



Oifig an Choimisinéara Faisnéise
Office of the Information Commissioner

Annual Report 2014



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Foreword

I hereby submit my second Annual Report as Information Commissioner to the Dáil and Seanad pursuant to section 47(2) of the Freedom of Information Act 2014.

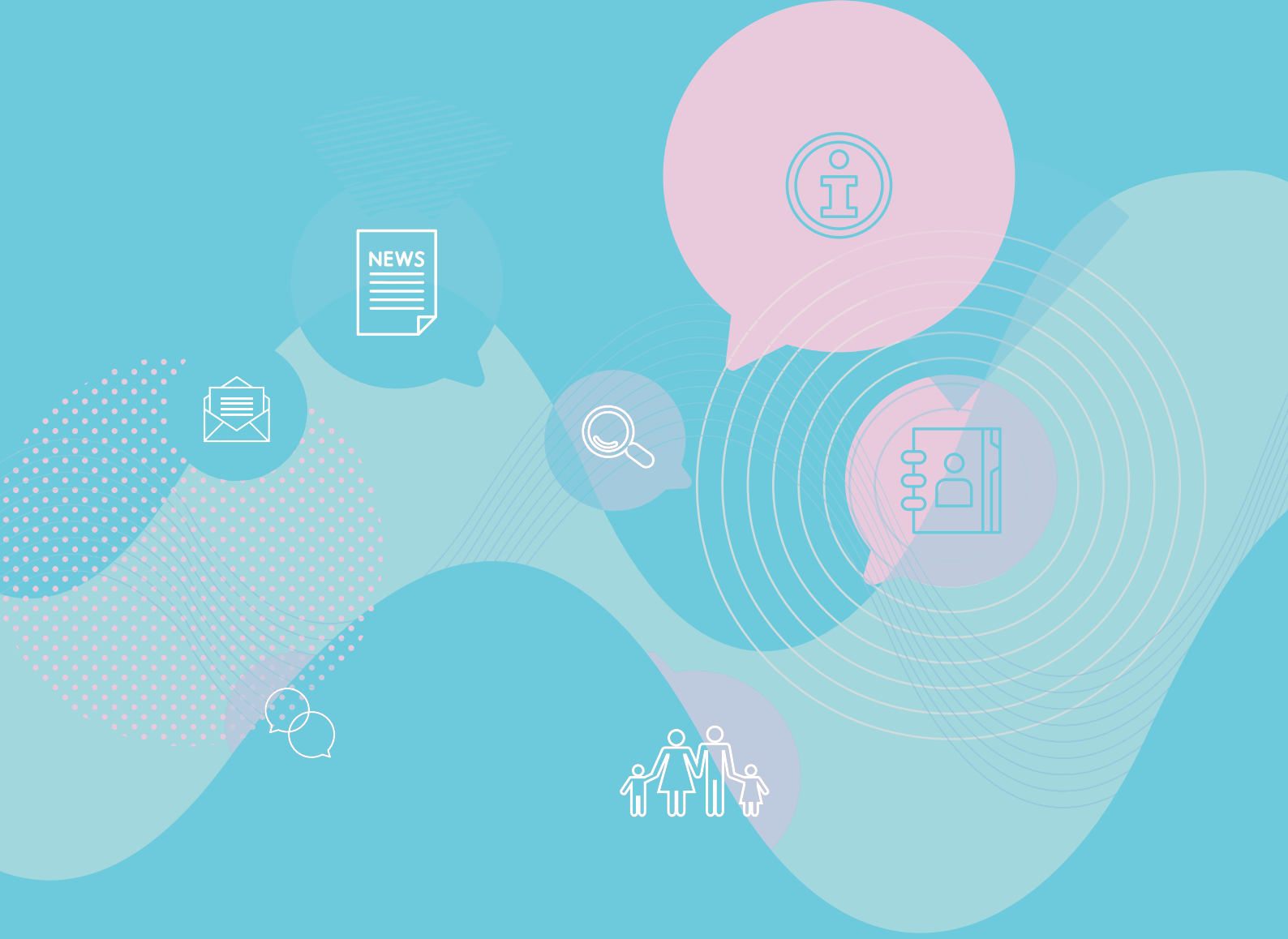
This is the seventeenth Annual Report of the Information Commissioner since the establishment of the Office in 1998.

Peter Tyndall
Information Commissioner
May 2015



Bernadette McNally
Director General

Chapter 1: The Year In Review



Chapter 1: The year in review

Your right to information

On 14 October 2014, the Freedom of Information Act 2014 was signed into law by the President. The FOI Act 2014 replaces the Freedom of Information Acts 1997 and 2003.

The new Act applies to all public bodies (or FOI bodies as they are referred to in the Act) that conform to the definition of prescribed body in Section 6 of the Act, unless they are specifically exempt or part-exempt under the provisions of Section 42 or Schedule 1 of the Act. As new public bodies are established, they will automatically be subject to FOI unless they are specifically exempt by order made by the Minister. In general, bodies that are to be made subject to FOI for the first time under the Act will have 6 months from enactment before FOI is to apply.

The FOI Act 2014 provides for a general right of access to records held by public bodies and also provides that records should be released unless they are found to be exempt. The Act also gives people the right to have personal information about them held by public bodies corrected or updated and gives people the right to be given reasons for decisions taken by public bodies, where those decisions expressly affect them.

It is noteworthy that section 55 of the Act provides that any action commenced under the 1997 Act but not completed before the commencement of the 2014 Act shall continue to be performed and shall be completed as if the 1997 Act had not been repealed. Accordingly, many of the reviews being undertaken by my Office in 2015 will be completed under the provisions of the FOI Acts 1997 and 2003. Similarly, all of the work undertaken by my Office in 2014 was under the provisions of those Acts. Accordingly, all references to the FOI Act in this Report should, unless otherwise stated, be taken as references to the FOI Acts 1997 and 2003.

The European Communities (Access to Information on the Environment) Regulations 2007 to 2011 provide an additional means of access for people who want environmental information. The Department of the Environment, Community and Local Government has published a set of Guidance Notes which can be accessed via the website of the Commissioner for Environmental Information at www.ocei.gov.ie.

Both access regimes are legally independent of each other, as are my roles of Information Commissioner and Commissioner for Environmental Information.

Introduction

This is my second Annual Report as Information Commissioner covering the period from 1 January 2014 to 31 December 2014 and represents my first complete year in Office. In Part II of this Report, I report on my work during the year as Commissioner for Environmental Information.

As Information Commissioner, I am very pleased to be able to report on significant improvements in productivity for the year. By any standards, 2014 was a very challenging year for my Office. At the beginning of the year there was a backlog of reviews amounting to an equivalent of one year's work based on review completion rates for 2013 and my Office also faced the challenge of preparing for the introduction of the new FOI Act.

In last year's Report, I explained that my Office had commenced a process of reform, involving a complete review of organisational structures and processes, with the intention of improving case turnaround times and increasing case throughput. That process was completed during the year and the revised structures were implemented in July. The resulting improvements in productivity have been significant. While I provide more detailed information on outputs later in this Chapter, it is worth noting some of the more significant achievements here.

The number of reviews completed in 2014 represents a 31% increase on the number completed in 2013 and a 70% increase on case closures for 2012. Furthermore, the percentage of all cases closed within four months has increased from 19% in 2012 and 26% in 2013 to 33% in 2014. During the year, I spoke of my aspiration of having no cases over a year old open at the end of 2014. I am pleased to note that the vast majority of those older cases have since been completed, with a small number of exceptions for reasons generally beyond the control of my Office.

I should add that while it took tremendous dedication and determined effort on the part of my staff to deliver such impressive improvements, they were ably assisted, in no small part, by the recruitment of a number of new staff members who have brought great enthusiasm and renewed vigour to the team. I am grateful to the Department of Public Expenditure and Reform for having sanctioned the recruitment of badly needed additional staff members.

My staff also worked closely with the staff of the Central Policy Unit in the Department on the development of the new FOI Act. I was very pleased to note that the new Act reflected the vast majority of the suggestions for improvements that were made by my Office.

I also very much welcome the Government's decision to abolish the €15 application fee for making FOI requests and to significantly reduce the fee for submitting review applications to my Office. My predecessor, Emily O'Reilly, and I have both publicly expressed our view that the fees in question acted as a disincentive to members of the public seeking access to information held by public bodies. As I said at the time of the announcement by the Minister for Public Expenditure and Reform of his proposal to eliminate and/or reduce the fees, I considered the charging of a fee to run contrary to the spirit and purpose of FOI which, as the long title

to the FOI Act explains, is “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”. I also welcomed the fact that the decision to abolish the application fee brings Ireland’s FOI regime into line with its international counterparts.

The FOI regime is fundamental to the overall framework of Open Government and plays a very important role in developing a greater understanding of how decisions are taken by public bodies. Earlier in 2014, I stated that confidence in Government in Ireland had reached a low ebb following successive tribunals and the banking crisis. I noted that the perception that too many people in public life were seeking personal advantage rather than working to benefit the nation, led to a deep cynicism, which, if unchallenged, would have undermined our democracy. I also stated that in order to restore faith in the decision making of public bodies, it was necessary to shed light into the previously dark places where decisions were being made. I believe that the new Act has significantly extended the reach of the light. I am confident that with the appropriate participation of all parties, the Act can help rejuvenate the interest of members of the public in how Government works and in the decisions that affect us all in our daily lives. I comment more on the FOI Act 2014 in the next section of this Chapter.

To support the new Act, a Code of Practice was published by the Central Policy Unit in December 2014. The Code draws on proposals made by two expert groups on FOI, comprising a broad and varied range of representatives. My Office was represented on both groups. The Code is intended to assist all public bodies, including those that will be subject to FOI for the first time under the new Act.

The Code aims to support the achievement of the objectives of the FOI Act and it has a number of laudable objectives, including the promotion of best practice in public bodies in relation to the operation of FOI and guiding and informing the performance of public bodies in relation to their responsibilities under the FOI Act. I welcome the publication of the Code and I believe it will prove to be a valuable resource for public bodies in their efforts to deal effectively and efficiently with FOI requests.

I should say that my Office is also in the process of developing additional supports for public bodies. For example, it is intended that a suite of guidance notes, currently under development, will be publicly available on my Office’s website (www.oic.gov.ie) by the end of the year. These guidance notes will comprehensively set out how my Office interprets and applies the various exemptions in the new Act. I expect that they will serve public bodies well in their application of the provisions of the new Act.

In this Report, I comment on a number of issues that arose during 2014 and I highlight some significant cases that were dealt with by my Office. In Part II, I report on my role as Commissioner for Environmental Information.

Peter Tyndall
Information Commissioner
Commissioner for Environmental Information

Freedom of Information Act 2014

I was very pleased to see the FOI Act 2014 passed into law in October 2014. In her 2011 Annual Report, the former Commissioner reported that the Department of Public Expenditure and Reform was working on the arrangements necessary to give effect to the commitments in the Programme for Government in relation to FOI. Significant effort and preparatory work was required to develop what I believe to be a comprehensive piece of legislation and I want to acknowledge the efforts of the Minister for Public Expenditure and Reform in getting it over the line. I also want to express my appreciation of the positive engagements between the Department and my Office during the drafting of the new legislation.

The new Act contains a number of welcome improvements to the FOI regime, including a provision for FOI to apply to all public bodies unless specifically exempt. This means that a number of public bodies that were previously excluded from FOI are now under the scope of the legislation. Bodies such as An Garda Síochána, NAMA, the NTMA and the Central Bank are now included. My Office has been calling for the extension of FOI to such bodies for a number of years. The Act also provides for future application to non-public bodies that are in receipt of significant funding by the Exchequer and I look forward to developments in this area. In addition, when a new public body is established, it will automatically be subject to the provisions of the Act, although the Minister may make an order to specifically exclude certain bodies, in whole or in part.

As with the previous Act, the objective of the FOI Act 2014 is to ensure that official information is available to citizens to the greatest extent possible, consistent with the public interest and the right to privacy. In furtherance of this objective, the Act introduces key principles to guide public bodies in the performance of their functions under the new legislation, by requiring them to have regard to

- the need to achieve greater openness in the activities of FOI bodies and to promote adherence by them to the principle of transparency in government and public affairs,
- the need to strengthen the accountability and improve the quality of decision making of FOI bodies, and
- the need to inform scrutiny, discussion, comment and review by the public of the activities of FOI bodies and facilitate more effective participation in consultations relating to the role, responsibilities and performance of FOI bodies.

There have been significant amendments to the FOI fees regime. I am particularly pleased that the requirement to pay a fee for making a request has been removed and that there has been a substantial reduction in the fee payable for applications made to my Office for review of decisions made by FOI bodies. The fees applicable to search and retrieval costs have also undergone a significant overhaul. The new Act provides that fees will apply only where the preparation time for a request exceeds 5 hours, and the fees will be capped at €500.

Another notable initiative in the new Act relates to the requirement on FOI bodies to prepare publication schemes that will set out the body's role, responsibilities and activities. The publication scheme requires the publication of a greater level of information than had been required under the previous Act.

The introduction of the new Act has brought with it a specific challenge for my Office. The transitional provisions of the Act provide that any action commenced under the Act of 1997 but not completed before the new Act takes effect shall continue to be performed under the Acts of 1997 and 2003. Therefore, any FOI request submitted to an FOI body prior to 14 October 2014 must be reviewed by my Office under the provisions of the Act of 1997. As a result, my Office will operate under two separate legislative regimes for the foreseeable future. I accept, however, that this was the most practical solution for the processing of applications submitted before the passing of the new Act and I am confident that my staff will comfortably meet the challenge without undue interference with the progress already made in improving productivity.

Organisational Review

As I mentioned in my Introduction, my Office completed a reform process during 2014 culminating in the introduction of revised Office structures and work processes in July. Essentially, a small team was established to conduct a complete review of my Office's structures and processes with a view to determining what changes, if any, might be made to improve productivity.

As a first step in the process, the team carried out fact-finding visits to the Offices of the Information Commissioner in the UK and in Scotland. The visits proved very useful in terms of identifying potential improvements, notwithstanding the fact that there were significant differences between the regime in operation in the UK and Scotland, and the Irish FOI regime. I want to personally thank the staff of those Offices for their invaluable contribution and for their encouragement and support.

As the next step in the process, the team conducted a detailed analysis of closed cases to determine what process improvements might be made. Following a comprehensive review of existing structures and processes, a suite of changes was proposed and agreed. One of the more fundamental changes proposed was the establishment of an Assessment Unit with responsibility for identifying and processing newly accepted review applications that appear capable of early resolution. This particular initiative has produced very promising initial results. Of all cases closed by the Assessment Unit in 2014, 60% were closed within four months.

Another initiative went to the heart of how my Office approaches reviews. The FOI Act places the onus on FOI bodies to satisfy me that a decision to refuse a request for access to records was justified. In essence, by providing a body with an opportunity to make submissions during

the course of a review, the body has a third chance to consider its position, having previously been given the opportunity to do so at the initial and internal review decision-making stages. The process team had identified that there were occasions where my staff engaged in prolonged discussions in relation to the reasons for public bodies refusing requests. In many cases, my staff furnished detailed preliminary views to the bodies which effectively allowed them a further opportunity to present more detailed arguments for refusing a request. Under the revised process, FOI bodies are now informed that they should treat the opportunity to make a submission as a final chance to justify their decision.

Before the roll-out of the revised work processes, some of which were likely to impact on how we expect bodies to respond to our requests for information, my Office held a briefing session for those bodies who deal with significant numbers of FOI requests. The briefing session provided my Office with an opportunity to explain the rationale for our changes and allowed the bodies to raise any concerns or issues arising.

I am pleased to note the high level of compliance by the vast majority of public bodies with the new process requirements. While many public bodies already have a proven track record of best practice in their responses to requesters, I welcome a renewed level of engagement by many more bodies. Also, I have noticed an improvement in the response times of public bodies to requests from my Office. This in itself is of great assistance to my staff in their efforts to process applications for review and helps to achieve a faster throughput of cases.

I should say that the organisational review was not an end in itself. My Office intends to review the revised structures and work processes later this year to determine if they continue to offer the best options for optimising productivity. However, I am pleased to note that the early signs are very encouraging

Statutory notices issued to public bodies

Notices issued under section 37 of the FOI Act

Under section 37 of the FOI Act, I can require a public body to provide me with any information in its possession or control that I deem to be relevant for the purposes of a review. The equivalent provision in the Act of 2014 is section 45. Each year I report on the number of statutory notices issued under section 37.

I fully appreciate the significant levels of cooperation by the vast majority of public bodies in responding to requests for information by my Office. While the question of whether or not a statutory notice should issue can arise at any stage during a review where an FOI body fails to respond to a request by my staff for relevant information, the matter is generally resolved informally with a telephone call, or email, between my staff and the relevant FOI Liaison Officer. This is a clear indicator that by maintaining appropriate channels of informal communication, the formal, statutory notice approach may be avoided. However, sometimes an informal follow-up contact does not suffice.

I am disappointed to have to report that my Office served nine statutory notices on public bodies in 2014. While this figure is small, relative to the number of engagements between my Office and public bodies, I am concerned to note a consistent pattern of non-compliance by some public bodies with their obligations under the FOI Act.



The public bodies in receipt of section 37 notices in 2014 are the Irish Greyhound Board (three notices), University College Dublin (two), Cork County Council (one), Tipperary County Council (one), the Department of Justice and Equality (one) and the National Maternity Hospital (one).

It is a matter of some concern that four of the bodies in receipt of section 37 notices in 2014 were also the recipients of such notices in 2013. These are University College Dublin, the National Maternity Hospital, Cork County Council, and the Irish Greyhound Board. In fact, both University College Dublin and the National Maternity Hospital also featured in the 2012 Annual Report as recipients of section 37 notices.

University College Dublin (UCD)

In the case of UCD, my Office sought access to the records associated with two separate applications for review in December 2013. As the records were not provided, my Office issued two notices under section 37 to the President of UCD and asked for the records for both reviews to be forwarded by 25 February 2014.

The notice letters were acknowledged but neither set of records was received. Consequently, on 28 March 2014, the Director General of my Office wrote again to the President of UCD and the records were eventually submitted in early April.

National Maternity Hospital (NMH)

I mentioned in my 2013 Annual Report that my staff met with NMH during 2013 to discuss issues relating to its processing of FOI requests and that NMH outlined proactive measures that had been taken to ensure potential delays would be highlighted and addressed at the earliest opportunity. As such, it is even more frustrating to find that a section 37 notice was again required during 2014. Indeed, as I discuss below, NMH was also the recipient of a notice served under section 35, the first such notice my Office has served since 2004.

Cork County Council

My Office has noted examples of poor practice by Cork County Council in the processing of some FOI requests and in their dealings with my Office. In one case, the Council did not provide either the decision making records or the subject records to my Office in a timely manner. In that same case, my Office decided to issue a section 37 notice in April 2014 following an unsuccessful attempt to obtain further information deemed relevant to the review. The Council acknowledged receipt of the notice and one week later a further acknowledgement was received which explained that the matter was only then being considered by staff of the Council, seven weeks after the initial request for information had issued. My Office eventually received a response to the request three months after it had been made.

I am aware of other cases where the Council failed to adhere to statutory timeframes when processing FOI requests. While section 37 notices did not issue in those cases, it seem to me that there may be underlying issues concerning the attention afforded by the Council to the FOI regime. It remains a fact that the administration of FOI is a statutory function that should be afforded as much weight as any other statutory function. Indeed, it is noteworthy that the Code of Practice issued by the Department of Public Expenditure and Reform describes FOI as "...a core function of the work of public bodies". I intend to ask my staff to visit the Council's Offices during the year to discuss its administration of the FOI process.

Irish Greyhound Board (IGB)

While section 37(1) requires public bodies to furnish relevant records or information to me, section 37(2) of the Act of 1997 empowers me to enter any premises occupied by a public body and require that any relevant information or records be made available to me.

While the former Commissioner came close to using her section 37(2) powers just once in her tenure, my Office had not previously found it necessary to actually enter a premises for the purposes of a review. However, this year, I have to report that circumstances left me with no choice but to use those powers for the first time. Consequently, I formally delegated responsibility to two of my staff to enter the premises of the IGB for the purposes of obtaining access to information that had been the subject of repeated requests from my Office.

From the very beginning of the review, my Office experienced a considerable delay in obtaining records from the IGB to allow even an initial examination. In fact, it took in excess of six months, and a substantial amount of effort on the part of my staff, for my Office to receive a properly presented set of records and a related schedule. An investigator from my Office was appointed to examine the matter. The investigator's initial examination in this case and in another review concerning the IGB highlighted a number of issues, including delays by the IGB in dealing with requests, failing to provide records to this Office, poor decision making and case handling and failure to adhere to the provisions of the FOI Act.

The investigator also noted that during the course of the review, the IGB had appointed no fewer than three members of IGB staff to act as FOI officer and liaise with my Office at various stages. It was apparent that there was no clear handover of responsibilities or exchange of information between the FOI officers, a situation which I am certain contributed to the delay in the review process. In addition, it was clear from the records provided that the IGB had not in fact identified all the relevant information and records that came within the scope of the applicant's original FOI request.

A substantial amount of correspondence, in the form of emails, letters and personal meetings is recorded in this case. All of the correspondence, from March to September 2014, records the attempts of the investigator to elicit a satisfactory response from the IGB, to enable a proper investigation of the matter. However, in late August 2014 the CEO of the IGB contacted my Office and spoke personally with the investigator on several occasions, in order to help bring about a satisfactory resolution of the ongoing problem. Notwithstanding the intervention of the CEO, I concluded that the most effective method of progressing the matter was to issue a notice under section 37(2) as a prior notice under section 37(1) did not prove successful. My Office wrote to the CEO on 8 September 2014 to make arrangements for my staff to visit the offices of IGB in Limerick. That visit took place, by arrangement and with the cooperation of the IGB, on 25 September 2014, in accordance with the provisions of section 37(2).

It is worth noting that the application for review was first received in my Office in July 2012 and at the time of writing, had not concluded. Consequently, I am not in a position to comment on the outcome of the review at this time. However, the events recorded here indicate how important it is for public bodies to ensure that they have effective structures, supports and resources in place to support the implementation of FOI. Indeed, the Code of Practice published by the Central Policy Unit is intended to assist public bodies in the achievement of that objective and I note that section 48(3) of the Act of 2014 requires FOI bodies to have regard to the Code of Practice in the performance of their functions under the Act.

Two further section 37 notices were issued to the IGB during 2014 in separate reviews involving the same requester.

Section 35

Where I consider that the reasons given by a public body in support of a decision are not adequate, section 35 empowers me to direct the head of a public body to issue a more comprehensive statement of its reasons for the decision.

In a review before my Office concerning NMH, I noted that it did not issue an initial decision on foot of a request received for certain records. Following the requester's application for an internal review, a reply issued on 24 October 2013, which was taken to be an internal review decision. Section 14(5)(c) of the FOI Act provides that notification of a decision on internal review shall specify, if the decision is to refuse to grant the request wholly or in part,

- the reasons for the refusal,
- details of any provisions of the FOI Act pursuant to which the request is refused,
- 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.

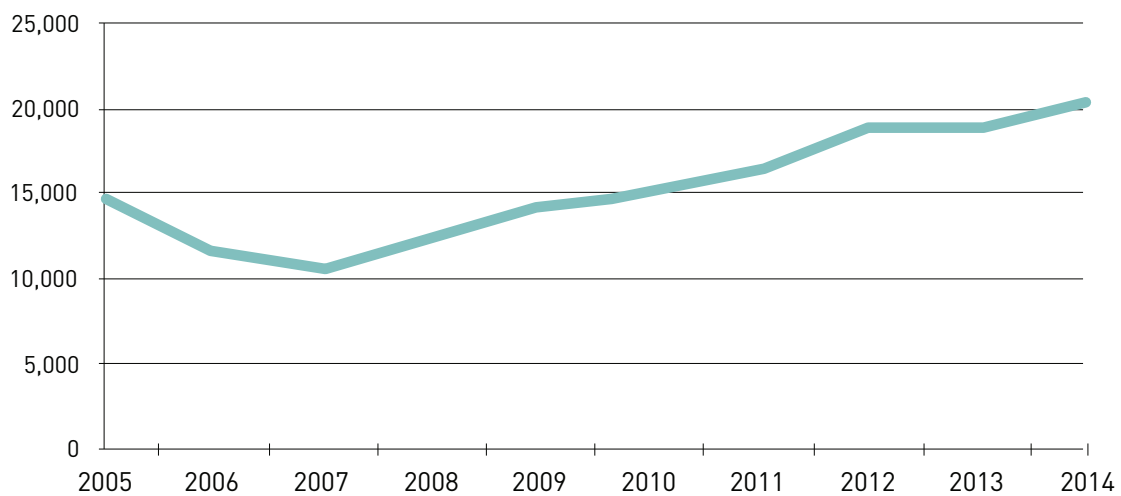
My Office took the view that the reply that issued to the requester did not adequately address his request and did not comply with the stated requirements of an adequate internal review decision.

In the circumstances, my Office issued a formal section 35 notification directing NMH to furnish to the requester, and to my Office, a written statement of reasons why access to the records requested was being refused and of any findings on any material issues relevant to the decision. While I am disappointed that it was necessary to issue such a notification, it is even more disappointing that I was compelled to issue a section 37 notification in respect of the same case.

Key FOI statistics for the year

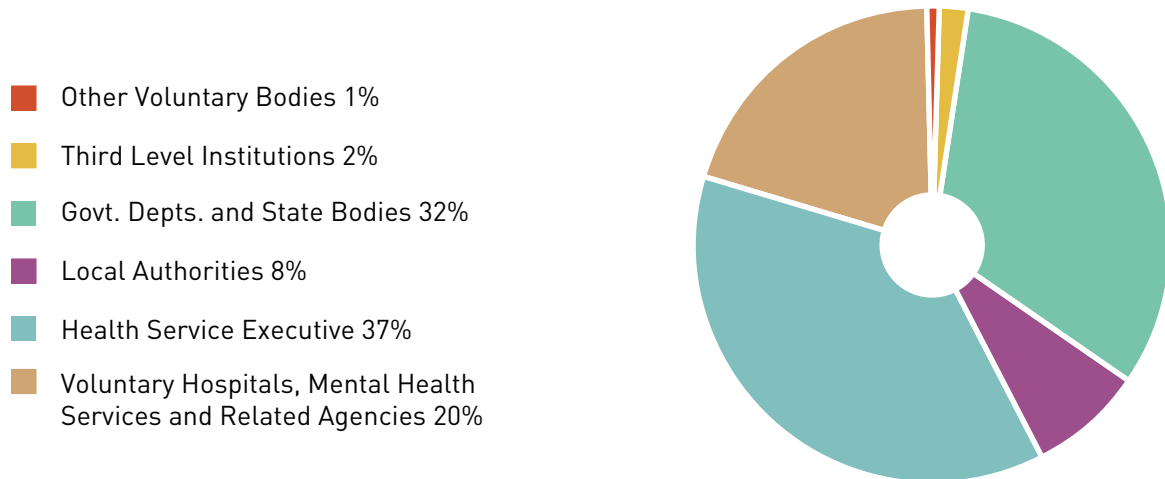
I wish to acknowledge the efforts made by all the lead agencies that collect statistics for inclusion in my Annual Report. The charts in this section of my Report can be viewed in association with the tables of statistics in Chapter 4 and other tables in previous Annual Reports, available on the Office website at www.oic.ie.

Number of FOI requests to public bodies 2005-2014



The total number of requests received by public bodies in 2014 was 20,244, an increase of almost 7% over the figure for 2013. Accordingly, while the number of requests processed by public bodies during 2014 also increased by almost 6%, the number of requests on hand at the end of 2014 has risen to 4,214 (from 3,232 at the end of 2013). Indeed, the number of requests on hand at the end of 2014 represents an increase of almost 71% on the number on hand at the end of 2012. I would urge public bodies to carefully monitor their processing rates to ensure that adequate resources are provided to efficiently manage the volume of requests received on an ongoing basis.

Sectoral breakdown of FOI requests to public bodies



As in previous years, Government Departments/State Bodies and the Health Service Executive account for more than two thirds of all FOI requests received in the year. Similarly, in line with previous years, the HSE recorded the majority of requests received by a public body in the year.

There was a significant increase in the number of requests made to the Department of Justice and Equality in 2014 (920 in 2014 as against 550 in 2013). I am not aware of any specific factors that contributed to such a significant increase, although I note that the majority of the requests were for access to personal information - See table 6, Chapter 4.

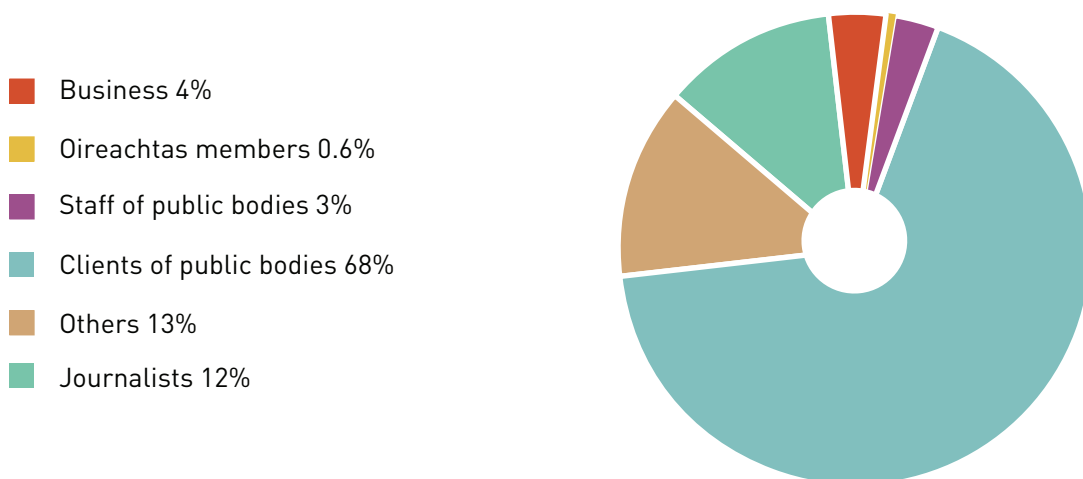
Other notable increases in the number of requests received (albeit with relatively smaller numbers) include the Department of the Taoiseach (173 requests received in 2014 as against 91 in 2013), the Department of the Environment, Community and Local Government (180 requests received in 2014 as against 98 in 2013) and the Defence Forces (224 requests received in 2014 as against 150 in 2013).

Top ten bodies who received most requests during 2014

Placing	Public Body	2014	2013	2012
1	HSE South	3,074	3,085	3,036
2	HSE West	2,407	2,572	2,429
3	Department of Social Protection	2,193	2,148	1,686
4	Department of Justice and Equality	920	550	594
5	HSE Dublin North East	864	941	912
6	HSE Dublin Mid-Leinster	794	919	830
7	Mercy University Hospital, Cork	715	698	614
8	St James's Hospital	501	488	469
9	Tallaght Hospital	409	264	257
10	HSE National	327	292	262

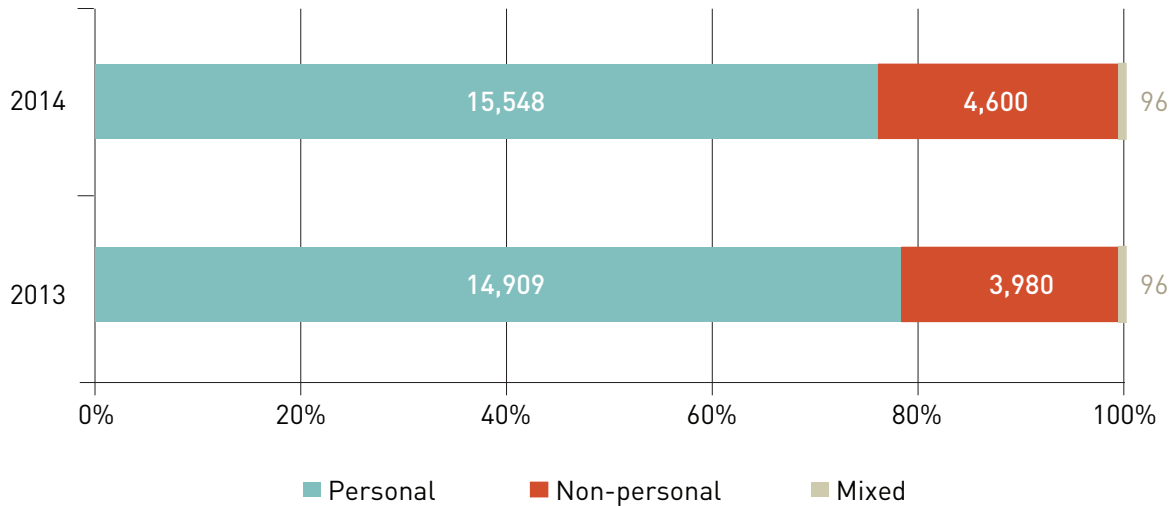
The HSE and hospitals account for eight of the top ten public bodies in receipt of FOI requests in 2014. There was a noticeable increase (55%) in the number of requests made to Tallaght Hospital in 2014 over 2013.

Type of requester to public bodies



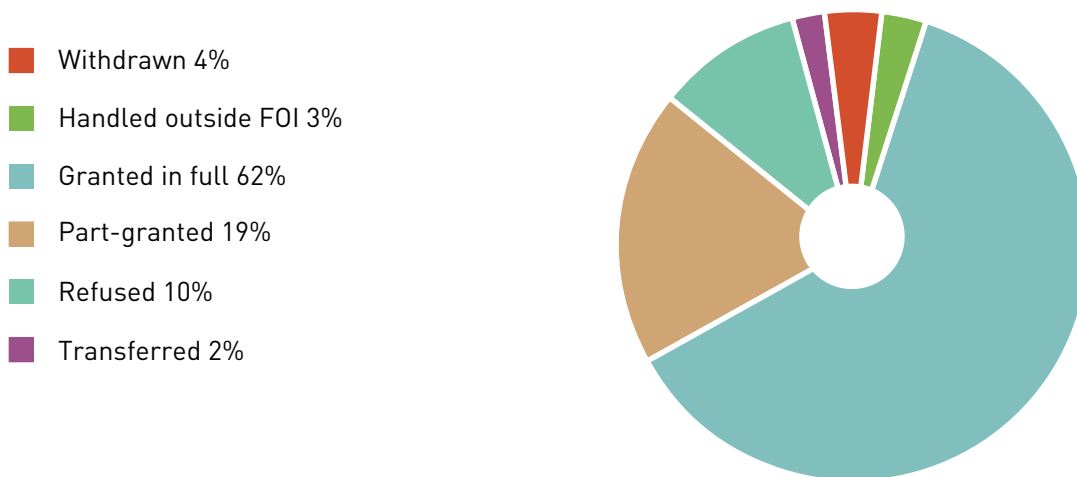
Compared to the breakdown of requester types in 2013, the percentages have remained relatively static. However, there are small percentage increases in the proportion of journalists and others, with a slight decrease in the percentage of clients of public bodies.

Type of request to public bodies



The percentages for the types of request as displayed in the above chart have remained broadly similar for the past four years. It will be interesting to note what effect, if any, the changes in the fees structure mentioned earlier will have on the number of requests made in 2015 for access to non-personal or mixed information.

Release rates by public bodies



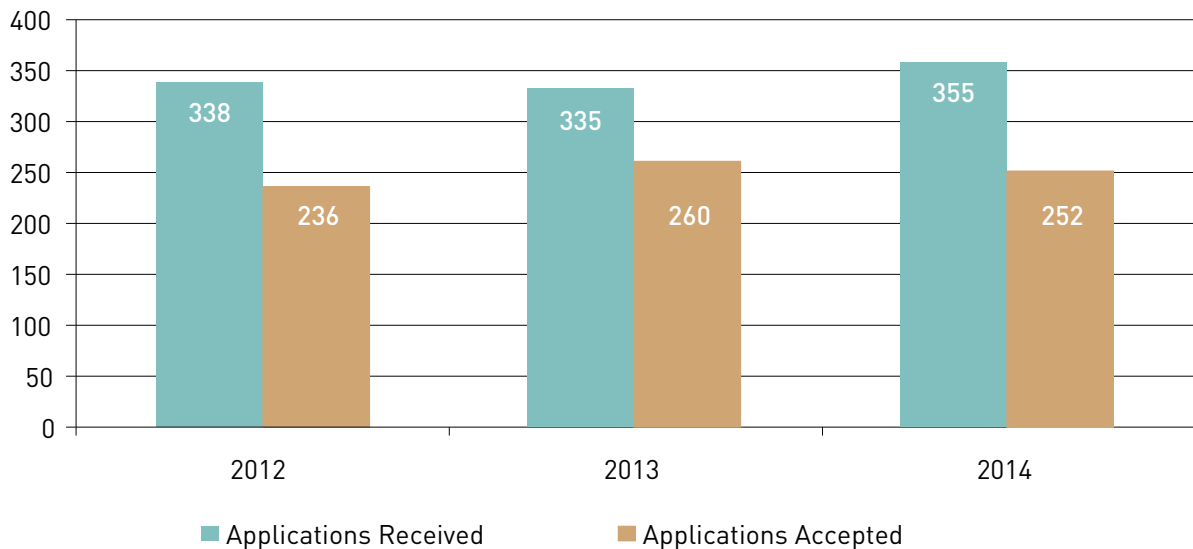
A more detailed breakdown of release rates is contained at table 5, Chapter 4. The percentage number of requests that were refused has remained reasonably static over the past few years.

It is noteworthy that more than 80% of FOI requests are granted either in full or in part. Local Authorities show the highest percentage number of refusals, at 14%, the same percentage rate as 2013.

Office of the Information Commissioner (OIC) caseload

Applications for review can be made to my Office by a requester who is not satisfied with a decision of the public body on an FOI request. Where a decision is made following a review by my Office, it is legally binding and can be appealed to the High Court only on a point of law.

