances.

(10) Where a request under *section 7* would fall to be granted by virtue of *subsection (9)* but for the fact that it relates to a record that contains, with the matter relating to the service concerned, other matter, the head of the public body concerned shall, if it is practicable to do so, prepare a copy, in such form as he or she considers appropriate of so much of the record as does not consist of the other matter aforesaid and the request shall be granted by offering the requester access to the copy.

7.—(1) A person who wishes to exercise the right of access shall make a request, in writing or in such other form as may be determined, addressed to the head of the public body concerned for access to the record concerned— Requests for access to records.

- (a) stating that the request is made under this Act,
- (b) containing sufficient particulars in relation to the information concerned to enable the record to be identified by the taking of reasonable steps, and
- (c) if the person requires such access to be given in a particular form or manner (being a form or manner referred to in *section 12*), specifying the form or manner of access.

(2) The head shall cause the receipt by him or her of a request under *subsection (1)* to be notified, in writing or in such other form as may be determined, to the requester concerned as soon as may be but not later than 2 weeks after such receipt, and the notification shall include a summary of the provisions of *section 41* and particulars of the rights of review under this Act, the procedure governing the exercise of those rights, and the time limits governing such exercise, in a case to which that section applies.

(3) Where a request under this section is received by the head of a public body (“the head”) and the record or records concerned is or are not held by the body (“the first-mentioned body”) but, to the knowledge of the head, is or are held by one or more other public bodies, the head shall, as soon as may be, but not more than 2 weeks, after the receipt of the request, cause a copy of the request to be given to the head of the other body or, as the case may be, to the head of that one of the other bodies—

- (a) whose functions are, in the opinion of the head, most closely related to the subject matter of the record or records, or

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- (b) that, in the opinion of the head, is otherwise most appropriate,

and inform the requester concerned, by notice in writing or in such other form as may be determined, of his or her having done so and thereupon—

- (i) the head to whom the copy aforesaid is furnished shall be deemed, for the purposes of this Act, to have received the request under this section and to have received it at the time of the receipt by him or her of the copy, and
- (ii) the head shall be deemed, for the purposes of this Act, not to have received the request.

(4) Where a request under this section relating to more than one record is received by the head of a public body (“the first-mentioned body”) and one or more than one (but not all) of the records concerned is or are held by the body, the head shall inform the requester concerned, by notice in writing or in such other form as may be determined, of the names of any other public body that, to his or her knowledge, holds any of the records.

(5) The Minister shall, after consultation with the Commissioner, draw up and publish to heads guidelines for the purposes of *subsection (3)* and *(4)* and heads shall have regard to any such guidelines.

(6) A person shall be deemed to have the knowledge referred to in *subsection (3)* and *(4)* if, by the taking of reasonable steps, he or she could obtain that knowledge.

(7) Where—

- (a) a person makes a request for information, or a request for access to a record, to a public body or to a head or a director, or member of the staff, of a public body, other than under and in accordance with this Act, and
- (b) it is not or may not be possible to give the information, or make available the record, other than pursuant to a request in relation to it under and in accordance with *section 7*,

the head shall, if appropriate, cause the person to be informed of the right of access and shall assist, or offer to assist, the person in the preparation of such a request.

8.—(1) Subject to the provisions of this Act, a head shall, as soon as may be, but not later than 4 weeks, after the receipt of a request under *section 7*—

- (a) decide whether to grant or refuse to grant the request or to grant it in part,
- (b) if he or she decides to grant the request, whether wholly or in part, determine the form and manner in which the right of access will be exercised, and
- (c) cause notice, in writing or in such other form as may be determined, of the decision and determination to be given to the requester concerned.

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(2) A notice under *subsection (1)* shall specify—

- (a) the decision under that subsection concerned and the day on which it was made,
- (b) unless the head concerned reasonably believes that their disclosure could prejudice the safety or well-being of the person concerned, the name and designation of the person in the public body concerned who is dealing with the request,
- (c) if the request aforesaid is granted, whether wholly or in part—
 - (i) the day on which, and the form and manner in which, access to the record concerned will be offered to the requester concerned and the period during which the record will be kept available for the purpose of such access, and
 - (ii) the amount of any fee under *section 47* payable by the requester in respect of the grant of the request,
- (d) if the request aforesaid is refused, whether wholly or in part—
 - (i) the reasons for the refusal, and
 - (ii) unless the refusal is pursuant to *section 19 (5), 22 (2), 23 (2) or 24 (3)*, any provision of this Act pursuant to which the request is refused and the findings on any material issues relevant to the decision and particulars of any matter relating to the public interest taken into consideration for the purposes of the decision,
- (e) if the giving of access to the record is deferred under *section 11*, the reasons for the deferral and the period of the deferral, and
- (f) particulars of rights of review and appeal under this Act in relation to the decision under *subsection (1)* and any other decision referred to in the notice, the procedure governing the exercise of those rights and the time limits governing such exercise.

(3) Subject to the provisions of this Act, where a request is granted under *subsection (1)*—

- (a) if—
 - (i) a fee is not charged under *section 47* in respect of the matter,
 - (ii) a deposit under that section has been paid and a fee under that section is charged and the amount of the deposit equals or exceeds the amount of the fee, or
 - (iii) such a deposit has been paid but such a fee is not charged,

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access to the record concerned shall be offered to the requester concerned forthwith and the record shall be kept available for the purpose of such access for a period of 4 weeks thereafter, and

(b) if a fee is so charged, access to the record concerned shall be offered to the requester concerned as soon as may be, but not more than one week, after the day on which the fee is received by the public body concerned, and the record shall be kept available for the purpose of such access until—

(i) the expiration of the period of 4 weeks from such receipt, or

(ii) the expiration of the period of 8 weeks from the receipt by the requester concerned of the notice under *subsection (1)* concerned,

whichever is the earlier.

(4) In deciding whether to grant or refuse to grant a request under *section 7*—

(a) any reason that the requester gives for the request, and

(b) any belief or opinion of the head as to what are the reasons of the requester for the request,

shall be disregarded.

(5) This section shall not be construed as requiring the inclusion in a notice under *subsection (1)* of matter that, if it were included in a record, would cause the record to be an exempt record.

(6) References in this section to the grant of a request under *section 7* include references to such a grant pursuant to *section 13*.

Extension of time for consideration of requests under *section 7*.

9.—(1) The head may, as respects a request under *section 7* received by him or her (“the specified request”), extend the period specified in *section 8 (1)* for consideration of the request by such period as he or she considers necessary but not exceeding a period of 4 weeks if in the opinion of the head—

(a) the request relates to such number of records, or

(b) the number of other requests under *section 7* relating either to the record or records to which the specified request relates or to information corresponding to that to which the specified request relates or to both that have been made to the public body concerned before the specified request was made to it and in relation to which a decision under *section 8* has not been made is such,

that compliance with that subsection within the period specified therein is not reasonably possible.

(2) Where a period is extended under this section, the head concerned shall cause notice in writing or in such other form as may be determined, to be given to the requester concerned, before the expiration of the period, of the extension and the period thereof and reasons therefor.

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(3) The reference in *section 8 (1)* to 4 weeks shall be construed in accordance with any extension under this section of that period. Pr.II S.9

10.—(1) A head to whom a request under *section 7* is made may refuse to grant the request if— Refusal on administrative grounds to grant requests under *section 7*.

(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,

(b) the request does not comply with *section 7 (1) (b)*,

(c) in the opinion of the head, granting the request would, by reason of the number or nature of the records concerned or the nature of the information concerned, require the retrieval and examination of such number of records or an examination of such kind of the records concerned as to cause a substantial and unreasonable interference with or disruption of the other work of the public body concerned,

(d) publication of the record is required by law and is intended to be effected not later than 12 weeks after the receipt of the request by the head,

(e) the request is, in the opinion of the head, frivolous or vexatious, or

(f) a fee or deposit payable under *section 47* has not been paid.

(2) A head shall not refuse, pursuant to *paragraph (b)* or *(c)* of *subsection (1)*, to grant a request under *section 7* unless he or she has assisted, or offered to assist, the requester concerned in an endeavour so to amend the request that it no longer falls within that paragraph.

11.—(1) Where a request is made under *section 7*, and— Deferral of access to records.

(a) the record concerned was prepared solely for the information of either or both of the Houses of the Oireachtas or a committee of either or both of such Houses and copies of the record are intended to be laid before either or both of such Houses or given to such a committee or otherwise published to members of either or both of such Houses or such a committee on a day falling within a reasonable period after the receipt by the head concerned of the request (“the specified day”), or

(b) information contained in the record concerned falls within *paragraph (b)*, *(d)* or *(e)* of *section 20 (2)* and the giving of access to the record on or before a particular day (“the specified day”) would, in the opinion of the head concerned, be contrary to the public interest, or

(c) the record concerned is held by a public body, being a Department of State or the Office of the Tánaiste and the Minister of the Government in whom functions in relation to the public body are vested considers that the record or part thereof or any matter to which it relates is of such interest to the public generally that he or she intends to inform either or both of the Houses of the

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Oireachtas of the contents of the record or part or of the matter or otherwise to publish the contents of the record or part or information relating to the matter on a day not later than one week after the appropriate time specified in *section 8 (3)* (“the specified day”),

the head concerned may defer the offering of access to the record to the requester concerned until the day immediately after the specified day.

(2) *Section 8 (3)* shall be construed and have effect in relation to a case in which the offering of access to a record is deferred under this section as if—

(a) *paragraph (a)* thereof required access to the record to be offered to the requester concerned forthwith upon the expiration of the period of the deferral and the record to be kept available for the purpose of such access for a period of 4 weeks thereafter, and

(b) *paragraph (b)* thereof required access to the record to be offered to the requester as soon as may be, but not more than one week, after—

(i) the expiration of the period of the deferral, or

(ii) the day on which the fee under *section 47* concerned is received by the public body concerned,

whichever is the later and the record to be kept available for the purpose of such access until—

(I) the expiration of the period of 4 weeks from such receipt, or

(II) the expiration of the period of 4 weeks from the expiration of the period of the deferral,

whichever is the later.

Manner of access to records.

12.—(1) A head may give access under this Act to a record by providing the requester with—

(a) a copy of the record,

(b) a transcript of the information concerned,

(c) a computer disk or other electronic device containing the information,

(d) a reasonable opportunity to inspect the record,

(e) in case the record is of sound or visual images, a reasonable opportunity to hear or view the record,

(f) in case the information is in shorthand or other code, the information in decodified form and in written form or such other form as may be determined,

(g) the information in such other form or manner as may be determined, or

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(h) the information in a combination of any two or more of the foregoing. Pr.II S.12

(2) Where a head decides to grant a request under *section 7* and the request is for access in a particular form or manner to a record, such access shall be given in that form or manner unless the head concerned is satisfied—

(a) that such access in another form or manner specified in or determined under *subsection (1)* would be significantly more efficient, or

(b) that the giving of access in the form or manner requested would—

(i) be physically detrimental to the record,

(ii) involve an infringement of copyright (other than copyright owned by the State, the Government or the public body concerned),

(iii) conflict with a legal duty or obligation of a public body, or

(iv) prejudice, impair or damage any interest protected by *Part III* or *section 46*.

(3) Where a head decides to grant a request under *section 7* but not to give access to the record concerned in the form or manner specified in the request, he or she shall give such access—

(a) if the case is one to which *paragraph (a)* of *subsection (2)* applies, in the appropriate form or manner having regard to that paragraph, and

(b) if the case is one to which *paragraph (b)* of that subsection applies, in such other form or manner specified in or determined under *subsection (1)* as may be agreed by the head and the requester or, if those persons are unable to agree upon such a form, in such form specified in *subsection (1)* as the head considers appropriate.