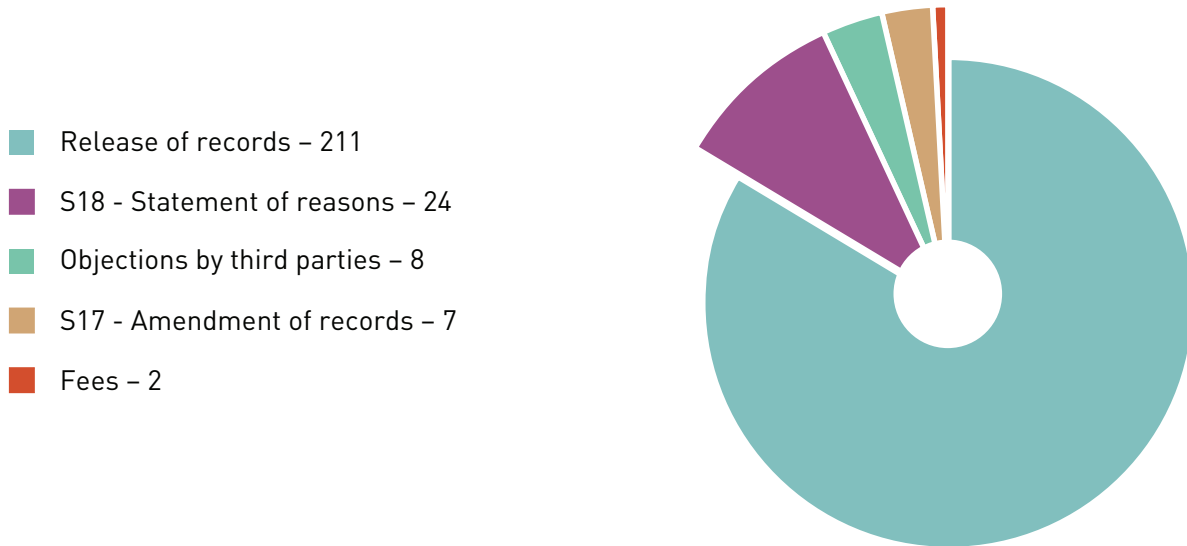
Applications to OIC 2012-2014



Applications made to my Office in 2014 increased by 6% over the 2013 figure. The actual number of applications accepted for review is similar to 2013.

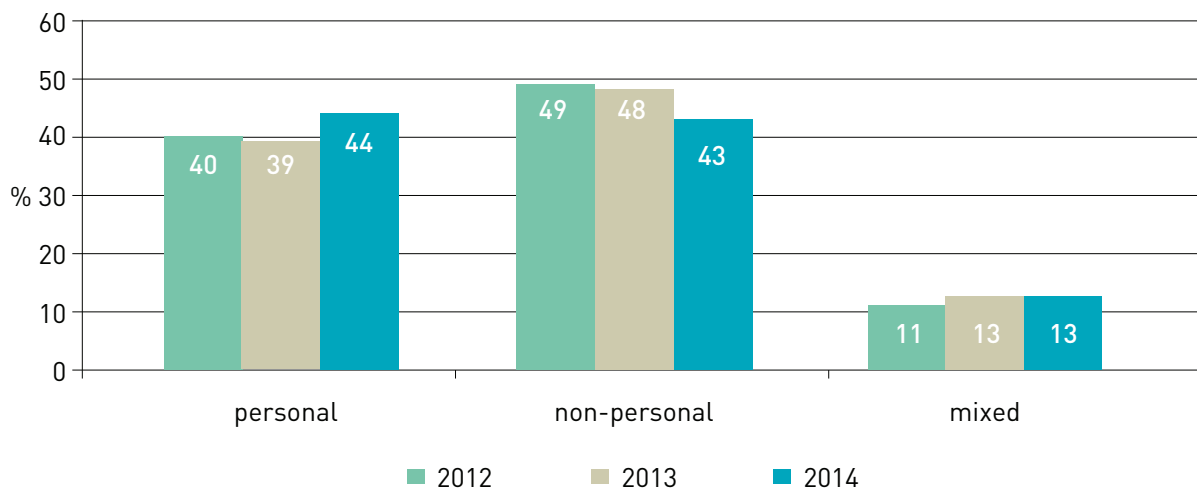
The difference between the number of applications received and accepted is mainly due to a number of applications being identified by my Office as invalid or premature (before the full FOI process had been concluded by the public body), or withdrawn by the applicant at an early stage prior to acceptance.

Subject matter of review applications accepted by OIC

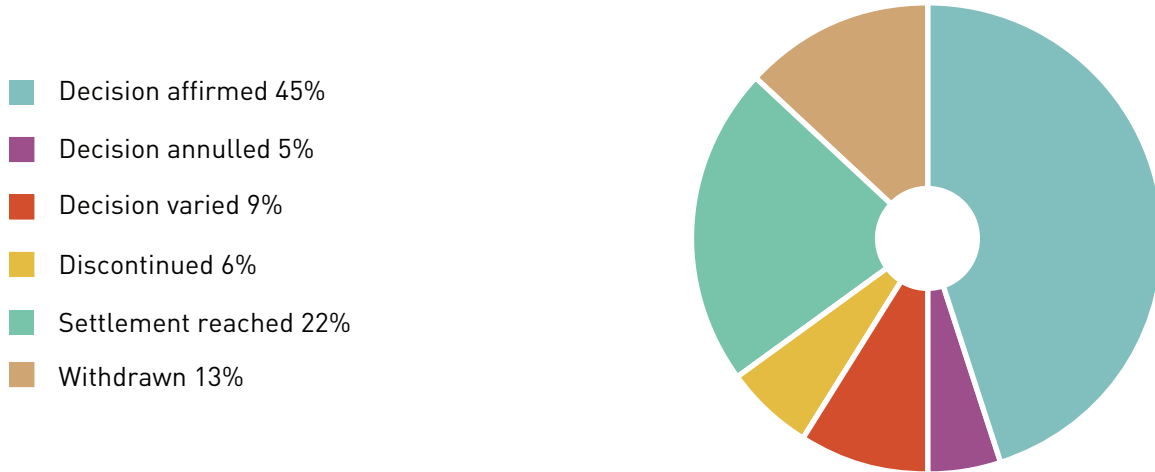


As in previous years, the majority of applications accepted by my Office in 2014 concerned the refusal by public bodies to grant access (release of records) to some, or all, of the information requested.

Applications accepted by OIC by type 2012 – 2014



Outcome of reviews by OIC in 2014



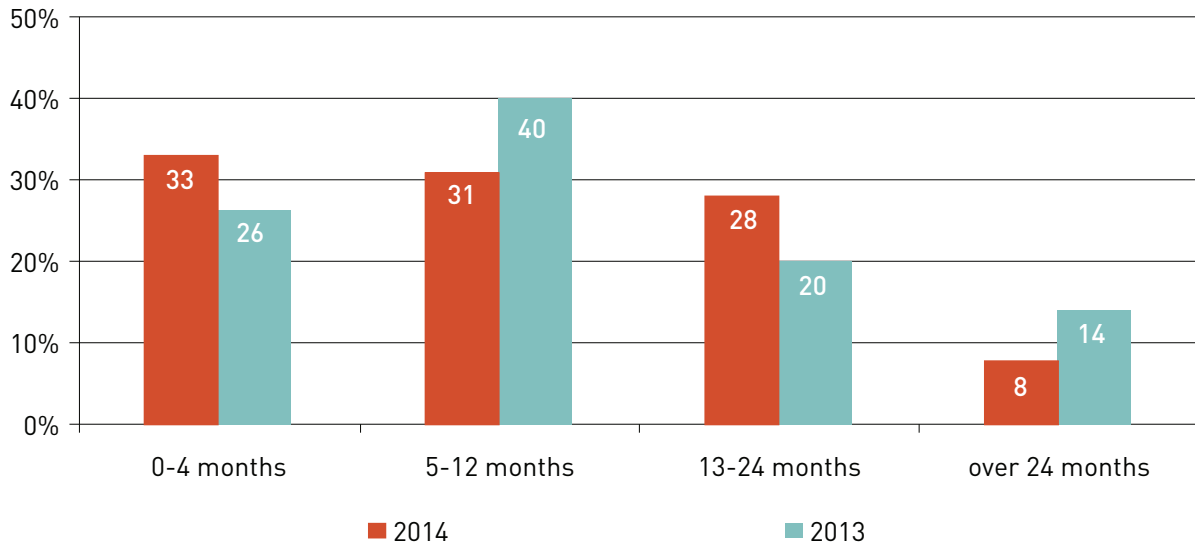
In 2014, my Office reviewed decisions of public bodies in 340 cases. This represents an increase of 31% over the 2013 figure of 258.

Settlements and withdrawals

Applications that are settled, withdrawn or discontinued may follow discussions between the applicant, the public body and staff from my Office. Withdrawals often follow as a result of the intervention of my Office and a more detailed explanation of a decision being given to the applicant by the public body concerned. Settlements usually arise as a result of the public body releasing additional information during the course of a review.

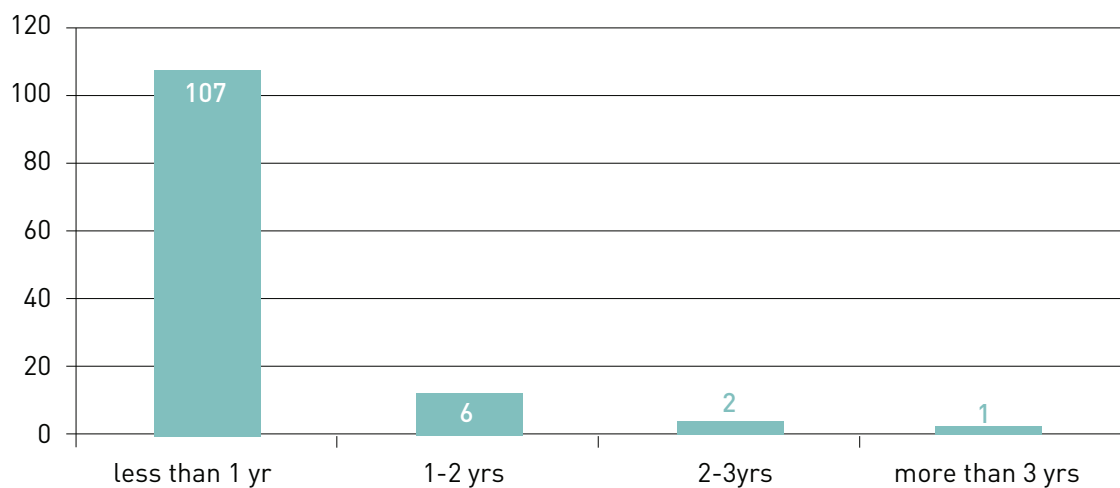
A number of cases were discontinued in the year by my Office as the applications were considered to be frivolous or vexatious. I comment further on cases of this nature in Chapter 2.

Age profile of cases closed by OIC



This table shows how long it took for a review to be completed by my Office. I am pleased that my Office was able to record a 7% increase in the number of cases closed within a four-month period over 2013.

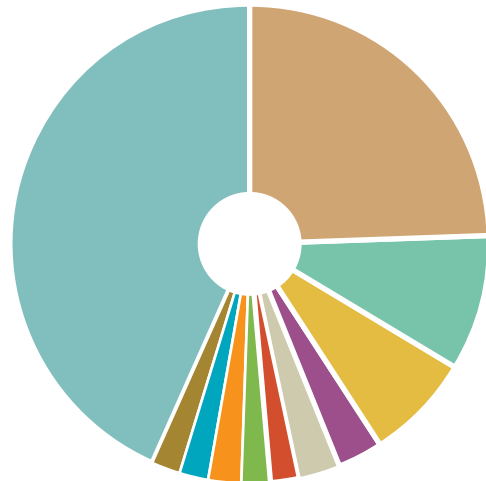
Age profile of cases on hand in OIC at end 2014



At the end of 2013, my Office had 72 cases on hand that were more than 1 year old. I am very pleased to record here that the number of such cases on hand at the end of 2014 had fallen to nine, a number of which remained open for reasons beyond the control of my Office. This was as a result of a specific initiative I introduced aimed at achieving an objective of having no cases over one year old on hand at the end of the year.

Breakdown by public body of applications for review accepted by OIC

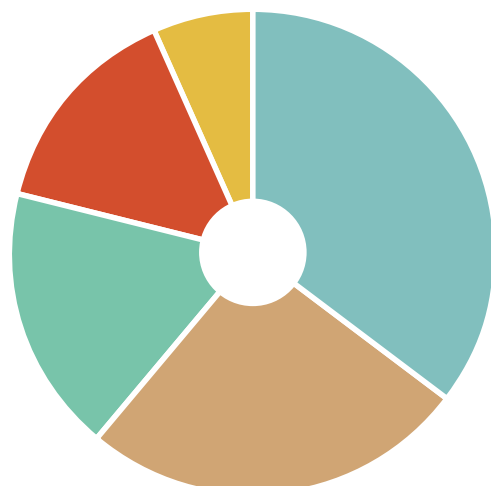
- Health Service Executive – 62
- Department of Social Protection – 23
- Department of Justice and Equality – 18
- Defence Forces Ireland – 8
- Department of Agriculture, Food and the Marine – 7
- Department of Finance – 5
- Department of Public Expenditure and Reform – 5
- Dublin City Council – 5
- Irish Greyhound Board – 5
- Legal Aid Board – 5
- Other Bodies (4 applications or less) – 109



This chart diagram shows a breakdown by public body of cases that were accepted for review by my Office in 2014. The top three bodies in 2014 are the same as in 2013. Other bodies (less than five applications for review accepted) account for 43% of all applications accepted during the year. Further details on the HSE can be found in table 15, Chapter 4 and in the chart following this one.

Breakdown of HSE cases accepted by OIC

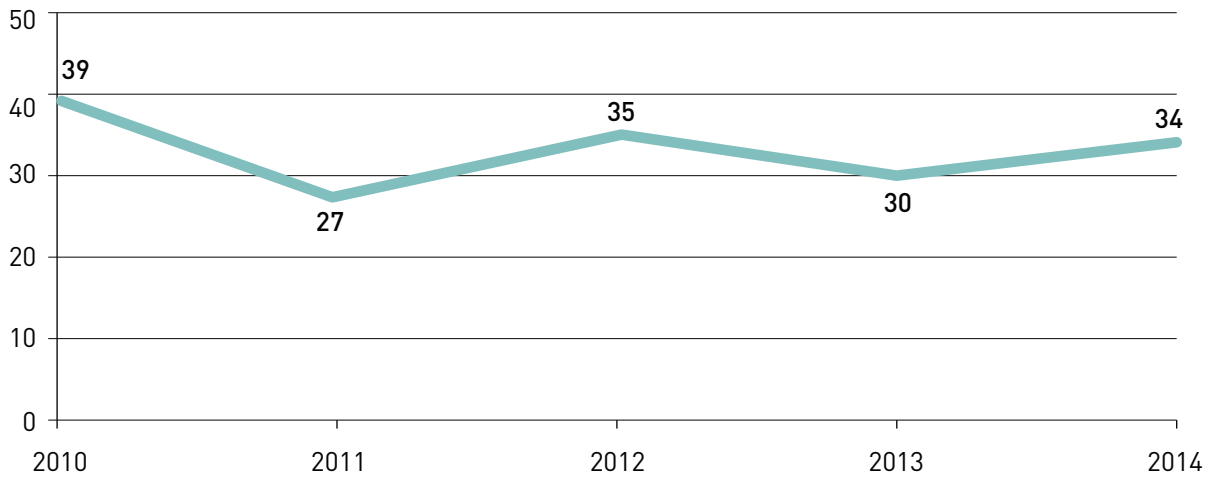
- HSE National – 22
- HSE South – 16
- HSE West – 11
- HSE Dublin Mid-Leinster – 9
- HSE Dublin North East – 4



Deemed refusals

The FOI Act imposes statutory time limits on public bodies for processing the various stages of an FOI request. Specifically, a decision on an original request should issue within four weeks and, in the event of an application for internal review, a decision following receipt of that application should issue within three weeks. A breach of these time limits, whether by means of no decision at the original request stage, or a late decision at internal review stage, results in the requester having the right to regard a decision as a 'deemed refusal' of access. Following a deemed refusal at internal review stage, a requester is entitled to apply for a review to my Office. The charts below show how many requests were deemed refused in the year at either stage or, indeed, at both.

Deemed refusals (at both stages) 2010 – 2014

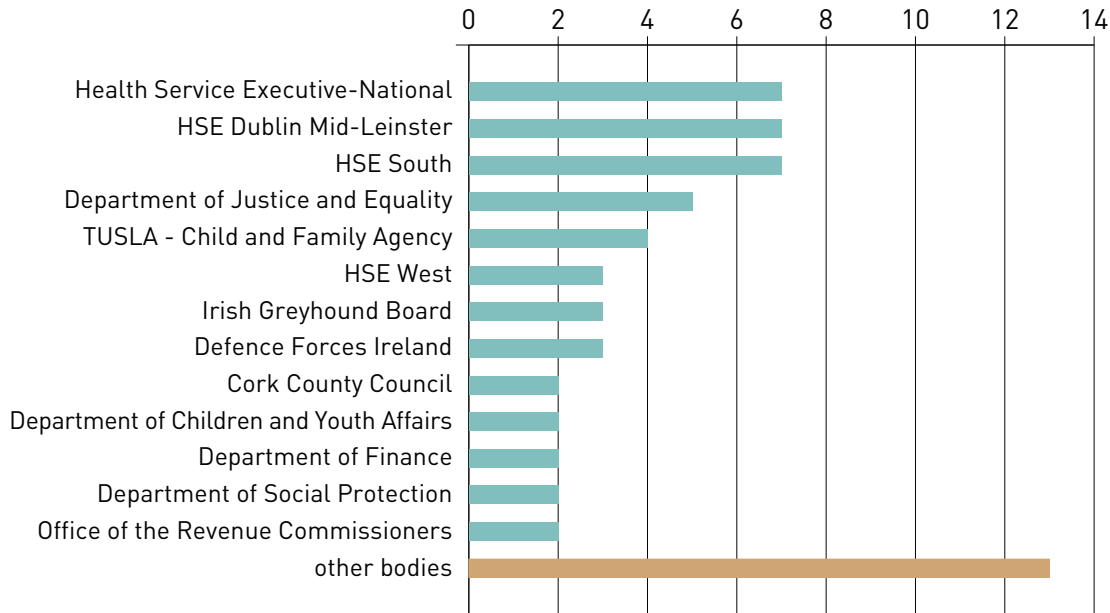


Deemed refusals (at both stages) by body 2014

- HSE National – 6
- HSE South – 5
- HSE Dublin Mid-Leinster – 4
- Department of Justice and Equality – 3
- HSE West – 3
- TUSLA: Child and Family Agency – 3
- Cork County Council – 2
- Irish Greyhound Board – 2
- Other public bodies – 6

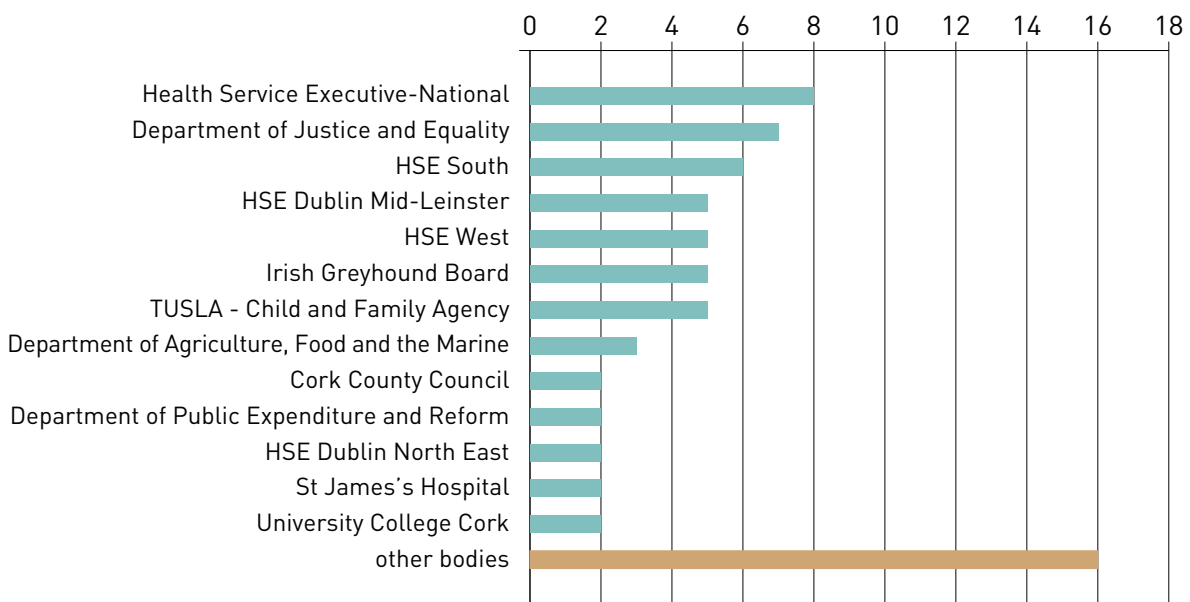


Public body – deemed refusal at 1st stage of FOI request



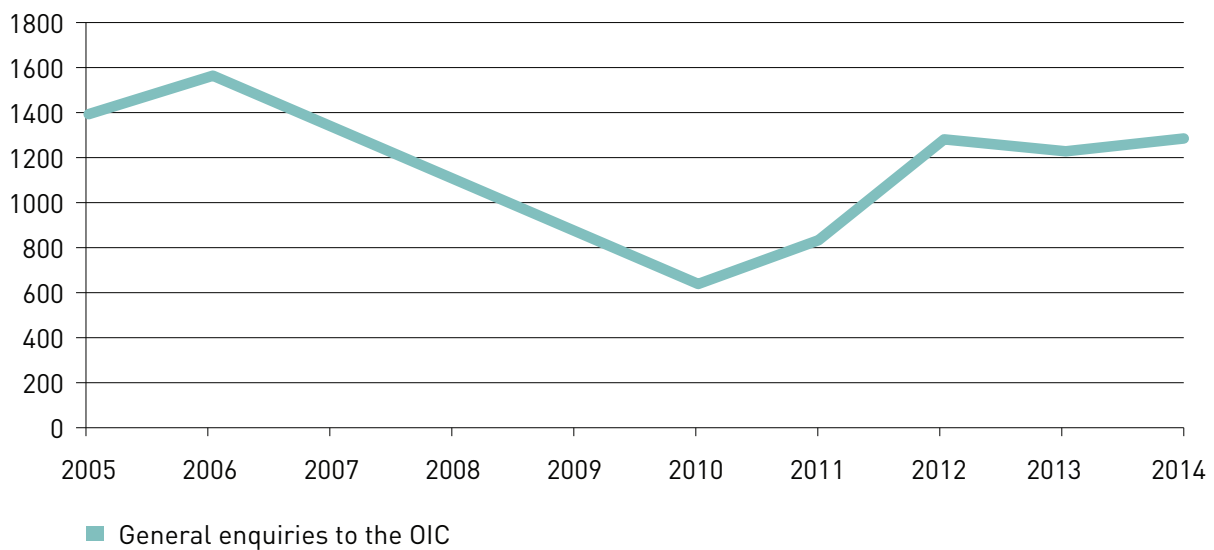
Of the 252 applications accepted for review by my Office in 2014, 24% were deemed refused by the public body at the first stage of the applicant’s FOI request. Where a deemed refusal occurs at this first stage, the requester is entitled to write to the public body concerned and request an internal review.

Public body – deemed refusal at 2nd stage of FOI request



The figure for deemed refusals at the second stage is almost 28%. In a situation where a request for access to records is deemed refused at the second 'internal review' stage, the requester has a right to apply to my Office for review. In addition, in this situation, the requester is not obliged to pay a fee to my Office, where the request is for access to records that are non-personal or mixed.

General enquiries to OIC



There was a slight increase in the number of general enquiries made to my Office in 2014, compared to 2013. The number of enquiries, at 1,274, is the highest number recorded in a year since 2007.

Fees received by OIC

During 2014, my Office received 104 applications for review where a fee was paid. The total amount received in application fees by my Office in 2014 was €11,865. A total of €7,350 was refunded to applicants for the following reasons:

- €4,950, because the applications in question were either rejected as invalid, withdrawn or settled;
- €1,550, because the public body had not issued an internal review decision within the time limit and was therefore of 'deemed refusal' status (section 41 of the FOI Act refers);
- €850 was refunded to applicants because of situations where decisions were either annulled, discontinued, or where a fee was not due.

Statutory Certificates issued by Ministers and Secretaries General

The FOI (Amendment) Act 2003 introduced provisions whereby certain records could be removed from the scope of the FOI Act by means of certification by a Minister, or by a Secretary General of a Department. The relevant provisions, commented on below, are contained in sections 19, 20 and 25 of the FOI Act and provide that a report specifying the number of such certificates issued must be forwarded to my Office.

In the FOI Act 2014, the power for Secretaries General to protect records relating to the deliberative process of a public body was repealed.

Section 19

Section 19 is a mandatory exemption which provides protection for records relating to the Government or Cabinet. The definition of Government was amended by the 2003 Act to include a committee of officials appointed by the Government to report directly to it and certified as such by the written certification of the Secretary General to the Government.

I have been informed by the Secretary General to the Government that no section 19 certificates were issued by him in 2014.

Section 20

Section 20 protects certain records relating to the deliberative process of a public body. In the case of a Department of State, the Secretary General may issue written certification to the effect that a particular record contains matter relating to the deliberative process of that Department. Where such a certificate is issued, the record specified cannot be released under the FOI Act. Any such certificate is revoked in due course by the issue of written certification by the Secretary General.

Having consulted with each Secretary General, my Office has been informed that no new section 20 certificates were issued during 2014.

Section 25

Where a Minister of the Government is satisfied that a record is an exempt record, either by virtue of section 23 (law enforcement and public safety), or section 24 (security, defence and international relations) and the record is of sufficient sensitivity or seriousness to justify doing so, that Minister may declare the record to be exempt from the application of the FOI Act by issuing a certificate under section 25(1) of the FOI Act.

Each year, Ministers must provide my Office with a report on the number of certificates issued and the provisions of section 23 or section 24 of the FOI Act that applied to the exempt record(s). I must append a copy of any such report to my Annual Report for the year in question.

My Office has been notified of the following certificates issued under Section 25.

Three section 25 certificates were renewed by the Minister for Justice and Equality in 2014 and they will fall for review in 2016. Another three certificates will fall for review in 2015. One certificate was issued by the Minister under the equivalent provision (section 34) of the FOI Act 2014. The new certificate will fall for review in 2016. A copy of the notification is attached at Appendix I to this Report.

Three certificates were issued under section 34 of the 2014 Act by the Minister for Foreign Affairs and Trade in 2014. These certificates will fall for review in 2016. A copy of the notification is attached at Appendix I to this Report.

Staffing matters

As I mentioned earlier in my introduction, the Department of Public Expenditure and Reform approved the recruitment by my Office of five additional staff members in anticipation of the expected additional demand for its services arising from the passing of the FOI Act 2014 and its extension to all public bodies. Sanction was also received to fill a number of vacancies at Investigator level.

I want to welcome each of the staff members who joined my Office in 2014. I also want to thank everyone for their support, drive and commitment to the work of the Office in 2014. I mentioned earlier how the year is noted for its successes. My staff and I are determined to build on that success and I anticipate that my Annual Report for 2015 will reflect another year of achievements and successes.

My thanks to Elizabeth Dolan and Stephen Rafferty, Senior Investigators for their drive, commitment and expertise throughout the year, and to Melanie Campbell and Edmund McDaid for their assistance in compiling this Report.

Right of access
to public data
a crucial tool
in democracy

Irish Examiner – 07/11/2014

Journalist describes four-year legal battle
with Nama over meaning of ‘including’

Irish Times – 20/10/2014

Commissioner says public interest
outweighs judges’ right of privacy

Concerns about
judicial safety were
‘speculative in
nature’

Irish Times – 17/10/2014

Chapter 2: Issues Arising



Chapter 2: Issues Arising

This Chapter highlights issues which arose during the year concerning the operation of the FOI Act.

The issues discussed are:

- Office workload
- S32 non-disclosure provisions
- Missing records
- Voluminous FOI requests
- Frivolous or vexatious requests
- Appeals to the Courts

Office workload

As I outlined in Chapter 1, the implementation of revised structures and work process following an organisational review and the recruitment of a number of additional staff members during 2014 has resulted in significant increases in productivity for the year.

While the revised structures and processes and the recruitment of staff were necessary measures to help my Office deal with the significant backlog of work on hand at the start of the year, it was also very important that my Office could position itself to readily manage the anticipated increase in work arising from the introduction of new FOI legislation. As it transpires, the anticipated increase in demand is not now likely until the second half of 2015. Nevertheless, the tremendous work carried out in 2014 in addressing the backlog of work on hand has enabled us to prepare the groundwork for the expected increased demands on our services in the months ahead.

I have set challenging objectives for my staff this year to ensure that we build upon the strong performance achieved during 2014. Amongst other objectives, I am keen to ensure that the time taken to conduct reviews continues to fall and moves ever nearer to the statutory

requirement that reviews are completed, in so far as practicable, within four months. Certainly, by the end of 2015, I am hopeful that my Office will have no cases older than eight months on hand. Achievement of this objective would represent a significant improvement on recent years.

Section 32 non-disclosure provisions

It is now almost two years since Emily O'Reilly presented the Third Report of the Information Commissioner to the Joint Committee on Finance, Public Expenditure and Reform under section 32 of the FOI Act.

Section 32 provides for the mandatory refusal of access to records whose disclosure is prohibited, or whose non-disclosure is authorised, by other enactments. The section subordinates the access provisions of the FOI Act to all non-disclosure provisions in statutes except for those cited in the Third Schedule. The Act provides for the review by the Joint Committee of the operation of any enactments that authorise or require the non-disclosure of records, to determine whether they should be amended or repealed, or be added to the Third Schedule.

In my 2013 Annual Report, I expressed my disappointment that the Joint Committee's report of its deliberations remained outstanding. I suggested that the then FOI Bill presented an excellent opportunity for including any amendments to the Third Schedule as recommended by the Joint Committee. One year later, the report of the Joint Committee's deliberations remains outstanding.

It is noteworthy that the Houses of the Oireachtas saw fit to ensure that the requirement to review non-disclosure provisions would remain in place in the FOI Act 2014. Under section 41, all Government Ministers must furnish to the Joint Committee a report on the enactments within their respective areas of governance that contain provisions prohibiting the disclosure or authorising the non-disclosure of certain records. Under section 41(6), the first such report must be furnished within 30 days after the fifth anniversary of the day on which the last report, under section 32 of the Act of 1997, was furnished and subsequent reports must be furnished every five years thereafter.

Under the Act of 1997, the Ministers were due to submit their first reports to the Joint Committee by 21 April 1999 and to submit subsequent reports every five years thereafter. Had the provisions of the Act been strictly adhered to, the Ministers would have submitted their fourth reports by 21 May 2014 for consideration by the Joint Committee. As things stand, the third reports remain to be considered.

It seems to me that delay in consideration of the third round of reports brings with it an opportunity to bring the process back on track for future reporting requirements and in line with the provisions of the Act of 2014. Rather than require Ministers to submit the fourth

.....

round of reports that were due in 2014, it may be preferable for the Joint Committee to report on its deliberations of the reports currently before it and to require the Ministers to submit their next reports by 21 May 2019 and every five years thereafter. I intend to pursue this matter with the Department of Public Expenditure and Reform.

Missing records

Section 10(1)(a) of the FOI Act allows a public body to refuse a request where the records sought cannot be found after all reasonable steps to ascertain their whereabouts have been taken. In December 2014, I upheld a decision of the HSE to refuse access to certain medical records under section 10(1)(a) in circumstances where records that were known to exist were missing. The request was for medical records held by St. John's Community Hospital, Sligo. I upheld the HSE's decision reluctantly, given that no acceptable explanation for the absence of the relevant records had been given. The full decision can be viewed on my Office's website at www.oic.gov.ie (Case No 130242 - Ms GK and the Health Service Executive). More specific details of the case are set out in Chapter 3.

When reviewing the decision of a public body to refuse a request under section 10(1)(a), I have regard to the evidence available to the decision maker and the reasoning used by the decision maker in arriving at his/her decision and I also assess the adequacy of the searches conducted by the public body in looking for relevant records. The evidence in such search cases generally consists of the steps actually taken to search for records, along with miscellaneous other evidence about the record management practices of the public body, on the basis of which the public body concluded that the steps taken to search for records were reasonable. On the basis of the information provided, I form a view as to whether the decision maker was justified in coming to the decision that the records sought do not exist or cannot be found.

In the particular case in question, while I formed the view that it was unlikely that the records sought were mislaid or misfiled and while it appeared to me that the situation concerned one of possible wilful removal of records from a patient's file, I was satisfied that extensive searches were carried out by the HSE for the records and that further searches are unlikely to result in them being found. Therefore, I had no option but to conclude that the decision of the HSE was justified on the basis of Section 10(1)(a) of the FOI Act.

Nevertheless, given my serious concerns on the matter, I decided to bring the case to the attention of the Director General of the HSE following the conclusion of the review. Subsequently, in early February 2015, I received a reply from the HSE's Area Manager for Sligo/Leitrim/West Cavan. The Area Manager stated that every effort was made to trace the patient records and that a policy to deal with patient files within the relevant HSE area is being rolled out. He also acknowledged shortcomings in the processing of the FOI request and he assured me that procedures have been put in place to ensure that this does not happen again.

I appreciate the proactive response of the HSE to my concerns. I also wish to acknowledge that the circumstances of this case highlight issues within a specific area of the HSE and not a systemic nationwide issue within the HSE generally. However, the issues pertinent to this case can offer valuable lessons to any public body about record management practices and their obligations in responding to FOI requests. It is also noteworthy that the Act of 2014 now provides, at Section 52, that a person who destroys a record with intention to deceive shall be guilty of an offence and be liable on summary conviction to a fine.

Voluminous FOI requests

Section 10 of the FOI Act allows a public body to refuse access to records on certain administrative grounds. Section 10(1)(c) provides that a request may be refused if 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 work of the public body concerned.

However, section 10(2) requires that such “voluminous” requests shall not be refused under section 10(1)(c) unless the public body has assisted, or offered to assist, the requester in amending the request so that it no longer falls within the parameters of 10(1)(c). Thus, a public body cannot rely on section 10(1)(c) where it has not assisted or offered to assist the requester as required by section 10(2).

I am aware of a growing number of applications made to my Office where public bodies have refused FOI requests under section 10(1)(c) without having first assisted or offered to assist the requester in amending the request so that it no longer falls within the parameters of 10(1)(c). The requirement to assist as set out in section 10(2) is mandatory. Accordingly, where such cases come before my Office, I generally annul the public body’s decision to refuse the request. The effect of such an annulment is that the public body is required to make a new, first instance, decision in respect of the original request, and to offer assistance to the requester in accordance with the provisions of section 10(2), should this be deemed necessary.

While section 10(1)(c) is in place to prevent substantial and unreasonable disruption to the work of the public body, there is an onus on public bodies to ensure that the provision is correctly applied. It has been my experience that requesters are quite often prepared to amend their requests to make them more manageable, to the benefit of all concerned. Of course, if the requester refuses to amend the request, the public body is fully entitled, at that stage, to make a determination as to whether or not the request should be refused under section 10(1)(c). Correct application of the provision will prevent the necessity for annulments by my Office and for requests to be dealt with afresh.

Frivolous or vexatious requests

While I have outlined some of the more significant decisions of my Office for 2014 in Chapter 3, I want to draw particular attention to an issue that arose in a small number of applications for review made to my Office. On a number of occasions during 2014, I have had cause to consider whether certain requests are frivolous or vexatious or form part of a pattern of manifestly unreasonable requests.

This issue may arise for consideration in one of two ways. Firstly, a public body may refuse a request under section 10(1)(e) of the Act if it considers that the request is frivolous or vexatious, or forms part of a pattern of unreasonable requests from the same requester or other requesters acting in concert. Such decisions are subject to review by my Office. Secondly, section 34(9)(a)(i) of the Act provides that I may refuse to accept an application for review or discontinue a review if I form the opinion that the application for review is frivolous or vexatious.

I consider a request or an application to be “frivolous or vexatious” within the meaning of the FOI Act where it either is made in bad faith, or forms part of a pattern of conduct that amounts to an abuse of process or an abuse of the right of access. In my view, the refusal of requests on the grounds that they are frivolous or vexatious is not something that should be undertaken lightly. The FOI Act demands that FOI bodies meet very high standards in dealing with requests. However, I am also of the view that the legislation assumes reasonable behaviour on the part of requesters.

In recent years, all public bodies, my Office included, have faced significant challenges in meeting increased demands with fewer resources. Notwithstanding those increased demands, I have been keen to stress that FOI is a core function of public bodies and is not something that can be afforded lesser weight than other statutory functions when balancing competing demands. On the other hand, I am keen to ensure that requesters do not abuse the important rights afforded to them under the FOI Act. I am also concerned to ensure that the scarce resources of my Office are not abused.

During the year, I discontinued two reviews from the same applicant as I formed the opinion that the applications for review were vexatious. I found that the purpose of the applicant’s requests to the public body was directed at an objective unrelated to the access process and that they were submitted to the body for what I considered to be nothing other than nuisance value.

It is worth noting that in 2013 the former Commissioner also discontinued seven separate review applications made by the same applicant to the same public body, on the ground that those applications were frivolous or vexatious. The details of those cases are set out in more detail in the following section concerning appeals to the superior courts.

In exercising my discretion to discontinue the two reviews in 2014, I considered that both related to a long-standing grievance the applicant had with the public body concerned and that they formed part of the same pattern of conduct amounting to an abuse of process as that identified by the former Commissioner.

I will continue to ensure that my Office's limited resources are put to the best use possible and I will continue to expect reasonable behaviour on the part of requesters.

Appeals to the Courts

For the first time since the inception of my Office, an applicant for review applied to the High Court for an Order directing my Office to complete the review in his case. The review had been suspended pending the outcome of a related High Court appeal concerning the same applicant, details of which are described in more detail below (Westwood Club and the Information Commissioner). At the time of writing, the matter stood adjourned by the Court to allow my Office to consider the application for review.

A party to a review, or any other person who is affected by a decision of my Office, may appeal to the High Court on a point of law. A decision of the High Court can be appealed to the Court of Appeal. Four appeals of decisions of my Office were made to the High Court in 2014, three by the applicant and one by the public body. Ex-tempore judgment was delivered in one of the four cases (see below) while the case that had been brought by the public body was remitted back to my Office by agreement. The two remaining High Court appeals are listed for progression in 2015.

Two appeals of decisions of the High Court were made to the Court of Appeal in 2014, one by the applicant and one by my Office. At the time of writing, my Office had not made a final determination on whether to proceed with its appeal. The remaining case is listed for hearing later in 2015.

No Supreme Court judgments were delivered in 2014.

As I mentioned above, an ex-tempore judgment was issued in one case in 2014. In the case in question, (Case 120129 – Mr X and the Health Service Executive) the applicant appealed my Office's decision to uphold a decision of the HSE to refuse access to certain records held on a file relating to an assessment of the applicant's son.

Counsel for my Office argued that the applicant had not identified in his appeal a point of law as required by the FOI Act. It was brought to the Court's attention that the applicant had been informed of this issue through the exchange of affidavits.