13.—(1) Where a request under *section 7* would fall to be granted but for the fact that it relates to a record that is an exempt record, by reason of the inclusion in it, with other matter, of particular matter, the head of the public body concerned, shall, if it is practicable to do so, prepare a copy, in such form as he or she considers appropriate, of so much of the record as does not consist of the particular matter aforesaid and the request shall be granted by offering the requester access to the copy. Access to parts of records.

(2) *Subsection (1)* shall not apply in relation to a record if the copy provided for thereby would be misleading.

(3) Where a requester is offered access to a copy of part of a record under this section, then (unless the record is one to which *section 19 (5)*, *22 (2)*, *23 (2)* or *24 (3)* applies), the notice under *section 8 (1)* concerned shall specify that such access is offered pursuant to this section and that the copy does not purport to be a copy of the complete record to which the request under *section 7* relates and shall also specify the nature of the matter contained in the record by virtue of which *subsection (1)* applies to the record.

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Pt. II
Review by heads of
decisions.

14.—(1) This section applies to a decision made pursuant to this Act by a person to whom the function concerned stood delegated at the time of the making of the decision, being—

- (a) a decision to refuse to grant a request under *section 7*, whether wholly or in part, (other than a request to which *section 29* applies) (“a request”) in relation to the record concerned,
- (b) a decision under *section 11* to defer the offering of access to a record falling within *paragraph (a)* of *subsection (1)* of that section,
- (c) a decision under *section 12* to grant a request by giving access to the record concerned in a form other than that specified in the request,
- (d) a decision under *section 13* to grant a request under *section 7* by offering the requester concerned access to a copy of part only of the record concerned,
- (e) a decision under *section 17* to refuse to amend a record,
- (f) a decision under *section 18* in relation to the contents of a statement furnished under *subsection (1)* of that section or to refuse an application under that subsection, or
- (g) a decision to charge a fee or deposit, or a fee or deposit of a particular amount, under *section 47*.

(2) Subject to the provisions of this section, the head of the public body concerned, on application to him or her in that behalf, in writing or in such other form as may be determined, by a relevant person—

- (a) may review a decision to which this section applies, and
- (b) following the review, may, as he or she considers appropriate—
 - (i) affirm or vary the decision, or
 - (ii) annul the decision and, if appropriate, make such decision in relation to the matter as he or she considers proper,

in accordance with this Act.

(3) A person to whom a function under this section stands delegated under *section 4* shall not perform that function in relation to a decision to which this section applies that was made by a member of the staff of the public body concerned whose rank is the same as or higher than that of the person aforesaid.

(4) A decision under *subsection (2)* shall be made, and the head concerned shall cause notice thereof, in writing or in such other form as may be determined, to be given to the relevant person and any other person whom he or she considers should be notified thereof, not later than 3 weeks after the receipt by the head of the application for the review under that subsection concerned.

(5) A notice under *subsection (4)* shall specify—

- (a) the day on which the decision concerned under that subsection was made,
- (b) if the decision is to grant, in whole or in part, the request under *section 7* concerned, the information referred to in *section 8 (2) (c)*,
- (c) if the decision is to refuse to grant, wholly or in part, the request aforesaid, the information specified in *subparagraph (i) of paragraph (d) of section 8 (2)* and, if the refusal is not pursuant to *section 10 (1) (c), 19 (5), 22 (2), 23 (2), or 24 (3)*, the information specified in *subparagraph (ii) of that paragraph*,
- (d) if the decision is to defer the giving of access to the record concerned, the reasons for the deferral and the period of the deferral,
- (e) if the decision is a decision referred to in *paragraph (c), (d), (e), (f) or (g) of subsection (1)*, the reasons for the decision, and
- (f) particulars of the rights of review and appeal under this Act in relation to the decision, the procedure governing the exercise of those rights and the time limits governing such exercise.

(6) This section shall not be construed as requiring the inclusion in a notice under *subsection (4)* of matter that, if it were included in a record, would cause the record to be an exempt record.

(7) An application under *subsection (2)* shall be made not later than 4 weeks after the notification under this Act of the decision concerned to the relevant person concerned or, in a case in which the head concerned is of the opinion that there are reasonable grounds for extending that period, the expiration of such longer period as he or she may determine.

(8) The relevant person concerned may, at any time before the making of a decision under *subsection (2)* following the review concerned, by notice in writing or in such other form as may be determined, given to the head concerned, withdraw the application concerned under that subsection.

(9) *Subsection (3) of section 8* shall apply in relation to a case where a decision under *subsection (2)* is to grant a request under *section 7* or to annul or vary a deferral under *section 11* with the modification that the reference in the said *subsection (3)* to the grant of a request under *subsection (1) of section 8* shall be construed as a reference to the making of the decision under *subsection (2)*.

(10) Subject to the provisions of this Act, a decision under *subsection (2)* shall—

- (a) in so far as it is inconsistent with the decision to which this section applies concerned, have effect in lieu thereof, and
- (b) be binding on the parties concerned.

(11) In this section “relevant person”, in relation to a decision to which this section applies, means—

- (a) the requester concerned, or

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- (b) if the decision is under *section 17* or *18*, the person who made the application concerned.

Publication of information about public bodies.

15.—(1) A public body shall cause to be prepared and published and to be made available in accordance with *subsection (7)* a reference book containing—

- (a) 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,
- (b) a general description of the classes of records held by it, giving such particulars as are reasonably necessary to facilitate the exercise of the right of access,
- (c) a general description of the matters referred to in *paragraphs (a)* and *(b)* of *section 16 (1)*,
- (d) the arrangements made by the body—
- (i) to enable a person to obtain access to records held by the body,
 - (ii) to enable an individual to apply for the amendment of any such records that relate to personal information in respect of the individual, and
 - (iii) to enable a person to whom *section 18 (1)* applies to obtain the information specified therein,
- (e) the names and designations of the members of the staff of the body responsible for carrying out the arrangements aforesaid (unless the head of the body reasonably believes that publication of that information could threaten the physical safety or well-being of the persons),
- (f) the address or addresses at which requests under *section 7* or applications under *section 17* or *18* should be given,
- (g) 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,
- (h) any other information that the head of the body considers relevant for the purpose of facilitating the exercise of the right of access, and
- (i) information in relation to such other matters (if any) as may be prescribed.

(2) A reference book prepared under *subsection (1)* shall be made available in accordance with *subsection (7)*—

- (a) in case the body concerned is a body specified in *paragraph 1* (other than *subparagraph (3), (4)* and *(5)*) of the *First Schedule*, upon the commencement of this Act,

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- (b) in case the body is a local authority, upon the commencement of the said *subparagraph (3)*, Pr.II S.15
- (c) in case the body is a health board, upon the commencement of the said *subparagraph (4)*, and
- (d) in case the body is a body standing prescribed under *section 3* for the purposes of the said *subparagraph (5)*, upon such prescription,

and thereafter a version, appropriately revised, of the book shall be prepared and published and shall be made available as aforesaid by the body not less frequently than 3 years after the latest such book was so made available by the body and as soon as may be after any significant alterations or additions fall to be made in or to the latest such book so made available.

(3) In preparing a reference book under *subsection (1)*, a public body shall have regard to the fact that the purpose of the book is to assist members of the public in ascertaining and exercising their rights under this Act.

(4) At the time of the publication of a reference book under *subsection (1)* or *(2)*, the body concerned shall furnish to the Minister a summary thereof and the Minister shall cause the summaries furnished to him or her under this subsection to be collated and shall cause a reference book containing the summaries as so collated to be published and to be made available in accordance with *subsection (7)* not later than 15 months after the commencement of this Act and thereafter not less frequently than 3 years after the latest such book is published and so made available and as soon as may be after any significant alterations or additions fall to be made in or to the latest such book so made available.

(5) The Minister shall ensure that appropriate measures are taken by public bodies, as respects training of staff, organisational arrangements and such other matters as the Minister considers appropriate, for the purpose of facilitating compliance by the bodies with this Act and, without prejudice to the generality of *paragraph (b)* of *section 3 (1)*, may, by regulations made under that paragraph after consultation with the Commissioner and the Director of the National Archives (within the meaning of the National Archives Act, 1986), make provision for the management and maintenance of records held by public bodies.

- (6) (a) As soon as may be after the end of a period specified in *paragraph (d)*, the Minister shall prepare a report in writing of the measures taken by public bodies pursuant to *subsection (5)* during that period.
- (b) A report under this subsection shall include a report of any measures taken by a public body during the period to which the report relates consequent upon a report under *section 36 (4)*.
- (c) The Minister shall cause a copy of a report under this subsection to be furnished as soon as may be to the committee (within the meaning of *section 32*).
- (d) The periods referred to in *paragraph (a)* are:
- (i) the period of 3 months beginning on the commencement of this Act, and

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- (ii) the period of 12 months beginning on the expiration of the period aforesaid and each subsequent period of 12 months beginning on the expiration of the period of 12 months immediately preceding.

(7) A book referred to in *subsection (1), (2) or (4)* shall be made available for inspection free of charge, and for removal free of charge or, at the discretion of the head concerned or the Minister, as may be appropriate, for purchase, at such places as the head or, as may be appropriate, the Minister may determine and the head or the Minister, as may be appropriate, shall cause notice of those places to be published in such manner as he or she considers adequate for the purposes of this section and, if the book relates to a local authority or a health board, a copy of it shall be given to each member of the authority or board.

(8) *Subsection (1)* does not apply to any matter by reason of which a record in which it is included is an exempt record.

Publication of information regarding rules and practices in relation to certain decisions by public bodies.

16.—(1) A public body shall cause to be prepared and published and to be made available in accordance with *subsection (5)*—

- (a) the rules, procedures, practices, guidelines and interpretations used by the body, and an index of 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, and
- (b) appropriate information in relation to the manner or intended manner of administration of any such enactment or scheme.

(2) A publication prepared under *subsection (1)* shall be made available in accordance with *subsection (5)*—

- (a) in case the body concerned is a body specified in *paragraph 1 (other than subparagraph (3), (4) or (5)) of the First Schedule*, upon the commencement of this Act,
- (b) in case the body is a local authority, upon the commencement of the said *subparagraph (3)*,
- (c) in case the body is a health board, upon the commencement of the said *subparagraph (4)*, and
- (d) in case the body is a body standing prescribed under *section 3* for the purposes of the said *subparagraph (5)*, upon such prescription,

and thereafter a version, appropriately revised, of the publication shall be prepared and published and shall be made available as aforesaid by the body not less frequently than 3 years after the latest such publication was so made available by the body and as soon as may be after any significant alterations or additions fall to be made in or to the latest such publication so made available.

(3) If the material specified in *paragraph (a) of subsection (1)* is not published and made available in accordance with this section or

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the material so published and purporting to be the material aforesaid Pr.II S.16
is incomplete or inaccurate and a person shows—

- (a) that he or she was not aware of a rule, procedure, practice, guideline, interpretation or precedent referred to in *subsection (1) (a)* (“the rule”) or of a particular requirement of the rule, and
- (b) that, but for such non-publication, non-availability, incompleteness or incorrectness, as the case may be, he or she would have been so aware,

the public body concerned shall, if and in so far as it is practicable to do so, ensure that the person is not subjected to any prejudice (not being a penalty imposed by a court upon conviction of an offence) by reason only of the application of the rule or requirement if the person could lawfully have avoided that prejudice if he or she had been aware of the rule or requirement.

(4) *Subsection (3)* shall not apply in a case where the public body concerned shows that reasonable steps were taken by it to bring the rule or requirement concerned to the notice of those affected by it.