Mr. Justice Eager delivered judgment after a brief period of consideration. He found that no point of law had been identified by the applicant and that the appeal was not in keeping with

Order 130 of the Rules of the Superior Courts which requires that a ground of appeal and point of law be stated. He therefore dismissed the appeal.

Three written High Court judgments were delivered in 2014. The full texts of the judgments are available on www.oic.gov.ie. What follows is a brief summary of the main points in the cases.

Minister for Health and the Information Commissioner [2013] 265 MCA. Judgment of Mr. Justice O’Neill, 9 May 2014

Background

The applicant applied to my Office for a review of the decision of the Department of Health to refuse his request for a copy of a transcript of a meeting he had with Mr Justice Thomas Smyth in connection with an inquiry conducted by Mr Justice Smyth into certain matters relating to Our Lady of Lourdes Hospital Drogheda, commonly referred to as the “Drogheda Review”. The Department refused the request on the ground that it did not hold the records in question for the purposes of the FOI Act.

Issue

The Department argued that the transcripts were the property of Mr Justice Smyth and were lodged with it for safekeeping only. My Office found that the records were both held by, and under the control of, the Department under section 2(5)(a) of the FOI Act. My Office annulled the Department’s decision and directed it to process the FOI request. The Department appealed my decision to the High Court

Conclusion of the Court

The Court found that mere lawful possession of a document was not sufficient to make the document amenable to disclosure under the FOI Act on the basis that it was “held” by the public body within the meaning of section 6(1) of the FOI Act.

On the matter of whether the records were under the control of the Department, the Court found that because of his independent status as reviewer and because the documents at issue were brought into existence by Mr. Justice Smyth for the purposes of the review, the only party who could assert any proprietary interest or any other form of legal control over the documents was Mr. Justice Smyth.

The Court found that the records were not held by, or under the control of, the Department for the purposes of the FOI Act and it upheld the Department’s appeal.

While my Office has submitted an appeal of the High Court’s decision to the Court of Appeal, no decision had been taken at the time of writing as to whether the appeal will proceed.

Westwood Club and the Information Commissioner [2013] 176 MCA. Judgment of Mr. Justice Cross, 15 July 2014

Background

The applicant applied to my Office for a review of a decision of Bray Town Council to refuse access to records held by the Council concerning Bray Swimming Pool and Sports Leisure Centre Limited (the company).

Issue

During the course of the review, the Council accepted that it held certain records as shareholder of the company but it argued that such records were commercially sensitive and exempt from release under section 27(1)(b) of the Act. It also argued that any other relevant records that were held by the company were not under its control and were not subject to the Act. Section 2(5)(a) of the Act provides that a reference to records held by a public body includes a reference to records under the control of the body.

My Office affirmed the decision of the Council to refuse access the records at issue on the basis that certain records held by it were commercially sensitive. My decision also affirmed that other records as held by the company were not under the Council's control such that they could be deemed to be held by the Council under section 2(5)(a) of the FOI Act. The applicant appealed that decision to the High Court.

Conclusion of the Court

The Court found that my Office erred in relation to the burden of proof in a preliminary views letter to the applicant in so far as it purported to place the onus on the applicant of demonstrating that the records held by the Council should be released. Cross J. found that my Office's decision was fatally undermined by the failure to repudiate the statement in the preliminary view concerning the burden of proof and by the incorporation of the reasoning in the preliminary view in the decision without such a repudiation.

On the matter of the records held by the company, the Court found that my Office failed to adequately consider all relevant matters in relation to the issue of control. The Court found that my Office had not considered that the Council had provided a loan in excess of €10million to the company and that my Office did not take into account the fact that the company was in the possession of the property under a lease that was not commercially viable.

By Order dated 23 October 2014, my decision was discharged and the matter was remitted to my Office for further consideration. The Court further ordered that the decision was to be made within ten weeks of the date of the Order by a decision maker other than those involved in the making of the initial decision. A new decision was made by me in December 2014 and is available to view on my Office's website (Case 140287 – Mr X and Bray Town Council).

[Patrick Kelly and the Information Commissioner \[2013\] 325 MCA.](#)

Judgment of Ms. Justice Iseult O'Malley, 7 October 2014

Background

The applicant submitted seven separate applications to my Office for review of decisions taken by University College Dublin (UCD) in relation to requests he made under the FOI Act. All seven requests related in some way to a long-standing grievance the applicant had with UCD. The former Commissioner found that the applicant's use of the FOI Act constituted part of his strategy for furthering and/or prolonging that grievance and also constituted a pattern of conduct which suggested an abuse of the FOI process. She exercised her discretion to discontinue all seven applications under section 34(9)(a)(i) of the FOI Act, on the basis that the applications were vexatious. The applicant submitted an appeal to the High Court.

Issue

The applicant argued, amongst other things, that the former Commissioner did not correctly interpret the phrase "frivolous or vexatious" in arriving at her decision. He also argued that his right to fair procedures was breached, insofar as submissions made by UCD to my Office were not made available to him for comment, prior to the decision to discontinue his applications for review.

The applicant further argued that the Senior Investigator who filed the affidavit in relation to the Court proceedings in November 2013 did not have delegated authority to do so as the post of Information Commissioner was vacant at the time.

Counsel for my Office argued that the decision to discontinue the reviews was not a decision taken following the reviews, and as such no appeal lies against a decision by the Information Commissioner to discontinue a review.

Conclusion of the Court

The Court found that the statutory appeal process is intended to relate to points of law arising from substantive decisions of the Commissioner following a review and not to a decision of the Commissioner as to whether to carry out a review or to discontinue one that has commenced. The Court held that it had no jurisdiction to entertain the appeal.

Nevertheless, in the event that it might be mistaken, the Court went on to consider the test applied by the former Commissioner for determining whether an application is frivolous or vexatious. O'Malley J. found that the former Commissioner did not err either in the legal test to be applied or in its application to the facts.

O'Malley J. stated that in determining whether an application to the Information Commissioner should be described as vexatious, the Commissioner was entitled by statute to use her discretion. She found that there was no obligation on the Commissioner to prove the applicant's state of mind and that inferences may be drawn on a common sense basis from a

pattern of conduct

On the matter of delegated authority, the Court held that it is not the law that the staff of public service bodies lose their legal right to continue to do their jobs and to make the decisions that they were previously authorised to make every time there is an interregnum in the position of head of such agency. The Court dismissed the applicant's appeal. The applicant has since appealed the Court's decision to the Court of Appeal.

FOI revision a step in the right direction

Irish Examiner - 04/10/2014

FOI covers gardai and NAMA for first time

By **Alan O'Keeffe**

A MORE powerful Freedom of Information Act coming into force this month will include gardai and NAMA within its powers for the first time.

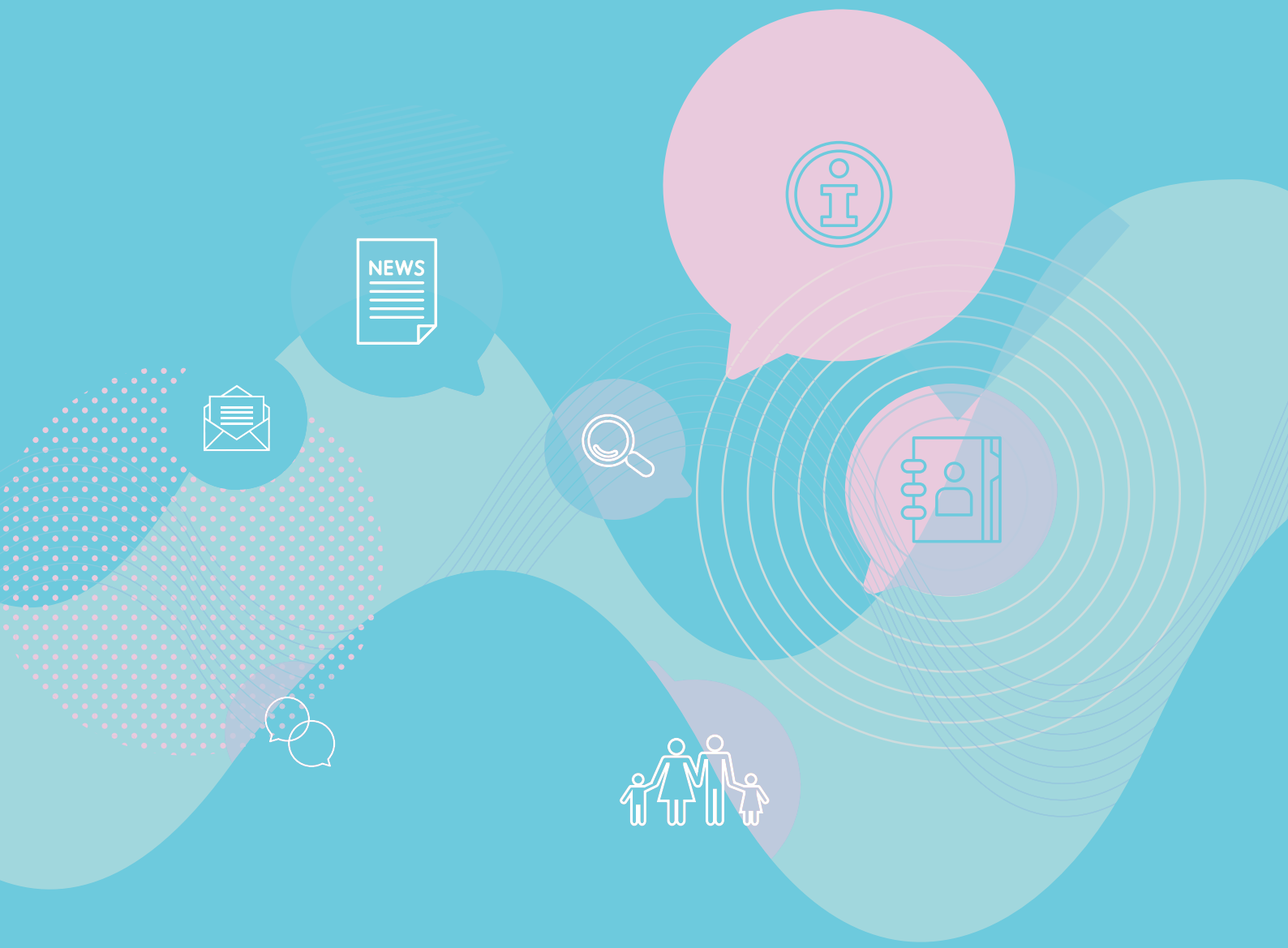
The Herald - 04/10/2014

Faulty CCTV system at UHG putting patient safety at risk

Freedom of Information reply to former Mayor revealed security lapses

Connacht Sentinel - 16/09/2014

Chapter 3: Decisions



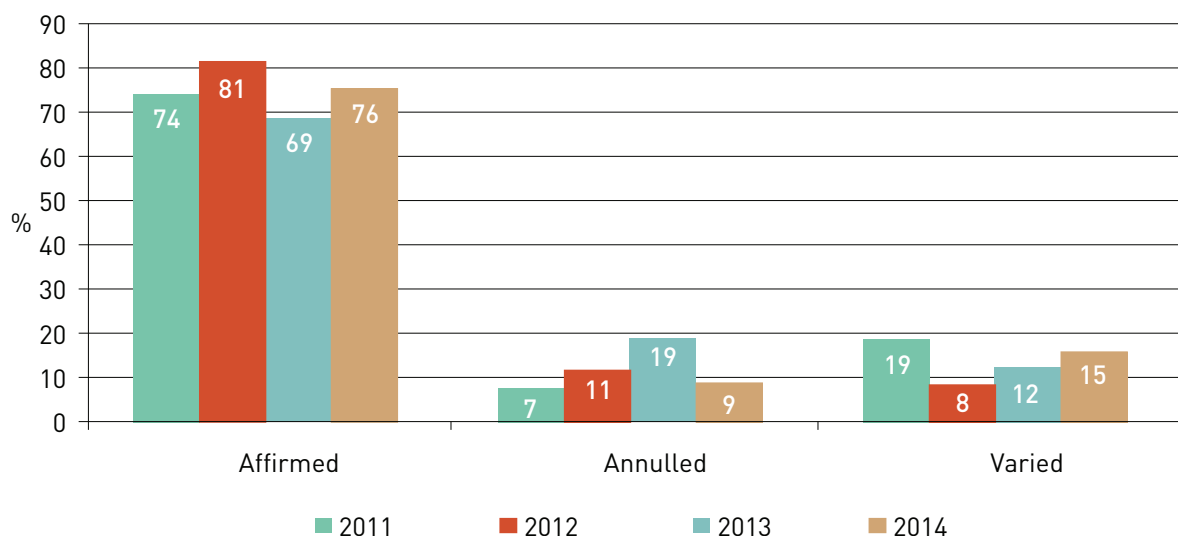
Chapter 3: Decisions

Formal decisions

In 2014 a total of 340 cases were reviewed by my Office, of which 202 went to a formal decision (59% of all reviews completed). The remaining 138 cases were closed by way of discontinuance, settlement or withdrawal (see Table 16, Chapter 4).

The outcomes of the reviews that went to formal decision in the years 2011 to 2014 are highlighted and compared as percentages in the table below.

Percentage comparison of formal decisions 2011 - 2014



As is clear from the above table, the percentage number of decisions annulled by my Office in 2014 is significantly less than the number annulled in 2013. This is primarily due to a fall in the number of cases (compared with 2013) where my Office found it necessary to annul the decision of the public body for its failure to adhere to certain mandatory provisions of the FOI Act.

Significant decisions

Martina Fitzgerald, RTÉ and the Department of Justice and Equality – Case no. 130165

At the end of 2014 I issued a decision relating to the direct provision of accommodation and ancillary services to asylum seekers by the Reception and Integration Agency (RIA) of the Department of Justice and Equality. Ms Martina Fitzgerald, an RTÉ journalist, sought access to records of inspection reports for eight named Asylum Centres and detailed information relating to the direct provision of support for those seeking asylum in Ireland for the period 2011 to 2012.

Ms Fitzgerald specifically requested access to the general information gathered for statistics published in the annual report. At a late stage in this review it came to light that the RIA maintained a database which contained some of the information covered by the request. It would appear that this database was used to produce the statistics for the annual report, yet it seems that it was not examined by the Department until my Office pursued the question of whether records existed from which the annual report data was collated. Ms Fitzgerald specifically asked for this type of information and, in my view, relevant records could have been retrieved from this database in the form of a report or otherwise and considered for release where the FOI Act provided for this.

Furthermore, it seems that no consideration was given by the Department to the provision of redacted records, where appropriate, as provided for in section 13 of the FOI Act. It is most unsatisfactory that the database records should have been brought to the attention of my Office at such a late stage when, clearly, they should have been considered in 2012.

My Office varied the decision of the Department in the case. While affirming the decision to refuse access to the personal information of individuals recorded on the database and in the records sought, it directed the release of the remaining withheld records subject to redaction of the personal information of individuals. My Office also annulled the decision to refuse part of the request under section 10(1)(c) on the ground that it was voluminous as the Department had not complied with the requirements of section 10(2) to assist or offer to assist Ms Fitzgerald to amend the request so that it would no longer fall to be refused under that section.

Ms GK and the Health Service Executive – Case no. 130242

A woman applied to the HSE for copies of her uncle's medical records relating to his care in St. John's Hospital, Sligo. When she received the records, some pages were missing. The missing pages related to days on which the family had concerns about the care of their uncle. The HSE's internal review decision of 26 July 2013 stated that, following a search conducted by the Director of Nursing at the Hospital, no clinical medical records for the dates outlined could be found.

At no stage during the course of the review was the HSE in a position to offer an acceptable explanation as to why the records were missing. It was clear that the records concerned had been created by Hospital staff and placed on the patient's file but at some point the records went missing.

In cases where concerns arise in relation to a person's care, the availability of contemporaneous medical notes may be critical to addressing any issues arising regarding the care and treatment of the patient, and the absence of such records was a matter of serious concern, not just in the context of FOI, but in a broader context. Having examined the file and the responses of the HSE to the initial search queries raised by my Office, it appeared to me that the question of possible wilful removal of records from a patient's file arose. From the various accounts of what happened, it appears that the patient's file was brought along to a meeting that staff had with the applicant on 14 January 2013 but that it was not opened at that time. The fact that certain pages were missing came to light when the FOI request was made.

My staff asked the HSE if any investigations or enquiries had been conducted or if the matter had been referred to An Garda Síochána. In response, the HSE stated that it was not able to establish any prima facie case to warrant a disciplinary investigation. It also said that involving the Gardaí would be a matter for local management and that they would not be called in the absence of evidence of a crime. Notwithstanding the HSE's response, my Office formed the view that it was unlikely that the records were mislaid or misfiled.

Nevertheless, my role in cases where records sought cannot be found is limited to determining whether the public body has taken all reasonable steps to ascertain their whereabouts. This means that I must have regard to the evidence available to the decision maker and the reasoning used by the decision maker in arriving at his/her decision and also must assess the adequacy of the searches conducted by the public body in looking for relevant records.

According to the HSE responses, the records at issue were present at meetings between the applicant and Hospital staff on 17 December 2012 and 14 January 2013, though they were not used at either meeting. Based on the recollection of a staff member, the HSE stated that "following an FOI request [a HSE member of staff] checked the file and the portion of the

nursing notes, now missing, was present. The file was on the Rehab Unit overnight and on the following morning three pages of the nursing notes had been removed". The HSE stated that a comprehensive search of the filing room, Rehab Unit, Day Hospital and other Units, and Nursing administration offices, was conducted at the time but the missing notes were not located. The HSE also stated that Hospital Administration interviewed all relevant staff regarding the disappearance of these notes, i.e. nursing staff, clerical staff and the relevant Medical Officer. This process included interviewing certain staff members whose names were suggested by the applicant as being amongst those who witnessed the relevant notes prior to their disappearance. According to the HSE, five members of staff have tried to locate the missing records.

While it is a matter of serious concern that personal medical records held by the HSE can go missing in a case such as this, my Office has no powers to direct public bodies as to how to manage their records. Furthermore, while I am glad to note that, during the course of the review, the HSE informed my Office that as a result of this incident, changes had been made to records management arrangements in the Hospital, including more secure storage arrangements and restrictions on access to medical records, it is understandably very disappointing and upsetting for the applicant that she has not been able to obtain copies of the records. However, having regard to the details of the searches undertaken by the HSE in its efforts to locate the records, I had no option but to conclude that the HSE had taken all reasonable steps to locate the records and that it was therefore justified in deciding that the records could not be found.

Ms Fiona Gartland and the Courts Service - Case no. 130140

This review concerned the refusal by the Courts Service to release details of expenses claimed by each judge of the Supreme Court, High Court, Circuit Court and District Court for the year 2012.

The Courts Service provided the applicant with an explanation of the types of expenses claimed by judges and with tables detailing expenses claimed by all judges for 2012 with the names of the judges withheld. The Courts Service argued that the disclosure of the details of the expenses claimed by each judge was personal information and was exempt from release under section 28 of the FOI Act. It also argued that the information was exempt from release under section 24 of the Act on the basis that release of the details could reasonably be expected to affect adversely the security of the State.

I accepted that, in a general way, details of expenses claimed by individual judges can be said to be information relating to the financial affairs of those judges and so comes within the definition of 'personal information' for the purposes of the Act. However, I noted that the information relates to the judges in their roles as public officials and to payments made to them in connection with their public duties. In one of the earliest cases decided by my Office (Case no. 99168), the then Commissioner found that expenses paid to the elected members

of the Houses of the Oireachtas to defray expenses incurred by them in discharging their functions as public representatives, did not arise out of some private aspect of the claimants' lives. I found that the same considerations applied in this case. As such, I found that the public interest in ensuring accountability for the use of public funds outweighed any right to privacy which judges might enjoy in relation to details of their expenses claims.

Section 24(1)(a) provides that a head may refuse access to a record if it could reasonably be expected to affect adversely the security of the State. It was argued that the disclosure of details of travel expenses paid to individual judges would allow for the identification of judges who are away from home frequently, that the availability of such information could pose a risk to judges and/or their families, and that a threat to the safety of a judge or his/her family might be used to compromise judicial independence, thereby affecting the security of the State, particularly in political cases and cases being heard in the Special Criminal Court.

Having considered the arguments made, I found that the harms identified were speculative in nature and that it was not reasonable to expect that the security of the State would be adversely affected arising from the disclosure of expenses paid to individual judges in 2012. I noted that granting the request would disclose nothing more than the overall amount of expense payments claimed by specific judges for expenses incurred in the course of the performance of their functions during 2012. It did not appear to me that regard was had to the fact that the information at issue was historic and that the level of detail did not extend beyond describing the general nature of the expense, i.e. in respect of travel, subsistence, or judicial attire and incidental expenses. I also noted that the identities of which judges are sitting in a number of the courts on any given day can usually be discerned from the Legal Diary published on the website of the Courts Service and that such information published in the Legal Diary, already publicly available, did not appear to be considered an undue security risk.

I found that the Courts Service had not justified its decision to refuse access to the details of the expenses claimed by each judge and I directed the release of the information sought.

Cork City Council and the Department of the Environment, Community and Local Government - Case no. 140144

In this case, a request was made to the Department of the Environment, Community and Local Government for copies of management letters that were issued to city, county and town managers in respect of statutory audits conducted by the Department's Local Government Audit Service (LGAS) in respect of the financial years 2010, 2011 and 2012. The Department consulted all City and County Councils under section 29 of the FOI Act before a decision was made to release the records in the public interest. Cork City Council applied to my Office for a review of that decision.

The records at issue comprised letters prepared by the Department as part of their audit of the Council's annual financial statements for the relevant years. The Council argued that the records sought were exempt from release under section 27 of the FOI Act. While that section provides for the protection of commercially sensitive information, there appears to be some uncertainty as to whether it might apply to protect the commercial interests of public bodies. As a general principle, I accept that section 27 is primarily aimed at protecting the commercial interests of parties engaged in commercial activity. As such, it is not clear to me that it is entirely appropriate for a public body, which is engaged in the provision of public services, to seek to claim exemption under section 27 to protect its financial interests. I take the view that such protection generally lies in the exemption provided for at section 31 of the FOI Act which is concerned with protecting the financial and economic interests of the State and public bodies.

Nevertheless, I was prepared to accept in the circumstances of this case that the FOI Act does not prohibit the Council from relying upon the provisions of section 27(1)(b) where it is claiming that the disclosure of the management letters at issue could reasonably be expected to result in it incurring a material financial loss.

The Council argued that the letters could highlight weaknesses which could give rise to material financial losses if released. However, it did not identify any specific information in the records whose release could reasonably be expected to give rise to the harm envisaged. My Office took the view that where audits identify weaknesses in internal control mechanisms, there is a public interest in knowing that such weaknesses have been identified and that public bodies are being held to account in terms of addressing those weaknesses.

The Council also argued that the principle of openness and transparency is well served by separate published reports by the LGAS and the Audit Committee wherein each and every concern they have can, and is, expressed and subsequently debated by elected members and, indeed, reported in the press. However, my Office found that this does not mean that further mechanisms for increasing such openness and transparency are not in the public interest. My Office found that any public interest in withholding the records at issue was clearly outweighed by the public interest in granting access and directed the release of the records.

Mr X and the Broadcasting Authority of Ireland (BAI) - Case no. 120260

This case involved the BAI's investigation into the RTÉ "Prime Time Investigates - Mission to Prey" programme that was broadcast on 23 May 2011 and resulted in the defamation of an Irish priest who had previously served as a missionary in Kenya. The BAI's Investigation Report was published in full in May 2012, but the issue before me was whether the BAI was justified in refusing access to the interview notes and written submissions made by or on behalf of RTÉ and the individual programme makers in relation to the investigation.

.....

In my decision, I recognised that the principle of “journalistic privilege” is well established in Irish and European law, i.e. that journalistic source material is entitled to special protection in order to ensure the free flow of information to journalists and thus safeguard freedom of expression. In the circumstances, I accepted that broadcasting investigations generally require confidentiality in order to be effective and that the BIA’s decision was justified under section 21(1)(a) of the FOI Act, in light of the significant harm that would arise from disclosure of the records concerned.

Mr X and the Department of Justice and Equality – Case no. 120291

Later in 2015, the FOI Act 2014 will apply to administrative records held by An Garda Síochána in relation to human resources, finance and procurement matters. It will not apply to records held concerning its operational functions. Nevertheless, situations occasionally arise where the question of access to records created by An Garda Síochána and held by public bodies subject to FOI is raised.

The record at issue in this case was the Garda report to the Department on the Phoenix Park concerts in July 2012 that had resulted in “serious incidents of public disorder”. The Department refused to grant access to the report under sections 23(1)(a)(iii) (law enforcement and public safety) and 26(1)(a) (information obtained in confidence) of the FOI Act. Both the Department and An Garda Síochána expressed concerns about records containing information about policing methodologies being made public. They maintained that disclosure of information contained in the report, “no matter how apparently innocuous”, could reduce the ability of An Garda Síochána to protect life and property.

However, the FOI Act does not exempt Garda reports to the Minister as a class. Neither An Garda Síochána nor the Department identified the policing procedures or methodologies that were considered to be at risk in this case. It was also not explained how any harm could reasonably be expected to arise in the event of the release of the report. Moreover, I found no basis for concluding that the release of the report would be likely to have any deterrent effect on the supply to the Minister or the Department of similar such information in the future. I concluded that the report should be released in full, subject to certain agreed redactions.

Mr. P and the Health Service Executive (HSE) & Our Lady’s Hospital for Sick Children - Case nos. 090261/62/63

This was a remitted case dating from 2009 (and originally from 2000) involving requests made by the applicant for access to records relating to himself and his former step-daughter, Ms X, who was a 20-year old university student at the time of my decision. The records concerned alleged child sexual abuse, but there was evidence that the allegations had been made for malicious purposes. Regardless of the evidence of malice, however, the records concerned deeply troubled family circumstances.

In my decision, I clarified my approach to the public interest balancing test, having regard to the judgment of the Supreme Court in the Rotunda Hospital case. I noted that an objective rather than a subjective standard applies in relation to the public interest. In relation to the question of procedural fairness, I explained there is a strong public interest in revealing information that would shed light on whether the HSE and the Hospital carried out their functions in a manner that was consistent with the principles of natural and constitutional justice as well as the right to privacy. I emphasised, however, that the public interest test does not give me the authority to investigate complaints against public bodies or to act as an alternative dispute mechanism with respect to actions taken by public bodies. In light of the records that had already been released to the applicant, which satisfied the public interest in openness and accountability to some degree, I concluded that, on balance, the public interest in granting access to the remaining records at issue was not sufficiently strong to outweigh the public interest in upholding the privacy rights of the third parties concerned.

[Note: This decision has been appealed to the High Court by the applicant.]

Mr X and the Department of Transport, Tourism and Sport - Case no. 090077

In late 2008, the applicant made a 34-part request to the Department, for records concerning bus routes and services, State aid, audits, inspections, statutory interpretation, advice, communications, diesel rebate and prices, and other matters. He had submitted this request after the Department had asked him to narrow down an earlier, similar request. The Department then processed the modified request, and the applicant ultimately appealed its decision to this Office in March 2009. My decision issued on 13 November 2014.

It is very regrettable that it took five years to issue my decision in this case. Quite simply, up to now, my Office did not have the necessary staff resources to devote to the many broad-ranging and varied aspects of this application for review. In any case, such a delay has implications for the currency of records released. In this particular case, in the intervening years, certain functions of the Department, and its control of related records, transferred to the National Transport Authority (NTA). As the NTA could not be joined to my review, I took the view that I no longer had remit to consider any records relevant to the request that were now held by the NTA. While those records might ultimately have been found to be exempt, I nonetheless accept that the delay in processing this review was unacceptable. However, I am confident that my Office's revised processes will ensure that such an unacceptable delay will not arise again.

While my review considered whether the Department had justified its decision not to fully grant the records it considered relevant to the various parts of the request (which refusals I largely upheld), I consider that the Department would have been entitled to refuse the applicant's request at the outset, in its entirety, under section 10(1)(c) of the FOI Act. This is an administrative ground for refusal, which is applicable if granting the request would require

the retrieval and examination of such number or kind of records as to cause a substantial and unreasonable interference with or disruption of the work of the public body concerned. The provision recognises the extent to which the retrieval and examination of records might impact on the work of public bodies, and it can be relied upon once the body has helped, or offered to help, a requester to amend their request so that it becomes more manageable from the body's perspective (section 10(2) refers).

The request in this case sought 34 different categories of record, some of which are listed above. All except three elements of the request were very broadly and vaguely framed (such as seeking "documentation of any kind relating to" the particular subject matter). Some records dating from 1990 i.e. before the commencement of the FOI Act, were sought. I regularly encourage public bodies to engage with FOI requests proactively and the Department's decision to deal with this FOI request was evidently in keeping with the spirit of the FOI Act. However, processing the request and internal review, and dealing with this Office's review, clearly placed a burden on the Department of a kind that, in my view, was not intended by the Oireachtas when passing the FOI Act.

Mr X and Meath County Council – Case no. 120210

This case has its background in actions taken by Meath County Council on a planning enforcement matter. The applicant sought records concerning two Enforcement Notices that the Council had issued to him in 2004 and 2009, both of which concerned alleged breaches of planning permission granted to the applicant and his building company in 2002. In 2006 and 2010, the Courts found the Notices to be, respectively, invalid and procedurally flawed.

The Council claimed that the records it had considered, which it created further to the court cases, continued to attract litigation privilege. Records that would be exempt from production in proceedings in a court on the ground of legal professional privilege are exempt from release under section 22(1)(a) of the FOI Act.

In considering the Council's claim of litigation privilege, I had regard to the judgment of 21 March 2014 of Finlay Geoghegan J., in the case of *University College Cork - National University of Ireland v the Electricity Supply Board* [2014] IEHC 135. In her judgment, Ms Justice Finlay Geoghegan made it clear that the onus is on the party asserting privilege to "establish ... as a matter of probability that litigation ... was apprehended or threatened from [a particular date]". She also ruled that, unlike legal advice privilege, litigation privilege does not "automatically continue beyond the final determination of either that litigation or ... closely related litigation."

My Office invited the Council to establish, on the balance of probabilities, that litigation regarding the alleged planning breaches was contemplated or pending, or that closely related litigation had either not concluded or was contemplated or pending. The Council's response was that its "litigation file in respect of [the applicant] is still a current file"

because the planning status of the applicant's development "has to date not been judicially determined". The Council argued that the possibility remained that the issue could come before the Courts at a later date and that litigation privilege may well continue beyond the determination of the Proceedings taken to date.

I found that the Council did not justify its assertion that litigation privilege may well continue in the circumstances of the case. That there is a possibility that an event will occur at some unspecified point in time does not mean, as is the standard required by the Courts, that it will happen on the balance of probabilities. Thus, I did not consider the Council had justified its contention that the Courts would accept that legal professional privilege applies to the records on the basis that they continued to attract any litigation privilege that may once have applied to them.

Aside from failing to make arguments that it was specifically invited to make, I was very disappointed with the Council's failure to engage with this FOI request and with my review. It took four months for the Council to acknowledge that it had failed to deal with one completely unambiguous part of the request, yet it offered no explanation for either its failure to do so, or for why it took so long to respond to my Office's repeated queries for such an explanation.

The Council also took three months to confirm that it had provided records to the applicant under Court discovery procedures, a factor that is relevant to considering whether release of such records under FOI would be a contempt of court, and to which section 22(1)(b) is relevant. It failed to identify the records so discovered. Furthermore, it essentially deprived the applicant of the opportunity to withdraw a related application, and get a refund of his application fee, by not alerting this Office to the fact that the record at issue in that case was also subject to review in the present case.

Having regard to the manner in which the Council dealt with both the applicant and my Office, I considered it appropriate to take the rare step of directing the Council to release to the applicant those records that I found not to be exempt within 10 working days of the expiration of the time for the bringing of an appeal to the High Court.

HSE expects outpatient waiting times to be public later this year

Medical Independent – 11/09/2014

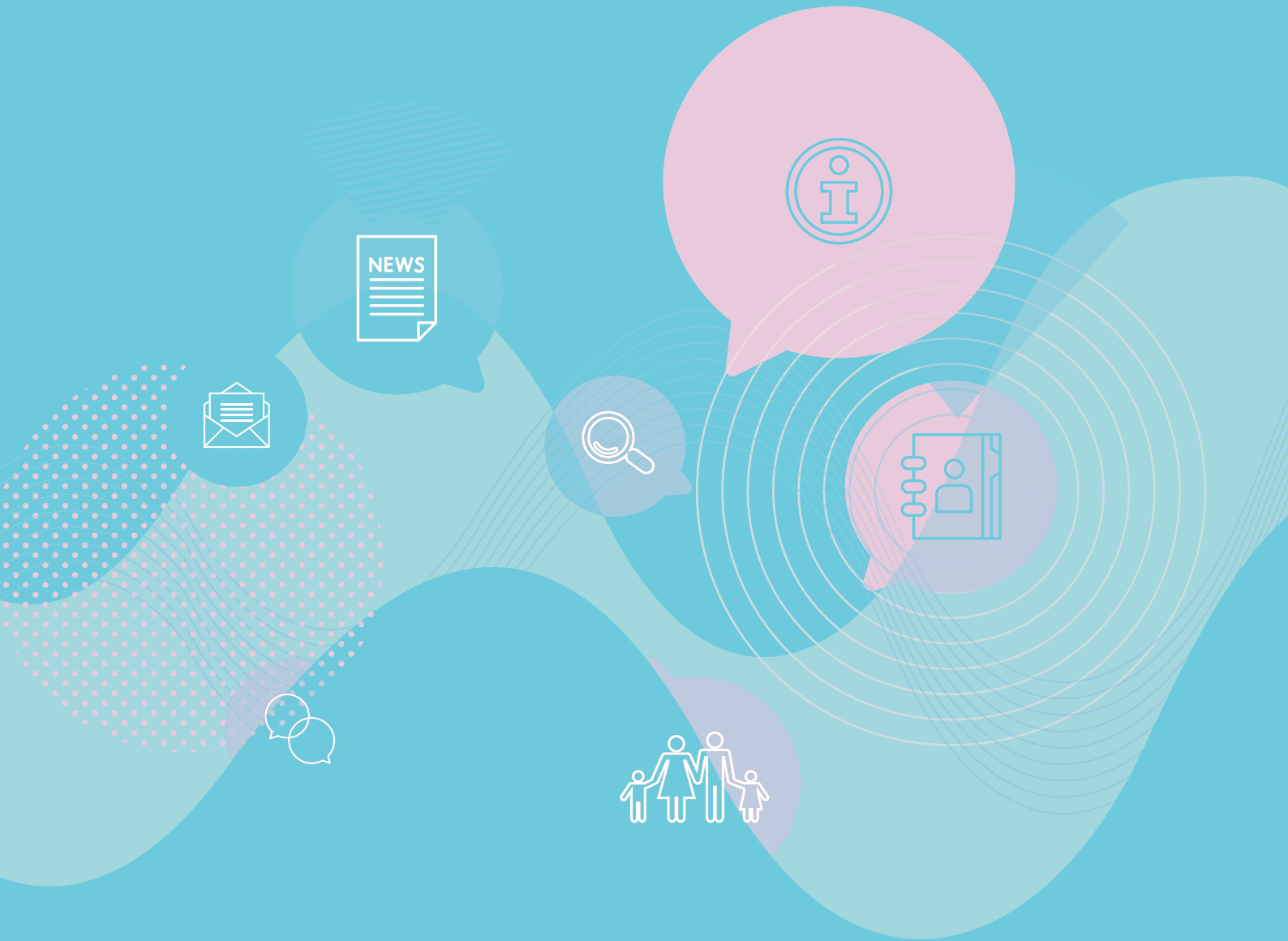
Revealed: public patients face two year delay for scans

Sunday Business Post – 07/09/2014

€19m ‘pocket money’ for prisoners in State’s jails

Metro Herald - 18/08/2014

Chapter 4: Statistics



Chapter 4: Statistics

Section I - Public Bodies - 2014

Table 1:	Overview of FOI requests dealt with by public bodies
Table 2:	FOI requests dealt with by public bodies and subsequently appealed
Table 3:	FOI requests received - by requester type
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Table 5:	Analysis of FOI requests dealt with by public service sector
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Table 11:	FOI requests received by other bodies
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(Figures for the above tables are supplied by the Department of Public Expenditure and Reform, the HSE, the Local Authorities FOI Liaison Group, the Department of Health, the National Federation of Voluntary Bodies and the Liaison Group for the Higher Education Sector, and collated by the Office of the Information Commissioner.)

Section II - Office of the Information Commissioner - 2014

Table 13:	Analysis of applications for review received
Table 14:	Analysis of review cases
Table 15:	Applications for review accepted in 2014
Table 16:	Outcome of completed reviews – 3-year comparison
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Section I – Public Bodies - 2014

Table 1: Overview of requests dealt with by public bodies

Requests on hand - 01/01/2014	3,232
Requests received in 2014	
Personal	15,548
Non-personal	4,600
Mixed	96
Total	20,244
Total requests on hand during year	23,476
Requests dealt with	19,262
Requests on hand - 31/12/2014	4,214

Table 2: FOI requests dealt with by public bodies and subsequently appealed

	Number	Percentage
FOI requests dealt with by public bodies	19,262	100%
Internal reviews received by public bodies	586	3%
Applications accepted by the Commissioner	252	1%

Table 3: FOI requests received - by requester type

Requester Type	Number	Percentage
Journalists	2,346	12%
Business	775	4%
Oireachtas Members	114	0%*
Staff of public bodies	644	3%
Clients	13,765	68%
Others	2,600	13%
Total	20,244	100%

* Actual percentage point is 0.6%

Table 4: Outcomes of FOI requests dealt with by public bodies

Request Type	Number	Percentage
Requests granted	11,896	62%
Requests part-granted	3,691	19%
Requests refused	1,958	10%
Requests transferred to appropriate body	294	2%
Requests withdrawn or handled outside FOI	1,423	7%
Total	19,262	100%

Table 5: Analysis of FOI requests dealt with by public service sector

	% granted	% part granted	% refused	% transferred	% withdrawn or handled outside of FOI
Civil Service departments	42%	33%	13%	1%	11%
Local Authorities	50%	31%	14%	0%	5%
HSE	75%	12%	9%	1%	3%
Voluntary Hospitals, Mental Health Services Regulators and Related Agencies	77%	4%	6%	2%	11%
Third Level Institutions	65%	21%	7%	0%	7%
Other Bodies	54%	30%	6%	1%	9%

Table 6: FOI requests received by civil service Departments/Offices

	Personal	Non-personal	Mixed	Total
Civil Service Department/Office				
Department of Social Protection	2,070	119	4	2,193
Department of Justice and Equality	720	198	2	920
Department of Education and Skills	172	127	4	303
Defence Forces	205	18	1	224
Department of Health	10	199	0	209
Department of Public Expenditure and Reform	104	104	0	208
Department of Agriculture, Food and the Marine	112	89	4	205
Office of the Revenue Commissioners	103	102	0	205
Department of the Environment, Community and Local Government	14	166	0	180
Department of the Taoiseach	13	160	0	173
Department of Finance	3	162	0	165
Social Welfare Appeals Office	134	0	0	134
Department of Foreign Affairs and Trade	34	83	0	117
Department of Transport, Tourism and Sport	5	88	0	93
Department of Arts, Heritage and the Gaeltacht	4	80	0	84
Department of Communications, Energy and Natural Resources	3	71	0	74
Houses of the Oireachtas Service	1	70	1	72
Department of Jobs, Enterprise and Innovation	12	49	1	62
Office of Public Works	8	33	2	43
Courts Service	8	29	6	43
Department of Children and Youth Affairs	2	35	0	37
Public Appointments Service	16	6	0	22
Office of the Director of Public Prosecutions	11	3	0	14
Office of the Ombudsman	10	4	0	14
Department of Defence	5	6	0	11
Office of the Information Commissioner	1	1	2	4
Total	3,780	2,002	27	5,809

Table 7: FOI requests received by local authorities

Local Authority*	Personal	Non-personal	Mixed	Total
Dublin City Council	132	168	3	303
Cork County Council	37	69	4	110
Cork City Council	5	87	0	92
South Dublin County Council	34	43	0	77
Limerick City Council	29	44	0	73
Dún Laoghaire/Rathdown County Council	30	41	0	71
Mayo County Council	7	50	0	57
Fingal County Council	16	38	0	54
Galway County Council	5	46	0	51
Clare County Council	10	38	1	49
Kerry County Council	2	38	7	47
Meath County Council	5	41	1	47
Donegal County Council	9	37	0	46
Kildare County Council	10	35	0	45
Louth County Council	15	28	2	45
Tipperary SR County Council	7	32	3	42
Wexford County Council	11	30	0	41
Wicklow County Council	2	37	0	39
Galway City Council	16	21	0	37
Carlow County Council	6	26	0	32
Laois County Council	18	10	0	28
Waterford City Council	9	19	0	28
Kilkenny County Council	4	23	0	27
Roscommon County Council	2	19	1	22
Sligo County Council	5	16	0	21
Westmeath County Council	3	17	0	20
Leitrim County Council	2	17	0	19
Longford County Council	7	9	1	17
Offaly County Council	3	11	1	15
Monaghan County Council	4	9	1	14

Tipperary NR County Council	0	13	0	13
Limerick County Council	1	7	0	8
Waterford County Council	1	7	0	8
Cavan County Council	0	5	0	5
Total	447	1,131	25	1,603
Regional Authorities	0	7	0	7
Regional Assemblies	0	4	0	4
*County Council figures include any FOI requests received by Town and Borough Councils				

Table 8: FOI requests received by the HSE (excluding certain agencies covered in Table 9)

HSE area*	Personal	Non-Personal	Mixed	Total
HSE South	3,012	62	0	3,074
HSE West	2,282	121	4	2,407
HSE Dublin North East	837	26	1	864
HSE Dublin Mid-Leinster	771	22	1	794
HSE National Requests	6	321	0	327
Total received	6,908	552	6	7,466
*Figures represent the regional structure of the HSE				

Table 9: FOI requests received by voluntary hospitals, mental health services regulators and related agencies

Hospital/Service/Agency*	Personal	Non-Personal	Mixed	Total
Mercy University Hospital, Cork	712	3	0	715
St James's Hospital	495	6	0	501
Tallaght Hospital	404	5	0	409
Rotunda Hospital	267	13	0	280
Mater Misericordiae Hospital	263	13	0	276
Beaumont Hospital	253	15	0	268
National Maternity Hospital, Holles Street	201	8	0	209
St. Vincent's University Hospital	183	10	0	193
Our Lady's Hospital for Sick Children, Crumlin	183	6	0	189
St. John's Hospital, Limerick	163	0	0	163
Temple Street Children's Hospital	147	7	0	154
Coombe Hospital	149	3	0	152
South Infirmary - Victoria Hospital, Cork	115	1	0	116
Cappagh Orthopaedic Hospital	96	0	0	96
Hospitaller Order of St. John of God	36	0	0	36
Royal Victoria Eye & Ear Hospital	34	0	0	34
Health Information & Quality Authority	11	21	1	33
Medical Council	22	11	0	33
National Rehabilitation Hospital, Dún Laoghaire	31	1	0	32
Central Remedial Clinic	21	4	0	25
St. Vincent's Hospital, Fairview	24	0	0	24
Mental Health Commission	18	4	0	22
St. Michael's Hospital, Dún Laoghaire	16	0	0	16
Food Safety Authority of Ireland	0	14	0	14
Dublin Dental School & Hospital	11	0	1	12
Enable Ireland	10	1	0	11
Other Hospitals/Services/Agencies	32	20	5	57
Total	3,897	166	7	4,070

*At the time of printing this Report figures for FOI requests made to TUSLA –Child and Family Agency were not available

Table 10: FOI requests received by third-level education institutions

Third Level Education Body	Personal	Non-Personal	Mixed	Total
University College Dublin	77	26	0	103
National University of Ireland Galway	22	18	0	40
University College Cork	14	15	3	32
University of Dublin (Trinity College)	11	19	1	31
University of Limerick	7	18	1	26
Cork Institute of Technology	5	20	0	25
Dublin City University	6	13	0	19
Dublin Institute of Technology	6	13	0	19
Waterford Institute of Technology	2	11	1	14
National University of Ireland Maynooth	2	8	0	10
St Patrick's College, Drumcondra	4	6	0	10
Galway-Mayo Institute of Technology	1	9	0	10
Other bodies	14	58	2	74
Total	171	234	8	413

Table 11: FOI requests received by other bodies

Public body	Personal	Non-Personal	Mixed	Total
Irish Water	11	77	0	88
RTÉ	1	55	0	56
Health & Safety Authority	32	4	1	37
Office of the Chief Medical Officer	27	0	0	27
Arts Council	3	21	0	24
Enterprise Ireland	8	12	3	23
Commission for Communications Regulation	15	5	0	20
Commission for Energy Regulation	7	12	0	19
Irish Sports Council	6	13	0	19
Pobal	2	16	1	19
Probation and Welfare Service	17	2	0	19
Broadcasting Authority of Ireland	0	18	0	18

National Transport Authority	6	12	0	18
Health Products Regulatory Board	0	17	0	17
Inland Fisheries Ireland	1	12	4	17
Legal Aid Board	12	3	1	16
National Council for Special Education	13	3	0	16
Solas	1	13	2	16
IDA Ireland	0	15	0	15
Fáilte Ireland	1	12	0	13
Environmental Protection Agency	0	12	0	12
National Roads Authority	0	10	0	10
Other Bodies (92 bodies with less than 10 requests each)	32	141	8	181
Total	195	485	20	700

Table 12: Fees charged

	Original Request	Search and Retrieval	Internal Review	Refunds	Net Fees
Government Departments and State Bodies	€21,540.35	€12,941.01	€4,615.00	€2,579.87	€36,516.49
Local Authorities	€11,320.00	€2,054.01	€2,995.00	€235.00	€16,134.01
Health Service Executive	€4,880.00	€728.00	€215.00	€895.00	€4,928.00
Voluntary Hospitals, Mental Health Services and Related Agencies	€1,750.00	€3,803.70	€450.00	€45.00	€5,958.70
Third Level Institutions	€1,831.35	€119.23	€255.00	€285.00	€1,920.58
Other Bodies	€0.00	€0.00	€0.00	€0.00	€0.00
Total	€41,321.70	€19,645.95	€8,530.00	€4,039.87	€65,457.78

Section II - Office of the Information Commissioner – 2014

Table 13: Analysis of applications for review received

Applications for review on hand - 01/01/2014	30
Applications for review received in 2014	355
Total applications for review on hand in 2014	385
Applications discontinued	7
Invalid applications	95
Applications withdrawn	15
Applications rejected	3
Applications accepted for review in 2014	252
Total applications for review considered in 2014	372
Applications for review on hand - 31/12/2014	13

Table 14: Analysis of review cases

Reviews on hand - 01/01/2014	204
Reviews accepted in 2014	252
Total reviews on hand in 2014	456
Reviews completed	340
Reviews carried forward to 2015	116

Table 15: Applications for review accepted in 2014

Health Service Executive		62
HSE National	22	
HSE South	16	
HSE West	11	
HSE Dublin Mid-Leinster	9	
HSE Dublin North East	4	
Department of Social Protection		23
Department of Justice and Equality		18
Defence Forces Ireland		8
Department of Agriculture, Food and the Marine		7
Department of Finance		5
Department of Public Expenditure and Reform		5
Dublin City Council		5
Irish Greyhound Board		5
Legal Aid Board		5
Others (bodies with less than 5 applications each)		109
Total		252

Table 16: Outcome of completed reviews - 3-year comparison

	2014	%	2013	%	2012	%
Decision affirmed	154	45%	104	40%	84	42%
Decision annulled	17	5%	29	11%	12	6%
Decision varied	31	9%	18	7%	8	4%
Discontinued	19	6%	8	3%	6	3%
Settlement reached	74	22%	35	14%	39	20%
Withdrawn	45	13%	64	25%	51	25%
Reviews completed	340	100%	258	100%	200	100%

Table 17: Subject matter of review applications accepted - 3-year comparison

	2014	%	2013	%	2012	%
Refusal of access	211	84%	217	84%	212	90%
Objections by third parties to release information about them or supplied by them	8	3%	16	6%	8	3%
Amendment of records under section 17	7	3%	9	3%	8	3%
Statement of reasons under section 18	24	9%	11	4%	6	3%
Decision to charge a fee	2	1%	7	3%	2	1%
Applications accepted	252	100%	260	100%	236	100%

Table 18: Applications accepted by type - 3-year comparison

	2014	%	2013	%	2012	%
Personal	110	44%	102	39%	94	40%
Non-personal	108	43%	125	48%	115	49%
Mixed	34	13%	33	13%	27	11%
Total	252	100%	260	100%	236	100%

Table 19: General enquiries

Year	Number
2014	1,274
2013	1,218
2012	1,262
2011	824
2010	622
2009	857
2008	1,100
2007	1,315
2006	1,551
2005	1,396

Table 20: Deemed refusals due to non-reply by public bodies

Refusal of original and internal review decisions			
Public Body	2014	2013	2012
HSE National	6	2	12
HSE South	5	1	-
HSE Dublin Mid-Leinster	4	4	-
Department of Justice and Equality	3	4	3
HSE West	3	1	1
TUSLA: Child and Family Agency	3	-	-
Cork County Council	2	3	1
Irish Greyhound Board	2	-	2
Cork City Council	1	-	-
Department of Arts, Heritage and the Gaeltacht	1	-	-
Department of Children and Youth Affairs	1	-	1
HSE Dublin North East	1	-	-
Shannon Development	1	-	-
St James's Hospital	1	-	-
Total	34		

**Revenue probe 150
high rollers over
offshore tax scheme**

Sunday Business Post - 10/08/2014

FOI fees to be abolished

Galway Advertiser - 03/07/2014

**FOI request
unveils County
Council figures**

Longford Leader - 09/05/2014

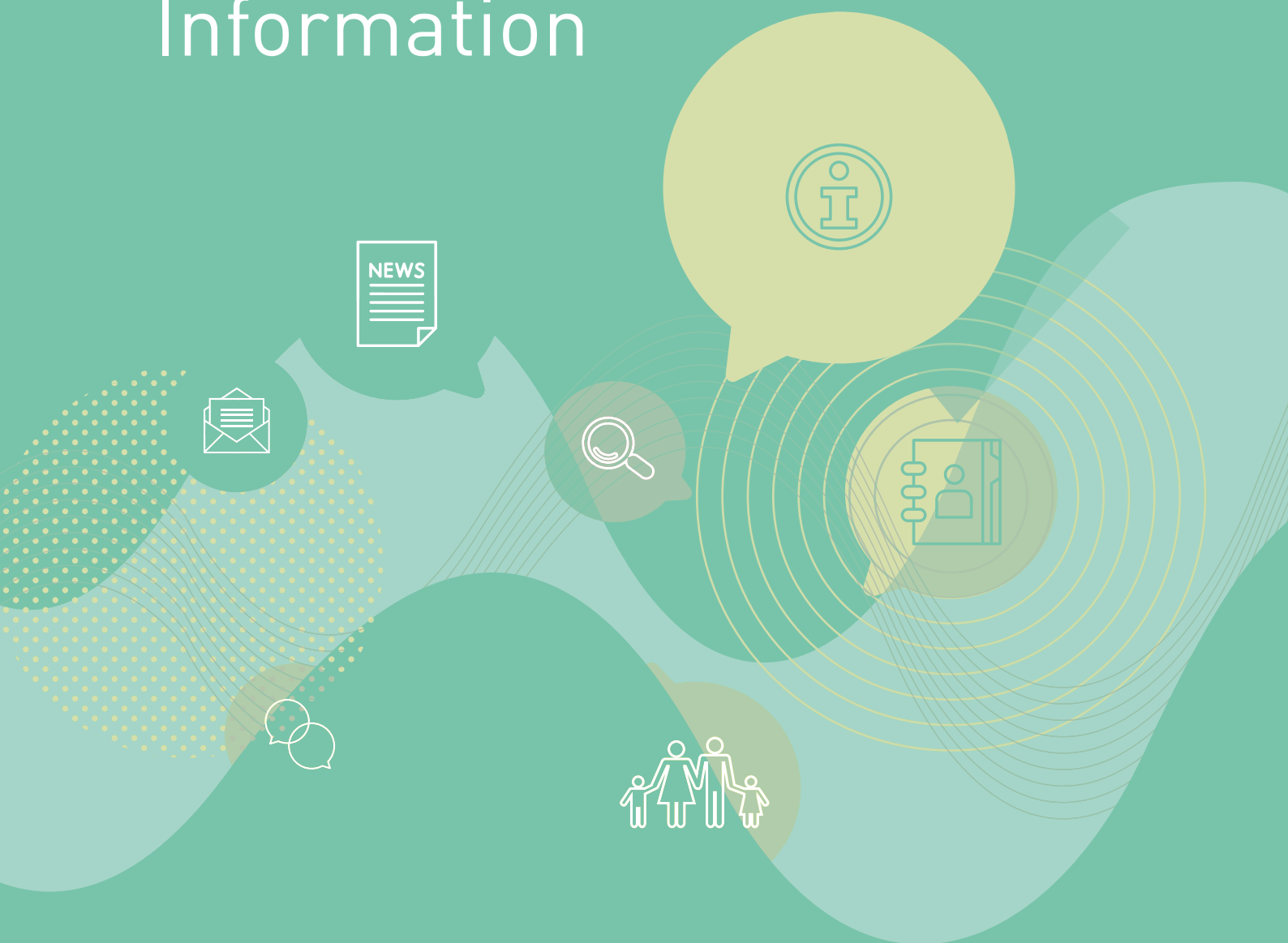
**Lack of transparency over
payments isn't good for democracy**

Irish Independent - 06/05/2014



Oifig an Choimisinéara um Faisnéise Comhshaoil
Office of the Commissioner for Environmental Information

Part II – Commissioner for Environmental Information



Introduction

In this, my first full year as Information Commissioner and Commissioner for Environmental Information, I had to make difficult choices regarding the allocation of resources between the two Offices. I discuss the issue of resources in some detail below. The Office of the Commissioner for Environmental Information (OCEI) was established under Article 12 of the European Communities (Access to Information on the Environment) (AIE) Regulations. The AIE Regulations are based on Directive 2003/4/EC on public access to environmental information and provide for a separate access regime in Ireland from that of the Freedom of Information (FOI) Act. Thus, my role as Commissioner for Environmental Information is legally independent of the role I have as Information Commissioner. However, Article 12(10) of the AIE Regulations provides that the Commissioner for Environmental Information shall be assisted by the staff of the Office of the Information Commissioner (OIC) and by such other resources as may be available to that Office. Thus, the operation of the OIC necessarily impacts upon the performance of the OCEI, as discussed in last year's Report. On a positive note, the enactment of the Freedom of Information (FOI) Act 2014, which included a reduction in FOI fees, was followed by a very welcome amendment to the AIE Regulations providing for a reduction in the AIE appeal fees also.

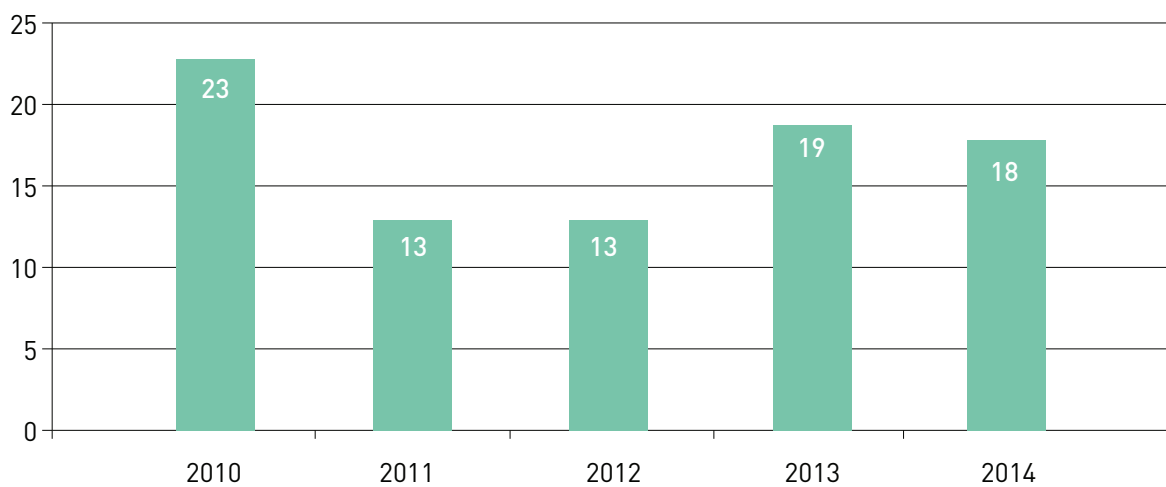
The right of access under the AIE Regulations applies to "environmental information" held by or for a "public authority" within the meaning of the Regulations. My role as Commissioner for Environmental Information is to review decisions of public authorities on appeal by applicants who are not satisfied with the outcome of their requests for information under the Regulations. A right of appeal to my Office also arises where the body or person to whom an AIE request has been made contends that it is not a public authority within the meaning of the Regulations. My decisions on appeal are final and binding on the affected parties, unless a further appeal is made to the High Court on a point of law within two months of the decision concerned.

For further information on the operation of the AIE regime in Ireland, please visit my website at www.ocei.gov.ie, which includes links to the previous Annual Reports of this Office, the website of the Department of the Environment, Community and Local Government, and Directive 2003/4/EC.

Appeals and enquiries

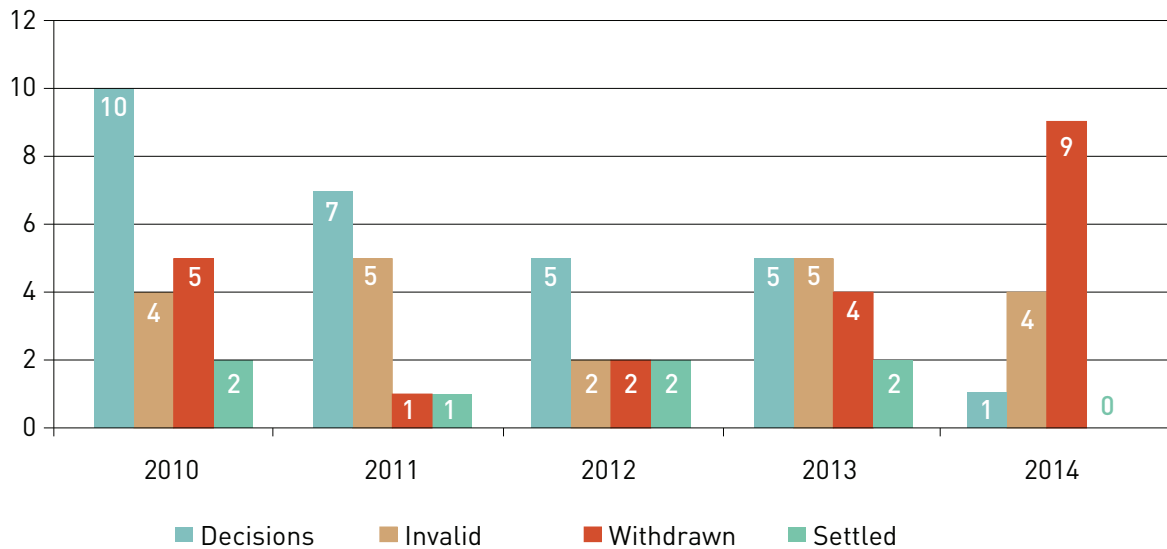
During 2014, 18 appeals were received by my Office. My Office recorded that 3 of these appeals involved a deemed refusal of the request concerned at the original and/or internal review decision-making stage, which is a significant improvement on the year before. A deemed refusal occurs when the public authority fails to issue a decision on the request within the relevant time limit specified in the Regulations (usually one month).

Number of appeals received



Fourteen appeals were closed during the year. Of these, only one resulted in a formal decision, the highlights of which are set out below. The decision is published in full on my Office's website at www.ocei.gov.ie.

Outcome of CEI appeals by year



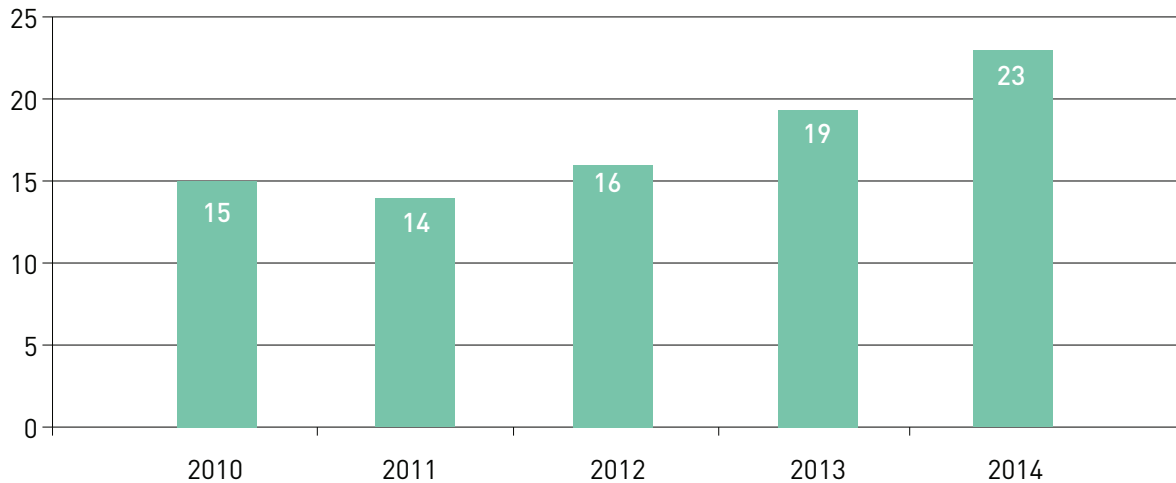
Six appeals were either withdrawn or deemed as withdrawn, because the public authority concerned agreed to make the requested information available through publication or otherwise. Two of these cases involved my Office’s direct intervention and are discussed below. In four of the cases, however, the public authority concerned agreed to make the requested information available of its own initiative following the appeal.

Two further appeals were withdrawn in light of the decision taken by my Office in early 2014 to withdraw its appeal to the Supreme Court in the case of *An Taoiseach v. Commissioner for Environmental Information* [2010] IEHC 241. An additional appeal was withdrawn because the appellant accepted the view of my Office that the public authority concerned did not hold the requested information. The remaining appeals closed in 2014 were deemed to be invalid, primarily because no internal review request had been made.

Half of the appeals last year arose from requests to government departments and local authorities. Other public authorities whose decisions were appealed included An Bord Pleanála, Bord na Móna, Coillte, ESB Networks, and Eirgrid. In two cases, the bodies dispute that they are public authorities within the meaning of the Regulations.

Twenty-three cases were on hand at the end of the year, an increase of four from the year before. My staff recorded 42 general enquiries about the Regulations.

Number of appeals on hand by year



Article 12(6) of the Regulations

Article 12(6) gives me certain powers in dealing with an appeal. I may:

- require a public authority to make environmental information available to me,
- examine and take copies of environmental information held by a public authority, and
- enter any premises occupied by a public authority so as to obtain environmental information.

I am pleased to report that I had no need to invoke this provision in 2014.

Significant cases

Case CEI/13/0006, Mr. Stephen Minch and Department of Communications, Energy and Natural Resources (the Department) – Decision of 18 December 2014

Whether the Department was justified in refusing access to the report entitled “Analysis of options for potential State intervention in the roll out of next-generation broadband” on the ground that the information concerned is not environmental information within the meaning of the Regulations

In this decision, I confirmed that, in order for information to qualify as “environmental information” for purposes of the Regulations, it is necessary for the information to fall within one of the six categories set out in the definition in Article 3(1); it is not sufficient that the

requested information simply “relates to” one of the six categories, however distantly. I also noted that the judgment of the European Court of Justice in Case C-524/09, *Ville de Lyon* (22 Dec. 2010), involving a request for access to trading data relating to greenhouse gas emission allowances, indicates that not all information with a connection even to greenhouse gas emissions necessarily qualifies as environmental information within the meaning of the Directive. Having examined its contents, I observed that the report concerned is about the cost implications for the State of deploying various types of next-generation broadband infrastructure to areas underserved by the private sector. I found no basis for concluding that it qualifies as environmental information within the meaning of Articles 3(1)(b) or (c), as the appellant argued.

I also considered the question of whether the National Broadband Plan (NBP) may itself be a “measure” within the meaning of Article 3(1)(c) such that the requested report could qualify under paragraph (e) of the environmental information definition. I noted, however, that the NBP is merely a high level strategy setting targets for the delivery of high speed broadband throughout Ireland. I found that the NBP is not itself a measure affecting or likely to affect the environmental elements and factors referred to in paragraphs (a) and (b) of the definition, as the link between the plan and any effect on the environment is simply too remote, unlike the measures and activities that may be adopted to implement the plan. I concluded that the Department’s decision to refuse the appellant’s request in this case was correct.

[Note: This decision has been appealed by the applicant to the High Court; a hearing date has been set for 25 June 2015.]

Case CEI/12/0007 – Mr. David Healy, Friends of the Irish Environment and Department of Environment, Community and Local Government (the Department) – Appeal deemed as withdrawn on 11 June 2014

Whether the Department was justified in refusing access to an unredacted version of the “Irish Water: Phase 1 Report” and its Appendices

The question presented in this case was whether the Department was justified in refusing access to information relating to the funding requirements of Irish Water and future water charges. The Department did not dispute that the requested information, which had been redacted from a published version of the report concerned, was environmental information, but it refused access under Articles 8(a)(iv) (confidentiality of the proceedings of public authorities), 8(b) (Cabinet confidentiality), and 9(1)(c) (commercial or industrial confidentiality) of the Regulations.

During the course of the review, my Office met with officials from the Department to discuss a number of concerns, but in particular the Department’s reliance on FOI exemptions as a basis for refusal under Article 8(a)(iv) of the Regulations. The meeting concluded with what may be described as an “agreement to disagree” on the matter. Subsequently, having regard

to the judgment of O’Neill J. in *An Taoiseach v. Commissioner for Environmental Information* [2010] IEHC 241, the Department made a new claim for refusal under Article 9(2)(d), which relates to internal communications of public authorities.

However, following further exchanges of correspondence, the Department eventually indicated that it would be willing to publish the report in full, subject to Government approval. On 29 May 2014, the Department informed my Office that the Government had approved the publication of the report in full and that it was available on the Department’s website. My Office notified the appellant accordingly, and he raised no further issues in response. The appeal was therefore deemed to be withdrawn.

Case CEI/12/0009 – Mr. Damien McCallig and Eirgrid – Appeal deemed as withdrawn on 8 July 2014

Whether a decision on an appeal is required where no further issue remains to be determined

This case involved a refusal of access by Eirgrid to environmental information relating to a third party grid connection application. The primary ground for refusal was Article 9(1)(c) having regard to a 2009 Directive and related Regulations providing for the confidentiality of commercially sensitive information held by the transmission system operator.

During the course of the review, my Office met with a representative from Eirgrid and also consulted with the third party concerned. My Office stressed that the scheme of the AIE Regulations, and of the Directive upon which the Regulations are based, makes it clear that there is a presumption in favour of release of environmental information. It was ultimately agreed that the requested information could be released in full. Following the release of the requested information, the appellant raised form of access and search issues, both of which were addressed by Eirgrid satisfactorily. My Office therefore proposed to the appellant that his appeal be deemed as withdrawn.

The appellant objected to the proposal and requested that I issue a formal decision on the matter. Article 15(5) of the Regulations states: “The Commissioner may deem an appeal to be withdrawn if the public authority makes the requested information available, in whole or in part, prior to a formal decision of the Commissioner under article 12(5).” In this case, all of the relevant information held by Eirgrid had been released to the appellant and no further issue remained to be determined. In the circumstances, I decided to exercise my discretion to deem the appeal to be withdrawn notwithstanding the appellant’s stated objection to the proposal.

High Court and Supreme Court proceedings

A party to an appeal to my Office or any other person affected by my decision may appeal to the High Court on a point of law from the decision. There were no new appeals to the High Court in 2014. However, in December, an application for judicial review was made to the High Court by the Friends of the Irish Environment seeking an order of mandamus in relation to an appeal that was made to my Office in July 2014.

The Supreme Court concluded its hearing in July in the case of National Asset Management Agency v. Commissioner for Environmental Information (CEI/10/0005), which involves the question of whether NAMA is a public authority within the meaning of the Regulations. Judgment is awaited at the time of writing.

Deemed refusals

A deemed refusal occurs when the public authority fails to issue a decision on the request within the relevant time limit specified in the Regulations (usually one month).

In 2014, my Office recorded deemed refusals concerning three public authorities which had not responded to a request within the time limits provided for in the Regulations. This is a marked improvement from the rate of seven the year before, which was also the year that I first started reporting on the details of the public authorities concerned.

Deemed refusal at first stage of the request

Two applications to public authorities were recorded by my Office as deemed refusals at the first stage of the request. The public authorities are:

- Bord na Móna, and
- Wexford County Council.

Deemed refusal at second stage of the request

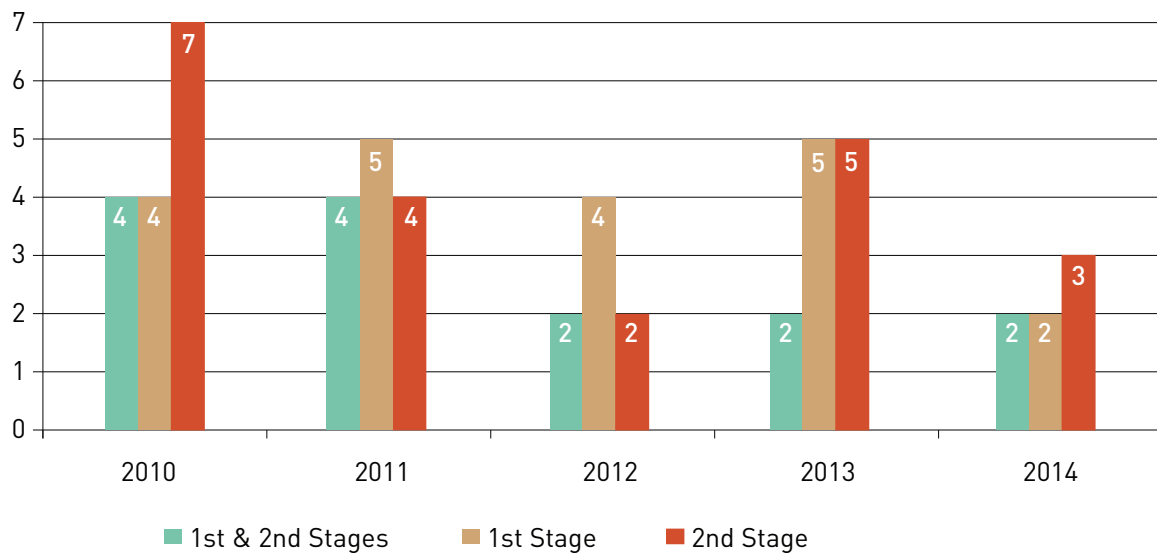
Three applications to public authorities were recorded by my Office as deemed refusals at the second stage of the request. The public authorities are:

- Bord na Móna,
- Wexford County Council, and
- Department of Agriculture. (The Department's internal review decision was dated 18 July 2014, but did not issue until 5 August 2014 and thus was late by one day.)

Deemed refusals at both stages of the requests

Two of the applications mentioned above were recorded by my Office as having been deemed refusals at both stages of the request. The public authorities are:

- Bord na Móna, and
- Wexford County Council. (I note, however, that the Council disputes that the request was valid in light of the technical requirements of Article 6(1) of the Regulations.)



Issues arising & other matters of interest

In 2014, the choices that I made regarding the allocation of the limited resources available to me unfortunately resulted in the increase in the backlog of OCEI cases on hand that is reported above. On the other hand, however, many positive developments occurred last year that will bring about improvements in the operation of the AIE regime in Ireland. One positive change, the reduction of the appeal fees from €150/50 to €50/15, has already been put into effect.

Resources

As I previously reported, the OCEI has historically been inadequately resourced. Although it is a legally independent Office, the OCEI had not, until very recently, received any specific funding allocation from the State and instead had to rely entirely upon the resources that could be made available from the Office of the Information Commissioner. However, the OIC itself faced significant challenges from the time of its inception in terms of securing an adequate level of funding having regard to the demand for its services. Thus, the OIC had very few resources to spare, with a significant increase in demand expected when applications for review start arising under the FOI Act 2014.

In this context, I had to consider how best to progress the overall work of the Office within the limited resources available to me. I identified as a priority for 2014 the objective of having no FOI reviews over 12 months old on hand by the end of the year and devoted the resources from within my Office's Vote as needed to meet that target. I am happy to say that my objective met with success, with very few FOI cases older than one year remaining on hand by the end of the year and significantly improved case turnaround times overall as a result of the organisational reforms implemented in June 2014.

However, it has been the experience of this Office that AIE appeals generally involve complicating factors that make them very difficult to process quickly; thus, while the numbers are low, AIE appeals tend to require a disproportionate amount of resources. Therefore, the success of the OIC in reducing its backlog and improving case turnaround times could not have been achieved while also giving priority to AIE appeals.

At the same time, I did not lose sight of the need to provide a timely and effective review procedure under the AIE Regulations. Once embedded, the OIC organisational reforms are expected to have a positive impact on the processing of AIE appeals. In addition, in a budget submission for 2015 made to the Department of Public Expenditure and Reform (DPER), my Office made a strong case for funding the OCEI based on what experience had shown was needed to meet its resource requirements and to achieve marked improvements in service delivery. I am very pleased to report that in October 2014 DPER approved a budget allocation which reflected the needs of the OCEI as identified in my Office's submission. Resources have now been secured for the OCEI for the first time. With these resources, the OCEI will be in a position to mirror the success of the OIC in reducing its backlog and improving case turnaround times.

Positive engagement with the DECLG & others

On another positive note, 2014 saw an increased level of engagement between officials from the Department of the Environment, Community and Local Government (DECLG) and my Office. Following on from the meeting with the DECLG regarding Case CEI/12/0007, referenced above, another meeting was held to discuss various issues, including an EU Pilot (pre-infringement) case that had been brought by the European Commission in response to a complaint relating to Ireland's implementation of the AIE Directive. My Office took the opportunity to press its case for resources and to urge the DECLG to reduce the OCEI appeal fees in line with the reduction in application fees for a review by my Office under the FOI Act 2014. Other issues for discussion included possible amendments to the Regulations to address such matters as the confusion and increased administrative burden caused by the fact that the AIE and FOI regimes are not aligned as is the case in the UK and Scotland, omissions in the Regulations such as the absence of an express provision for the burden of proof in relation to justifying a refusal to make information available, and concerns over the purported incorporation of the FOI exemptions into the Regulations under Article 8(a)(iv). My Office also agreed to take part in an AIE training event for public authority staff that was being planned at the time for delivery in September.

Immediately following the meeting, my Office formally notified the DECLG in writing that at least two additional Investigators with suitable experience in the field of environmental law are considered necessary to allow for marked improvements in service delivery. My Office also made a submission in response to the public consultation ongoing at the time on the access to justice provisions of the Aarhus Convention. My submission again addressed the issues of the appeal fees, resources and legislative change.

I am pleased to report that the Secretary General of the DECLG supported my case for resources by writing directly to DPER on 28 November 2014 to raise awareness of the issue and to recommend favourable consideration by DPER of the OCEI staffing proposal. Subsequently, on 23 December 2014, sanction was granted by DPER for the filling of two Investigator posts in the OCEI, and the recruitment process for these posts is underway at the time of writing.

In addition, the DECLG agreed to the reduction in the appeal fees. Accordingly, on 19 December 2014, the Minister signed into law the European Communities (Access to Information on the Environment) (Amendment) Regulations 2014 (S.I. No. 615 of 2014, which reduced the standard appeal fee from €150 to €50 with immediate effect.

Moreover, the AIE training event for public authority staff, which was held on 16 September in Tullamore, County Offaly, was well attended and resulted in positive feedback from a number of the attendees. My Office was very happy to make a contribution to the event and very much welcomes such initiatives to improve training and awareness among public authority staff. A related initiative is the establishment by DECLG of an "Environlink" portal through which training material is available to public authority staff, including the presentation that was delivered by my Office.

Yet another positive development, or at least a step in the right direction, was the insertion of a clause into the FOI Act 2014 which expressly refers to the AIE Regulations. Section 12(7)(b) of the FOI Act now provides that an FOI body may advise a person making a request whether the records concerned may be accessed under the Regulations instead of under the Act. This provision should at least increase awareness of a requester's AIE rights and may reduce some of the confusion arising from the existence of two separate but overlapping public access to information regimes.

I also attended a very informative European conference relating to the AIE regime on 4 November. The conference was organised by the Centre for Freedom of Information in Edinburgh, Scotland, and included talks on the Aarhus Convention and the definition of environmental information. Among the speakers were the current Scottish Information Commissioner, Rosemary Agnew, her predecessor, Professor Kevin Dunion, and other prominent academics and practitioners.

Concerns regarding Article 8(a)(iv)

As noted, among the topics of conversation with DECLG officials have been the concerns of my Office regarding Article 8(a)(iv) of the Regulations. The concerns arise from the reference to the FOI Act in the context of the protection of the confidentiality of the proceedings of public authorities.