(5) A publication referred to in *subsection (1) or (2)* shall be made available for inspection free of charge, and for removal free of charge or, at the discretion of the head concerned, for purchase, at such places as the head concerned may determine and the head shall cause notice of those places to be published in such manner as he or she considers adequate for the purposes of this section and if the publication relates to a local authority or a health board, a copy of it shall be given to each member of the authority or board.

(6) A precedent referred to in an index specified in *subsection (1)* shall, on request therefor to the public body concerned, be made available to the person concerned in accordance with *subsection (5)*.

(7) *Subsection (1)* does not apply to any matter by reason of which a record in which it is included is an exempt record.

17.—(1) Where personal information in a record held by a public body is incomplete, incorrect or misleading, the head of the body shall, on application to him or her in that behalf, in writing or in such other form as may be determined, by the individual to whom the information relates, amend the record—

Amendment of records relating to personal information.

- (i) by altering it so as to make the information complete or correct or not misleading, as may be appropriate,
- (ii) by adding to the record a statement specifying the respects in which the body is satisfied that the information is incomplete, incorrect or misleading, as may be appropriate, or
- (iii) by deleting the information from it.

(2) An application under *subsection (1)* shall, in so far as is practicable—

- (a) specify the record concerned and the amendment required, and

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(b) include appropriate information in support of the application.

(3) The head concerned shall, as soon as may be, but not later than 4 weeks, after the receipt by him or her of an application under *subsection (1)*, decide whether to grant or refuse to grant the application and shall cause notice, in writing or in such other form as may be determined, of his or her decision and, if the decision is to grant it, of the manner of such grant to be given to the person concerned.

(4) (a) If the grant of an application under *subsection (1)* is refused, the head concerned shall—

(i) attach to the record concerned the application or a copy of it or, if that is not practicable, a notation indicating that the application has been made, and

(ii) include in the notification under *subsection (3)* particulars of—

(I) rights of review and appeal under this Act in relation to the decision to refuse to grant the application, and

(II) the procedure governing the exercise of those rights and any time limits governing such exercise.

(b) *Paragraph (a)(i)* does not apply in relation to a case in which the head concerned is of opinion that the application concerned is defamatory or the alterations or additions to which it relates to the record concerned would be unnecessarily voluminous.

(5) Where a record is amended pursuant to this section, the public body concerned shall take all reasonable steps to notify of the amendment—

(a) any person to whom access to the record was granted under this Act, and

(b) any other public body to whom a copy of the record was given,

during the period of one year ending on the date on which the amendment was effected.

Right of person to information regarding acts of public bodies affecting the person.

18.—(1) The head of a public body shall, on application to him or her in that behalf, in writing or in such other form as may be determined, by a person who is affected by an act of the body and has a material interest in a matter affected by the act or to which it relates, not later than 4 weeks after the receipt of the application, cause a statement, in writing or in such other form as may be determined, to be given to the person—

(a) of the reasons for the act, and

(b) of any findings on any material issues of fact made for the purposes of the act.

(2) Nothing in this section shall be construed as requiring—

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- (a) the giving to a person of information contained in an exempt Pr.II S.18 record, or
- (b) the disclosure of the existence or non-existence of a record if the non-disclosure of its existence or non-existence is required by this Act.
- (3) *Subsection (1)* shall not apply to—
- (a) a decision of the Civil Service Commissioners pursuant to subparagraph (d) or (e) of section 17 (1) of the Civil Service Commissioners Act, 1956, not to accept a person as qualified for a position referred to in that section, or
- (b) a decision of the Local Appointments Commissioners made by virtue of section 7 (3) of the Local Authorities (Officers and Employees) Act, 1926, not to recommend a person to a local authority for appointment to an office referred to in that section,

if, in the opinion of the head concerned, the giving of a statement under *subsection (1)* in relation to the decision would be likely to prejudice the effectiveness of the process for selecting a person for appointment to the position or office.

(4) If, pursuant to *subsection (2)* or (3), the head of a public body decides not to cause a statement to be given under *subsection (1)* to a person, the head shall, not later than 4 weeks after the receipt of the application concerned under *subsection (1)*, cause notice, in writing or in such other form as may be determined, of the decision to be given to the person.

(5) For the purposes of this section a person has a material interest in a matter affected by an act of a public body or to which such an act relates if the consequence or effect of the act may be to confer on or withhold from the person a benefit without also conferring it on or withholding it from persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person is a member.

(6) In this section—

“act”, in relation to a public body, includes a decision (other than a decision under this Act) of the body;

“benefit”, in relation to a person, includes—

- (a) any advantage to the person,
- (b) in respect of an act of a public body done at the request of the person, any consequence or effect thereof relating to the person, and
- (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage affecting the person.

PART III

EXEMPT RECORDS

19.—(1) A head may refuse to grant a request under *section 7* if Meetings of the Government.
the record concerned—

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- (a) has been, or is proposed to be, submitted to the Government for their consideration by a Minister of the Government or the Attorney General and was created for that purpose,
- (b) is a record of the Government other than a record by which a decision of the Government is published to the general public by or on behalf of the Government, or
- (c) contains information (including advice) for a member of the Government, the Attorney General, a Minister of State, the Secretary to the Government or the Assistant Secretary to the Government for use by him or her solely for the purpose of the transaction of any business of the Government at a meeting of the Government.

(2) A head shall refuse to grant a request under *section 7* if the record concerned—

- (a) contains the whole or part of a statement made at a meeting of the Government or information that reveals, or from which may be inferred, the substance of the whole or part of such a statement, and
- (b) is not a record—
 - (i) referred to in *paragraph (a)* or *(c)* of *subsection (1)*, or
 - (ii) by which a decision of the Government is published to the general public by or on behalf of the Government.

(3) Subject to the provisions of this Act, *subsection (1)* does not apply to a record referred to in that subsection—

- (a) if and in so far as it contains factual information relating to a decision of the Government that has been published to the general public, or
- (b) if the record relates to a decision of the Government that was made more than 5 years before the receipt by the head concerned of the request under *section 7* concerned.

(4) A decision to grant a request under *section 7* in respect of a record to which *paragraph (a)* or *(b)* of *subsection (1)* applies shall not be made unless, in so far as it is practicable to do so, the head concerned has, prior to the making of the decision, consulted in relation to the request with—

- (a) the leader of each political party to which belonged a member of the Government that made any decision to which the record relates, and
- (b) any member of the Government aforesaid who was not a member of a political party.

(5) Where a request under *section 7* relates to a record to which *subsection (1)* applies, or would, if the record existed, apply, and the head concerned is satisfied that the disclosure of the existence or non-existence of the record would be contrary to the public interest, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.

(6) In this section—

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“decision of the Government” includes the noting or approving by Pr.III S.19 the Government of a record submitted to them;

“record” includes a preliminary or other draft of the whole or part of the material contained in the record;

“Government” includes a committee of the Government, that is to say, a committee appointed by the Government whose membership consists of—

- (a) members of the Government, or
- (b) one or more members of the Government together with either or both of the following:
 - (i) one or more Ministers of State,
 - (ii) the Attorney General.

20.—(1) A head may refuse to grant a request under *section 7*— Deliberations of public bodies.

- (a) if the record concerned contains matter relating to the deliberative processes of the public body concerned (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes), and
- (b) the granting of the request would, in the opinion of the head, be contrary to the public interest,

and, without prejudice to the generality of *paragraph (b)*, the head shall, in determining whether to grant or refuse to grant the request, consider whether the grant thereof would be contrary to the public interest by reason of the fact that the requester concerned would thereby become aware of a significant decision that the body proposes to make.

(2) *Subsection (1)* does not apply to a record if and in so far as it contains—

- (a) matter used, or intended to be used, by a public body for the purpose of making decisions, determinations or recommendations referred to in *section 16*,
- (b) factual (including statistical) information and analyses thereof,
- (c) the reasons for the making of a decision by a public body,
- (d) a report of an investigation or analysis of the performance, efficiency or effectiveness of a public body in relation to the functions generally or a particular function of the body,
- (e) a report, study or analysis of a scientific or technical expert relating to the subject of his or her expertise or a report containing opinions or advice of such an expert and not being a report used or commissioned for the purposes of a decision of a public body made pursuant to any enactment or scheme.

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Functions and
negotiations of
public bodies.

21.—(1) A head may refuse to grant a request under *section 7* if access to the record concerned could, in the opinion of the head, reasonably be expected to—

- (a) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of the public body concerned or the procedures or methods employed for the conduct thereof,
- (b) have a significant, adverse effect on the performance by the body of any of its functions relating to management (including industrial relations and management of its staff), or
- (c) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or a public body.

(2) *Subsection (1)* shall not apply in relation to a case in which in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under *section 7* concerned.

Parliamentary,
court and certain
other matters.

22.—(1) A head shall refuse to grant a request under *section 7* if the record concerned—

- (a) would be exempt from production in proceedings in a court on the ground of legal professional privilege,
- (b) is such that its disclosure would constitute contempt of court, or
- (c) consists of—
 - (i) the private papers of a representative in the European Parliament or a member of a local authority or a health board, or
 - (ii) opinions, advice, recommendations, or the results of consultations, considered by—
 - (I) either House of the Oireachtas or the Chairman or Deputy Chairman or any other member of either such House or a member of the staff of the Office of the Houses of the Oireachtas for the purposes of the proceedings at a sitting of either such House, or
 - (II) a committee appointed by either such House or jointly by both such Houses and consisting of members of either or both of such Houses or a member of such a committee or a member of the staff of the Office of the Houses of the Oireachtas for the purposes of the proceedings at a meeting of such a committee.

(2) Where a request under *section 7* relates to a record to which *subsection (1)(a)* applies, or would, if the record existed, apply, and the head concerned is satisfied that the disclosure of the existence or non-existence of the record would be contrary to the public interest, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.

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23.—(1) A head may refuse to grant a request under *section 7* if access to the record concerned could, in the opinion of the head, reasonably be expected to—

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Law enforcement
and public safety.

(a) prejudice or impair—

- (i) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,
- (ii) the enforcement of, compliance with or administration of any law,
- (iii) lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property,
- (iv) the fairness of criminal proceedings in a court or of civil proceedings in a court or other tribunal,
- (v) the security of a penal institution,
- (vi) the security of the Central Mental Hospital,
- (vii) the security of a building or other structure or a vehicle, ship, boat or aircraft,
- (viii) the security of any system of communications, whether internal or external, of the Garda Síochána, the Defence Forces, the Revenue Commissioners or a penal institution,

(b) reveal or lead to the revelation of the identity of a person who has given information to a public body in confidence in relation to the enforcement or administration of the civil law or any other source of such information given in confidence, or

(c) facilitate the commission of an offence.

(2) Where a request under *section 7* relates to a record to which *subsection (1)* applies, or would, if the record existed, apply, and the head concerned is satisfied that the disclosure of the existence or non-existence of the record would have an effect specified in *paragraph (a), (b) or (c)* of that subsection, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.

(3) *Subsection (1)* does not apply to a record—

(a) if it—

- (i) discloses that an investigation for the purpose of the enforcement of any law, or anything done in the course of such an investigation or for the purposes of the prevention or detection of offences or the apprehension or prosecution of offenders, is not authorised by law or contravenes any law, or

(ii) contains information concerning—

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- (I) the performance of the functions of a public body whose functions include functions relating to the enforcement of law or the ensuring of the safety of the public (including the effectiveness and efficiency of such performance), or
- (II) the merits or otherwise or the success or otherwise of any programme, scheme or policy of a public body for preventing, detecting or investigating contraventions of the law or the effectiveness or efficiency of the implementation of any such programme, scheme or policy by a public body,

and

- (b) in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request concerned.