My Office had flagged its concerns as early as 2006 in correspondence relating to the draft Regulations at the time. Following the meeting with the Department in November 2013 in relation to Case CEI/12/0007, my Office sought legal advice on the question of whether the FOI Act could be regarded as providing the requisite legal protection for the confidentiality of the proceedings of public authorities and whether this would be consistent with the Directive in light of the relevant case law of the European Court of Justice. Our legal advice indicates that incorporating the FOI exemptions into AIE is not necessarily inconsistent with the Directive, because “confidentiality provided for by law” may be regarded as meaning no access by the public as a matter of right. However, our adviser agreed that “the point is far from clear-cut”.

At the meeting with DECLG officials in August 2014 and in subsequent correspondence, my Office noted that the incorporation of the FOI exemptions into the AIE Regulations remains very problematic for numerous reasons, including:

- The “concept of proceedings” has not been clearly defined, which the ECJ has described as necessary under national law;
- While perhaps an increasingly common practice, it is administratively difficult to apply one piece of legislation in reference to a separate piece of legislation;
- The application of the FOI exemptions in this manner is likely to be subject to vigorous challenge.

My Office intends to pursue its concerns over these and other difficulties arising from the Regulations in further communications with the DECLG in the near future.

Appendices



Appendices

Appendix I

Statutory Certificates issued by Ministers and Secretaries General in 2014



OIFIG AN ARD-RUNAÍ, AN RIONN DLÍ AGUS CIRT AGUS COMHIONANNAIS
OFFICE OF THE SECRETARY GENERAL, DEPARTMENT OF JUSTICE AND EQUALITY

Ms Bernadette McNally
Director General
Office of the Information Commissioner
Lower Leeson Street
Dublin 2

21 January 2015

Dear Ms. McNally,

I wish to refer to your letter of 9 January 2015 regarding Ministerial Certificates. The Department of Justice and Equality have 7 Ministerial Certificates.

Three certificates were renewed in 2014 and one new certificate was issued. Copies are attached as requested.

Yours sincerely,

Noel Waters
Secretary General (Acting)

Appendix I



An Roinn Gnóthaí Eachtracha agus Trádála
Baile Átha Cliath 2

Department of Foreign Affairs and Trade
Dublin 2

26 January 2015

26 JAN 2015

Ms Bernadette McNally
Director General
Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

**Notification under Sections 20 and 25 of the Freedom of Information Acts, 1997 and 2003 and
Section 34 of the Freedom of Information Act 2014**

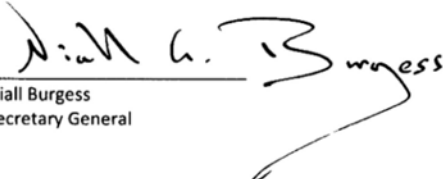
Dear Ms McNally

I refer to your recent letter on the above.

I confirm that, during 2014, I did not issue any certificates under Section 20 of the Freedom of Information Acts, 1997 and 2003.

In 2014 the Minister for Foreign Affairs and Trade did not issue any certificates under Section 25 of the Freedom of Information Acts, 1997 and 2003. On 16 November 2014, the Minister issued three certificates in accordance with Section 34 of the Freedom of Information Act 2014 by reference to which the records are exempted under Section 32 (1)(a)(i) and Section 33(1)(c). The certificates related to three requests for the same set of records.

Yours sincerely


Niall Burgess
Secretary General

Appendix II

Annual Energy Efficiency Report 2014

Monthly Energy Report		OPW - Office of Public Works Office of the Ombudsman	
Dec 2014			
Summary			
Month to month			
Energy usage has decreased by -19.1.0% from 58,955kWh in Dec 2010 to 47,719kWh in Dec 2014. As a result, CO2 emissions for this period have decreased by -15.4% from 19,886kg to 16,828kg, (-3,058Kg).			
Annual			
The base year used for all these calculations is 2010.			
Compared to this base year, energy consumption on site has decreased by -100,512kWh or -21.7% over the last 12 months.			
In terms of total CO2, production has decreased by -19.7%, since 2010 or by -40,650Kg.			
Normalised for weather variations, CO2 has decreased by -15.3%, since 2010 or by -31,590Kg			
Energy use - Dec 2014			
Annualised energy usage			
Description	Electricity	Gas	Total
Benchmark Year	284,062	179,086	463,148
Previous 12 months	232,449	130,187	362,636
% Difference	-18.2%	-27.3%	-21.7%



Oifig an Choimisinéara Faisnéise
Office of the Information Commissioner

Tuarascáil Bhliantúil 2014



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Oifig an Choimisinéara Faisnéise
Office of the Information Commissioner

Tuarascáil Bhliantúil 2014

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Brollach

Leis seo, cuirim an dara Tuarascáil Bhliantúil uaim mar Choimisinéir Faisnéise faoi bhráid na Dála agus an tSeanaid de bhun alt 47(2) den Acht um Shaoráil Faisnéise 2014.

Is í seo an seachtú Tuarascáil Bhliantúil déag ón gCoimisinéir Faisnéise ó bunaíodh an Oifig i 1998.

A handwritten signature in black ink, appearing to read 'Peter Tyndall', written in a cursive style.

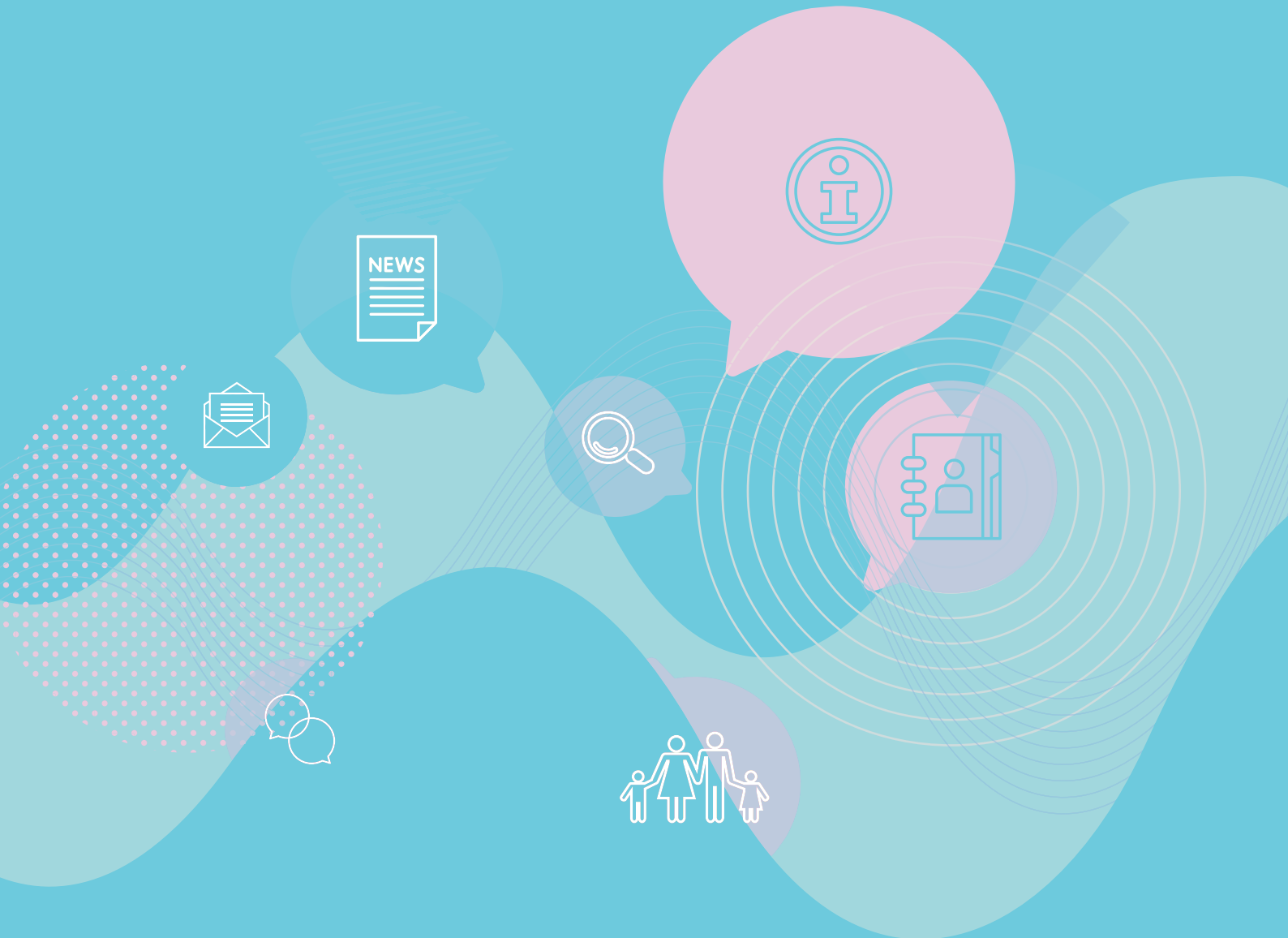
Peter Tyndall
An Coimisinéir Faisnéise
Bealtaine 2015



Bernadette McNally
An tArd-Stiúrthóir

Caibidil 1:
An bhliain faoi athbhreithniú

Caibidil 1: An bhliain faoi athbhreithniú



Caibidil 1: An bhliain faoi athbhreithniú

An ceart atá agat chun faisnéis a fháil

Rinne an tUachtarán an tAcht um Shaoráil Faisnéise 2014 a shíniú mar dhlí an 14 Deireadh Fómhair 2014. Cuirtear an tAcht um Shaoráil Faisnéise 2014 in áit na nAchtanna um Shaoráil Faisnéise, 1997 agus 2003.

Tá feidhm ag an Acht nua maidir le gach comhlacht poiblí (nó comhlachtaí Saoráil Faisnéise mar a thagraítear dóibh san Acht) a thagann faoin sainmhíniú ar chomhlacht forordaithe atá in Alt 6 den Acht, ach amháin sa chás go bhfuil siad díolmhaithe nó páirtdíolmhaithe go sonrach faoi fhorálacha Alt 42 nó faoi Sceideal 1 leis an Acht. De réir mar a chuirtear comhlachtaí poiblí nua ar bun, beidh siad go huathoibríoch faoi réir Saoráil Faisnéise ach amháin sa chás go bhfuil siad díolmhaithe go sonrach uathu le hordú ón Aire. Tríd is tríd, ní bheidh feidhm ag Saoráil Faisnéise maidir le comhlachtaí a chuirfear faoi réir Saoráil Faisnéise den chéad uair faoin Acht ach amháin tar éis 6 mhí óna achtú.

Foráiltear leis an Acht um Shaoráil Faisnéise 2014 do cheart ginearálta chun rochtain a fháil ar thaifid atá i seilbh comhlachtaí poiblí. Foráiltear leis freisin gur cheart taifid a eisiúint ach amháin sa chás go meastar iad a bheith díolmhaithe. Leis an Acht freisin, tugtar an ceart do dhaoine go ndéanfar faisnéis phearsanta a bhaineann leo agus atá i seilbh comhlachtaí poiblí a cheartú nó a nuashonrú agus tugtar an ceart do dhaoine cúiseanna a fháil le breitheanna atá déanta ag comhlachtaí poiblí sa chás go dtéann na breitheanna sin i bhfeidhm go sainráite orthu.

Is fiú a thabhairt faoi deara go bhforáiltear le halt 55 den Acht go leanfar ar aghaidh le haon ghníomh a tosaíodh faoi Acht 1997 ach nach bhfuil críochnaithe roimh thosach feidhme Acht 2014 agus go gcríochnófar an gníomh mar a bheadh Acht 1997 fós i bhfeidhm. Dá réir sin, is faoi fhorálacha na nAchtanna um Shaoráil Faisnéise, 1997 agus 2003, a chríochnófar cuid mhaith de na hathbhreithnithe a dhéanfaidh an Oifig seo sa bhliain 2015. Mar an gcéanna, ba faoi fhorálacha na nAchtanna sin a rinneadh obair ar fad na hOifige seo sa bhliain 2014. Dá bhrí sin, ba cheart go nglacfaí leis na tagairtí uile sa Tuarascáil seo don Acht um Shaoráil Faisnéise

mar thagairtí do na hAchtanna um Shaoráil Faisnéise, 1997 agus 2003, ach amháin nuair a shonraítear a mhalairt.

Le Rialacháin na gComhphobal Eorpach (Rochtain ar Fhaisnéis faoin gComhshaoil) 2007 go 2011, tugtar bealach eile do dhaoine rochtain a fháil ar fhaisnéis comhshaoil. Tá sraith Nótaí Treorach foilsithe ag an Roinn Comhshaoil, Pobail agus Rialtais Áitiúil agus is féidir iad sin a rochtain trí shuíomh Gréasáin an Choimisinéara um Fhaisnéis Comhshaoil ag www.ocei.gov.ie.

Tá an dá chóras neamhspleách ar a chéile de réir an dlí, díreach mar is amhlaidh i gcás na ról atá agam mar Choimisinéir Faisnéise agus mar Choimisinéir um Fhaisnéis Comhshaoil.

Réamhrá

Is é seo an dara Tuarascáil Bhliantúil uaim mar Choimisinéir Faisnéise, rud ina gcuimsítear an tréimhse ón 1 Eanáir 2014 go dtí an 31 Nollaig 2014, arbh é an chéad bhliain iomlán a chaith mé san Oifig. I gCuid II den Tuarascáil seo, tuairiscím ar mo chuid oibre le linn na bliana mar Choimisinéir um Fhaisnéis Comhshaoil.

Mar Choimisinéir Faisnéise, tá an-áthas orm a bheith in ann a thuairisciú go raibh feabhsuithe suntasacha ann ó thaobh táirgiúlachta de sa bhliain. Bliain an-dúshlánach amach is amach don Oifig seo ba ea an bhliain 2014. Ba ann do riaráiste athbhreithnithe ag tús na bliana, rud arbh ionann é, bunaithe ar rátaí críochnaithe athbhreithnithe don bhliain 2013, agus obair bliana ar fad. Chomh maith leis sin, bhí ar an Oifig seo ullmhú do thabhairt isteach an Achta nua um Shaoráil Faisnéise.

I dTuarascáil na bliana seo caite, mhínigh mé gur chuir an Oifig seo tús le próiseas athchóirithe, rud a bhain le hathbhreithniú iomlán a dhéanamh ar struchtúir agus ar phróisis na heagraíochta d'fhonn agaí slánúcháin agus tréachur na gcásanna a mhéadú. Críochnaíodh an próiseas sin le linn na bliana agus cuireadh na struchtúir athbhreithnithe chun feidhme i mí Iúil. Is suntasach atá na feabhsuithe ó thaobh táirgiúlachta de a tháinig as an obair sin. Cé go dtugaim faisnéis níos mine faoi aschur níos déanaí sa Chaibidil seo, is fiú aird a tharraingt anseo ar roinnt de na héachtaí ba shuntasáí a baineadh amach.

B'ionann líon na n-athbhreithnithe a críochnaíodh sa bhliain 2014 agus méadú 31% ar an líon a críochnaíodh sa bhliain 2013. B'ionann é freisin agus méadú 70% ar líon na gcásanna a dúnadh sa bhliain 2012. Ina theannta sin, ba ó 19% sa bhliain 2012 agus ó 26% sa bhliain 2013 go 33% a mhéadaigh céatadán na gcásanna uile a dúnadh laistigh de cheithre mhí sa bhliain 2014. Le linn na bliana, labhair mé faoin aidhm a bhí agam gan aon chásanna a bhí ar bun le breis agus aon bhliain a bheith ar oscailt ag deireadh na bliana 2014. Tá áthas orm a thabhairt faoi deara gur críochnaíodh formhór mór na seanchásanna sin ó shin i leith, agus líon beag eisceachtaí ann ar chúiseanna nach raibh neart ag an Oifig seo orthu den chuid is mó.

Cé go raibh tiomantas ollmhór agus iarracht dhiongbháilte ar thaobh na foirne ag teastáil chun feabhsuithe chomh mór sin a bhaint amach, ba cheart dom a rá freisin go bhfuair siad cúnamh breá ó roinnt ball foirne nua a earcaíodh sa bhliain, daoine a chuir an-díograis agus fuinneamh leis an bhfoireann. Táim buíoch den Roinn Caiteachais Phoiblí agus Athchóirithe as cead a thabhairt dúinn baill foirne bhreise a bhí ag teastáil go géar a earcú.

D'oibrigh an fhoireann go dlúth le foireann an Láraonaid Bheartais sa Roinn freisin ar mhaithe leis an Acht nua um Shaoráil Faisnéise a fhorbairt. Tá an-áthas orm a thabhairt faoi deara gur léiríodh san Acht nua formhór mór na moltaí chun feabhais a rinne an Oifig seo.

Cuirim an-fháilte roimh bhreith an Rialtais deireadh a chur leis an táille iarratais €15 i leith iarrataí Saoráil Faisnéise a dhéanamh agus laghdú suntasach a dhéanamh ar an táille i leith iarratais ar athbhreithniú a chur faoi bhráid na hOifige seo. Chuir Emily O'Reilly, mo réamhtheachtaí, agus mise féin in iúl go poiblí go bhfuilimid araon den tuairim gur thug na táillí atá i gceist díspreagadh do dhaoine den phobal rochtain ar fhaisnéis atá i seilbh comhlachtaí poiblí a lorg. Faoi mar a dúirt mé tráth a d'fhógair an tAire Caiteachais Phoiblí agus Athchóirithe go raibh sé beartaithe aige deireadh a chur leis na táillí agus/nó iad a laghdú, bhí mé den tuairim go raibh gearradh na táille contrártha do mheon agus do chuspóir na Saorála Faisnéise. De réir an teidil fhada ar an Acht um Shaoráil Faisnéise, is é an meon agus an cuspóir sin: "cumasú do dhaoine den phobal rochtain a bheith acu, a mhéid is féidir é i gcomhréir le leas an phobail agus leis an gceart chun príobháideachta, chuig faisnéis atá i seilbh comhlachtaí poiblí". Chuir mé fáilte freisin roimh an bhfíric go bhfágann an bhreith deireadh a chur leis an táille iarratais go bhfuil córas Saoráil Faisnéise na hÉireann ar chomhréim anois le córas a contrapháirtithe idirnáisiúnta.

Cuid dhílis de chreat foriomlán an Rialtais Oscailte is ea an córas Saoráil Faisnéise. Imríonn sé ról an-tábhachtach freisin maidir le tuiscint níos fearr a fhorbairt ar an dóigh a ndéanann comhlachtaí poiblí a gcuid breitheanna. Luaigh mé ní ba luaithe sa bhliain 2014 go raibh easpa muiníne ann as Rialtas in Éirinn de bharr roinnt binsí as a chéile agus de bharr na géarchéime baincéireachta. Thug mé faoi deara go raibh tuairim i réim go raibh barraíocht daoine sa saol poiblí ar lorg buntáiste pearsanta, agus ní ag obair chun tairbhe na tíre, agus go raibh ciniceas domhain ag teacht as an tuairim sin, ciniceas a bhainfeadh an bonn ó dhaonlathas sa tír seo mura gcuirfí ina aghaidh. D'fhonn muinín as breitheanna comhlachtaí poiblí a athbhunú, bhí gá le haird a tharraingt ar an dóigh rúnda a raibh breitheanna á ndéanamh acu roimhe seo. Creidim go gcabhraítear leis an Acht nua tuilleadh airde a tharraingt ar chúrsaí den sórt sin. Le rannpháirtíocht chuí na bpáirtithe uile, tá muinín agam gur féidir leis an Acht cabhrú le hathnuachan a dhéanamh ar an spéis atá ag daoine den phobal sa dóigh a n-oibríonn an Rialtas agus sna breitheanna a théann i bhfeidhm orainn go léir sa ghnáthshaol. Déanfaidh mé plé níos mine ar an Acht um Shaoráil Faisnéise 2014 sa chéad rannán eile den Chaibidil seo.

D'fhonn tacú leis an Acht nua, rinne an Láraonad Beartais Cód Cleachtas a fhoilsiú i mí na Nollag 2014. Baintear leas sa Chód as moltaí a rinne dhá ghrúpa saineolaithe ar Shaoráil Faisnéise, grúpaí a chuimsigh raon leathan éagsúil ionadaithe. Rinneadh ionadaíocht don Oifig

seo ar an dá ghrúpa. Is é is aidhm don Chód cúnamh a thabhairt do chomhlachtaí poiblí, lena n-áirítear na comhlachtaí poiblí sin a bheidh faoi réir Saoráil Faisnéise den chéad uair faoin Acht nua.

Is é an aidhm atá leis an gCód tacú le cuspóirí an Achta um Shaoráil Faisnéise a bhaint amach agus tá roinnt cuspóirí inmholta ag gabháil leis, lena n-áirítear an dea-chleachtas i ndáil le Saoráil Faisnéise a fheidhmiú a chur chun cinn i gcomhlachtaí poiblí agus feidhmíocht comhlachtaí poiblí a threorú, agus eolas a thabhairt don fheidhmíocht sin, i ndáil leis na freagrachtaí atá orthu faoin Acht um Shaoráil Faisnéise. Cuirim fáilte roimh fhoilsiú an Chóid agus creidim go mbeidh sé ina acmhainn an-luachmhar do chomhlachtaí poiblí agus iad ag iarraidh déileáil go héifeachtach agus go héifeachtúil le hiarrataí Saoráil Faisnéise.

Ba cheart dom a rá go bhfuil an Oifig seo i mbun tacaí breise a fhorbairt do chomhlachtaí poiblí freisin. Mar shampla, beartaítear go mbeidh sraith nótaí treorach, atá á gcur le chéile faoi láthair, ar fáil go poiblí ar shuíomh Gréasáin na hOifige seo www.oic.gov.ie faoi dheireadh na bliana. Leagfar amach go cuimsitheach sna nótaí treorach sin an dóigh a ndéanann an Oifig seo na díolúintí éagsúla san Acht nua a léirmhíniú agus a chur i bhfeidhm. Táim ag súil go bhfreastalóidh siad go maith ar chomhlachtaí poiblí agus forálacha an Achta nua á gcur i bhfeidhm acu.

Sa Tuarascáil seo, déanaim trácht ar roinnt saincheistanna a tháinig chun cinn le linn 2014 agus tarraingim aird ar roinnt cásanna móra ar dhéileáil an Oifige seo leo. I gCuid II, tuairiscím ar an ról atá agam mar Choimisinéir um Fhaisnéis Comhshaoil.

Peter Tyndall
An Coimisinéir Faisnéise
An Coimisinéir um Fhaisnéis Comhshaoil

An tAcht um Shaoráil Faisnéise 2014

Bhí an-áthas orm go ndearnadh an tAcht um Shaoráil Faisnéise 2014 a rith mar dhlí i mí Dheireadh Fómhair 2014. Sa Tuarascáil Bhliantúil uaithi do 2011, thuairiscigh an Coimisinéir roimhe go raibh an Roinn Caiteachais Phoiblí agus Athchóirithe ag obair ar na socruithe a bhí riachtanach chun éifeacht a thabhairt do na gealltanais a tugadh i gClár an Rialtais ó thaobh Saoráil Faisnéise de. Bhí méid suntasach iarrachta agus obair ullmhúcháin ag teastáil chun rud a measaim gur píosa cuimsitheach reachtaíochta é a fhorbairt agus ba mhaith liom aitheantas a thabhairt d'obair an Aire Caiteachais Phoiblí maidir leis an reachtaíocht a thabhairt chun críche go rathúil. Chomh maith leis sin, ba mhaith liom buíochas a chur in iúl as an rannpháirtíocht dhearfach a bhí ann idir an Roinn agus an Oifig seo agus an reachtaíocht nua á dréachtú.

Áirítear leis an Acht nua roinnt feabhsuithe maithe ar an gcóras Saoráil Faisnéise, lena n-áirítear foráil go bhfuil feidhm ag Saoráil Faisnéise maidir le gach comhlacht poiblí ach amháin sa chás go bhfuil siad díolmhaithe go sonrach. Fágann sé sin gur faoi raon feidhme na reachtaíochta anois atá roinnt comhlachtaí poiblí a bhí díolmhaithe roimhe seo ó Shaoráil Faisnéise. Tá comhlachtaí amhail an Garda Síochána, an Ghníomhaireacht Náisiúnta um Bainistíocht Sócmhainní (GNBS), Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta (GBCN) agus an Banc Ceannais ar áireamh anois. Tá an Oifig seo ag iarraidh le roinnt blianta anuas go leathnófar Saoráil Faisnéise chuig comhlachtaí den sórt sin. Foráiltear leis an Acht freisin go mbeidh feidhm aige amach anseo maidir le comhlachtaí neamhphoiblí a fhaigheann maoiniú suntasach ón Státchiste agus táim ag súil le forbairtí ina leith sin. Chomh maith leis sin, beidh comhlacht poiblí nua go huathoibríoch faoi réir fhorálacha an Achta a luaithe a bheidh sé ar bun. Mar sin féin, féadfaidh an tAire ordú a dhéanamh chun comhlachtaí áirithe a eisiáimh go sonrach ina n-iomláine nó i bpáirt.

Faoi mar ab amhlaidh i gcás an Achta roimhe, is é cuspóir an Achta um Shaoráil Faisnéise 2014 a chinntiú go bhfuil faisnéis oifigiúil ar fáil do shaoránaigh a mhéid is féidir é i gcomhréir le leas an phobail agus leis an gceart chun príobháideachta. D'fhonn an cuspóir sin a chur ar aghaidh, tugtar isteach leis an Acht príomhphrionsabail a threoróidh comhlachtaí poiblí agus a gcuid feidhmeanna faoin reachtaíocht nua á gcomhlíonadh acu trí cheangal a chur orthu aird a thabhairt ar na nithe seo a leanas

- an gá atá le tuilleadh oscailteachta a bhaint amach maidir le gníomhaíochtaí de chuid comhlachtaí Saoráil Faisnéise agus cloí le prionsabal na trédhearcachta i ngnóthaí rialtais agus poiblí a chur chun cinn i measc comhlachtaí Saoráil Faisnéise,
- an gá atá le cuntasacht comhlachtaí Saoráil Faisnéise a neartú agus le feabhas a chur ar chaighdeán a mbreitheanna, agus
- an gá atá le heolas a thabhairt do scrúdú, do phlé, do thrácht agus d'athbhreithniú ag an bpobal maidir le gníomhaíochtaí de chuid comhlachtaí Saoráil Faisnéise agus rannpháirtíocht níos éifeachtaí a éascú i gcomhairliúcháin a bhaineann le ról, le freagrachtaí agus le feidhmíocht comhlachtaí Saoráil Faisnéise.

Rinneadh roinnt leasuithe suntasacha ar an gcóras um tháillí Saoráil Faisnéise. Tá áthas ar leith orm gur cuireadh deireadh leis an gceanglas atá ann táille a íoc as iarraidh a dhéanamh agus go ndearnadh laghdú suntasach ar an táille is iníoctha i leith iarratas a dhéantar chuig an Oifig seo ar athbhreithniú ar bhreitheanna de chuid comhlachtaí Saoráil Faisnéise. Bhí na táillí is infheidhme i leith costais chuardaigh agus aisghabhála faoi réir ollchóiriú suntasach freisin. Foráiltear leis an Acht nua nach ngearrfar táillí ach amháin sa chás gur mó ná 5 uair an chloig an t-am a chaitear ar fhreagra a ullmhú ar iarraidh. I gcásanna den sórt sin, cuirfear uasteorainn €500 leis an táille.

Baineann tionscnamh suntasach eile san Acht nua leis an gceanglas atá ar chomhlachtaí Saoráil Faisnéise scéimeanna foilsithe ina leagfar amach ról, freagrachtaí agus gníomhaíochtaí an chomhlachta a ullmhú. Ceanglaítear leis an scéim foilsithe go bhfoilseofar leibhéal faisnéise níos mine ná an leibhéal faisnéise a ceanglaíodh faoin Acht roimhe.

Gabhann dúshlán ar leith don Oifig seo le tabhairt isteach an Achta nua. Foráiltear le forálacha idirthréimhseacha an Achta gur faoi Achtanna 1997 agus 2003 a leanfar ar aghaidh le haon ghníomh a tosaíodh faoi Acht 1997 ach nach bhfuil críochnaithe roimh thosach feidhme an Achta nua. Dá bhrí sin, ní mór don Oifig seo forálacha Acht 1997 a leanúint agus athbhreithniú á dhéanamh aici ar aon iarraidh Saoráil Faisnéise a cuireadh faoi bhráid comhlacht Saoráil Faisnéise roimh an 14 Deireadh Fómhair 2014. Mar thoradh air sin, beidh an Oifig seo ag obair faoi dhá chóras reachtacha ar leith go ceann i bhfad. Glacaim leis, áfach, gurb é sin an réiteach is praiticiúla maidir le próiseáil a dhéanamh ar iarratais a cuireadh isteach roimh rith an Achta nua agus tá muinín agam go n-éireoidh leis an bhfoireann an dúshlán lena mbaineann a sháru gan cur isteach míchuí ar an dul chun cinn atá déanta cheana féin ar tháirgiúlacht a mhéadú.

Athbhreithniú Eagrúcháin

Faoi mar a luaigh mé sa Réamhrá, chuir an Oifig seo próiseas athchóirithe i gcrích le linn na bliana 2014. Ag teacht sna sála ar an bpróiseas sin, tugadh struchtúir agus próisis oibre athbhreithnithe Oifige isteach i mí Iúil. Go bunúsach, cuireadh foireann bheag ar bun chun athbhreithniú iomlán a dhéanamh ar struchtúir agus ar phróisis na hOifige seo d'fhonn a chinneadh cé na hathruithe, dá mba ann dóibh, a d'fhéadfaí a dhéanamh chun táirgiúlacht a mhéadú.

Mar chéad chéim sa phróiseas, thug an fhoireann faoi chuairteanna faisnéise ar Oifigí an Choimisinéara Faisnéise sa Ríocht Aontaithe agus in Albain. Bhí na cuairteanna sin an-úsáideach maidir le feabhsuithe féideartha a shainnaint, beag beann ar an bhfíric go raibh difríochtaí móra ann idir an córas a bhí i bhfeidhm sa Ríocht Aontaithe agus in Albain agus córas Saoráil Faisnéise na hÉireann. Ba mhaith liom buíochas a ghabháil le foireann na nOifigí sin as an rannchuidiú fíorluachmhar a rinne siad agus as an spreagadh agus as an tacaíocht a thug siad.

Mar chéad chéim eile sa phróiseas, rinne an fhoireann grinnanailís ar chásanna dúnta chun a chinneadh cé na feabhsuithe a d'fhéadfaí a dhéanamh ar na próisis. Tar éis athbhreithniú

cuimsitheach a dhéanamh ar struchtúir agus ar phróisis reatha, rinneadh sraith athruithe a mholadh agus a chomhaontú. Ceann de na hathruithe ba bhunúsáí a moladh ba ea Aonad Measúnachta a bhunú, rud a bheadh freagrach as sainathint agus as próiseáil a dhéanamh ar iarratais nuaghlactha ar athbhreithniú a meastar gur féidir iad a réiteach go tapa. Tá an-ghealladh faoi na torthaí tosaigh atá bainte amach ag an tionscnamh cheana féin. De na cásanna uile ar dhún an tAonad Measúnachta iad sa bhliain 2014, dúnadh 60% laistigh de cheithre mhí.

Bhain tionscnamh eile leis an gcur chuige a ghlacann an Oifig seo i leith athbhreithnithe. Leis an Acht um Shaoráil Faisnéise, cuirtear dualgas ar chomhlachtaí Saoráil Faisnéise mé a shásamh go raibh údar le breith diúltú géilleadh d'iarraidh ar rochtain ar thaifid. Go bunúsach, trí dheis a thabhairt do chomhlacht aighneachtaí a dhéanamh le linn an athbhreithnithe, tá tríú deis ag an gcomhlacht sin a sheasamh a bhreithniú, tar éis dó deis a fháil déanamh amhlaidh ag na céimeanna tosaigh agus inmheánacha den athbhreithniú ar bhreith. Shainaithe an fhoireann próiseas gurbh ann d'ócáidí ina raibh an fhoireann i mbun díospóireacht fhada ar na cúiseanna gur dhiúltaigh comhlachtaí poiblí d'iarraí. Ina lán cásanna, chuir an fhoireann réamhthuairimí faoi bhráid na gcomhlachtaí, rud a thug deis eile dóibh argóintí níos mine a chur i láthair maidir leis na cúiseanna le diúltú d'iarraidh. Faoi bpróiseas athbhreithnithe, cuirtear in iúl do chomhlachtaí Saoráil Faisnéise gur cheart dóibh féachaint ar an deis le haighneacht a dhéanamh mar dheis deiridh chun údar a thabhairt leis an mbreith lena mbaineann.

Roimh chur i bhfeidhm na bpróiseas oibre athbhreithnithe, ar dóigh go ndéanfadh roinnt díobh difear don dóigh a bhfreagraíonn comhlachtaí ar ár n-iarraí ar fhaisnéis, thionóil an Oifig seo seisiún faisnéise do na comhlachtaí sin a phléann le líon suntasach iarrataí Saoráil Faisnéise. Thug an seisiún faisnéise sin deis don Oifig seo an réasúnaíocht taobh thiar de na hathruithe a mhíniú agus thug sé deis do na comhlachtaí lena mbaineann aon ábhair imní nó aon saincheisteanna a d'fhéadfadh teacht as na hathruithe a chur in iúl.

Tá áthas orm a thuairisciú go raibh ardleibhéal comhlíonta i measc fhormhór mór na gcomhlachtaí poiblí maidir le ceanglais na bpróiseas nua. Cé go bhfuil an dea-chleachtas á leanúint le fada ag cuid mhaith comhlachtaí poiblí agus iad ag déileáil le hiarrthóirí, cuirim fáilte roimh an leibhéal athnuaite rannpháirtíochta i measc a lán comhlachtaí eile. Chomh maith leis sin, thug mé faoi deara gur tháinig feabhas ar an am a thógann sé ar chomhlachtaí poiblí freagra a thabhairt ar iarrataí ón Oifig seo. Cabhraíonn an méid sin go mór leis an bhfoireann agus iarratais ar athbhreithniú á bpróiseáil acu. Cabhraíonn sé le tréachur na gcásanna a luathú freisin.

Ba cheart dom a rá nárbh é sin an deireadh leis an athbhreithniú eagrúcháin. Tá sé beartaithe ag an Oifig seo athbhreithniú a dhéanamh ar na struchtúir agus ar na próisis oibre athbhreithnithe níos déanaí i mbliana chun a chinneadh cé acu a leanann nó nach leanann siad de bheith ar an rogha is fearr chun táirgiúlacht a bharrfheabhsú. Tá áthas orm a thabhairt faoi deara, áfach, gur ábhar misnigh é an méid atá bainte amach go dtí seo.

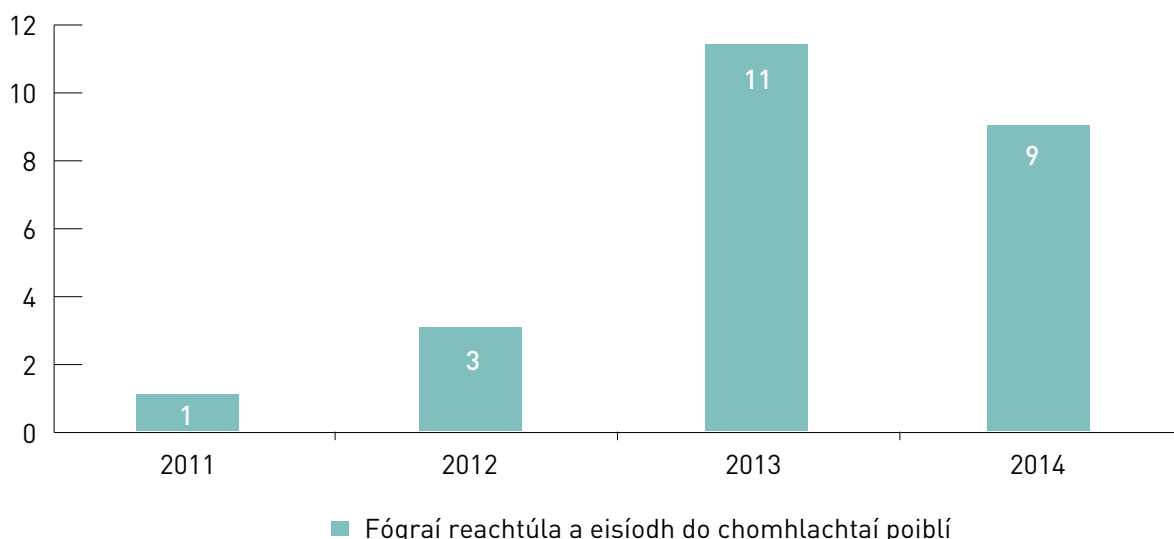
Fógraí reachtúla a eisíodh do chomhlachtaí poiblí

Fógraí a eisíodh faoi alt 37 den Acht um Shaoráil Faisnéise

Faoi alt 37 den Acht um Shaoráil Faisnéise, féadfaidh mé a cheangal ar chomhlacht poiblí aon fhaisnéis atá ina sheilbh nó faoina rialú agus a mheasaim a bheith iomchuí chun críocha athbhreithniú a chur ar fáil dom. Is é alt 45 an fhoráil choibhéiseach in Acht 2014. Tugaim tuairisc gach bliain ar líon na bhfógraí reachtúla a eisíodh faoi alt 37.

Is maith agam an leibhéal suntasach comhair a fhaightear ó thromlach mór na gcomhlachtaí poiblí agus freagra á thabhairt acu ar iarraí ar fhaisnéis ón Oifig seo. Cé gur féidir leis an gceist maidir le cé acu ba cheart nó nár cheart fógra reachtúil a eisiúint teacht chun cinn tráth ar bith le linn athbhreithniú i gcásanna ina dteipeann ar chomhlacht Saoráil Faisnéise freagra a thabhairt ar iarraidh ón bhfoireann ar fhaisnéis ábhartha, is minic a réitítear é sin le glao teileafóin nó le ríomhphost idir an fhoireann agus an tOifigeach Idirchaidrimh um Shaoráil Faisnéise lena mbaineann. Léiríonn sé sin go soiléir gur féidir cur chuige foirmiúil an fhógra reachtúil a sheachaint ach bealaí cuí cumarsáide neamhfoirmiúla a choinneáil ar bun. Mar sin féin, ní leor teagmháil neamhfoirmiúil leantach i gcásanna áirithe.

Tá díomá orm a thuairisciú gur sheirbheáil an Oifig seo naoi bhfógra reachtúla ar chomhlachtaí poiblí sa bhliain 2014. Cé gur beag atá an líon sin i gcoibhneas leis an gcomhpháirtíocht a bhí ann idir an Oifig seo agus comhlachtaí poiblí, tá imní orm a thuairisciú gurb ann do phatrún comhsheasmhach neamh-chomhlíonta i roinnt comhlachtaí poiblí i dtaca leis na hoibleagáidí atá orthu faoin Acht um Shaoráil Faisnéise.



Ba iad seo a leanas na comhlachtaí poiblí a fuair fógraí alt 37 sa bhliain 2014: Bord na gCon (trí fhógra), an Coláiste Ollscoile, Baile Átha Cliath (dhá fhógra), Comhairle Contae Chorcaí (fógra amháin), Comhairle Contae Thiobraid Árann (fógra amháin), an Roinn DLí agus Cirt agus Comhionannais (fógra amháin) agus an tOspidéal Náisiúnta Máithreachais (fógra amháin).

Is ábhar imní é go ndearna ceithre cinn de na comhlachtaí ar seirbheáladh fógraí alt 37 orthu sa bhliain 2014 fógraí den chineál céanna a fháil sa bhliain 2013 freisin. Ba iad sin, an Coláiste Ollscoile, Baile Átha Cliath, an tOspidéal Náisiúnta Máithreachais, Comhairle Contae Chorcaí agus Bord na gCon. Mar a tharla, luadh sa Tuarascáil Bhliantúil do 2012 go bhfuair an Coláiste Ollscoile, Baile Átha Cliath, agus an tOspidéal Náisiúnta Máithreachais fógraí alt 37 an bhliain sin freisin.

An Coláiste Ollscoile, Baile Átha Cliath (UCD)

I gcás UCD, d'iarr an Oifig seo rochtain ar thaifid a bhain le dhá iarratas ar leith ar athbhreithniú i mí na Nollag 2013. Toisc nár cuireadh na taifid sin ar fáil, rinne an Oifig seo dhá fhógra faoi alt 37 a eisiúint d'Uachtarán UCD agus d'iarr sí go gcuirfí na taifid don dá athbhreithniú ar aghaidh chuici faoin 25 Feabhra 2014.

Admhaíodh na litreacha fógra ach ní bhfuarthas ceachtar sraith de na taifid. Ina dhiaidh sin, scríobh Ard-Stiúrthóir na hOifige seo chuig Uachtarán UCD arís an 28 Márta 2014 agus cuireadh na taifid isteach ar deireadh go luath i mí Aibreáin.

An tOspidéal Náisiúnta Máithreachais

Luaigh mé sa Tuarascáil Bhliantúil uaim do 2013 gur bhuaill an fhoireann leis an Ospidéal Náisiúnta Máithreachais le linn na bliana 2013 chun plé a dhéanamh ar shaincheistanna a bhain leis an dóigh a raibh iarrataí Saoráil Faisnéise á bpróiseáil aici. Luaigh mé freisin gur leag an tOspidéal Náisiúnta Máithreachais bearta réamhghníomhacha amach chun a chinntiú go dtarraingeofaí aird ar mhoilleanna ionchasacha agus go ndéileálfá leo a luaithe ab fhéidir. Mar sin, is mórchúis frustrachais é a fháil amach go raibh fógra alt 37 ag teastáil arís eile le linn na bliana 2014. Go deimhin, mar a phléifidh mé thíos, fuair an tOspidéal Náisiúnta Máithreachais fógra a seirbheáladh faoi alt 35 freisin, rud arbh é an chéad fhógra den sórt sin a bhí eisithe ag an Oifig seo ón mbliain 2004.

Comhairle Contae Chorcaí

Thug an Oifig seo samplaí droch-chleachtais ar thaobh Chomhairle Contae Chorcaí faoi deara maidir le roinnt iarrataí Saoráil Faisnéise a phróiseáil agus maidir leis an dóigh ar dhéileáil sí leis an Oifig seo. I gcás amháin, níor chuir an Chomhairle na taifid bhreithe ná na taifid ábhair ar fáil don Oifig seo ar bhealach tráthúil. Sa chás céanna, chinn an Oifig seo fógra alt 37 a eisiúint i mí Aibreáin 2014 tar éis iarracht neamhrathúil eile a dhéanamh tuilleadh faisnéise a measadh a bheith iomchuí maidir leis an athbhreithniú a fháil. D'admhaigh an Chomhairle go bhfuarthas an fógra agus, seachtain amháin ina dhiaidh sin, fuarthas admháil eile inar míníodh nach raibh foireann na Comhairle ach tar éis tús a chur leis an ábhar a bhreithniú. Ba é sin seacht seachtaine tar éis an chéad iarraidh ar fhaisnéis a eisiúint. Fuair an Oifig freagra ar an iarraidh ar deireadh trí mhí tar éis an iarraidh a dhéanamh.

Is eol dom cásanna eile inar theip ar an gComhairle cloí le creataí ama reachtúla le linn di iarrataí Saoráil Faisnéise a phróiseáil. Cé nár eisíodh fógraí alt 37 sna cásanna sin, feictear

dom go bhfuil fadhbanna bunúsacha ann leis an aire a thugann an Chomhairle ar an gcóras Saoráil Faisnéise. Is feidhm reachtúil í Saoráil Faisnéise a riar agus ba cheart déileáil léi mar a dhéileáiltear le gach feidhm reachtúil eile. Go deimhin, is fiú a thabhairt faoi deara go gcuirtear síos ar Shaoráil Faisnéise mar "...croífheidhm na hoibre a dhéanann comhlachtaí poiblí" [aistriúchán neamhoifigiúil] sa Chód Cleachtais arna eisiúint ag an Roinn Caiteachais Phoiblí agus Athchóirithe. Tá sé beartaithe agam iarraidh ar an bhfoireann cuairt a thabhairt ar Oifigí na Comhairle le linn na bliana chun plé a dhéanamh ar an dóigh a riarann sí an próiseas Saoráil Faisnéise.

Bord na gCon

Cé go gceanglaítear le halt 37(1) ar chomhlachtaí poiblí taifid nó faisnéis iomchuí a chur faoi mo bhráid, tugtar le 37(2) d'Acht 1997 de chumhacht dom dul isteach in aon áitreabh atá á áitiú ag comhlacht poiblí agus a cheangal go gcuirfear aon fhaisnéis nó taifid iomchuí ar fáil dom.

Cé go raibh an Coimisinéir roimhe ar tí leas a bhaint as na cumhachtaí a bhí aici faoi alt 37(2) uair amháin agus í san Oifig, níor ghá don Oifig seo dul isteach in aon áitreabh riamh chun críocha athbhreithniú. Mar sin féin, tá orm a thuairisciú nach raibh an dara rogha agam i mbliana ach leas a bhaint as na cumhachtaí sin den chéad uair. Ina dhiaidh sin, rinne mé freagracht a tharmligean go foirmiúil chuig beirt bhall den fhoireann dul isteach in áitreabh Bhord na gCon chun rochtain a fháil ar fhaisnéis a bhí ina hábhar arís agus arís eile d'iarrataí ón Oifig seo.

Bhí moill shuntasach ann ar thaifid a fháil ó Bhord na gCon ó thús an athbhreithnithe, rud a d'fhág nach rabhtas in ann scrúdú tosaigh a dhéanamh. Mar a tharla, thóg sé breis agus sé mhí, agus iarracht shuntasach ar thaobh na foirne, sula bhfuair an Oifig seo sraith taifead agus sceideal gaolmhar a bhí curtha i láthair i gceart. Ceapadh imscrúdaitheoir ón Oifig seo chun an t-ábhar a scrúdú. Tarraingíodh aird ar roinnt saincheisteanna i scrúdú tosaigh an imscrúdaitheora ar an gcás seo agus in athbhreithniú eile a bhain le Bord na gCon. I measc na saincheisteanna sin, bhí moilleanna ar thaobh Bhord na gCon ar dhéileáil le hiarrataí, mainneachtain taifid a chur ar fáil don Oifig seo, drochbhreitheanna agus drochláimhseáil cásanna agus mainneachtain cloí le forálacha an Achta um Shaoráil Faisnéise.

Le linn an athbhreithnithe, thug an t-imscrúdaitheoir faoi deara freisin gur cheap Bord na gCon triúr ball foirne dá chuid chun gníomhú mar oifigeach um Shaoráil Faisnéise agus chun idirchaidreamh a dhéanamh leis an Oifig seo ag céimeanna éagsúla. Bhí sé soiléir nach raibh aon aistriú soiléir freagrachtaí ná malartú soiléir faisnéise ann idir na hoifigigh um Shaoráil Faisnéise agus táim cinnte gur chuir sé sin leis an moill a bhí ar an bpróiseas athbhreithnithe. Ina theannta sin, bhí sé soiléir sna taifid a chuir Bord na gCon ar fáil nár shainithin sé an fhaisnéis ná na taifid iomchuí ar fad a tháinig faoi raon feidhme na hiarrata bunaidh Saoráil Faisnéise ón iarratasóir.

Bhí méid suntasach comhfhreagrais ann sa chás seo, agus é i bhfoirm ríomhphost, litreacha agus cruinnithe pearsanta. Taifeadtar sa chomhfhreagrais ar fad, a seoladh ó mhí an Mhárta

go mí Mheán Fómhair 2014, na hiarrachtaí a rinne an t-imscrúdaitheoir freagra sásúil a fháil ó Bhord na gCon chun go mbeifí in ann imscrúdú ceart a dhéanamh ar an ábhar. Ag deireadh mhí Lúnasa 2014, rinne Príomhfheidhmeannach Bhord na gCon teagmháil leis an Oifig seo agus labhair sé féin leis an imscrúdaitheoir ar roinnt ócáidí ar mhaithe le teacht ar réiteach sásúil ar an bhfadhb. In ainneoin idirghabháil an Phríomhfheidhmeannaigh, tháinig mé ar an gconclúid gurbh é an bealach ab éifeachtaí chun an t-ábhar a chur ar aghaidh ná fógra a eisiúint faoi alt 37(2) toisc nár éirigh le fógra roimhe sin faoi alt 37(1). Scríobh an Oifig seo chuig an bPríomhfheidhmeannach an 8 Meán Fómhair 2014 chun socruithe a dhéanamh do chuairt ón bhfoireann ar oifigí Bhord na gCon i Luimneach. Tugadh an chuairt sin, mar a bhí socraithe agus le comhar ó Bhord na gCon, an 25 Meán Fómhair 2014 de réir fhorálacha alt 37(2).

Is fiú a thabhairt faoi deara go bhfuair an Oifig seo an t-iarratas ar athbhreithniú ar dtús i mí Iúil 2012. Níl an t-athbhreithniú sin críochnaithe go fóill agus é seo á scríobh. Dá bhrí sin, níl in ann trácht a dhéanamh ar thoradh an athbhreithnithe ag an am seo. Mar sin féin, léiríonn na himeachtaí sin cé chomh tábhachtach is atá sé go gcinnteoidh comhlachtaí poiblí go bhfuil struchtúir, tacaí agus acmhainní éifeachtacha i bhfeidhm acu chun tacú le Saoráil Faisnéise a chur chun feidhme. Go deimhin, is é is aidhm don Chód Cleachtais arna fhoilsiú ag an Láraonad Beartais cúnamh a thabhairt do chomhlachtaí poiblí an cuspóir sin a bhaint amach. Tugaim faoi deara freisin go gceanglaítear le halt 48(3) d'Acht 2014 go dtabharfaidh comhlachtaí Saoráil Faisnéise aird ar an gCód Cleachtais agus na feidhmeanna atá acu faoin Acht á gcomhlíonadh acu.

Rinneadh dhá fhógra eile faoi alt 37 a eisiúint do Bhord na gCon le linn na bliana 2014 in athbhreithnithe ar leith a bhain leis an iarrthóir céanna.

Alt 35

Sa chás go measaim nach leor na cúiseanna atá tugtha ag comhlacht poiblí chun tacú le breith, tugtar de chumhacht dom le halt 35 ordú do cheann an chomhlachta poiblí lena mbaineann ráiteas níos cuimsithí a eisiúint ar na cúiseanna a bhí aige leis an mbreith.

In athbhreithniú a rinne an Oifig seo ar an Ospidéal Náisiúnta Máithreachais, thug mé faoi deara nár eisigh sé breith thosaigh de bhun iarrata ar thaifid áirithe a fuarthas. Tar éis iarratas ar athbhreithniú inmheánach a fháil ón iarrthóir, eisíodh freagra an 24 Deireadh Fómhair 2013, rud ar glacadh leis mar bhreith athbhreithnithe inmheánaigh. Foráiltear le halt 14(5)(c) den Acht um Shaoráil Faisnéise go sonrúfar san fhógra faoi bhreith ar athbhreithniú inmheánach más breith í géilleadh, go hiomlán nó go páirteach, don iarraidh,

- na cúiseanna leis an diúltú,
- sonraí faoi aon fhorálacha den Acht um Shaoráil Faisnéise ar diúltaíodh don iarraidh dá mbun,
- na fionnachtana maidir le haon saincheisteanna ábhartha a bhaineann leis an mbreith, agus
- sonraí faoi aon ábhar a bhaineann le leas an phobail a cuireadh san áireamh chun críochna na breithe.

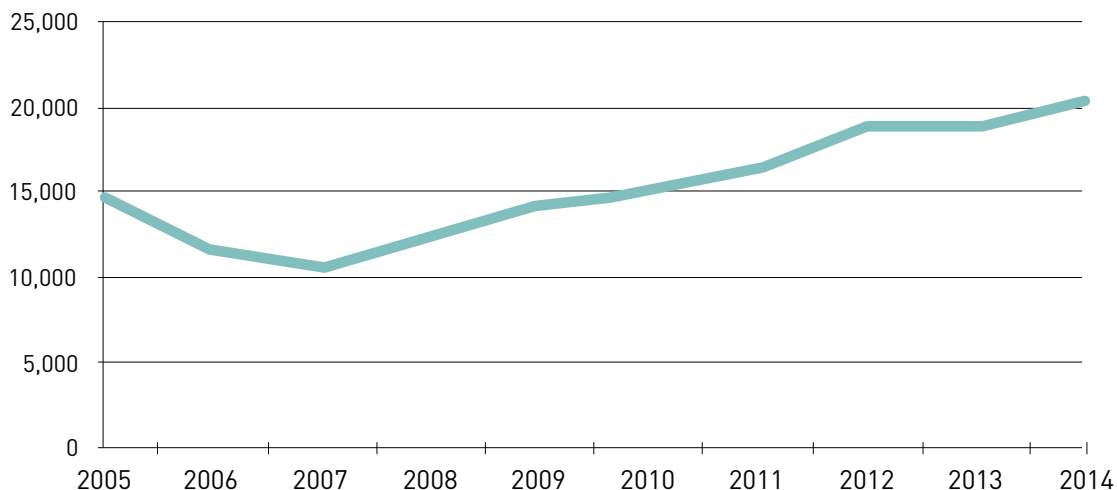
Bhí an Oifig seo den tuairim nár pléadh go cuí leis an iarraidh sa fhreagra a eisíodh don iarrthóir agus nár chomhlíon an freagra na riachtanais shonraithe a bhaineann le breith imleor athbhreithnithe inmheánaigh.

Sna himthosca sin, d'eisigh an Oifig seo fógra foirmiúil alt 35 lenar ordáíodh don Ospidéal Náisiúnta Máithreachais ráiteas i scríbhinn maidir leis na cúiseanna go raibh rochtain á diúltú ar na taifid a iarradh agus maidir leis na fionnachtana maidir le haon saincheisteanna ábhartha a bhain leis an mbreith a chur faoi bhráid an iarrthóra agus na hOifige seo. Cé go bhfuil díomá orm gur ghá fógra den sórt sin a eisiúint, cuireann sé tuilleadh díomá orm go raibh orm fógra alt 37 a eisiúint i ndáil leis an gcás céanna.

Príomhstaitisticí Saoráil Faisnéise don bhliain

Ba mhaith liom aitheantas a thabhairt do na hiarrachtaí a rinne gach ceann de na príomhghníomhaireachtaí a bhailíonn staitisticí lena gcuimsiú sa Tuarascáil Bhliantúil. Is féidir amharc ar na cairteacha sa rannán seo den Tuarascáil i gcomhar leis na táblaí staitisticí i gCaibidil 4 agus le táblaí eile i dTuarascálacha Bliantúla roimhe seo atá ar fáil ar shuíomh Gréasáin na hOifige ag www.oic.ie.

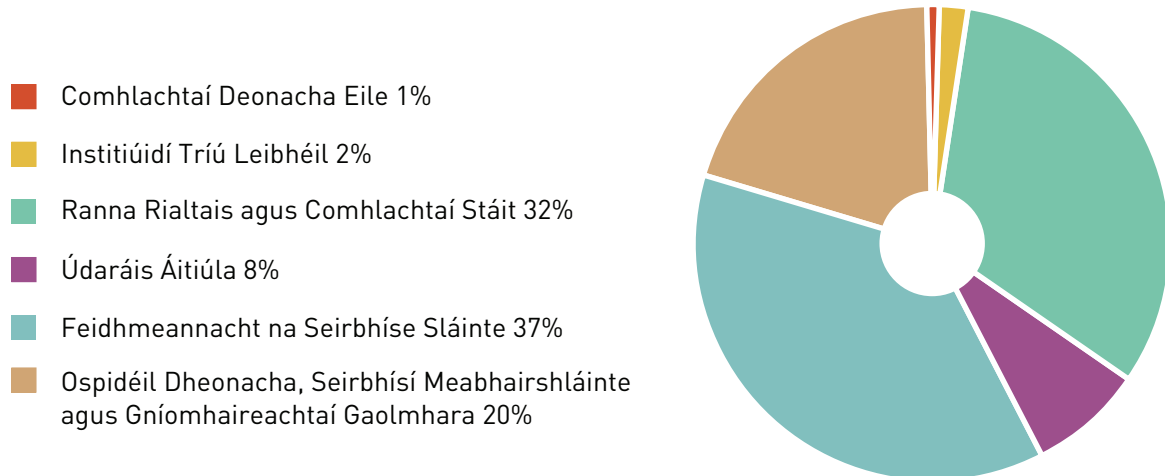
Líon na n-iarrataí Saoráil Faisnéise chuig comhlachtaí poiblí 2005-2014



Fuair comhlachtaí poiblí 20,244 iarraidh san iomlán sa bhliain 2014. B'ionann é sin agus méadú de bheagnach 7% ar an bhfigiúr don bhliain 2013. Dá réir sin, cé gur tháinig méadú de bheagnach 6% ar líon na n-iarrataí a phróiseáil comhlachtaí poiblí freisin, ba go 4,214 iarraidh (ó 3,232 iarraidh ag deireadh na bliana 2013) a mhéadaigh líon na n-iarrataí a bhí idir lámha ag deireadh na bliana 2014. Go deimhin, b'ionann líon na n-iarrataí a bhí idir lámha ag deireadh na bliana 2014 agus méadú de bheagnach 71% ar an líon a bhí idir lámha ag deireadh na bliana 2012. Mholfainn do chomhlachtaí poiblí monatóireacht chúramach a dhéanamh ar a rátaí

próiseála chun a chinntiú go gcuirtear go leor acmhainní ar fáil chun líon na n-iarrataí a fhaightear a bhainistiú go héifeachtach ar bhonn leanúnach.

Miondealú de réir earnála ar iarrataí Saoráil Faisnéise a rinneadh chuig comhlachtaí poiblí



Faoi mar a tharla i mblianta roimhe, bhí Ranna Rialtais/Comhlachtaí Stáit agus Feidhmeannacht na Seirbhíse Sláinte (FSS) freagrach as níos mó ná dhá dtrian de na hiarrataí Saoráil Faisnéise uile a fuarthas sa bhliain. Ar aon dul lenar tharla i mblianta roimhe freisin, ba í FSS an comhlacht poiblí a fuair an líon ba mhó iarrataí sa bhliain.

Bhí méadú suntasach ann ar líon na n-iarrataí a rinneadh chuig an Roinn Dlí agus Cirt agus Comhionannais sa bhliain 2014 (920 iarraidh sa bhliain 2014 i gcomparáid le 550 iarraidh sa bhliain 2013). Ní eol dom aon tosca ar leith a chuir le méadú chomh mór sin, cé go dtugaim faoi deara gur le rochtain ar fhaisnéis phearsanta a bhain tromlach na n-iarrataí - Féach tábla 6, Caibidil 4.

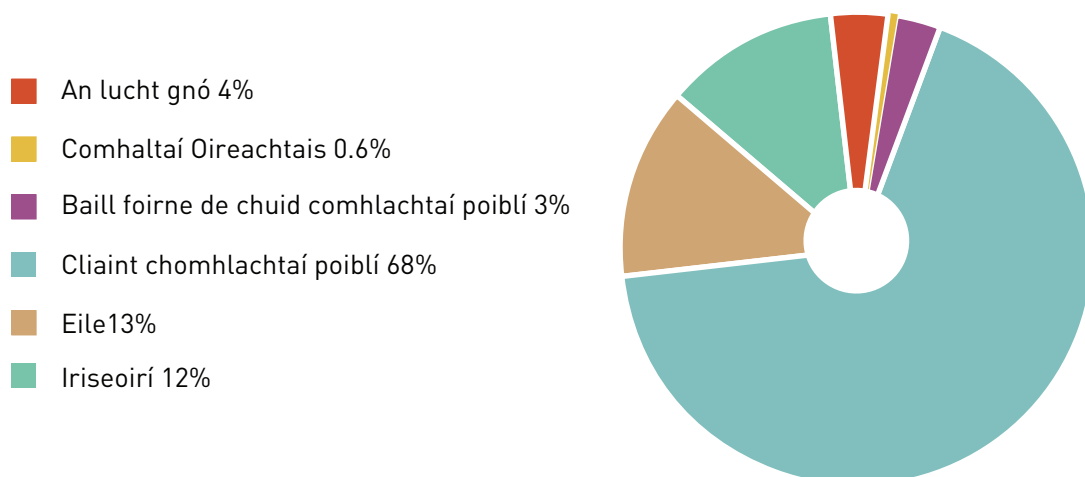
I measc na gcomhlachtaí eile ina raibh méadú suntasach ar líon na n-iarrataí a fuarthas (cé gur beag a bhí an líon sin), bhí Roinn an Taoisigh (173 iarraidh sa bhliain 2014 i gcomparáid le 91 iarraidh sa bhliain 2013), an Roinn Comhshaoil, Pobail agus Rialtais Áitiúil (180 iarraidh sa bhliain 2014 i gcomparáid le 98 iarraidh sa bhliain 2013) agus Óglaigh na hÉireann (224 iarraidh sa bhliain 2014 i gcomparáid le 150 sa bhliain 2013).

Na deich gcomhlacht a fuair an líon ba mhó iarrataí le linn na bliana 2014

Áit	Comhlacht Poiblí	2014	2013	2012
1	FSS - An Deisceart	3,074	3,085	3,036
2	FSS - An tIarthar	2,407	2,572	2,429
3	An Roinn Coimirce Sóisialaí	2,193	2,148	1,686
4	An Roinn Dlí agus Cirt agus Comhionannais	920	550	594
5	FSS - Baile Átha Cliath agus an tOirthuaisceart	864	941	912
6	FSS - Baile Átha Cliath - Laighin Láir	794	919	830
7	Ospidéal Ollscoile na Trócaire, Corcaigh	715	698	614
8	Ospidéal San Séamas	501	488	469
9	Ospidéal Thamhlachta	409	264	257
10	FSS - Náisiúnta	327	292	262

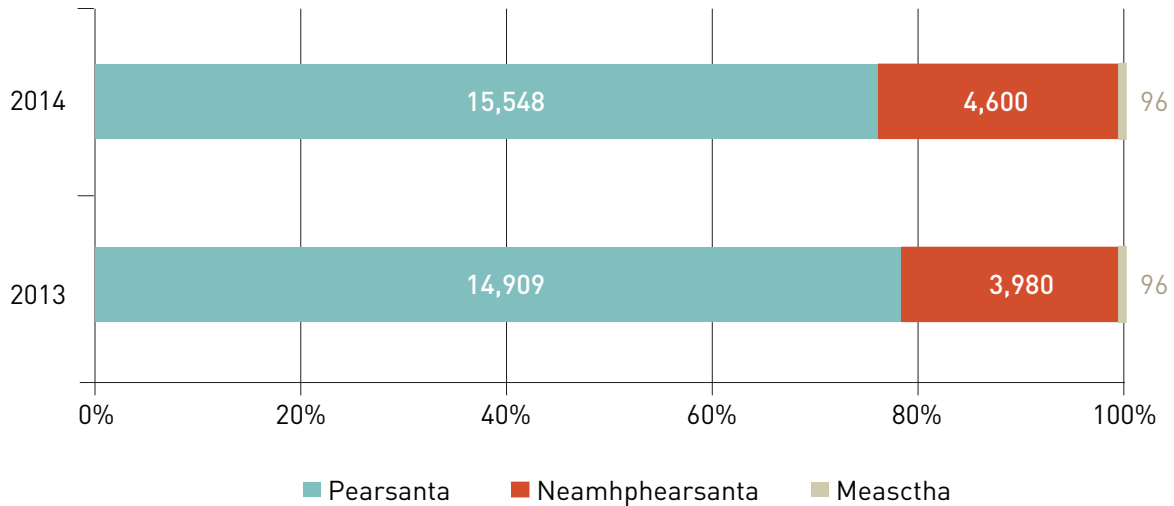
Is ionann FSS agus ospidéal agus ocht gcinn de na deich gcomhlacht poiblí a fuair an líon ba mhó iarrataí Saoráil Faisnéise sa bhliain 2014. Bhí méadú suntasach (55%) ann ar líon na n-iarrataí a rinneadh chuig Ospidéal Thamhlachta sa bhliain 2014 i gcomparáid leis an bhfigiúr don bhliain 2013.

An cineál iarrthóra chuig comhlachtaí poiblí



I gcomparáid leis an miondealú ar na cineálacha iarrthóra sa bhliain 2013, bhí na céatadán i mbliana réasúnta statach. Mar sin féin, bhí méaduithe beaga céatadánacha i gcion na n-iriseoirí agus na ndaoine eile, agus laghdú beag ann i gcéatadán na gcliant de chuid comhlachtaí poiblí.

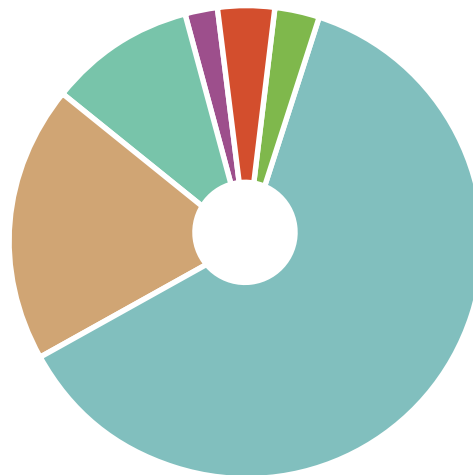
An cineál iarrata a rinneadh chuig comhlachtaí poiblí



Tá na céatadáin do na cineálacha iarrata atá ar taispeáint sa chart thuas a bheag nó a mhór gan athrú le ceithre bliana anuas. Beidh sé spéisiúil a thabhairt faoi deara cén tionchar, más ann dó, a bheidh ag athruithe sa struchtúr táille a luadh ní ba luaithe ar líon na n-iarrataí a dhéanfar sa bhliain 2015 ar rochtain ar fhaisnéis neamhphearsanta nó mheasctha.

Rátaí eisiúna ag comhlachtaí poiblí

- Iarrataí a tarraingíodh siar 4%
- Iarrataí ar láimhseáladh leo lasmuigh de Shaoráil Faisnéise 3%
- Iarrataí ar géilleadh dóibh go hiomlán 62%
- Iarrataí ar géilleadh dóibh go páirteach 19%
- Iarrataí ar diúltaíodh dóibh 10%
- Iarrataí a aistríodh 2%



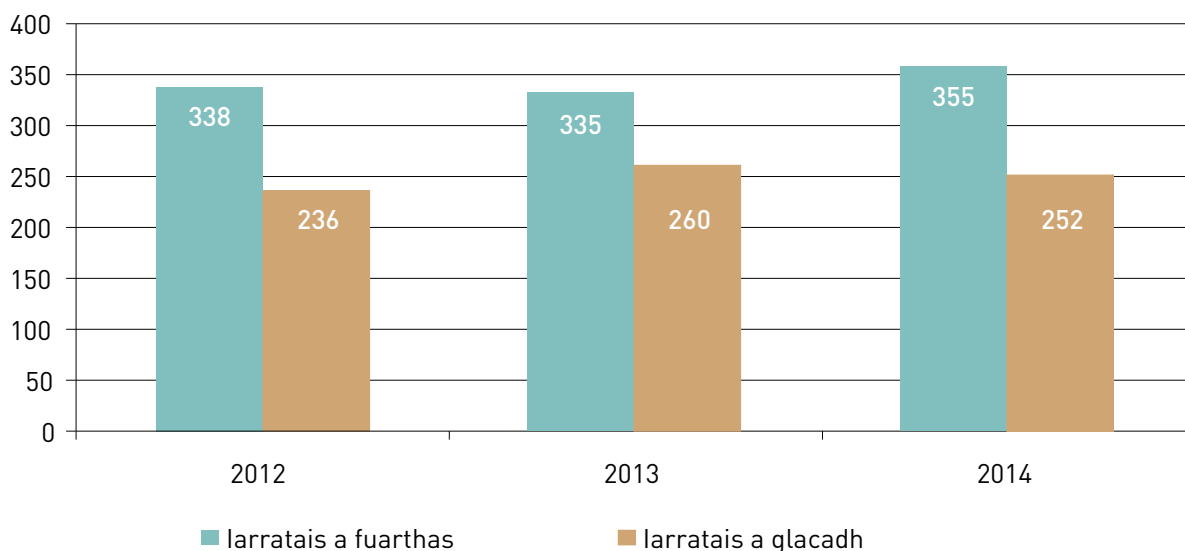
Tá miondealú níos mionsonraithe ar rátaí eisiúna le fáil i dtábla 5, Caibidil 4. Tá céatadán na n-iarrataí ar diúltaíodh dóibh réasúnta statach le cúpla bliain anuas.

Is fiú a thabhairt faoi deara gur géilleadh go hiomlán nó go páirteach do bhreis agus 80% de na iarrataí Saoráil Faisnéise. Ba ag Údaráis Áitiúla a bhí an céatadán ab airde de dhiúltuithe, agus é cothrom le 14%. Ba é sin an ráta céatadánach don bhliain 2013 freisin.

Cás-ualach Oifig an Choimisinéara Faisnéise (OCF)

Féadfaidh iarrthóir nach bhfuil sásta leis an mbreith a thug comhlacht poiblí ar iarraidh Saoráil Faisnéise iarratas a dhéanamh ar athbhreithniú chuig an Oifig seo. Nuair a thugtar breith tar éis athbhreithniú ag an Oifig seo, tá sí ceangailteach le dlí agus ní fhéadfar achomharc a dhéanamh uirthi chun na hArd-Chúirte ach ar phoncanna dlí amháin.

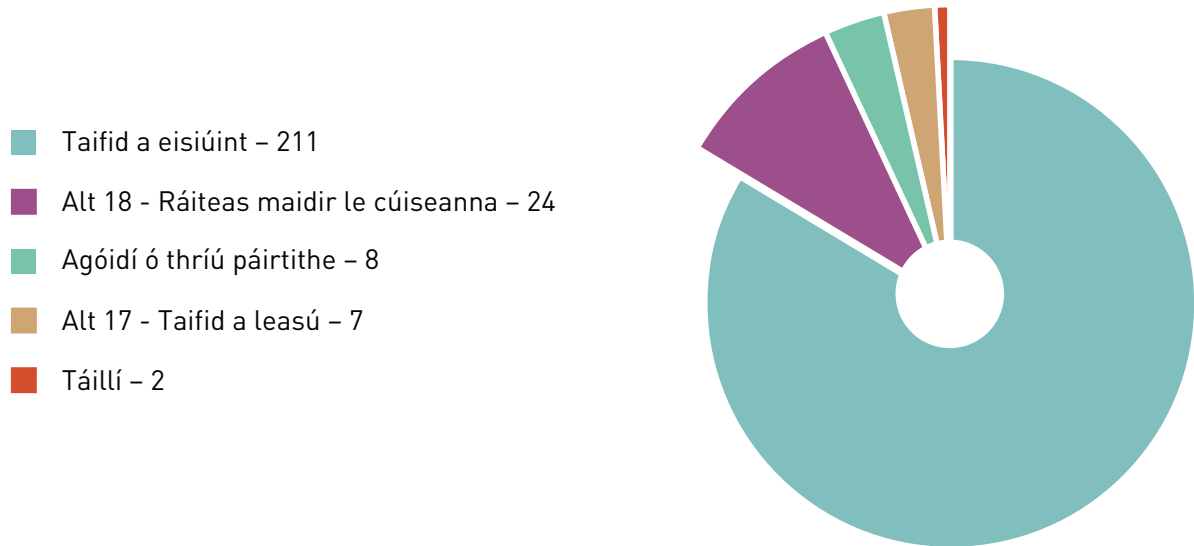
Iarratais a rinneadh chuig OCF 2012-2014



Sa bhliain 2014, tháinig méadú 6% ar líon na n-iarratas a rinneadh chuig an Oifig seo i gcomparáid leis an bhfigiúr don bhliain 2013. Tá líon iarbhir na n-iarratas ar glacadh leo lena n-athbhreithniú cosúil leis an bhfigiúr don bhliain 2013.

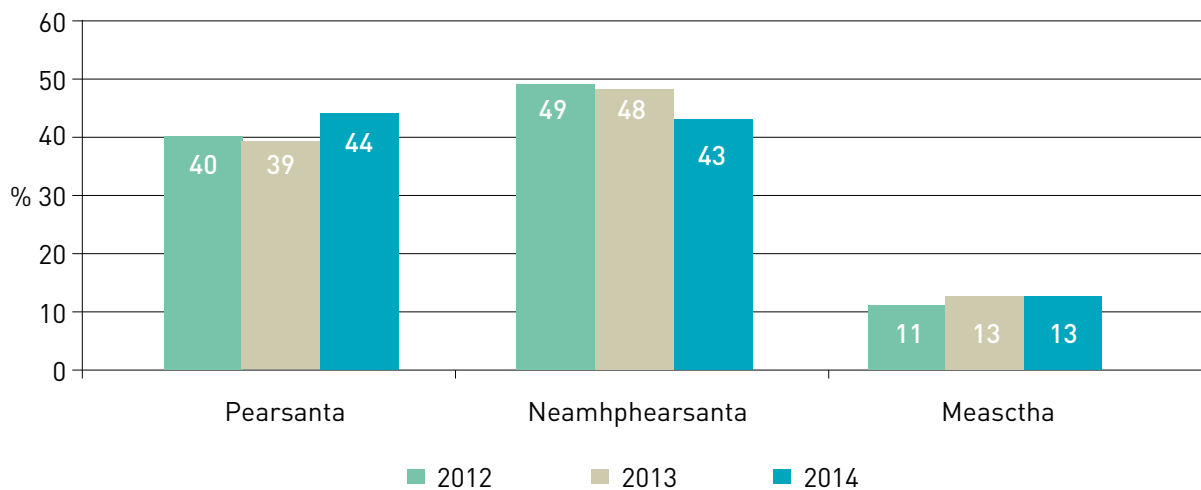
Tháinig an difríocht idir líon na n-iarratas a fuarthas agus líon na n-iarratas ar glacadh leo chun cinn go príomha mar gheall ar iarratais a bheith sainaitheanta ag an Oifig seo mar iarratais neamhbhailí nó réamhaibí (agus iad curtha isteach sula raibh an próiseas iomlán Saoráil Faisnéise curtha i gcrích ag an gcomhlacht poiblí) nó mar gheall gur tharraing an t-iarratasóir an t-iarratas siar ag luathchéim sular glacadh leis.

Ábhar na n-iarratas ar athbhreithniú ar ghlac OCF leo



Faoi mar a tharla i mblianta roimhe, bhain tromlach na n-iarratas ar ghlac an Oifig seo leo sa bhliain 2014 le diúltú ag comhlachtaí poiblí géilleadh do rochtain (taifid a eisiúint) ar chuid den fhaisnéis a iarradh nó ar an bhfaisnéis ar fad a iarradh.

Iarratais ar ghlac OCF leo de réir cineáil 2012 – 2014



Toradh ar athbhreithnithe OCF sa bhliain 2014

- Daingníodh an bhreith 45%
- Neamhnaíodh an bhreith 5%
- Athraíodh an bhreith 9%
- Scoireadh den bhreith 6%
- Socraíodh an bhreith 22%
- Iarrataí a tarraingíodh siar 13%



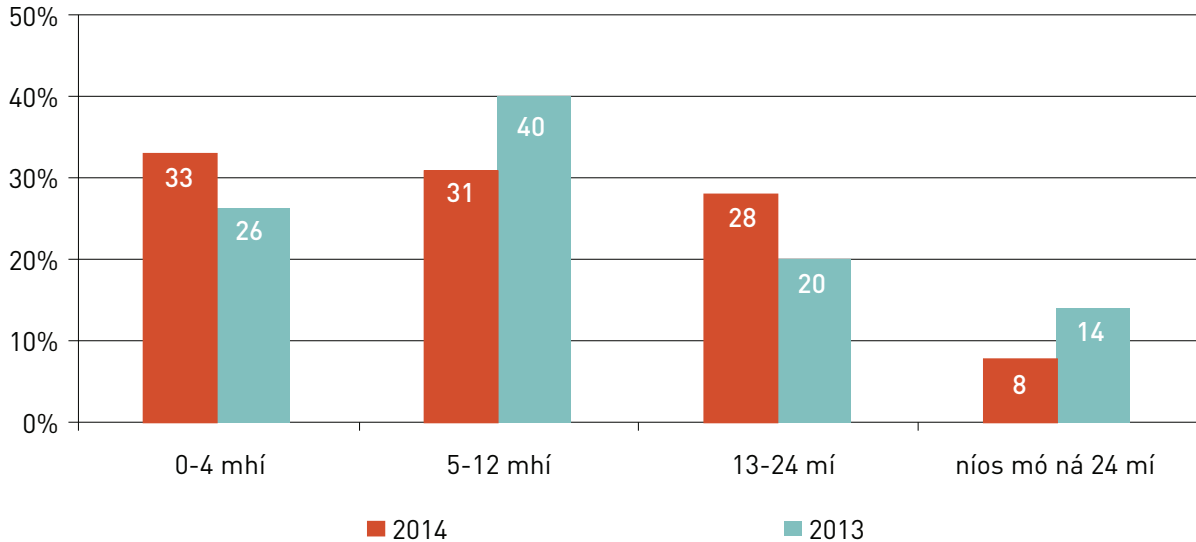
Sa bhliain 2014, rinne an Oifig seo athbhreithniú ar bhreitheanna de chuid comhlachtaí poiblí i 340 cás. B'ionann é sin agus méadú 31% ar an 258 breith a ndearnadh athbhreithniú orthu sa bhliain 2013.