(4) In *subsection (1)* “penal institution” means—

- (a) a place to which the Prisons Acts, 1826 to 1980, apply,
- (b) a military prison or detention barrack within the meaning, in each case, of the Defence Act, 1954,
- (c) Saint Patrick’s Institution, or
- (d) an institution established under the Children Act, 1908, in which young offenders are detained.

Security, defence and international relations.

24.—(1) A head may refuse to grant a request under *section 7* in relation to a record (and, in particular, but without prejudice to the generality otherwise of this subsection, to a record to which *subsection (2)* applies) if, in the opinion of the head, access to it could reasonably be expected to affect adversely—

- (a) the security of the State,
- (b) the defence of the State,
- (c) the international relations of the State, or
- (d) matters relating to Northern Ireland.

(2) This subsection applies to a record that—

- (a) contains information—
 - (i) that was obtained or prepared for the purpose of intelligence in respect of the security or defence of the State, or
 - (ii) that relates to—
 - (I) the tactics, strategy or operations of the Defence Forces in or outside the State, or
 - (II) the detection, prevention, or suppression of activities calculated or tending to undermine the public order or the authority of the State (which

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expression has the same meaning as in section 2 Pr.III S.24 of the Offences against the State Act, 1939),

- (b) contains a communication between a Minister of the Government and a diplomatic mission or consular post in the State or a communication between the Government or a person acting on behalf of the Government and another government or a person acting on behalf of another government,
- (c) contains a communication between a Minister of the Government and a diplomatic mission or consular post of the State,
- (d) contains information communicated in confidence to any person in or outside the State from any person in or outside the State and relating to a matter referred to in *subsection (1)* or to the protection of human rights and expressed by the latter person to be confidential or to be communicated in confidence,
- (e) contains information communicated in confidence from, to or within an international organisation of states or a subsidiary organ of such an organisation or an institution or body of the European Union or relates to negotiations between the State and such an organisation, organ, institution or body or within or in relation to such an organisation, organ, institution or body, or
- (f) is a record of an organisation, organ, institution or body referred to in *paragraph (e)* containing information the disclosure of which is prohibited by the organisation, organ, institution or body.

(3) Where a request under *section 7* relates to a record to which *subsection (1)* applies, or would, if the record, existed, apply, and the head concerned is satisfied that the disclosure of the existence or non-existence of the record would prejudice a matter referred to in that subsection, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.

25.—(1) (a) Subject to *paragraph (b)*, where—

(i) a Minister of the Government or the head of a public body (other than a Department of State or the Office of the Tánaiste) in relation to which functions stand conferred on that Minister of the Government—

- (I) pursuant to *section 8*, refuses to grant a request to him or her under *section 7*, or
- (II) pursuant to *section 14*, upholds a decision, or decides, to refuse to grant a request under *section 7*,

because he or she is satisfied that, by virtue of *section 23* or *24*, the record concerned is an exempt record, and

Conclusiveness of certain decisions pursuant to *sections 23* and *24*.

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- (ii) the Minister of the Government is satisfied, that the record is of sufficient sensitivity or seriousness to justify his or her doing so,

the Minister of the Government may declare, in a certificate issued by him or her (“a certificate”), that the record is, by virtue of *section 23* or *24*, an exempt record.

- (b) A Minister of the Government shall not issue a certificate in respect of a record the subject of a decision referred to in *clause (I)* or *(II)* of *paragraph (a) (i)* by the head of a public body (other than a Department of State or the Office of the Tánaiste) unless he or she has been requested by the head, in writing or such other form as may be determined, to do so.

(2) Where an application is made to a head for the review under *section 14* of a decision to refuse to grant a request under *section 7*, a certificate shall not be issued in respect of the record concerned more than 3 weeks after the date of the receipt of the application by that head.

(3) While a certificate is in force—

- (a) the record to which it relates shall, subject to the provisions of this Act, be deemed conclusively to be an exempt record, and
- (b) an application for a review under *section 14* or *34*, as may be appropriate, of the decision concerned under *section 8* or *14* in relation to the record shall not lie.

(4) A document purporting to be a certificate and to be signed by a Minister of the Government shall, unless the contrary is proved, be deemed to be a certificate of that Minister of the Government and to be in force and shall be received in any proceedings in a court or under *section 14* or *34* without further proof.

(5) A certificate shall specify—

- (a) the request under *section 7* concerned,
- (b) the provisions of *section 23* or *24*, as may be appropriate, by reference to which the record to which it relates is an exempt record,
- (c) the date on which the certificate is signed by the Minister of the Government concerned and the date of its expiration, and
- (d) the name of the requester,

and shall be signed by the Minister of the Government by whom it is issued.

(6) Upon the issue of a certificate, the Minister of the Government concerned shall cause—

- (a) a copy of the certificate to be furnished forthwith to the requester concerned, and

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- (b) a copy of the certificate and a statement in writing of the reasons why the record to which it relates is an exempt record and of the matter by reference to which the Minister of the Government is satisfied that *subsection (1) (a) (ii)* applies to the record to be furnished forthwith to the Taoiseach and such other Ministers of the Government as may be prescribed. Pr.III S.25
- (7) (a) Subject to *paragraph (b)*, the Taoiseach, jointly with any other Ministers of the Government standing prescribed under *subsection (6)*, shall, as soon as may be after the expiration of each period of 6 months (or such other period not exceeding 12 months in length as may be prescribed) beginning with the period from the commencement of this Act, review the operation of *subsection (1)* during that period.
- (b) A Minister of the Government shall not take part in a review under this subsection in so far as it relates to a certificate issued by him or her but may make submissions to the other Ministers of the Government concerned in relation to the part of such a review in which he or she is precluded as aforesaid from taking part.
- (c) If, following a review under this subsection, the Ministers of the Government concerned are not satisfied—
- (i) that a record to which the certificate concerned relates is an exempt record, or
- (ii) that any of the information contained in the record is of sufficient sensitivity or seriousness to justify the continuance in force of the certificate,
- they shall request the Minister of the Government concerned to revoke the certificate.
- (d) A Minister of the Government may, for the purposes of a review by that Minister of the Government under this subsection, examine all relevant records held by or on behalf of or under the control of another head.
- (8) (a) The Taoiseach may, at any time, review the operation of *subsection (1)* in so far as it relates to any other Minister of the Government or the issue of a particular certificate by another Minister of the Government.
- (b) *Paragraphs (c) and (d) of subsection (7)* shall have effect in relation to a review under this subsection with the necessary modifications.
- (9) A Minister of the Government may, and shall, if so requested pursuant to *subsection (7) (c)*, by instrument signed by him or her, revoke a certificate issued by that Minister of the Government and, if he or she does so, he or she shall cause the requester concerned to be furnished forthwith with a copy of the instrument.
- (10) If a certificate or the decision concerned under *section 8 or 14* in relation to a record to which a certificate relates is annulled by the High Court under *section 42*, the certificate shall thereupon expire.

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(11) A Minister of the Government shall, in each year after the year in which this section comes into operation, cause to be prepared and furnished to the Commissioner a report in writing specifying the number of certificates issued by him or her in the preceding year and the provisions of *section 23* or *24*, as may be appropriate, by virtue of which, pursuant to *section 8*, the grant of the request under *section 7* concerned was refused, or, pursuant to *section 14*, a decision to uphold a decision to refuse to grant, the request under *section 7* concerned was made.

(12) Where a certificate is revoked or has expired and another certificate is not in force in relation to the record concerned or the certificate is annulled under *section 42*, the requester concerned may make an application for a review under *section 14* or *34*, as may be appropriate, of the decision concerned under *section 8* or *14* not later than 28 days after the date of the revocation, expiration or annulment, as the case may be.

(13) Subject to *subsections (9)* and *(10)*, a certificate shall remain in force for a period of 2 years from the date on which it is signed by the Minister of the Government concerned and shall then expire, but a Minister of the Government may, at any time, issue a certificate under this section in respect of a record in relation to which a certificate had previously been issued unless pursuant to—

(a) a decision (which has not been reversed) following a review under *section 14* or *34*, or

(b) a decision under *section 42* on an appeal to the High Court,

the record is not an exempt record.

Information
obtained in
confidence.

26.—(1) Subject to the provisions of this section, a head shall refuse to grant a request under *section 7* if—

(a) the record concerned contains information given to the public body concerned in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body, or

(b) disclosure of the information concerned would constitute a breach of a duty of confidence provided for by a provision of an agreement or enactment (other than a provision specified in *column (3)* of the *Third Schedule* of an enactment specified in that Schedule) or otherwise by law.

(2) *Subsection (1)* shall not apply to a record which is prepared by a head or any other person (being a director, or member of the staff of, a public body or a person who is providing a service for a public body under a contract for services) in the course of the performance of his or her functions unless disclosure of the information concerned would constitute a breach of a duty of confidence that is provided for by an agreement or statute or otherwise by law and is owed to a person other than a public body or head or a director, or member of

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the staff of, a public body or a person who is providing or provided a service for a public body under a contract for services. Pr.III S.26

(3) Subject to *section 29, subsection (1) (a)* shall not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under *section 7* concerned.

27.—(1) Subject to *subsection (2)*, a head shall refuse to grant a request under *section 7* if the record concerned contains— Commercially sensitive information.

- (a) trade secrets of a person other than the requester concerned,
- (b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or
- (c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

(2) A head shall grant a request under *section 7* to which *subsection (1)* relates if—

- (a) the person to whom the record concerned relates consents, in writing or in such other form as may be determined, to access to the record being granted to the requester concerned,
- (b) information of the same kind as that contained in the record in respect of persons generally or a class of persons that is, having regard to all the circumstances, of significant size, is available to the general public,
- (c) the record relates only to the requester,
- (d) information contained in the record was given to the public body concerned by the person to whom it relates and the person was informed on behalf of the body, before its being so given, that the information belongs to a class of information that would or might be made available to the general public, or
- (e) disclosure of the information concerned is necessary in order to avoid a serious and imminent danger to the life or health of an individual or to the environment.

(3) Subject to *section 29, subsection (1)* does not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under *section 7* concerned.

28.—(1) Subject to the provisions of this section, a head shall refuse to grant a request under *section 7* if, in the opinion of the head, Personal information.

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access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).

- (2) *Subsection (1)* does not apply if—
 - (a) subject to *subsection (3)*, the information concerned relates to the requester concerned,
 - (b) any individual to whom the information relates consents, in writing or such other form as may be determined, to its disclosure to the requester,
 - (c) information of the same kind as that contained in the record in respect of individuals generally, or a class of individuals that is, having regard to all the circumstances, of significant size, is available to the general public,
 - (d) the information was given to the public body concerned by the individual to whom it relates and the individual was informed on behalf of the body, before its being so given, that the information belongs to a class of information that would or might be made available to the general public, or
 - (e) disclosure of the information is necessary in order to avoid a serious and imminent danger to the life or health of an individual,

but, in a case falling within *paragraph (a)* or *(b)*, the head concerned shall ensure that, before the request under *section 7* concerned is granted, the identity of the requester or, as the case may be, the consent of the individual is established to the satisfaction of the head.

- (3) Where a request under *section 7* relates to—
 - (a) a record of a medical or psychiatric nature relating to the requester concerned, or
 - (b) a record kept for the purposes of, or obtained in the course of the carrying out of, social work in relation to the requester,

and, in the opinion of the head concerned, disclosure of the information concerned to the requester might be prejudicial to his or her physical or mental health, well-being or emotional condition, the head may decide to refuse to grant the request.