Iarratais a socraíodh agus iarratais a tarraingíodh siar

D'fhéadfaí iarratais a shocrú nó a tharraingt siar, nó d'fhéadfaí scor díobh, tar éis díospóireachta idir an t-iarratasóir, an comhlacht poiblí agus foireann na hOifige seo. Is minic a tharraingítear iarratais siar mar thoradh ar idirghabháil ón Oifig seo agus ar mhíniú níos mionsonraithe ar bhreith a bheith á thabhairt ag an gcomhlacht poiblí lena mbaineann don iarratasóir. Is minic a shocraítear iarratais mar thoradh ar fhaisnéis bhreise a bheith á heisiúint ag an gcomhlacht poiblí le linn athbhreithnithe.

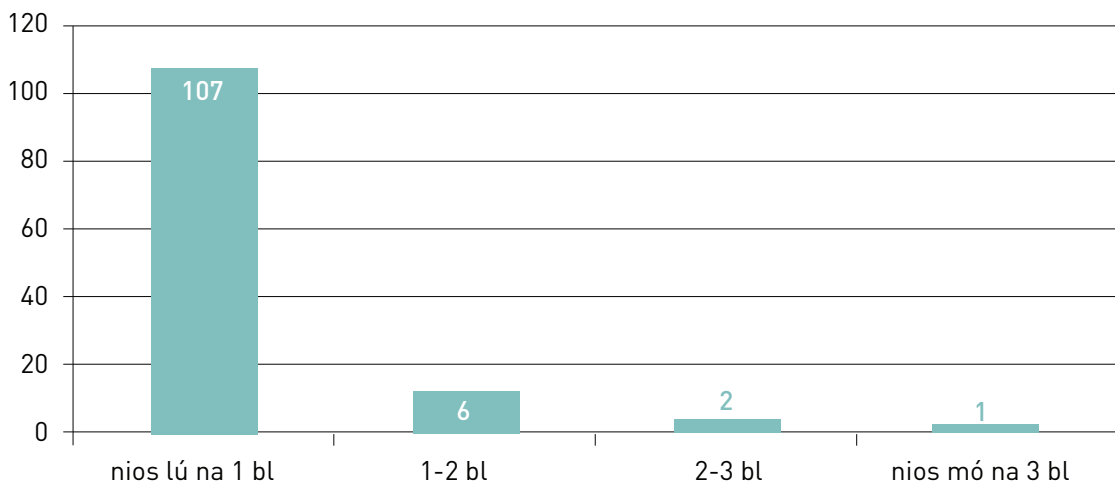
Scoir an Oifig seo de roinnt cásanna sa bhliain toisc gur measadh gur iarratais chráiteacha nó iarratais shuaibhreasacha a bhí sna hiarratais lena mbaineann. Déanfaidh mé plé níos mine ar chásanna den sórt sin i gCaibidil 2.

Aoisphróifíl na gcásanna a dhún OCF



Léirítear sa tábla seo cé chomh fada is a thóg sé ar an Oifig seo athbhreithniú a chríochnú. Tá áthas orm go raibh an Oifig seo in ann méadú 7% ar an bhfigiúr don bhliain 2013 a thuirisciú i líon na gcásanna a dúnadh laistigh de thréimhse ceithre mhí.

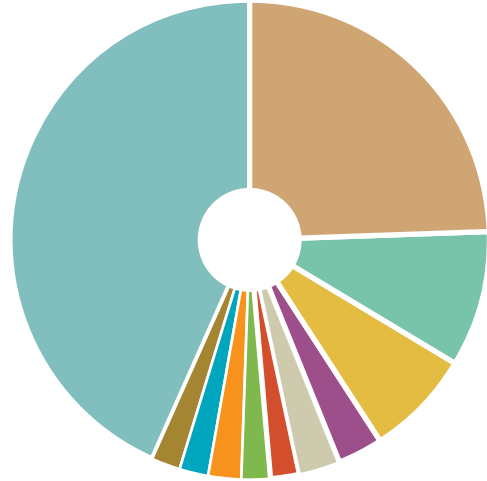
Aoisphróifíl na gcásanna a bhí idir lámha in OCF ag deireadh na bliana 2014



Ag deireadh na bliana 2013, bhí 72 cás a bhí ar bun le breis agus 1 bhliain idir lámha ag an Oifig seo. Tá áthas orm a thuirisciú anseo nach raibh ach naoi gcás den sórt sin idir lámha ag deireadh na bliana 2014 agus go raibh roinnt díobh sin ar oscailt go fóill ar chúiseanna nach raibh an Oifig seo neart orthu. Tháinig sé sin as tionscnamh ar leith a thug mé isteach, agus é mar aidhm leis gan aon chás a bhí ar bun le breis agus aon bhliain a bheith idir lámha ag deireadh na bliana.

Miondealú de réir comhlacht poiblí ar iarratais ar athbhreithniú ar ghlac OCF leo

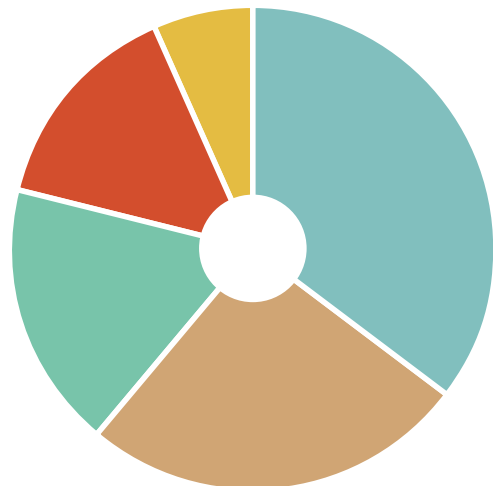
- Feidhmeannacht na Seirbhíse Sláinte – 62
- An Roinn Coimirce Sóisialaí – 23
- An Roinn Dlí agus Cirt agus Comhionannais – 18
- Óglaigh na hÉireann – 8
- An Roinn Talmhaíochta, Bia agus Mara – 7
- An Roinn Airgeadais – 5
- An Roinn Caiteachais Phoiblí agus Athchóirithe – 5
- Comhairle Cathrach Bhaile Átha Cliath – 5
- Bord na gCon – 5
- Bord um Chúnammh Dlíthiúl – 5
- Comhlachtaí eile (4 iarratas nó níos lú) – 109



Léirítear sa chart seo miondealú de réir comhlacht poiblí ar na cásanna ar ghlac an Oifig seo leo lena n-athbhreithniú sa bhliain 2014. Is ionann na trí chomhlacht ba mhó iarratas ar glacadh leo don bhliain 2014 agus don bhliain 2013. Tá comhlachtaí eile (ar glacadh le níos lú ná cúig iarratas ar athbhreithniú uathu) freagrach as 43% de na hiarratais uile ar glacadh leo le linn na bliana. Is féidir sonraí breise faoi FSS a fháil i dtábla 15, Caibidil 4, agus sa chéad chart eile.

Miondealú ar chásanna FSS ar ghlac OCF leo

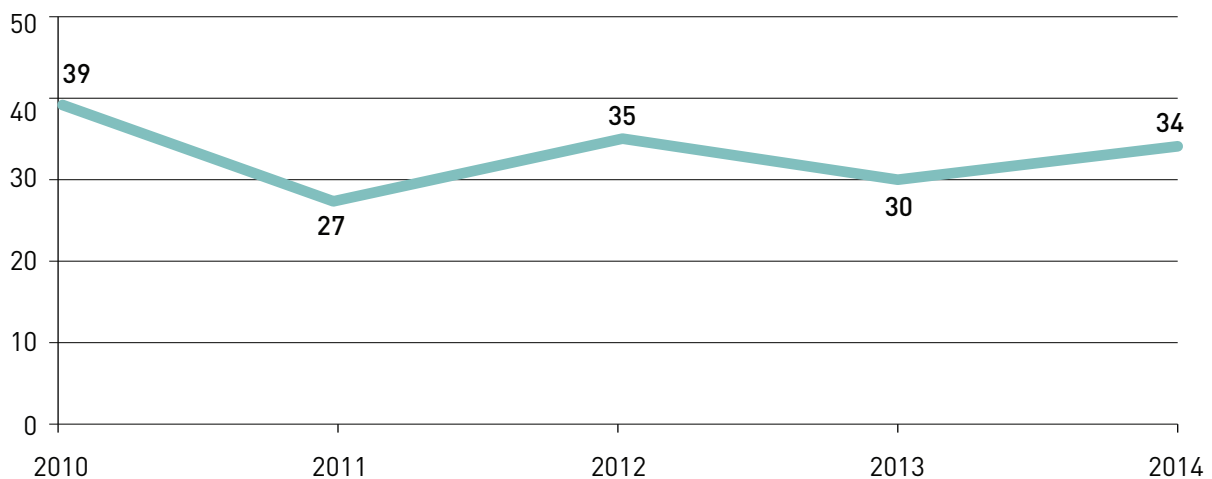
- FSS – Náisiúnta – 22
- FSS - An Deisceart – 16
- FSS - An tIarthar – 11
- FSS - Baile Átha Cliath - Laighin Láir – 9
- FSS - Baile Átha Cliath agus an tOirthuaisceart – 4



Iarrataí a mheastar a bheith diúltaithe

Leis an Acht um Shaoráil Faisnéise, forchuirtear teorainneacha ama reachtúla ar chomhlachtaí poiblí maidir le próiseáil a dhéanamh ar na céimeanna éagsúla d'iarraidh Saoráil Faisnéise. Go háirithe, ba cheart breith ar iarraidh bhunaidh a eisiúint laistigh de cheithre seachtaine agus, i gcás iarratas ar athbhreithniú inmheánach, ba cheart breith a eisiúint laistigh de thrí seachtaine ón iarratas sin a fháil. Má sháraítear na teorainneacha ama sin, cibé acu de bharr gan breith a dhéanamh ag céim na hiarrata bunaidh nó de bharr breith dhéanach ag céim an athbhreithnithe inmheánaigh, beidh sé de cheart ag an iarrthóir an iarraidh a mheas mar iarraidh dhiúltaithe. Tar éis iarraidh a mheas a bheith diúltaithe ag céim an athbhreithnithe inmheánaigh, tá iarrthóir i dteideal iarratas ar athbhreithniú a dhéanamh chuig an Oifig seo. Léirítear sna cairteacha thíos líon na n-iarrataí a measadh a bheith diúltaithe sa bhliain ag ceachtar céim nó ag an dá chéim.

Iarrataí a measadh a bheith diúltaithe (ag an dá chéim) 2010 – 2014

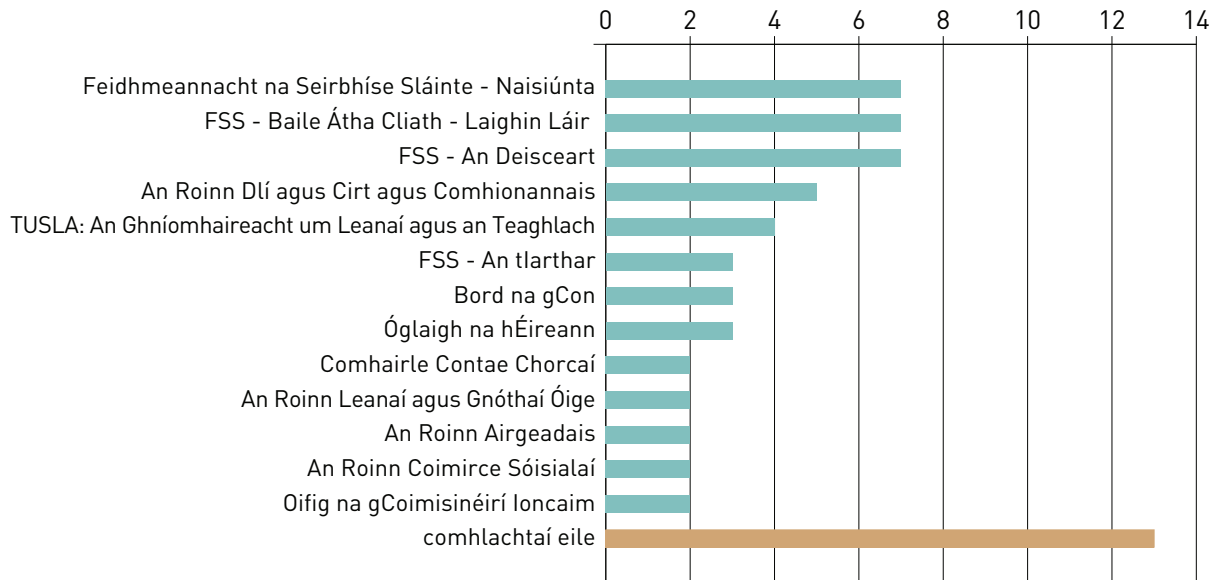


Iarrataí a measadh a bheith diúltaithe (ag an dá chéim) de réir comhlachta 2014

- FSS – Náisiúnta – 6
- FSS - An Deisceart – 5
- FSS - Baile Átha Cliath-Lar Laighean – 4
- An Roinn Dlí agus Cirt agus Comhionannais – 3
- FSS - An tIarthar – 3
- TUSLA: An Ghníomhaireacht um Leanaí agus an Teaghlach – 3
- Comhairle Contae Chorcaí – 2
- Bord na gCon – 2
- Comhlachtaí poiblí eile – 6

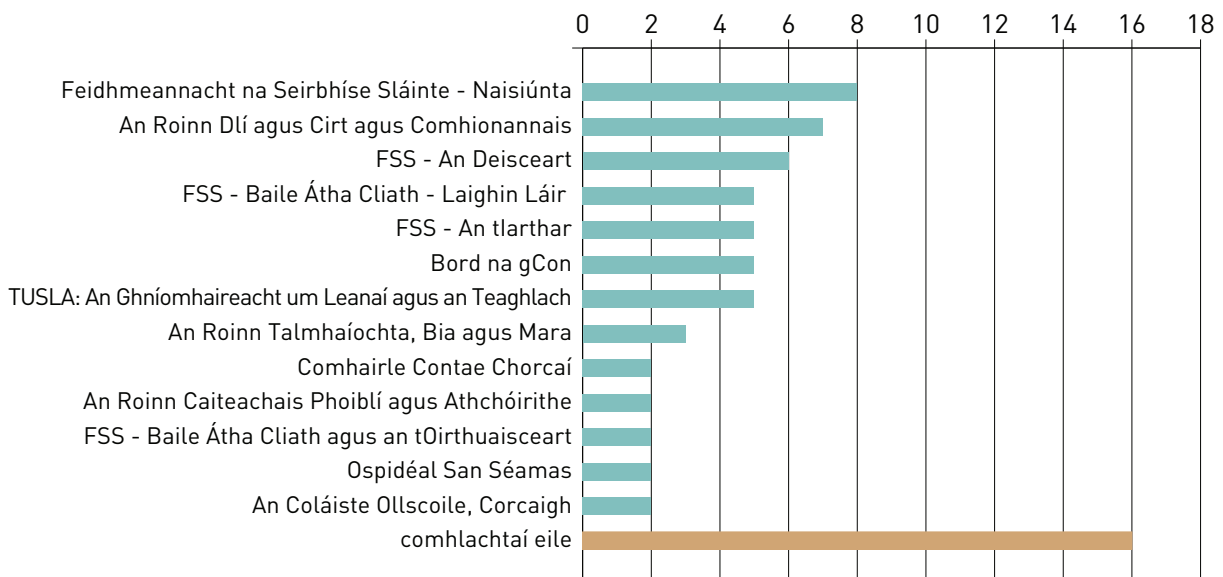


Comhlacht poiblí - iarraidh a measadh a bheith diúltaithe ag an gcéad chéim den iarraidh Saoráil Faisnéise



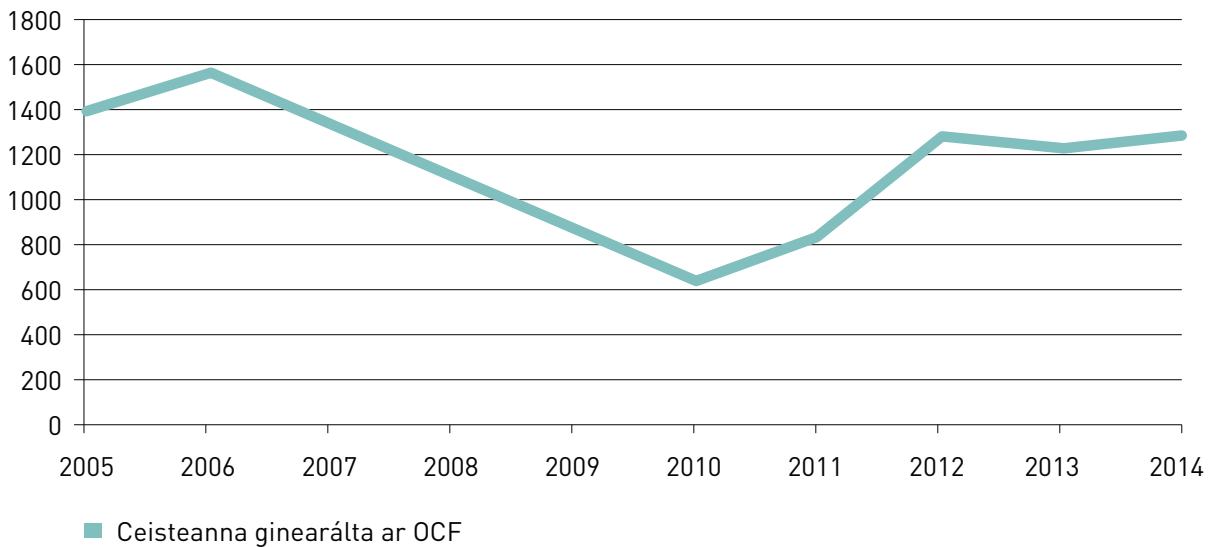
Den 252 iarratas ar ghlac an Oifig seo leo lena n-athbhreithniú sa bhliain 2014, measadh 24% díobh a bheith diúltaithe ag an gcomhlacht poiblí lena mbaineann ag an gcéad chéim den iarraidh Saoráil Faisnéise ón iarrthóir. Sa chás go meastar iarraidh a bheith diúltaithe ag an gcéad chéim sin, tá an t-iarrthóir i dteideal scríobh chuig an gcomhlacht poiblí lena mbaineann agus athbhreithniú inmheánach a iarraidh.

Comhlacht poiblí - iarraidh a measadh a bheith diúltaithe ag an dara céim den iarraidh Saoráil Faisnéise



Beagnach 28% a bhí an figiúr d'iarrataí a measadh a bheith diúltaithe ag an dara céim. Sa chás go meastar iarraidh ar rochtain ar thaifid a bheith diúltaithe ag an dara céim, is é sin, céim an athbhreithnithe inmheánaigh, tá sé de cheart ag an iarrthóir iarratas ar athbhreithniú a dhéanamh chuig an Oifig seo. Ina theannta sin, ní éilítear ar an iarrthóir táille a íoc leis an Oifig seo i gcásanna ina mbaineann an iarraidh le rochtain a fháil ar thaifid atá neamhphearsanta nó measctha.

Ceisteanna ginearálta ar OCF



I gcomparáid leis an bhfigiúr don bhliain 2013, bhí méadú beag ann ar líon na gceisteanna ginearálta a cuireadh ar an Oifig seo sa bhliain 2014. Agus é cothrom le 1,274 ceann, bhí líon na gceisteanna a fuarthas ar an líon ab airde in aon bhliain ar leith ón mbliain 2007.

Táillí a fuair OCF

Le linn na bliana 2014, fuair an Oifig seo 104 iarratas ar athbhreithniú inar íocadh táille. Ba é €11,865 an tsuim iomlán a fuair an Oifig seo i bhfoirm táillí iarratais sa bhliain 2014. Aisíocadh suim iomlán €7,350 le hiarratasóirí ar na cúiseanna seo a leanas:

- Aisíocadh €4,950 toisc gur diúltaíodh do na hiarratais a bhí i gceist mar gurbh iarratais neamhbhailí iad nó toisc go ndearnadh na hiarratais a tharraingt siar nó a shocrú;
- Aisíocadh €1,550 toisc nár eisigh an comhlacht poiblí breith an athbhreithnithe inmheánaigh laistigh den teorainn ama agus gur measadh an iarraidh a bheith diúltaithe dá bharr sin (féach alt 41 den Acht um Shaoráil Faisnéise);
- Aisíocadh €850 le hiarratasóirí i gcásanna inar neamhnaíodh an bhreith, inar scoireadh den bhreith nó nach raibh táille le híoc inti.

Deimhnithe Reachtúla arna n-eisiúint ag Airí agus ag Ard-Rúnaithe

Leis an Acht um Shaoráil Faisnéise (Leasú) 2003, tugadh isteach forálacha trína bhféadfadh taifid áirithe a bhaint ó raon feidhme an Achta um Shaoráil Faisnéise trí bhíthin deimhniú ó Aire nó ó Ard-Rúnaí de chuid Roinne. Tá na forálacha ábhartha, mar a phléifear thíos, le fáil in ailt 19, 20 agus 25 den Acht um Shaoráil Faisnéise agus foráiltear leo nach mór tuarascáil ina sonraítear líon na ndeimhnithe den sórt sin arna n-eisiúint a chur ar aghaidh chuig an Oifig seo.

Leis an Acht um Shaoráil Faisnéise 2014, aisghaireadh an chumhacht a bhí ag Ard-Rúnaithe taifid a bhaineann le próiseas pléite de chuid comhlacht poiblí a chosaint.

Alt 19

Díolúine éigeantach lena bhforáiltear do thaifid a bhaineann leis an Rialtas nó leis an gComhairle a chosaint is ea alt 19. Rinneadh an sainmhíniú ar Rialtas a leasú le hAcht 2003 chun go bhfolódh sé coiste oifigeach arna cheapadh ag an Rialtas chun tuairisc a thabhairt go díreach dó agus a bhí deimhnithe déanamh amhlaidh le deimhniú i scríbhinn ó Ard-Rúnaí an Rialtais.

Chuir Ard-Rúnaí an Rialtais in iúl dom nár eisigh sé aon deimhniú faoi alt 19 sa bhliain 2014.

Alt 20

Cosnaítear le halt 20 den Acht taifid áirithe a bhaineann le próiseas pléite de chuid comhlacht poiblí. I gcás Roinn Stáit, féadfaidh an tArd-Rúnaí deimhniú i scríbhinn a eisiúint sa chéill go bhfuil ábhar a bhaineann le próiseas pléite na Roinne sin le fáil i dtaifead ar leith. Sa chás go n-eisítear deimhniú den sórt sin, ní fhéadfar an taifead atá sonraithe a eisiúint faoin Acht um Shaoráil Faisnéise. Féadfar aon deimhniú den sórt sin a chúlghairm le deimhniú i scríbhinn ón Ard-Rúnaí.

Tar éis dom dul i gcomhairle le gach Ard-Rúnaí, cuireadh in iúl don Oifig seo nár eisíodh aon deimhnithe nua faoi alt 20 le linn na bliana 2014.

Alt 25

Sa chás go bhfuil Aire den Rialtas sásta gur taifead díolmhaithe é taifead, de bhua alt 23 (forfheidhmiú an dlí agus sábháilteacht an phobail) nó de bhua alt 24 (slándáil, cosaint agus caidreamh idirnáisiúnta) agus gur deimhin leis an Aire den Rialtas go bhfuil an taifead sách íogair nó sách tromáil chun gur chóir dó nó di déanamh amhlaidh, féadfaidh sé nó sí a dhearbhu, trí dheimhniú a eisiúint faoi alt 25(1) den Acht, gur taifead díolmhaithe ó fheidhmiú an Achta um Shaoráil Faisnéise an taifead.

Ní mór d'Airí tuarascáil a chur ar fáil don Oifig seo gach bliain ar líon na ndeimhnithe a eisíodh agus ar fhorálacha alt 23 nó alt 24 den Acht um Shaoráil Faisnéise a raibh feidhm leo maidir leis na taifid díolmhaithe nó leis na taifid dhíolmhaithe. Ní mór dom cóip d'aon tuarascáil den sórt sin a chur i gceangal leis an Tuarascáil Bhliantúil uaim don bhliain atá i gceist.

Tugadh fógra don Oifig seo faoi na deimhnithe seo a leanas a eisíodh faoi alt 25.

Rinne an tAire DLí agus Cirt agus Comhionannais trí dheimhniú faoi alt 25 a athnuachan sa bhliain 2014 agus tiocfaidh siad sin faoi réir athbhreithniú sa bhliain 2016. Tiocfaidh trí dheimhniú eile faoi réir athbhreithniú sa bhliain 2015. Rinne an tAire deimhniú amháin a eisiúint faoin bhforáil choibhéiseach (alt 34) den Acht um Shaoráil Faisnéise 2014. Tiocfaidh an deimhniú nua faoi réir athbhreithniú sa bhliain 2016. Tá cóip den fhógra ceangailte le hAguisín I leis an Tuarascáil seo.

Rinne an tAire Gnóthaí Eachtracha agus Trádála trí dheimhniú a eisiúint faoi alt 34 d'Acht 2014 sa bhliain 2014. Tiocfaidh na deimhnithe sin faoi réir athbhreithniú sa bhliain 2016. Tá cóip den fhógra ceangailte le hAguisín I leis an Tuarascáil seo.

Cúrsaí foirne

Mar a luaigh mé ní ba luaithe sa Réamhrá, thug an Roinn Caiteachais Phoiblí agus Athchóirithe cead don Oifig seo cúigear ball foirne breise a earcú in oirchill éileamh breise tuartha ar a cuid seirbhísí de bharr rith an Achta um Shaoráil Faisnéise 2014 agus de bharr leathnú an Achta chuig gach comhlacht poiblí. Fuarthas cead roinnt folúntas ar leibhéal Imscrúdaitheora a líonadh freisin.

Ba mhaith liom fáilte a chur roimh gach ball foirne a chuaigh isteach san Oifig seo sa bhliain 2014. Chomh maith leis sin, ba mhaith liom buíochas a ghabháil le gach duine as a gcuid tacaíochta, treallúis agus tiomantais d'obair na hOifige sa bhliain 2014. Luaigh mé ní ba luaithe gur baineadh amach roinnt éachtaí sa bhliain. Tá rún daingean agam agus ag an bhfoireann cur leis na héachtaí sin agus táim ag súil go léireofar éachtaí agus rath arís eile sa Tuarascáil Bhliantúil uaim don bhliain 2015.

Gabhaim an-bhuíochas le Elizabeth Dolan agus le Stephen Rafferty, Imscrúdaitheoirí Sinsearach, as ucht a dtreallúis, a dtiomantais agus a saineolais le linn na bliana, agus le Melanie Campbell agus le Edmund McDaid as ucht a gcúnaimh agus an Tuarascáil seo á cur le chéile.

Caibidil 2: Saincheisteanna a Tháinig Chun Cinn



Caibidil 2: Saincheisteanna a Tháinig Chun Cinn

Sa Chaibidil seo, leagtar béim ar na saincheisteanna a tháinig chun cinn le linn na bliana a bhaineann le hoibriú an Achta um Shaoráil Faisnéise.

Is iad seo na saincheisteanna a pléadh:

- Ualach oibre na hOifige
- Forálacha neamhnocha alt 32
- Taifid ar iarraidh
- Iarrataí an-mhór ar Shaoráil Faisnéise
- Iarrataí suaibhreasacha nó cráiteacha
- Achomhairc chuig na Cúirteanna

Ualach oibre na hOifige

Mar a luaigh mé i gCaibidil 1, tháinig méaduithe suntasacha ar tháirgiúlacht don bhliain as struchtúir athbhreithnithe agus próiseas oibre athbhreithnithe a chur chun feidhme tar éis athbhreithniú eagrúcháin agus as roinnt baill foirne bhreise a earcú le linn na bliana 2014.

Cé gur bhearta riachtanacha iad na struchtúir athbhreithnithe agus na próisis athbhreithnithe chun cabhrú leis an Oifig seo déileáil le riaráiste mór oibre ar láimh ag tús na bliana, bhí sé an-tábhachtach freisin go bhféadfadh an Oifig seo bheith in ann an méadú réamh-mheasta ar obair a eascraíonn as tabhairt isteach na reachtaíochta nua um Shaoráil Faisnéise a bhainistiú go réidh. Mar a tharlaíonn, ní dócha go dtiocfaidh an méadú réamh-mheasta ar éileamh go dtí an dara leath den bhliain 2015. Mar sin féin, chuir an obair iontach a rinneadh sa bhliain 2014 ar thabhairt faoin riaráiste oibre ar láimh ar ár gcumas an bhunobair a dhéanamh le haghaidh na n-éileamh méadaithe ar ár gcuid seirbhísí a bhfuiltear ag súil leo sna míonna romhainn.

Shocraigh mé cuspóirí dúshlánacha don fhoireann i mbliana chun a chinntiú go ndéanfaimid forbairt ar an bhfeidhmíocht láidir a baineadh amach sa bhliain 2014. I measc cuspóirí eile, is mian liom a chinntiú go leanfar ar aghaidh ag laghdú na tréimhse a thógtar chun athbhreithnithe a dhéanamh agus go mbeidh an tréimhse sin ag déanamh ar an gceanglas reachtúil go gcuirtear athbhreithnithe i gcrích laistigh de cheithre mhí sa mhéid is indéanta sin. Is cinnte go bhfuil súil agam nach mbeidh cásanna atá níos sine ná ocht mí d'aois ar lámh ag an Oifig seo faoi dheireadh na bliana 2015. Bheadh baint amach an chuspóra sin ina fheabhsú suntasach ar fheidhmíocht le blianta beaga anuas.

Forálacha neamhnocta alt 32

Tá beagnach dhá bhliain imithe ó chuir Emily O'Reilly an Tríú Tuarascáil ón gCoimisinéir Faisnéise faoi bhráid an Chomhchoiste um Airgeadas, Caiteachas Poiblí agus Athchóiriú faoi alt 32 den Acht um Shaoráil Faisnéise.

In alt 32, déantar foráil don diúltú éigeantach rochtana ar thaifid a dtairmisctear a nochtadh nó a n-údaraitear a neamhnoctadh le hachtacháin eile. San alt sin, fo-ordaítear forálacha rochtana an Achta um Shaoráil Faisnéise maidir le gach foráil neamhnocta i reachtanna, seachas iad sin a shonraítear sa Tríú Sceideal. Foráiltear leis an Acht go ndéanann an Comhchoiste athbhreithniú ar oibriú aon achtacháin lena n-údaraitear nó lena n-éilítear an neamhnoctadh taifead chun a chinntiú cé acu ba chóir iad a leasú, a aisghairm nó a chur leis an Tríú Sceideal nó nár chóir.

Sa Tuarascáil Bhliantúil do 2013, luaigh mé go raibh díomá orm nár foilsíodh tuarascáil an Chomhchoiste faoina bhreithniúcháin go fóill. Mhol mé go mbeadh an Bille um Shaoráil Faisnéise, mar a bhí sé ag an am, ina dheis iontach le haghaidh leasú ar bith ar an Tríú Sceideal a mhol an Comhchoiste a chur san áireamh. Bliain amháin ina dhiaidh sin, tá tuarascáil an Chomhchoiste faoina bhreithniúcháin gan foilsíú fós.

Is díol suntais gur mheas Tithe an Oireachtais gur chuí a chinntiú go bhfanadh an ceanglas chun forálacha neamhnocta a athbhreithniú i bhfeidhm san Acht um Shaoráil Faisnéise 2014. Faoi alt 41, ní foláir do gach Aire Rialtais tuarascáil faoi na hachtacháin laistigh dá réimse rialachais faoi seach a chuimsíonn forálacha lena dtairmisctear an nochtadh taifead áirithe nó lena n-údaraitear an neamhnoctadh taifead áirithe a thabhairt don Chomhchoiste. Faoi alt 41(6), ní foláir an chéad tuarascáil dá leithéid a thabhairt laistigh de 30 lá tar éis an chomóraidh cúig bliana ón lá ar ar tugadh an tuarascáil dheireanach, faoi alt 32 d'Acht 1997, agus ní foláir tuarascálacha ina dhiaidh sin a thabhairt gach cúig bliana dá éis.

Faoi Acht 1997, bhí ar na hAíre na chéad tuarascálacha uathu a chur faoi bhráid an Chomhchoiste faoin 21 Aibreán 1999 agus tuarascálacha ina dhiaidh sin a chur faoina bhráid gach cúig bliana dá éis. Dá mbeifí ag cloí go docht le forálacha an Achta, bheadh na ceathrú tuarascálacha uathu curtha faoi bhráid an Chomhchoiste ag na hAíre lena bhreithniú faoin 21 Bealtaine 2014. Mar atá an scéal, níl breithniú déanta ar na tríú tuarascálacha go fóill.

Feictear dom go dtugann an mhoill ar bhreithniú ar an tríú babhta tuarascálacha an deis leis an bpróiseas a chur ar an mbealach ceart an athuir le haghaidh ceanglais tuairiscithe amach anseo agus ar aon dul le forálacha Acht 2014. In ionad ceangal a chur ar Airí an ceathrú babhta tuarascálacha a bhí le cur isteach sa bhliain 2014 a chur isteach, d'fhéadfadh gurbh fhearr don Chomhchoiste tuairisc a thabhairt ar a bhreithniúcháin ar na tuarascálacha atá aige faoi láthair agus ceangal a chur ar na hAirí na chéad tuarascálacha eile uathu a chur isteach faoin 21 Bealtaine 2019 agus gach cúig bliana ina dhiaidh sin. Tá sé ar intinn agam an cheist sin a phlé leis an Roinn Caiteachais Phoiblí agus Athchóirithe.

Taifid ar iarraidh

Le halt 10(1)(a) den Acht um Shaoráil Faisnéise, ceadáítear do chomhlacht poiblí diúltú d'iarraidh sa chás nach féidir na taifid a aimsiú tar éis gach beart réasúnach a ghlacadh chun a fháil amach cá bhfuil siad. I mí na Nollag 2014, sheas mé le breith FSS diúltú do rochtain ar thaifid leighis áirithe faoi alt 10(1)(a) i gcásanna ina bhfuil taifid ab eol a bheith ann ar iarraidh. Bhain an iarraidh le taifid leighis atá i seilbh Ospidéal Pobail Naomh Eoin, Sligeach. Is go drogallach a sheas mé le breith FSS ós rud é nár tugadh aon mhíniú inghlactha ar an bhfáth nach raibh na taifid lena mbaineann ann. Is féidir amharc ar an mbreith iomlán ar shuíomh Gréasáin na hOifige seo ag www.oic.gov.ie (Uimh. Cháis 130242 - Ms GK and the Health Service Executive). Tá sonraí níos mine faoin gcás leagtha amach i gCaibidil 3.

Le linn dom athbhreithniú a dhéanamh ar bhreith a thug comhlacht poiblí diúltú d'iarraidh faoi alt 10(1)(a), tugaim aird ar an bhfianaise ar fáil don té a thug an bhreith agus ar an réasúnaíocht a d'úsáid an té a thug an bhreith chun teacht ar a chinneadh. Chomh maith leis sin, measúnaím a leorga a bhí na cuardaigh a rinne an comhlacht poiblí agus é ag iarraidh na taifid lena mbaineann a aimsiú. De ghnáth, is éard atá san fhianaise i gcásanna cuardaigh den chineál sin ná na bearta a rinneadh iarbhír chun cuardach le haghaidh taifead mar aon le fianaise ilghnéitheach eile ar chleachtais bhainistíochta taifead an chomhlachta poiblí, ar tháinig an comhlacht poiblí ar an gconclúid ar a mbonn gur réasúnach a bhí na bearta a rinneadh chun cuardach le haghaidh na dtaifead. Ar bhonn na faisnéise a chuirtear ar fáil, tagaim ar thuairim maidir le cé acu a bhí nó nach raibh cúis mhaith ag an té a thug an bhreith teacht ar an gcinneadh nach ann do na taifid a bhíodhas ag iarraidh nó nach féidir iad a aimsiú.

Sa chás ar leith atá i gceist, cé gur tháinig mé ar thuairim nach dócha go ndearnadh na taifid a bhíodhas ag iarraidh a chailleadh nó a chur sa chomhad mícheart agus go raibh an chosúlacht ar an scéal gurb é atá sa chás ná cás lena mbaineann baint thoilíúil fhéideartha taifead as comhad othair, ghlac mé leis go ndearna FSS cuardaigh fhorleathana le haghaidh na dtaifead agus nach dócha go n-aimseofar iad i gcuardaigh amach anseo. Dá bhrí sin, ní raibh an dara rogha agam ach teacht ar an gconclúid go raibh cúis mhaith ag breith FSS ar bhonn alt 10(1)(a) den Acht um Shaoráil Faisnéise.

De bharr na n-údar mórímíní a bhí agam faoin gceist, áfach, chinn mé go dtarraingeoinn aird Ard-Stiúrthóir FSS ar an gcás tar éis chur i gcrích an athbhreithnithe. Fuair mé freagra ina dhiaidh sin go luath i mí Feabhra 2015 ó Bhainisteoir Ceantair Shligigh/Liatroma/an Chabháin Thiar de chuid FSS. Luaigh an Bainisteoir Ceantair go ndearnadh gach iarracht taifid an othair a rianú agus go bhfuil beartas chun déileáil le comhaid othar laistigh de cheantar ábhartha FSS á chur i bhfeidhm. Chomh maith leis sin, d'aithin sé go raibh easnaimh i bpróiseáil na hiarrata ar Shaoráil Faisnéise agus dhearbhaigh sé dom gur cuireadh nósanna imeachta i bhfeidhm chun a chinntiú nach dtarlódh cás dá leithéid arís.

Is mór agam freagairt réamhghníomhach FSS do na húdair imní a bhí agam. Ina theannta sin, is mian liom a admháil gur ar fhadhbanna laistigh de cheantar sonrach FSS a leagann tosca an cháis sin béim agus ní hionann iad agus fadhb chórasach náisiúnta laistigh de FSS i gcoitinne. Mar sin féin, is féidir leis na fadhbanna a bhaineann leis an gcás sin ceachtanna luachmhara a chur ar fáil d'aon chomhlacht poiblí faoi chleachtais bhainistíochta taifead agus faoi na hoibleagáidí atá orthu maidir le freagairt d'iarrataí ar Shaoráil Faisnéise. Is fiú a lua freisin go ndéantar foráil le halt 52 d'Acht 2014 gur ciontach as cion agus faoi dhliteanas fíneála ar é a chiontú go hachomair a bheidh duine ar bith a scriosann taifead le hintinn mheabhlairachta.