- (4) Where, pursuant to *subsection (3)*, a head refuses to grant a request under *section 7*—
 - (a) there shall be included in the notice under *section 8 (1)* in relation to the matter a statement to the effect that, if the requester requests the head to do so, the head will offer access to the record concerned, and keep it available for that purpose, in accordance with *section 8 (3)* to such health professional having expertise in relation to the subject-matter of the record as the requester may specify, and

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(b) if the requester so requests the head, he or she shall offer Pr.III S.28
access to the record to such health professional as aforesaid, and keep it available for that purpose, in accordance with *section 8 (3)*.

(5) Where, as respects a request under *section 7* the grant of which would, but for this subsection, fall to be refused under *subsection (1)*, in the opinion of the head concerned, on balance—

(a) the public interest that the request should be granted outweighs the public interest that the right to privacy of the individual to whom the information relates should be upheld, or

(b) the grant of the request would benefit the individual aforesaid,

the head may, subject to *section 29*, grant the request.

(6) Notwithstanding *subsection (1)*, the Minister may provide by regulations for the grant of a request under *section 7* where—

(a) the individual to whom the record concerned relates belongs to a class specified in the regulations and the requester concerned is the parent or guardian of the individual, or

(b) the individual to whom the record concerned relates is dead and the requester concerned is a member of a class specified in the regulations.

(7) In this section “health professional” means a medical practitioner, within the meaning of the Medical Practitioners Act, 1978, a registered dentist, within the meaning of the Dentists Act, 1985, or a member of any other class of health worker or social worker standing prescribed, after consultation with such (if any) other Ministers of the Government as the Minister considers appropriate.

29.—(1) In this section “a request to which this section applies” means a request under *section 7* to which *section 26 (3)* or *27 (3)* applies or to which *section 28 (5)* applies and which, apart from this section, would fall to be granted. Procedure in relation to certain requests under *section 7* to which *section 26, 27* or *28* applies.

(2) Subject to *subsection (5)*, before deciding whether to grant a request to which this section applies, a head shall, not later than 2 weeks after the receipt of the request—

(a) if the request is one to which *section 26 (3)* applies, cause the person who gave the information concerned to the public body concerned and, if the head considers it appropriate, the person to whom the information relates, or

(b) if the request is one to which *section 27 (3)* or *28 (5)* applies, cause the person to whom the information relates,

to be notified, in writing or in such other form as may be determined—

(i) of the request and that, apart from this section, it falls, in the public interest, to be granted,

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(ii) that the person may, not later than 3 weeks after the receipt of the notification, make submissions to the head in relation to the request, and

(iii) that the head will consider any such submissions before deciding whether to grant or refuse to grant the request.

(3) A person who receives a notification under *subsection (2)* may, not later than 3 weeks after such receipt, make submissions to the head concerned in relation to the request to which this section applies referred to in the notification and the head—

(a) shall consider any such submissions so made before deciding whether to grant the request,

(b) shall cause the person to be notified in writing or in such other form as may be determined of the decision, and

(c) if the decision is to grant the request, shall cause to be included in the notification particulars of the right of review of the decision under *section 34*, the procedure governing the exercise of that right and the time limit governing such exercise.

(4) Subject to *subsection (5)*, a head shall make a decision whether to grant a request to which this section applies, and shall comply with *subsection (3)* in relation thereto, not later than 2 weeks after—

(a) the expiration of the time specified in *subsection (3)*, or

(b) the receipt of submissions under that subsection in relation to the request from those concerned,

whichever is the earlier, and *section 8 (1)* shall be construed and shall have effect accordingly.

(5) If, in relation to a request to which this section applies, the head concerned is unable to comply with *subsection (2)*, having taken all reasonable steps to do so, the head shall, if the Commissioner consents to the non-compliance, make a decision whether to grant or refuse the request not later than 7 weeks after the receipt of the request and in such a case *section 8 (1)* shall be construed and shall have effect accordingly.

(6) If, in relation to a request to which this section applies, the Commissioner does not consent, pursuant to *subsection (5)*, to non-compliance with *subsection (2)*, he or she shall direct the head concerned to take specified steps within a specified period for the purpose of complying with *subsection (2)* and if, having taken those steps within that period or such further period as the Commissioner may specify, the head is unable to comply with that subsection, he or she shall, as soon as may be, make a decision whether to grant or refuse the request.

Research and natural resources.

30.—(1) A head may refuse to grant a request under *section 7* if, in the opinion of the head—

(a) the record concerned contains information in relation to research being or to be carried out by or on behalf of a public body and disclosure of the information or its disclosure before the completion of the research would be likely to expose the body, any person who is or will be

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carrying out the research on behalf of the body or the subject matter of the research to serious disadvantage, or

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- (b) disclosure of information contained in the record could reasonably be expected to prejudice the well-being of a cultural, heritage or natural resource or a species, or the habitat of a species, of flora or fauna.

(2) *Subsection (1)* does not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under *section 7* concerned.

31.—(1) A head may refuse to grant a request under *section 7* in relation to a record (and, in particular, but without prejudice to the generality otherwise of this subsection, to a record to which *subsection (2)* applies) if, in the opinion of the head—

Financial and economic interests of the State and public bodies.

- (a) access to the record could reasonably be expected to have a serious adverse affect on the financial interests of the State or on the ability of the Government to manage the national economy,
- (b) premature disclosure of information contained in the record could reasonably be expected to result in undue disturbance of the ordinary course of business generally, or any particular class of business, in the State and access to the record would involve disclosure of the information that would, in all the circumstances, be premature, or
- (c) access to the record could reasonably be expected to result in an unwarranted benefit or loss to a person or class of persons.

(2) This subsection applies to a record relating to—

- (a) rates of exchange or the currency of the State,
- (b) taxes, revenue duties or other sources of income for the State, a local authority or any other public body,
- (c) interest rates,
- (d) borrowing by or on behalf of the State or a public body,
- (e) the regulation or supervision by or on behalf of the State or a public body of the business of banking or insurance or the lending of money or of other financial business or of institutions or other persons carrying on any of the businesses aforesaid,
- (f) dealings in securities or foreign currency,
- (g) the regulation or control by or on behalf of the State or a public body of wages, salaries or prices,
- (h) proposals in relation to expenditure by or on behalf of the State or a public body including the control, restriction or prohibition of any such expenditure,

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- (i) property held by or on behalf of the State or a public body and transactions or proposed or contemplated transactions involving such property,
- (j) foreign investment in enterprises in the State,
- (k) industrial development in the State,
- (l) trade between persons in the State and persons outside the State,
- (m) trade secrets or financial, commercial, industrial, scientific or technical information belonging to the State or a public body and is of substantial value or is reasonably likely to be of substantial value,
- (n) information the disclosure of which could reasonably be expected to affect adversely the competitive position of a public body in relation to activities carried on by it on a commercial basis, or
- (o) the economic or financial circumstances of a public body.

(3) *Subsection (1)* does not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under *section 7* concerned.

Enactments relating to non-disclosure of records.

32.—(1) A head shall refuse to grant a request under *section 7* if—

- (a) the disclosure of the record concerned is prohibited by any enactment (other than a provision specified in *column (3)* of the *Third Schedule* of an enactment specified in that Schedule), or
- (b) the non-disclosure of the record is authorised by any such enactment in certain circumstances and the case is one in which the head would, pursuant to the enactment, refuse to disclose the record.

(2) A joint committee of both Houses of the Oireachtas shall, if authorised in that behalf by both such Houses (and such a committee so authorised is referred to subsequently in this section as “the committee”)—

- (a) review from time to time the operation of any provisions of any enactment that authorise or require the non-disclosure of a record (other than a provision specified in the said *column (3)*) for the purpose of ascertaining whether, having regard to the provisions, purposes and spirit of this Act—
 - (i) any of those provisions should be amended or repealed, or
 - (ii) a reference to any of them should be included in the said *column (3)*,

and

- (b) prepare and furnish to each such House a report in writing of the results of the review aforesaid and, if it considers

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it appropriate to do so, include in the report recommendations in relation to the amendment, repeal or continuance in force of, or the inclusion in the said *column (3)* of a reference to, any of those provisions. Pr.III S.32

(3) A Minister of the Government shall, in accordance with *subsection (6)*, prepare and furnish to the committee reports in writing—

(a) specifying, as respects any enactments that confer functions on that Minister of the Government or on a public body in relation to which functions are vested in that Minister of the Government, any provisions thereof that authorise or require the non-disclosure of a record, and

(b) specifying whether, in the opinion of that Minister of the Government and (where appropriate) any such public body, formed having regard to the provisions, purposes and spirit of this Act—

(i) any of the provisions referred to in *paragraph (a)* should be amended, repealed or allowed to continue in force, or

(ii) a reference to any of them should be included in the said *column (3)*,

and outlining the reasons for the opinion.

(4) A Minister of the Government shall cause a copy of a report prepared by him or her under *subsection (3)* to be furnished to the Commissioner and to be laid before each House of the Oireachtas.

(5) The Commissioner may, and shall, if so requested by the committee, furnish to the committee his or her opinion and conclusions in relation to a report under *subsection (3)* or any matter contained in or arising out of such a report or any matter relating to or arising out of the operation of this section.

(6) The first report under *subsection (3)* of a Minister of the Government shall be furnished by him or her in accordance with that subsection not later than 12 months after the commencement of this Act and subsequent such reports of that Minister of the Government shall be so furnished not later than 30 days after the fifth anniversary of the day on which the last previous such report by him or her was so furnished.

PART IV

THE INFORMATION COMMISSIONER

33.—(1) There is hereby established the office of Information Commissioner and the holder of the office shall be known as the Information Commissioner. Establishment of office of Information Commissioner.

(2) The Commissioner shall be independent in the performance of his or her functions.

(3) The appointment of a person to be the Commissioner shall be made by the President on the advice of the Government following a resolution passed by Dáil Éireann and by Seanad Éireann recommending the appointment of the person.

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(4) (a) Subject to *paragraph (b)*, the provisions of the *Second Schedule* shall have effect in relation to the Commissioner.

(b) *Paragraphs 4 and 5* of the *Second Schedule* shall not have effect where the person who holds the office of Commissioner also holds the office of Ombudsman.

(5) Section 2 (6) of the Ombudsman Act, 1980 shall not apply to a person who holds the office of Ombudsman and also holds the office of Commissioner.

Review by
Commissioner of
decisions.

34.—(1) This section applies to—

(a) a decision under *section 14*, other than a decision referred to in *paragraph (c)*,

(b) a decision specified in *paragraph (a), (b), (c), (d), (e) or (f)* of *section 14 (1)*,

(c) a decision under *section 14*, or a decision under *section 47*, that a fee or deposit exceeding £10 or such other amount (if any) as may stand prescribed for the time being should be charged under *section 47*,

(d) a decision under *section 9* to extend the time for the consideration of a request under *section 7*,

(e) a decision under *section 11* to defer the giving of access to a record falling within *paragraph (b) or (c)* of *subsection (1)* of that section, and

(f) a decision on a request to which *section 29* applies,

but excluding—

(i) a decision aforesaid made by the Commissioner in respect of a record held by the Commissioner or (in a case where the same person holds the office of Ombudsman and the office of Commissioner) made by the Ombudsman in respect of a record held by the Ombudsman, and

(ii) a decision referred to in *paragraph (b)*, and a decision under *section 47* referred to in *paragraph (c)*, made by a person to whom the function concerned stood delegated under *section 4* at the time of the making of the decision.

(2) Subject to the provisions of this Act, the Commissioner may, on application to him or her in that behalf, in writing or in such other form as may be determined, by a relevant person—

(a) review a decision to which this section applies, and

(b) following the review, may, as he or she considers appropriate—

(i) affirm or vary the decision, or

(ii) annul the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper,

in accordance with this Act.

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(3) A decision under *subsection (2)* shall be made as soon as may be and, in so far as practicable—

(a) in case the application for the review concerned was made during the period of 3 years from the commencement of this Act, not later than 4 months after the receipt by the Commissioner of the application, and

(b) in case the application for the review was made after the expiration of the period aforesaid, not later than 3 months after the receipt by the Commissioner of the application.

(4) An application under *subsection (2)* shall be made—

(a) if it relates to a decision specified in *paragraph (d)* or *(f)* of *subsection (1)*, not later than 2 weeks after the notification of the decision to the relevant person concerned, and

(b) if it relates to any other decision specified in that subsection, not later than 6 months after the notification of the decision to the relevant person concerned or, in a case in which the Commissioner is of opinion that there are reasonable grounds for extending that period, the expiration of such longer period as he or she may determine.

(5) A person who makes an application under *subsection (2)* may, by notice in writing given to the Commissioner, at any time before a notice under *subsection (10)* in relation to the application is given to the person, withdraw the application, and the Commissioner shall cause a copy of any notice given to him or her under this subsection to be given to the relevant person, or the head, concerned, as may be appropriate, and any other person to whom, in the opinion of the Commissioner, it should be given.

(6) As soon as may be after the receipt by the Commissioner of an application under *subsection (2)*, the Commissioner shall cause a copy of the application to be given to the head concerned, and, as may be appropriate, to the relevant person concerned and, if the Commissioner proposes to review the decision concerned, he or she shall cause the head and the relevant person and any other person who, in the opinion of the Commissioner, should be notified of the proposal to be so notified and, thereupon, the head shall give to the Commissioner particulars, in writing or in such other form as may be determined, of any persons whom he or she has or, in the case of a refusal to grant a request to which *section 29* applies, would, if he or she had intended to grant the request under *section 7* concerned, have notified of the request.

(7) Where an application under *subsection (2)* is made, the Commissioner may at any time endeavour to effect a settlement between the parties concerned of the matter concerned and may for that purpose, notwithstanding *subsection (3)*, suspend, for such period as may be agreed with the parties concerned and, if appropriate, discontinue, the review concerned.

(8) In relation to a proposed review under this section, the head, and the relevant person concerned and any other person who is notified under *subsection (6)* of the review may make submissions (as the Commissioner may determine, in writing or orally or in such

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other form as may be determined) to the Commissioner in relation to any matter relevant to the review and the Commissioner shall take any such submissions into account for the purposes of the review.

- (9) (a) The Commissioner may refuse to grant an application under *subsection (2)* or discontinue a review under this section if he or she is or becomes of the opinion that—
- (i) the application aforesaid or the application to which the review relates (“the application”) is frivolous or vexatious,
 - (ii) the application does not relate to a decision specified in *subsection (1)*, or
 - (iii) the matter to which the application relates is, has been or will be, the subject of another review under this section.
- (b) In determining whether to refuse to grant an application under *subsection (2)* or to discontinue a review under this section, the Commissioner shall, subject to the provisions of this Act, act in accordance with his or her own discretion.

(10) Notice, in writing or in such other form as may be determined, of a decision under *subsection (2) (b)*, or of a refusal or discontinuation under *subsection (9)*, and the reasons therefor, shall be given by the Commissioner to—

- (a) the head concerned,
 - (b) the relevant person concerned, and
 - (c) any other person to whom, in the opinion of the Commissioner, such notice should be given.
- (11) (a) The notice referred to in *subsection (10)* shall be given as soon as may be after the decision, refusal or discontinuation concerned and, if it relates to a decision under *subsection (2)*, in so far as practicable, within the period specified in *subsection (3)*.
- (b) The report of the Commissioner for any year under *section 40* shall specify the number of cases (if any) in that year in which a notice referred to in *subsection (10)* in relation to a decision under *subsection (2) (b)* was not given to a person specified in *subsection (10)* within the appropriate period specified in *paragraph (a)*.

(12) In a review under this section—

- (a) a decision to grant a request to which *section 29* applies shall be presumed to have been justified unless the person concerned to whom *subsection (2)* of that section applies shows to the satisfaction of the Commissioner that the decision was not justified, and
- (b) a decision to refuse to grant a request under *section 7* shall be presumed not to have been justified unless the head concerned shows to the satisfaction of the Commissioner that the decision was justified.

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(13) A decision of the Commissioner following a review under this section shall, where appropriate, specify the period within which effect shall be given to the decision and, in fixing such a period, the Commissioner shall have regard to the desirability, subject to *section 44*, of giving effect to such a decision as soon as may be after compliance in relation thereto with *subsection (11)*. Pr.IV S.34

(14) Subject to the provisions of this Act, a decision under *subsection (2)* shall—

- (a) in so far as it is inconsistent with the decision to which this section applies concerned have effect in lieu thereof, and
- (b) be binding on the parties concerned.

(15) In this section “relevant person”, in relation to a decision specified in *subsection (1)*, means—

- (a) the requester concerned and, if the decision is in respect of a request to which *section 29* relates, a person to whom *subsection (2)* of that section applies, or
- (b) if the decision is under *section 17* or *18*, the person who made the application concerned under that section.

35.—(1) Where—

- (a) an application for the review by the Commissioner of—
 - (i) a decision to refuse to grant a request under *section 7*, or
 - (ii) a decision under *section 14* in relation to a decision referred to in *subparagraph (i)*,
is made under *section 34*, and
- (b) the Commissioner considers that the statement of the reasons for the decision referred to in *paragraph (a) (i)* in the notice under *subsection (1)* of *section 8* or of the findings or particulars referred to in *subsection (2) (d) (ii)* of that section in relation to the matter is not adequate,

Requests for further information by Commissioner.

the Commissioner shall direct the head concerned to furnish to the requester concerned and the Commissioner a statement, in writing or such other form as may be determined, containing any further information in relation to those matters that is in the power or control of the head.

(2) A head shall comply with a direction under this section as soon as may be, but not later than 3 weeks, after its receipt.

36.—(1) The Commissioner shall keep the operation of this Act under review and may, subject to *subsection (2)*, carry out an investigation at any time into the practices and procedures adopted by public bodies generally or any particular public body or public bodies for the purposes of compliance with—

Review of operation of Act and investigations by Commissioner.

- (a) the provisions of this Act generally,
- (b) any particular provisions of this Act.

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(2) The Commissioner shall carry out an investigation under *subsection (1) (a)* in relation to public bodies generally not later than 3 years after the commencement of this Act.

(3) The Commissioner may at any time carry out an investigation into the practices and procedures adopted by public bodies or any particular public body or public bodies for the purposes of enabling persons to exercise the rights conferred by this Act and facilitating such exercise.

(4) The Commissioner may at any time prepare a report, in writing or such other form as may be determined—

(a) of his or her findings and conclusions resulting from the performance of any function under *subsection (1) (2) or (3)*, or

(b) on any matter relating to or arising out of the performance of such a function.

(5) The Commissioner shall, if he or she considers it appropriate to do so, cause a copy of a report under this section to be furnished to the Minister and to each public body concerned and shall cause a copy of the report to be appended to the report under *section 40 (1)* prepared next after the preparation of the first-mentioned report.

Powers of
Commissioner.

37.—(1) The Commissioner may, for the purposes of a review under *section 34* or an investigation under *section 36*—

(a) require any person who, in the opinion of the Commissioner, is in possession of information, or has a record in his or her power or control, that, in the opinion of the Commissioner, is relevant to the purposes aforesaid to furnish to the Commissioner any such information or record that is in his or her possession or, as the case may be, power or control and, where appropriate, require the person to attend before him or her for that purpose, and

(b) examine and take copies in any form of, or of extracts from any record that, in the opinion of the Commissioner, is relevant to the review or investigation and for those purposes take possession of any such record, remove it from the premises and retain it in his or her possession for a reasonable period.

(2) The Commissioner may for the purposes of such a review or investigation as aforesaid enter any premises occupied by a public body and there—

(a) require any person found on the premises to furnish him or her with such information in the possession of the person as he or she may reasonably require for the purposes aforesaid and to make available to him or her any record in his or her power or control that, in the opinion of the Commissioner, is relevant to those purposes, and

(b) examine and take copies of, or of extracts from, any record made available to him or her as aforesaid or found on the premises.

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(3) Subject to *subsection (4)*, no enactment or rule of law prohibiting or restricting the disclosure or communication of information shall preclude a person from furnishing to the Commissioner any such information or record, as aforesaid. Pr.IV S.37

(4) A person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as a witness in a court.

(5) The Commissioner may, if he or she thinks fit, pay to any person who, for the purposes of a review under *section 34*, or an investigation under *section 36*, attends before the Commissioner or furnishes information or a record or other thing to him or her—

(a) sums in respect of travelling and subsistence expenses properly incurred by the person, and

(b) allowances by way of compensation for loss of his or her time,

of such amount as may be determined by the Minister.

(6) Subject to the provisions of this Act, the procedure for conducting a review under *section 34* or an investigation under *section 36* shall be such as the Commissioner considers appropriate in all the circumstances of the case and, without prejudice to the foregoing, shall be as informal as is consistent with the due performance of the functions of the Commissioner.

(7) A person who fails or refuses to comply with a requirement under this section or who hinders or obstructs the Commissioner in the performance of his or her functions under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 6 months or both.

(8) This section does not apply to a record in respect of which a certificate under *section 25* is in force.

38.—The Commissioner shall foster and encourage the publication by public bodies, in addition to the publications provided for by *sections 15* and *16*, of information of relevance or interest to the general public in relation to their activities and functions generally. Commissioner to encourage publication of information by public bodies.

39.—The Commissioner may prepare and publish commentaries on the practical application and operation of the provisions, or any particular provisions, of this Act, including commentaries based on the experience of holders of the office of Commissioner in relation to reviews, and decisions following reviews, of such holders under *section 34*. Publication of commentaries by Commissioner on practical application, etc., of Act.

40.—(1) The Commissioner shall, in each year after the year in which this section comes into operation— Reports of Commissioner.

(a) prepare a report in relation to his or her activities under this Act in the previous year, and

(b) append to the report a copy of any report furnished to him or her under *section 25 (11)*,

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(c) cause copies of the report and of any copy referred to in *paragraph (b)* to be laid before each House of the Oireachtas.

(2) The Commissioner may, if he or she considers it appropriate to do so in the public interest or in the interests of any person, prepare and publish a report in relation to any investigation, or review carried out or other function performed, by him or her under this Act or any matter relating to or arising in the course of such an investigation, review or performance.

PART V

MISCELLANEOUS

Decisions deemed to have been made in certain cases.

41.—(1) Where notice of a decision under *section 8* or *17* is not given to the requester concerned or to the person who made the application concerned under *section 17* before the expiration of the period specified for that purpose in *section 8* or *17*, as the case may be, a decision refusing to grant the request under *section 7* or the application under *section 17* shall be deemed for the purposes of this Act to have been made upon such expiration and to have been made by a person to whom the relevant functions stood delegated under *section 4*.

(2) Where notice of a decision under *section 14* is not given to the person who made the application concerned under that section before the expiration of the period specified in *subsection (4)* thereof, a decision affirming the decision to which the application relates shall be deemed for the purposes of this Act to have been made upon such expiration.

(3) Where a statement under *subsection (1)*, or notice of a decision under *subsection (4)*, of *section 18* is not given to the person who made the application under the said *subsection (1)* concerned before the expiration of the period specified for that purpose in the said *subsection (1)* or *(4)*, as the case may be, a decision refusing to grant the application shall be deemed for the purposes of this Act to have been made upon such expiration and to have been made by a person to whom the relevant functions stood delegated under *section 4*.

Appeal to High Court.

42.—(1) A party to a review under *section 34* or any other person affected by the decision of the Commissioner following such a review may appeal to the High Court on a point of law from the decision.

(2) The requester concerned or any other person affected by—

(a) the issue of a certificate under *section 25*,

(b) a decision, pursuant to *section 8*, to refuse to grant a request under *section 7* in relation to a record the subject of such a certificate, or

(c) a decision, pursuant to *section 14*, to refuse to grant, or to uphold a decision to refuse to grant, such a request,

may appeal to the High Court on a point of law against such issue or from such decision.

(3) A person may appeal to the High Court from—

(a) a decision under *section 14*, or

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(b) a decision specified in *paragraph (a), (b), (c), (d), (e), (f) or (g) of subsection (1) of that section (other than such a decision made by a person to whom the function stood delegated under section 4 at the time of the making of the decision),*

made by the Commissioner in respect of a record held by the Office of the Commissioner or (in a case where the same person holds the office of Ombudsman and the office of Commissioner) made by the Ombudsman in respect of a record held by the Office of the Ombudsman.

(4) An appeal under *subsection (1), (2) or (3)* shall be initiated not later than 4 weeks after notice of the decision concerned was given to the person bringing the appeal.

(5) The Commissioner may refer any question of law arising in a review under *section 34* to the High Court for determination, and the Commissioner may postpone the making of a decision following the review until such time as he or she considers convenient after the determination of the High Court.

(6) (a) Where an appeal under this section by a person other than a head is dismissed by the High Court, that Court may, if it considers that the point of law concerned was of exceptional public importance, order that some or all of the costs of the person in relation to the appeal be paid by the public body concerned.

(b) The High Court may order that some or all of the costs of a person (other than a head) in relation to a reference under this section be paid by the public body concerned.

(7) A decision of the High Court following an appeal under *subsection (1), (2) or (3)* shall, where appropriate, specify the period within which effect shall be given to the decision.

(8) The decision of the High Court on an appeal or reference under this section shall be final and conclusive.

43.—(1) In proceedings in the High Court under or in relation to this Act, that Court shall take all reasonable precautions to prevent the disclosure to the public or, if appropriate, to a party (other than a head) to the proceedings of—

Precautions by High Court and Commissioner against disclosure of certain information.

(a) information contained in an exempt record, or

(b) information as to whether a record exists or does not exist in a case where the head concerned is required by this Act not to disclose whether the record exists or does not exist.

(2) Without prejudice to the generality of *subsection (1)*, precautions under that subsection may include—

(a) hearing the whole or part of any such proceedings as aforesaid otherwise than in public,

(b) prohibiting the publication of such information in relation to any such proceedings as it may determine, including

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information in relation to the parties to the proceedings and the contents of orders made by the High Court in the proceedings, and

- (c) examining a record or a copy of a record without giving access or information in relation thereto to a party (other than a head) to the proceedings.

(3) In the performance of his or her functions under this Act, the Commissioner shall take all reasonable precautions (including conducting the whole or part of a review under *section 34* or an investigation under *section 36* otherwise than in public) to prevent the disclosure to the public or, in the case of such a review, to a party (other than a head) to the proceedings concerned of information specified in *paragraph (a) or (b) of subsection (1)*.

Stay on certain decisions.

44.—(1) This section applies to—

- (a) a decision to grant a request to which *section 29* applies, and
- (b) a decision under *section 34*.

(2) Effect shall not be given to a decision to which this section applies before—

- (a) the expiration of the time for—
 - (i) making an application for a review of the decision under *section 34*, or
 - (ii) bringing an appeal to the High Court from the decision,as may be appropriate,
- or
- (b) if such an application or appeal is made or brought, the determination or withdrawal thereof,

whichever is the later.

Immunity from legal proceedings.

45.—(1) This section applies to—

- (a) an act consisting of the grant or the grant in part under *section 8* or by virtue of *section 14* or *34* of a request under *section 7*,
- (b) an act consisting of the furnishing to a person under *section 18* of a statement specified in that section, or
- (c) an act consisting of the publication under *section 15* or *16* of a document specified in that section,

being an act that was required or authorised by, and complied with the provisions of, this Act or was reasonably believed by the head concerned to have been so required or authorised and to comply with the provisions of this Act.

(2) Subject to the provisions of this section, civil or criminal proceedings shall not lie in any court—

(a) against—

- (i) the State,
- (ii) a public body,
- (iii) a head,
- (iv) a director or a member of the staff of a public body,
or
- (v) a person providing a service for a public body under
a contract for services with the body,

in respect of an act to which this section applies or any
consequences of such an act, or

(b) against the author of a record to which an act specified in
subsection (1)(a) relates or any other person in respect of
any publication involved in, or resulting from, that act by
reason of that author or other person having supplied the
record to the public body.

(3) *Subsection (2)* does not apply in relation to proceedings for
breach of a duty imposed by *section 16*.

(4) Civil or criminal proceedings shall not lie in any court against
the Commissioner or a member of the staff of the Commissioner in
respect of anything said or done in good faith by the Commissioner
or member in the course of the performance or purported perform-
ance of a function of the Commissioner or member.

(5) The grant of a request under *section 7* shall not be taken as
constituting an authorisation or approval—

(a) for the purposes of the law relating to defamation or breach
of confidence, of the publication of the record concerned
or any information contained therein by the requester
concerned or any other person,

(b) for the purposes of the law of copyright, of the doing by
the requester concerned of any act comprised within the
copyright in—

- (i) any literary, dramatic, musical or artistic work,
- (ii) any sound recording, cinematograph film, television
broadcast or sound broadcast, or
- (iii) a published edition of a literary, dramatic, musical or
artistic work, contained in the record concerned, or

(c) for the purposes of the Performers' Protection Act, 1968, of
the doing by the requester concerned, in relation to any
record or cinematograph film (within the meaning, in
each case, of that Act) contained in the record concerned,
of an act prohibited by that Act.

(6) Words or expressions that are used in *subparagraph (i), (ii)* or
(iii) of *subsection (5)(b)* and are also used in the Copyright Act, 1963,
have in those subparagraphs the same meanings as in that Act.

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Restriction of Act.

46.—(1) This Act does not apply to—

- (a) a record held by—
 - (i) the courts,
 - (ii) a tribunal to which the Tribunals of Inquiry (Evidence) Act, 1921, is applied, or
 - (iii) a service tribunal within the meaning of section 161 of the Defence Act, 1954,and relating to, or to proceedings in, a court or such a tribunal other than—
 - (I) a record that relates to proceedings in a court or such a tribunal held in public but was not created by the court or tribunal and whose disclosure to the general public is not prohibited by the court or the tribunal, or
 - (II) a record relating to the general administration of the courts or the offices of the courts or such a tribunal or any offices of such a tribunal,
- (b) a record held or created by the Attorney General or the Director of Public Prosecutions or the Office of the Attorney General or the Director of Public Prosecutions (other than a record concerning the general administration of either of those Offices),
- (c) a record relating to—
 - (i) a review under *section 34* or an investigation under *section 36*,
 - (ii) an audit, inspection or examination carried out by the Comptroller and Auditor General under the Comptroller and Auditor General Acts, 1923 and 1993, the Exchequer and Audit Department Acts, 1866 and 1921, or any other enactment, or
 - (iii) an investigation or examination carried out by the Ombudsman under the Ombudsman Act, 1980,other than—
 - (I) such a record that was created before the commencement of the review, investigation, audit, inspection or examination aforesaid, or
 - (II) a record relating to the general administration of the Office of the Commissioner, the Office of the Comptroller and Auditor General or the Office of the Ombudsman,
- (d) a record relating to the President,
- (e) a record relating to any of the private papers (within the meaning of Article 15.10 of the Constitution) of a member of either House of the Oireachtas or an official document of either or both of such Houses that is required by

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the rules or standing orders of either or both of such Pr.V S.46 Houses to be treated as confidential, or

(f) a record relating to information whose disclosure could reasonably be expected to reveal or lead to the revelation of—

(i) the identity of a person who has provided information to a public body in confidence in relation to the enforcement of the criminal law, or

(ii) any other source of such information provided in confidence to a public body.

(2) Subject to *subsection (3)*, this Act does not apply to—

(a) a record that is available for inspection by members of the public whether upon payment or free of charge, or

(b) a record a copy of which is available for purchase or removal free of charge by members of the public,

whether by virtue of an enactment (other than this Act) or otherwise.

(3) A record shall not be within *subsection (2)* by reason only of the fact that it contains information constituting personal data to which the Data Protection Act, 1988, applies.

47.—(1) Subject to the provisions of this section, a fee of such amount as may be appropriate having regard to the provisions of this section shall be charged by the public body concerned and paid by the requester concerned to the body in respect of the grant of a request under *section 7*. Fees.

(2) Subject to the provisions of this section, the amount of a fee under this section shall be equal to—

(a) the estimated cost of the search for and retrieval of the record concerned, and

(b) the estimated cost of any copy of the record made by the public body concerned for the requester concerned,

as determined by the head concerned.

(3) For the purposes of *subsection (2)*—

(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, and

(b) the amount of the cost specified in *subsection (2)(b)* 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.

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(4) Where the record or records concerned contains or contain only personal information relating to the requester concerned, then, in calculating the amount of the fee under *subsection (1)*—

(a) *paragraph (a)* of *subsection (2)* shall be disregarded unless the grant concerned relates to a significant number of records, and

(b) *paragraph (b)* of that subsection shall be disregarded if, in the opinion of the head concerned, it would not be reasonable, having regard to the means of the requester and the nature of the record concerned, to include the cost specified in that paragraph in the calculation.

(5) A head may reduce the amount of or waive a fee or deposit under *subsection (1)* or *(7)* 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.

(6) A fee shall not be charged under *subsection (1)* if, in the opinion of the head concerned, the cost of collecting and accounting for the fee together with any other administrative costs incurred by the public body concerned in relation to the fee would exceed the amount of the fee.

(7) Where, in the opinion of the head concerned, the estimated cost, as determined by the head, of the search for and retrieval of a record the subject of a request under *section 7* is likely to exceed £40 or such other amount as may stand determined for the time being—

(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 public 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 request in writing for payment of the deposit to be given to the requester and the document 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 be begun 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.

(8) In a case to which *subsection (7)* applies, the head concerned shall, if so requested by the requester concerned—

(a) specify to him or her the amendments (if any) to the request under *section 7* concerned that, if made, would have the effect of reducing or eliminating the deposit payable under that subsection, and

(b) if amendments are specified under *paragraph (a)*, make such of them (if any) to the request as the requester may determine.

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(9) Where a deposit under *subsection (7)* is paid, the amount of the fee under *subsection (1)* payable in respect of the grant of the request under *section 7* concerned shall be reduced by the amount of the deposit. Pr.V S.47

(10) Where a deposit under *subsection (7)* is paid and, subsequently, the grant of the request under *section 7* concerned is refused or is granted in relation to a part only of the record concerned, the amount of the deposit or, if a fee under this section is payable in respect of the grant, so much (if any) of that amount as exceeds the amount of the fee shall be repaid to the requester concerned.

(11) Where a fee or deposit under this section is paid and, subsequently, the fee or deposit is annulled or varied under *section 14, 34* or *42*, the amount of the fee 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.

(12) *Section 8 (1)* shall be construed and have effect—

(a) in relation to a case in which a deposit is payable under *subsection (7)*, 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 request under *subsection (7)* 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 14* or *34* or an appeal under *section 42*, 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 request under *subsection (7)* concerned to the requester concerned to the date of the decision under *section 42* or, as the case may be, of the giving to the requester concerned of notice under *section 14* or *34* of the decision, and

(c) in relation to a case in which an amendment pursuant to *subsection (8)* 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.

(13) The Public Offices Fees Act, 1879, shall not apply to fees under this section.

48.—(1) A person who is, or reasonably believes that he or she is, authorised by this Act to communicate official information to another person shall be deemed for the purposes of section 4 of the Official Secrets Act, 1963, to be duly authorised to communicate that information. Amendment of Official Secrets Act, 1963.

(2) In a prosecution for an offence under section 5 or 9 of that Act, it shall be a defence to prove that the act to which the charge of the offence relates is authorised, or is reasonably believed by the person charged to be authorised, by this Act.

FIRST SCHEDULE

SCH.1
Section 2.

PUBLIC BODIES

1. Each of the following shall be a public body for the purposes of this Act:

- (1) the Department of Agriculture, Food and Forestry,
the Department of Arts, Culture and the Gaeltacht,
the Department of Defence,
the Department of Education,
the Department of Enterprise and Employment,
the Department of the Environment,
the Department of Equality and Law Reform,
the Department of Finance,
the Department of Foreign Affairs,
the Department of Health,
the Department of Justice (including the Probation and Welfare Service),
the Department of the Marine,
the Department of Social Welfare,
the Department of the Taoiseach,
the Department of Tourism and Trade,
the Department of Transport, Energy and Communications,
the Office of the Tánaiste,
the Office of the Attorney General.

- (2) the Army Pensions Board,
the Blood Transfusion Service Board,
the Board of the National Library of Ireland,
the Board of the National Museum of Ireland,
An Bord Pleanála,
the Censorship of Publications Board,
the Central Statistics Office,
the Civil Service Commissioners,
An Coimisiún Logainmneacha,
An Comhairle na Nimheanna,
An Comhairle na nOspidéal,
the Commissioners of Charitable Donations and Bequests,
the Companies Registration Office,
the Competition Authority,
the Commissioners of Public Works,
the Defence Forces,
the Employment Equality Agency,
the Environmental Information Service,
the Environmental Protection Agency,
the Government Information Services,
the Heritage Council,
the Ireland — United States Commission for Educational Exchange,
the Irish Manuscripts Commission,
the Irish Medicines Board,
the Irish Sports Council,
the Land Registry,
the Local Appointments Commissioners,
the National Archives,
the National Archives Advisory Council,
the National Council for Curriculum and Assessment,
the National Gallery of Ireland,
the Office of the Appeal Commissioners for the purposes of the Tax Acts,
the Office of the Chief Medical Officer for the Civil Service,
the Office of the Commissioner,

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the Office of the Commissioner of Valuation and Boundary Surveyor for Ireland SCH.1
the Office of the Comptroller and Auditor General,
the Office of the Director of Consumer Affairs,
the Office of the Director of Public Prosecutions,
the Office of the Houses of the Oireachtas,
the Office of the Official Censor of Films,
the Office of the Ombudsman,
the Office of the Registrar of Friendly Societies,
the Patents Office,
the Pensions Board,
the Public Offices Commission,
the Registry of Deeds,
the Revenue Commissioners,
the Social Welfare Appeals Office,
the State Laboratory.

(3) a local authority.

(4) a health board.

(5) any body, organisation or group standing prescribed for the time being, with the consent of such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government, and being—

(a) the Garda Síochána,

(b) a body, organisation or group established—

(i) by or under any enactment (other than the Companies Acts, 1963 to 1990) or any scheme administered by a Minister of the Government,

or

(ii) under the Companies Acts, 1963 to 1990, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,

(c) any other body, organisation or group financed as aforesaid,

(d) a company (within the meaning of the Companies Act, 1963) a majority of the shares in which are held by or on behalf of a Minister of the Government,

(e) any other body, organisation or group appointed by the Government or a Minister of the Government,

(f) subject to *paragraph 2*, any other body, organisation or group on which functions in relation to the general public or a class of the general public stand conferred by any enactment, or

(g) a subsidiary of a body, organisation or group specified in any of the foregoing provisions of this subparagraph.

2. A body, organisation or group standing prescribed pursuant to regulations for the purposes of *clause (f) of paragraph 1 (5)* shall be a public body only as respects functions referred to in that clause.

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SCH.1

3. The Minister may, with the consent of such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government, by regulations amend *subparagraph (2) of paragraph 1* by the deletion of a reference to any public body.

4. A reference in *subparagraph (1) of paragraph 1* to any particular Department of State shall be construed as—

- (a) including a reference to a body, organisation or group specified in relation to that Department of State in the Schedule to the Ministers and Secretaries Act, 1924 (not being a public body specified in *subparagraph (2)* of that paragraph), and
- (b) not including any other body, organisation or group.

Section 33.

SECOND SCHEDULE

THE INFORMATION COMMISSIONER

1. Subject to the provisions of this Schedule, a person appointed to be the Commissioner shall hold the office for a term of 6 years and may be re-appointed to the office for a second or subsequent term.

2. A person appointed to be the Commissioner—

- (a) may at his or her own request be relieved of office by the President,
- (b) may be removed from office by the President but shall not be removed from office except for stated misbehaviour, incapacity or bankruptcy and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his or her removal,
- (c) shall in any case vacate the office on attaining the age of 67 years.

3. (1) Where a person who holds the office of Commissioner is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or a local authority or to the European Parliament, or
- (c) regarded, pursuant to section 15 (inserted by the European Parliament Elections Act, 1993) of the European Assembly Act, 1977, as having been elected to the European Parliament to fill a vacancy,

he or she shall thereupon cease to be the Commissioner.

(2) A person who is for the time being entitled under the standing orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament or a local authority shall, while he or she is so entitled or is such a member, be disqualified for being appointed to be the Commissioner.

4. A person who holds the office of Commissioner shall not hold any other office or employment in respect of which emoluments are payable or be a member of the Reserve Defence Force.

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5. The Commissioner shall be paid, out of moneys provided by SCH.2 the Oireachtas, such remuneration and allowances for expenses as the Minister may from time to time determine.

6. (1) The Minister may make and carry out, in accordance with its terms, a scheme or schemes for the granting of pensions, gratuities or allowances on retirement or death to, or in respect of, persons who have held the office of Commissioner.

(2) The Minister may at any time make and carry out, in accordance with its terms, a scheme or schemes amending or revoking a scheme under this paragraph.

(3) A scheme under this paragraph shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

7. (1) The Minister may appoint to be members of the staff of the Commissioner such number of persons as the Minister may determine from time to time.

(2) Members of the staff of the Commissioner shall be civil servants in the Civil Service of the State (within the meaning of the Civil Service Regulation Act, 1956).

(3) The Minister may delegate to the Commissioner the powers exercisable by him or her under the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, as the appropriate authority in relation to members of the staff of the Commissioner and, if the Minister does so, then, so long as the delegation remains in force—

(a) those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Commissioner, and

(b) the Commissioner shall, in lieu of the Minister, be for the purposes of this Act the appropriate authority in relation to members of the staff of the Commissioner.

8. (1) The Commissioner shall keep, in such form as may be approved of by the Minister, all proper and usual accounts of all moneys received or expended by him or her and all such special accounts (if any) as the Minister may direct.

(2) Accounts kept in pursuance of this paragraph in respect of each year shall be submitted by the Commissioner in the following year on a date not later than a date specified by the Minister to the Comptroller and Auditor General for audit and, as soon as may be after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister may specify, together with the report of the Comptroller and Auditor General on the accounts, shall be presented by the Commissioner to the Minister who shall cause copies of the documents presented to him or her to be laid before each House of the Oireachtas.

9. The Commissioner may delegate to a member of the staff of the Commissioner any of the functions of the Commissioner (other than those under this paragraph or *section 40*) and *subsections (2) to (4) of section 4* shall, with any necessary modifications, have effect for the purposes of a delegation under this paragraph as they have effect for the purposes of a delegation under that section; and references in this Act to the Commissioner shall be construed, where appropriate having regard to any delegation under this paragraph, as

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including references to any person to whom functions stand delegated by the delegation.

THIRD SCHEDULE

ENACTMENTS EXCLUDED FROM APPLICATION OF *Section 32.*

PART I

STATUTES

Number and Year	Short Title	Provision
No. 26 of 1946	Industrial Relations Act, 1946.	Section 22.
No. 1 of 1963	Official Secrets Act, 1963.	Sections 4, 5 and 9.
No. 14 of 1969	Industrial Relations Act, 1969.	Section 14.
No. 30 of 1976	Gas Act, 1976.	Section 20.
No. 16 of 1977	Employment Equality Act, 1977.	Section 43(5).
No. 5 of 1979	Údarás na Gaeltachta Act, 1979.	Section 15.
No. 36 of 1980	Irish Film Board Act, 1980.	Section 18.
No. 26 of 1983	Postal and Telecommunications Services Act, 1983.	Section 37.
No. 28 of 1983	Local Government (Planning and Development) Act, 1983.	Section 13.
No. 2 of 1984	National Social Services Board Act, 1984.	Section 16.
No. 9 of 1986	Industrial Development Act, 1986.	Sections 42 and 43.
No. 14 of 1986	Combat Poverty Agency Act, 1986.	Section 20.
No. 31 of 1986	Transport (Re-organisation of Córas Iompair Éireann) Act, 1986.	Section 22.
No. 10 of 1987	Labour Services Act, 1987.	Section 13.
No. 31 of 1987	Restrictive Practices (Amendment) Act, 1987.	Section 36.
No. 18 of 1988	Agriculture (Research, Training and Advice) Act, 1988.	Section 14.
No. 26 of 1988	Forestry Act, 1988.	Section 33.
No. 7 of 1989	Safety, Health and Welfare at Work Act, 1989.	Section 45.
No. 1 of 1990	Bord Glas Act, 1990.	Section 23.
No. 18 of 1990	National Treasury Management Agency Act, 1990.	Section 14.
No. 19 of 1990	Industrial Relations Act, 1990.	Section 25(6).
No. 25 of 1990	Pensions Act, 1990.	Section 24.
No. 2 of 1991	Marine Institute Act, 1991.	Section 15.
No. 9 of 1991	Radiological Protection Act, 1991.	Section 36(1)(d).

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Number and Year	Short Title	Provision
No. 22 of 1991	Trade and Marketing Promotion Act, 1991.	Section 10.
No. 24 of 1991	Competition Act, 1991.	Paragraph 9 of Schedule.
No. 7 of 1992	Environmental Protection Agency Act, 1992.	Section 39.
No. 14 of 1993	Roads Act, 1993.	Section 38.
No. 19 of 1993	Industrial Development Act, 1993.	Paragraphs 4 and 5 of Second Schedule.
No. 27 of 1993	Irish Aviation Authority Act, 1993.	Section 35.
No. 18 of 1994	Irish Horseracing Industry Act, 1994.	Section 17.
No. 25 of 1994	Milk (Regulation of Supply) Act, 1994.	Section 16(1).
No. 29 of 1995	Irish Medicines Board Act, 1995.	Section 23.
No. 4 of 1996	Voluntary Health Insurance (Amendment) Act, 1996.	Section 8.
No. 11 of 1996	Harbours Act, 1996.	Section 33.
No. 21 of 1996	An Bord Bia Act, 1996.	Section 26.

PART II

STATUTORY INSTRUMENTS

Number and Year	Short Title	Provision
No. 222 of 1983	Housing (Rent Tribunal) Regulations, 1983.	Article 14(3).
No. 175 of 1983	Fire Services Council (Establishment) Order, 1983.	Article 13.