Iarrataí an-mhór ar Shaoráil Faisnéise

Le halt 10 den Acht um Shaoráil Faisnéise, tugtar cead do chomhlacht poiblí diúltú do rochtain ar thaifid ar fhorais áirithe riaracháin. Foráiltear le halt 10(1)(c) go bhféadfar diúltú d'iarraidh dá ngéillfí don iarraidh, mar gheall ar líon nó ar chineál na dtaifead lena mbaineann nó ar chineál na faisnéise lena mbaineann, líon taifead chomh mór sin a aisghabháil agus a scrúdú, nó scrúdú a dhéanamh ar na taifid lena mbaineann ar scrúdú de shórt é, go gcuirfí bac nó go gcuirfí isteach, go substaintiúil agus go míréasúnach, ar obair eile an chomhlachta poiblí lena mbaineann.

Mar sin féin, ceanglaítear le halt 10(2) nach ndiúltófar do na hiarrataí "an-mhór" sin faoi alt 10(1)(c) murar thug an comhlacht poiblí cúnamh, nó murar thairg sé cúnamh a thabhairt, don iarrthóir lena mbaineann d'fhonn féachaint leis an iarraidh a leasú sa chaoi is nach dtiocfadh sí faoi réim alt 10(1)(c) a thuilleadh. Dá bhrí sin, ní fhéadfaidh comhlacht poiblí bheith ag brath ar alt 10(1)(c) murar thug sé cúnamh nó murar thairg sé cúnamh a thabhairt don iarrthóir mar a cheanglaítear le halt 10(2).

Táim eolach ar an líon méadaitheach iarrataí atá á ndéanamh chuig an Oifig seo i gcásanna inar dhiúltaigh comhlachtaí poiblí d'iarrataí ar Shaoráil Faisnéise faoi alt 10(1)(c) gan cúnamh a thabhairt ná tairiscint cúnamh a thabhairt don iarrthóir d'fhonn féachaint leis an iarraidh a leasú sa chaoi is nach dtiocfadh sí faoi réim alt 10(1)(c) a thuilleadh. Is éigeantach atá an ceanglas chun cúnamh a thabhairt mar a leagtar amach é in alt 10(2). Dá réir sin, neamhním breith an chomhlachta poiblí diúltú don iarraidh de ghnáth nuair a thagann na cásanna sin os comhair na hOifige seo. Is é an toradh atá ar neamhniú den chineál sin ná go gceanglaítear ar an gcomhlacht poiblí breith nua chéadchéime a thabhairt i leith na hiarrata bunaidh agus

cúnamh a thairiscint don iarrthóir de réir fhorálacha alt 10(2), dá measfaí é sin a bheith riachtanach.

Cé go bhfuil alt 10(1)(c) i bhfeidhm le nach gcuirfear isteach, go substaintiúil agus go míréasúnach, ar obair eile an chomhlachta poiblí lena mbaineann, tá dualgas ar chomhlachtaí poiblí a chinntiú go gcuirtear an fhoráil i bhfeidhm i gceart. Ó thaobh mo thaithí féin de, is minic a bhíonn iarrthóirí sásta a gcuid iarrataí a leasú le go mbeadh sé níos fusa iad a bhainistiú le leas gach duine lena mbaineann. Ar ndóigh, más rud é go ndiúltaíonn an t-iarrthóir don iarraidh a leasú, beidh teidlíocht iomlán ag an gcomhlacht poiblí um an dtaca sin breith a thabhairt maidir le cé acu ba chóir nó nár chóir diúltú don iarraidh faoi alt 10(1)(c). Má chuirtear an fhoráil i bhfeidhm i gceart, ní chaithfidh an Oifig seo breitheanna a neamhní ná déileáil le hiarrataí ón tús an athuir.

Iarrataí suaibhreasacha nó cráiteacha

Cé gur luaigh mé roinnt de na breitheanna ba thábhachtaí a thug an Oifig seo sa bhliain 2014 i gCaibidil 3, is mian liom aird ar leith a tharraingt ar shaincheist a tháinig aníos i líon beag iarratas ar athbhreithniú a rinneadh chuig an Oifig seo. Bhí cúis agam roinnt uaireanta le linn 2014 le breithniú a dhéanamh ar cé acu atá iarrataí áirithe ina n-iarrataí suaibhreasacha nó ina n-iarrataí cráiteacha nó atá siad mar chuid de phatrún iarrataí atá míréasúnach go follasach.

Is féidir leis an tsaincheist sin teacht aníos lena breithniú ar cheann amháin de dhá bhealach. Ar an gcéad dul síos, féadfaidh comhlacht poiblí diúltú d'iarraidh faoi alt 10(1)(e) den Acht má mheasann sé go bhfuil an iarraidh suaibhreasach nó cráiteach nó go bhfuil sí mar chuid de phatrún iarrataí míréasúnach ón aon iarrthóir amháin nó ó iarrthóirí eile atá ag gníomhú as lámha a chéile. Tá na breitheanna sin faoi réir athbhreithnithe ag an Oifig seo. Ar an dara dul síos, foráiltear le halt 34(9)(a)(i) den Acht go bhféadfaidh mé diúltú géilleadh d'iarratas nó scor d'athbhreithniú má thagaim ar an tuairim go bhfuil an t-iarratas lena mbaineann an t-athbhreithniú suaibhreasach nó cráiteach.

Laistigh de chiall an Achta um Shaoráil Faisnéise, measfaidh mé iarraidh nó iarratas a bheith "suaibhreasach nó cráiteach" más dé mheon mímhacánta a dhéantar é/í nó má tá sé/sí ina chuid/cuid de phatrún iompraíochta arb ionann é agus mí-úsáid próise nó mí-úsáid an chirt rochtana. Is é mo thuairim nár chóir tabhairt faoin diúltú d'iarrataí ar na forais go bhfuil siad suaibhreasach nó cráiteach gan machnamh go maith air. Éilítear leis an Acht um Shaoráil Faisnéise go gcomhlíonann comhlachtaí Saoráil Faisnéise caighdeáin an-ard agus iad ag déileáil le hiarrataí. Táim den tuairim freisin, áfach, go bhfuiltear ag glacadh sa reachtaíocht le hiompraíocht réasúnach ar thaobh na n-iarrthóirí.

Tá dúshlán shuntasacha roimh gach comhlacht poiblí, an Oifig seo ina measc, le blianta beaga anuas maidir le freastal ar éilimh mhéadaithe le níos lú acmhainní. D'ainneoin na n-éileamh méadaithe sin, tá fonn orm a chur in iúl go láidir gur príomhfheidhm de chuid comhlachtaí poiblí í Saoráil Faisnéise agus ní féidir níos lú tábhachta a thabhairt di ná an tábhacht a thugtar

d'fheidhmeanna reachtúla eile agus éilimh iomaíocha á gcothromú. Os a choinne sin, is mian liom a chinntiú nach mbaineann iarrthóirí mí-úsáid as na cearta tábhachtacha a thugtar dóibh faoin Acht um Shaoráil Faisnéise. Tá freagracht orm freisin as a chinntiú nach mbaintear mí-úsáid as acmhainní ganna na hOifige seo.

Le linn na bliana, scoir mé de dhá athbhreithniú ón aon iarratasóir amháin toisc gur tháinig mé ar an tuairim gur cráiteach a bhí na hiarratais ar athbhreithniú. Chinn mé go raibh cuspóir iarrataí an iarratasóra chuig an gcomhlacht poiblí dírithe ar chuspóir nach mbaineann leis an bpróiseas rochtana agus gur cuireadh faoi bhráid an chomhlachta iad chun críche nús a chruthú, dar liom.

Is fiú a thabhairt faoi deara gur scoir an t-iarChoimisinéir sa bhliain 2013 de sheacht n-iarratas ar leith ar athbhreithniú a rinne an t-iarratasóir céanna chuig an gcomhlacht céanna ar an bhforas gur suaibhreasach nó cráiteach a bhí na hiarratais sin. Tugtar sonraí níos mine faoi na cásanna sin sa rannán seo a leanas a bhaineann le hachomhairc chuig na huaschúirteanna.

Agus an lánrogha atá agam scor den dá athbhreithniú in 2014 á cleachtadh agam, mheas mé gur bhain an dá cheann díobh le cúis ghearáin sheanbhunaithe a bhí ag an iarratasóir leis an gcomhlacht poiblí lena mbaineann agus go raibh siad mar chuid den phatrún céanna iompraíochta is ionann agus mí-úsáid próise agus an patrún sin a shainaithe an t-iarChoimisinéir.

Leanfaidh mé ar aghaidh ag cinntiú go mbainfear an leas is fearr is féidir as acmhainní teoranta na hOifige seo agus leanfaidh mé de bheith ag súil le hiompraíocht réasúnach ar thaobh na n-iarrthóirí.

Achomhairc chuig na Cúirteanna

Den chéad uair riamh ó bunaíodh an Oifig seo, rinne iarratasóir ar athbhreithniú iarratas chuig an Ard-Chúirt ar Ordú lena dtugtar treoir don Oifig seo an t-athbhreithniú ar a chás a chur i gcrích. Cuireadh an t-athbhreithniú ar fionraí ar feitheamh an toraidh ar achomharc gaolmhar san Ard-Chúirt a bhaineann leis an iarratasóir sin. Déantar cur síos níos mine ar na sonraí ina leith thíos (Westwood Club agus an Coimisinéir Faisnéise). Agus é seo á scríobh, bhí an t-ábhar curtha ar atráth ag an gCúirt chun ligean don Oifig seo an t-iarratas ar athbhreithniú a bhreithniú.

Páirtí in athbhreithniú agus duine ar bith eile a dtéann breith a thugann an Oifig seo i bhfeidhm air, féadfaidh sé achomharc a dhéanamh chuig an Ard-Chúirt ar phointe dlí. Is féidir breith a thugann an Ard-Chúirt a achomharc chuig an gCúirt Achomhairc. Rinneadh ceithre achomharc in aghaidh bhreitheanna na hOifige seo chuig an Ard-Chúirt sa bhliain 2014. Rinne an t-iarratasóir trí cinn díobh agus rinne an comhlacht poiblí an ceann eile. Tugadh breithiúnas ex-tempore i gceann amháin de na ceithre chás (féach thíos) agus tarchuireadh an cás ar thionscain an comhlacht poiblí é ar ais chuig an Oifig seo trí chomhaontú. Tá an dá achomharc Ard-Chúirte atá fágtha liostaithe le haghaidh dul chun cinn in 2015.

Rinneadh dhá achomharc in aghaidh bhreitheanna na hArd-Chúirte chuig an gCúirt Achomhairc sa bhliain 2014. Rinne an t-iarratasóir ceann amháin agus rinne an Oifig seo an ceann eile. Agus é seo á scríobh, níl cinneadh deiridh déanta ag an Oifig seo ar cé acu a leanfaidh sí uirthi lena hachomharc nó nach leanfaidh. Tá an cás eile liostaithe le haghaidh éisteacht níos moille sa bhliain 2015.

Níor tugadh aon bhreitheanna ón gCúirt Uachtarach sa bhliain 2014.

Mar a luaigh mé thuas, eisíodh breithiúnas ex-tempore i gcás amháin in 2014. Sa chás i gceist (Cás 120129 - Mr X and the Health Service Executive), rinne an t-iarratasóir achomharc in aghaidh bhreith na hOifige seo seasamh le breith a thug FSS diúltú do rochtain ar thaifid áirithe a bhí á gcoimeád ar chomhad a bhain le measúnú ar mhac an iarratasóra.

D'argóin an t-abhcóide a bhí ag déanamh ionadaíocht don Oifig seo nár shainaithin an t-iarratasóir pointe dlí ina achomharc mar atá riachtanach de réir an Achta um Shaoráil Faisnéise. Tarraingíodh aird na Cúirte ar an bhfíric gur cuireadh an tsaincheist sin in iúl don iarratasóir trí mhionnscríbhinní a mhalartú.

Thug an Breitheamh Onórach Eager breithiúnas tar éis tréimhse ghairid bhreithniúcháin. Thug sé breithiúnas nár shainaithin an t-iarratasóir aon pointe dlí agus nár chloígh an t-achomharc le hOrdú 130 de Rialacha na nUaschúirteanna. Ceanglaítear leis an ordú sin nach mór foras achomhairc agus pointe dlí a bheith luaite. Dá bhrí sin, dhiúltaigh sé don achomharc.

Tugadh trí bhreithiúnas scríofa Ard-Chúirte sa bhliain 2014. Tá na téacsanna iomlána de na breithiúnais ar fáil ag www.oic.gov.ie. Is éard atá sa mhéid seo a leanas ná achoimre ar na príomhphointí sna cásanna.

An tAire Sláinte agus an Coimisinéir Faisnéise [2013] 265 MCA. Breithiúnas an Bhreithimh Onóraigh O'Neill, an 9 Bealtaine 2014

Cúlra

Rinne an t-iarratasóir iarratas chuig an Oifig seo ar athbhreithniú ar bhreith a thug an Roinn Sláinte diúltú dá iarraidh ar chóip de thras-scríbhinn ina mionsonraítear cruinniú a bhí aige leis an mBreitheamh Onórach Thomas Smyth maidir le fiosrúchán a rinne an Breitheamh Onórach Smyth ar cheisteanna ábhartha a bhaineann le hOspidéal Mhuire Lourdes, Droichead Átha. Tugtar "Athbhreithniú Dhroichead Átha" air go coitianta. Dhiúltaigh an Roinn don iarraidh ar an bhforas nach raibh na taifid i gceist ina seilbh chun críocha an Achta um Shaoráil Faisnéise.

Saincheist

D'argóin an Roinn gur leis an mBreitheamh Onórach Smyth na tras-scríbhinní agus gur chun críche iad a choimeád slán a cuireadh ina taise iad. Fuair an Oifig seo amach go raibh na taifid i seilbh agus faoi rialú na Roinne de réir alt 2(5)(a) den Acht um Shaoráil Faisnéise. Neamhnigh

an Oifig seo breith na Roinne agus thug sí treoir di an iarraidh ar shaoráil faisnéise a phróiseáil. Rinne an Roinn achomharc in aghaidh na breithe sin chuig an Ard-Chúirt.

Cinneadh na Cúirte

Thug an Chúirt breithiúnas nár leor seilbh dhleathach doiciméid chun an doiciméad a chur faoi réir nochtadh faoin Acht um Shaoráil Faisnéise ar an mbonn go raibh sé “i seilbh” an chomhlachta phoiblí de réir bhrí alt 6(1) den Acht um Shaoráil Faisnéise.

Maidir leis an gceist faoi cé acu a bhí na taifid faoi rialú na Roinne nó nach raibh, thug an Chúirt breithiúnas gurbh é an Breitheamh Onórach Smyth an t-aon pháirtí amháin a d’fhéadfadh leas dílseánaigh nó foirm eile de rialú dlíthiúil ar na doiciméid a dheimhniú de bharr a stádais neamhspleách mar athbhreithneoir agus toisc gurbh é an Breitheamh Onórach Smyth a chruthaigh na doiciméid i gceist chun críocha an athbhreithnithe.

Chinn an Chúirt nach raibh na taifid i seilbh na Roinne ná faoina rialú chun críocha an Achta um Shaoráil Faisnéise agus sheas sí le hachomharc na Roinne.

Cé go bhfuil achomharc in aghaidh bhreith na hArd-Chúirte curtha faoi bhráid na Cúirte Achomhairc ag an Oifig seo, níl aon chinneadh déanta ar cé acu a leanfar leis an achomharc nó nach leanfar agus é seo á scríobh.

Westwood Club agus an Coimisinéir Faisnéise [2013] 176 MCA. Breithiúnas an Bhreithimh Onóraigh Cross, an 15 Iúil 2014

Cúlra

Rinne an t-iarratasóir iarratas chuig an Oifig seo ar athbhreithniú ar bhreith a thug Comhairle Baile Bhré diúltú do rochtain ar thaifid atá i seilbh na Comhairle maidir le Bray Swimming Pool and Sports Leisure Centre Limited (an chuideachta).

Saincheist

Le linn an athbhreithnithe, ghlac an Chomhairle leis go raibh taifid áirithe ina seilbh mar scairshealbhóir de chuid na cuideachta ach d’argóin sí go raibh na taifid sin íogair ó thaobh na tráchtála de agus díolmhaithe óna scaoileadh faoi alt 27(1)(b) den Acht. Rinneadh argóint freisin nach raibh taifid ábhartha eile a bhí i seilbh na cuideachta faoina rialú agus nach raibh siad faoi réir an Achta. Foráiltear le halt 2(5)(a) den Acht go bhfolaíonn aon tagairt do thaifid atá i seilbh comhlachta phoiblí tagairt do thaifid atá faoi rialú an chomhlachta.

Dhearbhaigh an Oifig seo breith na Comhairle diúltú do rochtain ar na taifid i gceist ar an mbonn gurb íogair ó thaobh na tráchtála de a bhí taifid áirithe a bhí ina seilbh. Dhearbhaigh an bhreith a thug an Oifig seo freisin nach raibh taifid eile a bhí i seilbh na cuideachta faoi rialú na Comhairle sa chaoi is go bhféadfaí a mheas go bhfuil siad i seilbh na Comhairle faoi alt 2(5)(a) den Acht um Shaoráil Faisnéise. Rinne an t-iarratasóir achomharc in aghaidh na breithe sin chuig an Ard-Chúirt.

Cinneadh na Cúirte

Chinn an Chúirt go ndearna an Oifig seo earráid i dtaca leis an dualgas cruthúnais i litir réamhthuirimí chuig an iarratasóir a mhéid gur airbheartaíodh léi an dualgas a chur ar an iarratasóir a thaispeáint gur chóir na taifid atá i seilbh na Comhairle a scaoileadh. Thug Cross, J., breithiúnas gur baineadh an bonn go mór de bhreith na hOifige seo leis an mainneachtain an ráiteas sa réamhthuirim maidir leis an dualgas cruthúnais a shéanadh agus mar gur cuireadh an réasúnaíocht sa réamhthuirim san áireamh sa bhreith gan séanadh den chineál sin.

Maidir leis an gceist faoi na taifid i seilbh na cuideachta, chinn an Chúirt gur theip ar an Oifig seo breithniú cuí a dhéanamh ar gach ceist ábhartha i dtaca le saincheist an rialaithe. Chinn an Chúirt nár bhreithnigh an Oifig seo gur chuir an Chomhairle iasacht ab fhiú breis agus €10 milliún ar fáil don chuideachta agus nár chuir an Oifig seo san áireamh an fhíric go raibh an réadmhaoin i seilbh na cuideachta faoi léas nach raibh inmharthana ó thaobh na tráchtála de.

Le hOrdú dar dáta an 23 Deireadh Fómhair 2014, baineadh an bhreith a thug mé agus tarchuireadh an tsaincheist chuig an Oifig seo le haghaidh tuilleadh breithnithe. Rinne an Chúirt ordú freisin go raibh an bhreith le tabhairt laistigh de dheich seachtaine ó dháta an Ordaithe ag té nach raibh páirteach i dtabhairt na breithe tosaigh. Thug mise breith nua i mí na Nollag 2014 agus is féidir amharc uirthi ar shuíomh Gréasáin na hOifige seo (Cás 140287 - Mr X and Bray Town Council).

Patrick Kelly agus an Coimisinéir Faisnéise [2013] 325 MCA. Breithiúnas an Bhreithimh Onóraigh Iseult O'Malley, an 7 Deireadh Fómhair 2014

Cúlra

Rinne an t-iarratasóir seacht n-iarratas ar leith chuig an Oifig seo ar athbhreithniú ar bhreitheanna a thug an Coláiste Ollscoile, Baile Átha Cliath (COBÁC), i dtaca le hiarrataí a rinne sé faoin Acht um Shaoráil Faisnéise. Bhain na seacht n-iarraidh ar dhóigh éigin le cúis ghearáin sheanbhunaithe a bhí ag an iarratasóir le COBÁC. Thug an t-iarChoimisinéir breith gurbh é a bhí san úsáid a bhain an t-iarratasóir as an Acht um Shaoráil Faisnéise ná cuid dá straitéis le haghaidh na cúise gearáin sin a chur chun cinn agus/nó a fhadú agus gurbh ionann í agus patrún iompraíochta a thug le fios gur baineadh mí-úsáid as an bpróiseas Saoráil Faisnéise. D'fheidhmigh sí an lánrogha atá aici scor de na seacht n-iarratas uile faoi alt 34(9)(a)(i) den Acht um Shaoráil Faisnéise ar an mbonn gur cráiteach a bhí na hiarratais. Rinne an t-iarratasóir achomharc chuig an Ard-Chúirt.

Saincheist

I measc nithe eile, d'argóin an t-iarratasóir nár léirmhínigh an t-iarChoimisinéir an frása “suaibhreasach nó cráiteach” agus í ag teacht ar a breith. D'argóin sé freisin gur sáraíodh a cheart chun nósanna imeachta cothroma a mhéid nár cuireadh aighneachtaí a chuir COBÁC faoi bhráid na hOifige seo ar fáil dó lena bharúil a iarraidh sular tugadh an bhreith scor dá hiarratais ar athbhreithniú.

Chomh maith leis sin, d'argóin an t-iarratasóir nach raibh an t-údarás tarmligthe chun déanamh amhlaidh ag an Imscrúdaitheoir Sinsearach a thug an mhionnscribhinn i dtaca leis na himeachtaí Cúirte i mí na Samhna 2013 mar go raibh an post mar Choimisinéir Faisnéise folamh ag an am.

Rinne an t-abhcóide a bhí ag déanamh ionadaíocht don Oifig seo argóint nár bhreith a tugadh tar éis na n-athbhreithnithe í an bhreith scor de na hathbhreithnithe agus, mar sin de, ní féidir achomharc a dhéanamh in aghaidh breithe a thug an Coimisinéir Faisnéise scor d'athbhreithniú.

Cinneadh na Cúirte

Chinn an Chúirt gurb é is aidhm don phróiseas achomhairc reachtúil a bheith bainteach le pointí dlí a eascraíonn as breitheanna substainteacha an Choimisinéara tar éis athbhreithnithe in ionad é a bheith bainteach le breith an Choimisinéara maidir le cé acu a dhéanfar athbhreithniú nó a scoirfear d'athbhreithniú a tosaíodh cheana. Dhearbhaigh an Chúirt nach raibh aon údarás aici aird a thabhairt ar an achomharc.

Sa chás go raibh sí mícheart faoi, áfach, bhreithnigh an Chúirt ina dhiaidh sin an triail a chuir an t-iarChoimisinéir i bhfeidhm chun a chinneadh an bhfuil iarratas ina iarratas suaibhreoseach nó cráiteach nó nach bhfuil. Chinn O'Malley, J., nach ndearna an t-iarChoimisinéir earráid sa triail dhlíthiúil le cur i bhfeidhm ná lena cur i bhfeidhm maidir leis na fíricí.

Luaigh O'Malley, J., go raibh an Coimisinéir i dteideal a lánrogha a chleachtadh le reacht agus í ag cinneadh ar cheart a mheas gur cráiteach atá iarratas chuig an gCoimisinéir Faisnéise nó nár cheart. Thug sí breithiúnas nach raibh aon dualgas ar an gCoimisinéir staid intinne an iarratasóra a chruthú agus gur féidir tatal a bhaint as patrún iompraíochta ar bhonn gnáthchéille.

Maidir leis an gceist faoi údarás tarmligthe, dhearbhaigh an Chúirt nach luaitear sa dlí go gcailleann foireann na gcomhlachtaí seirbhíse poiblí an ceart dlíthiúil atá acu chun leanúint dá jab a dhéanamh agus chun na breitheanna a thabhairt ar tugadh údarás dóibh roimhe sin iad a thabhairt gach uair a bhíonn idirthréimhse sa phost mar cheann ar an ngníomhaireacht sin. Dhiúltaigh an Chúirt d'achomharc an iarratasóra. Rinne an t-iarratasóir achomharc in aghaidh bhreith na Cúirte chuig an gCúirt achomharc ó tugadh an bhreith.

FOI revision a step in the right direction

Irish Examiner - 04/10/2014

FOI covers gardai and NAMA for first time

By **Alan O'Keeffe**

A MORE powerful Freedom of Information Act coming into force this month will include gardai and NAMA within its powers for the first time.

The Herald - 04/10/2014

Faulty CCTV system at UHG putting patient safety at risk

Freedom of Information reply to former Mayor revealed security lapses

Connacht Sentinel - 16/09/2014

Caibidil 3: Breitheanna



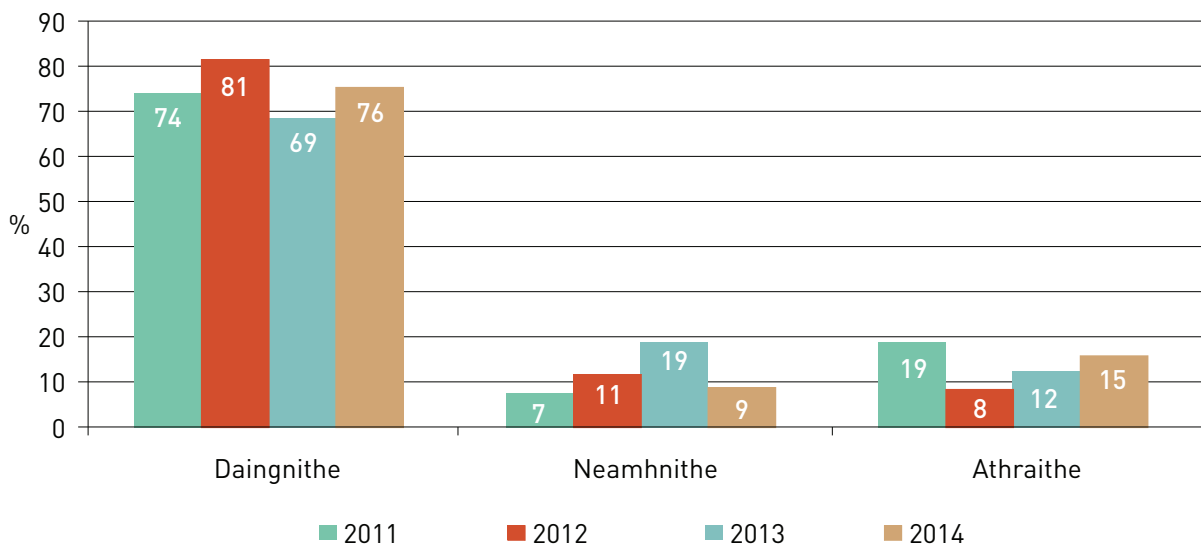
Caibidil 3: Breitheanna

Breitheanna foirmiúla

Sa bhliain 2014, rinne an Oifig seo athbhreithniú ar 340 cás san iomlán agus tugadh breith fhoirmiúil ar 202 cás díobh (59% de na hathbhreithnithe a cuireadh i gcrích). Ba trí bhíthin scor díobh, socrú nó tarraingt siar a druideadh na 138 cás eile (féach Tábla 16, Caibidil 4).

Torthaí na n-athbhreithnithe ar tugadh breith fhoirmiúil orthu idir an bhliain 2011 agus an bhliain 2014, leagtar béim orthu agus cuirtear iad i gcomparáid mar chéatadáin sa tábla thíos.

Comparáid chéatadáin na gcinntí foirmiúla 2011 - 2014



Mar is léir sa tábla thuas, is lú go mór an líon céatadánach breitheanna a neamhnigh an Oifig seo in 2014 ná an líon a neamhníodh in 2013. Is amhlaidh sin den chuid is mó cionn is gur tháinig laghdú ar líon na gcásanna (i gcomparáid leis an mbliain 2013) inar mheas an Oifig seo

go raibh sé riachtanach breith an chomhlachta phoiblí a neamhní de bharr gur theip air cloí le forálacha éigeantacha áirithe den Acht um Shaoráil Faisnéise.

Breitheanna suntasacha

Seo a leanas samplaí de na breitheanna suntasacha a thug an Oifig seo le linn na bliana 2014. Is féidir téacs iomlán gach breithe a fháil ar shuíomh Gréasáin na hOifige seo ag www.oic.gov.ie.

Martina Fitzgerald, RTÉ agus an Roinn Dlí agus Cirt agus Comhionannais - Uimh. cháis 130165

Ag deireadh na bliana 2014, d'eisigh mé breith a bhaineann le cóiríocht agus fosheirbhísí a bhí á gcur ar fáil go díreach ag an nGníomhaireacht Fáiltithe agus Imeasctha (RIA) de chuid na Roinne Dlí agus Cirt agus Comhionannais don lucht iarrtha tearmainn. D'iarr Martina Fitzgerald, iriseoir de chuid RTÉ, rochtain ar thaifid tuarascálacha cigireachta le haghaidh ocht nlonad Tearmainn ainmnithe mar aon le faisnéis mhionsonraithe faoin gcur ar fáil díreach tacaíochta do na daoine sin a bhí ag iarraidh tearmainn in Éirinn don tréimhse idir 2011 agus 2012.

D'iarr Iníon Fitzgerald go sonrath rochtain ar an bhfaisnéis ghinearálta a bailíodh le haghaidh staitisticí a foilsíodh sa tuarascáil bhliantúil. Go mall san athbhreithniú seo, tháinig sé chun solais gur choimeád an RIA bunachar sonraí a chuimsigh cuid den fhaisnéis a chlúdaigh an iarraidh. Ba chosúil gur baineadh úsáid as an mbunachar sonraí sin chun na staitisticí le haghaidh na tuarascála bliantúla a tháirgeadh. Tá an chuma ar an scéal, áfach, nár scrúdaigh an Roinn é go dtí gur lean an Oifig seo don cheist faoi cé acu is ann nó nach ann do na taifid as ar bailíodh na sonraí don tuarascáil bhliantúil. D'iarr Iníon Fitzgerald an cineál faisnéise sin go sonrath agus, i mo thuairimse, bhíothas in ann na taifid ábhartha a aisghabháil ón mbunachar sonraí sin i riocht tuarascála nó ar shlí eile agus iad a bhreithniú lena n-eisiúint sa chás go bhforáiltear é leis an Acht um Shaoráil Faisnéise.

Ina theannta sin, feictear dom nach ndearna an Roinn breithniú ar bith ar thaifid churtha in eagar a chur ar fáil, nuair is cuí, faoi mar a fhoráiltear le halt 13 den Acht um Shaoráil Faisnéise. Tá sé an-mhíshásúil gur tugadh aird na hOifige seo ar na taifid bhunachar sonraí chomh mall sin mar gur léir gur cheart iad a bhreithniú in 2012.

D'athraigh an Oifig seo breith na Roinne sa chás. Le linn di an bhreith diúltú do rochtain ar an bhfaisnéis phearsanta faoi dhaoine aonair a taifeadadh ar an mbunachar sonraí agus sna taifid a bhí á n-iarraidh a dhearbhu, thug sí ordú go n-eiseofaí na taifid choinnithe siar eile faoi réir an fhaisnéis phearsanta faoi dhaoine aonair a chur in eagar. Chomh maith leis sin, neamhnigh an Oifig seo an bhreith diúltú do chuid den iarraidh faoi alt 10(1)(c) ar an bhforas go raibh sí an-mhór toisc nár chloígh an Roinn le ceanglais alt 10(2) chun cúnadh a thabhairt nó chun tairiscint cúnadh a thabhairt d'Iníon Fitzgerald an iarraidh a leasú le nach ndiúltófaí di faoin alt sin a thuilleadh.

Iníon GK agus Feidhmeannacht na Seirbhíse Sláinte - Uimh. cháis 130242

Rinne bean iarratas chuig FSS ar chóipeanna de thaifid leighis a huncail a bhaineann leis an gcúram a cuireadh ar fáil dó in Ospidéal Naomh Eoin, Sligeach. Bhí roinnt de na leathanaigh ar iarraidh nuair a fuair sí na taifid. Bhain na laethanta ar iarraidh le laethanta ar a raibh imní ar bhail den teaghlach faoin gcúram a bhí á chur ar fáil dá n-uncail. I gcinneadh FSS ar an athbhreithniú inmheánach an 26 Iúil 2013, luadh nach rabhthas in ann aon taifid leighis chliniciúla le haghaidh na ndátaí a leagadh amach a aimsiú tar éis cuardaigh a rinne an Stiúrthóir Altranais san Ospidéal.

Ní raibh FSS in ann tráth ar bith le linn an athbhreithnithe míniú inghlactha a thabhairt ar cén fáth a raibh na taifid ar iarraidh. Ba léir go ndearna foireann an Ospidéil na taifid a chruthú agus a leagan ar chomhad an othair ach chuaigh na taifid ar iarraidh uair éigin.

I gcásanna ina dtagann buarthaí aníos faoin gcúram a fhaigheann duine, d'fhéadfadh an fháil ar nótaí comhaimseartha leighis bheith ríthábhachtach maidir le haghaidh a thabhairt ar shaincheisteanna ar bith a thagann aníos i dtaca leis an gcúram agus leis an gcóireáil a chuirtear ar fáil don othar. Ábhar mórímní a bhí i neamhláithreacht na dtaifead sin, ní hamháin i gcomhthéacs Saoráil Faisnéise ach i gcomhthéacs níos leithne freisin. Tar éis dom an comhad agus freagraí FSS ar na ceisteanna cuardaigh tosaigh a d'ardaigh an Oifig seo a scrúdú, ba chosúil dom gur tháinig an cheist um baint thoilíúil fhéideartha taifead ó chomhad othair aníos. Tá an chuma ar an scéal, ó na cuntais éagsúla ar an rud a tharla, gur tugadh comhad an othair chuig cruinniú a reáchtáil an fhoireann leis an iarratasóir an 14 Eanáir 2013 ach níor osclaíodh é ag an am sin. Tháinig an fhíric go raibh leathanaigh áirithe ar iarraidh chun solais nuair a rinneadh an iarraidh Saoráil Faisnéise.

D'fhiafraigh foireann na hOifige seo ar FSS an ndearnadh aon imscrúduithe nó fiosruithe nó ar tarchuireadh an cheist chuig an nGarda Síochána. Luaigh FSS ina freagra nach raibh sí in ann aon chás prima facie a éilíonn imscrúdú araíonachta a fháil amach. Luaigh sí freisin gur cheist don lucht bainistíochta áitiúil í iarraidh ar na Gardaí bheith páirteach ann agus nach nglaofaí orthu in éagmais fianaise ar choir. D'ainneoin an fhreagra a thug FSS, tháinig an Oifig seo ar an tuairim nár dhócha go ndearnadh na taifid a chailleadh ná a chur sa chomhad mícheart.

Mar sin féin, tá teorainn leis an ról atá agam i gcásanna nach féidir taifid atá á n-iarraidh a aimsiú iontu agus ní féidir liom ach a chinneadh cé acu a rinne an comhlacht poiblí gach beart réasúnach chun iad a aimsiú nó nach ndearna. Dá bharr sin, caithfidh mé aird a thabhairt ar an bhfianaise ar fáil don té a thug an bhreith agus ar an réasúnaíocht a d'úsáid an té a thug an bhreith chun teacht ar a chinneadh. Chomh maith leis sin, caithfidh mé measúnú a dhéanamh ar a leorga a bhí na cuardaigh a rinne an comhlacht poiblí agus é ag iarraidh na taifid lena mbaineann a aimsiú.

De réir na bhfreagraí a thug FSS, bhí na taifid i gceist i láthair ag cruinnithe idir an t-iarratasóir agus foireann an Ospidéil an 17 Nollaig 2012 agus an 14 Eanáir 2013, cé nár úsáideadh iad i

gceachtar cruinniú. Bunaithe ar an méid a chuimhníonn ball foirne, luaigh FSS gur “sheiceáil [ball foirne FSS] an comhad, tar éis iarraidh Saoráil Faisnéise, agus bhí cuid de na nótaí altranais, atá ar iarraidh anois, i láthair. Bhí an comhad san Aonad Athshlánúcháin thar oíche agus, an mhaidin dár gcionn, baineadh trí leathanach de na nótaí altranais”. Luaigh FSS go ndearnadh cuardach cuimsitheach ar sheomra na gcomhad, ar an Aonad Athshlánúcháin, ar an Ospidéal Lae, ar Aonaid eile agus ar oifigí riaracháin Altranais um an dtaca sin ach níor aimsíodh na nótaí ar iarraidh. Luaigh FSS freisin gur chuir Lucht Riaracháin an Ospidéil na baill foirne uile lena mbaineann faoi agallamh maidir le cailleadh na nótaí sin, i.e. foireann altranais, foireann chléireachais agus an Dochtúir Oifigiúil lena mbaineann. Ba éard a bhí i gceist leis an bpróiseas sin agallamh a chur ar na baill foirne áirithe ar mhol an t-iarratasóir go raibh a n-ainm i measc na ndaoine sin a chonaic na nótaí ábhartha sular cailleadh iad. Dar le FSS, rinne cúigear ball foirne iarracht na taifid ar iarraidh a aimsiú.

Cé gur ábhar mórinní é gur féidir taifid leighis phearsanta i seilbh FSS dul ar iarraidh i gcásanna mar sin, níl aon chumhachtaí ag an Oifig seo ordú a thabhairt do chomhlachtaí poiblí maidir le conas ba cheart dóibh a gcuid taifead a bhainistiú. Anuas air sin, cé go bhfuilim sásta a thabhairt faoi deara gur chuir FSS in iúl don Oifig seo le linn an athbhreithnithe go ndearnadh athruithe ar na socruithe bainistíochta taifead san Ospidéal mar thoradh ar an teagmhas seo, lena n-áirítear socruithe stórála níos daingne agus srianta ar rochtain ar thaifid leighis, is sothuigthe go bhfuil an t-iarratasóir an-díomách agus an-suaite mar nach raibh sí in ann cóipeanna de na taifid a fháil. Agus aird á tabhairt ar na sonraí faoi na cuardaigh a rinne FSS agus í ag iarraidh na taifid a aimsiú, áfach, ní raibh an dara rogha agam ach teacht ar an gconclúid go ndearna FSS gach beart réasúnach chun na taifid a aimsiú agus, dá bhrí sin, go raibh cúis mhaith aici lena chinneadh nárbh fhéidir na taifid a aimsiú.

Fiona Gartland agus an tSeirbhís Chúirteanna - Uimh. cháis 130140

Bhain an t-athbhreithniú seo le diúltú na Seirbhíse Cúirteanna do shonraí a eisiúint faoi speansais a d'éiligh gach breitheamh de chuid na Cúirte Uachtaraí, na hArd-Chúirte, na Cúirte Cuarda agus na Cúirte Dúiche don bhliain 2012.

Chuir an tSeirbhís Chúirteanna míniú ar fáil don iarratasóir faoi na cineálacha speansas a d'éiligh na breithiúna mar aon le táblaí ina mionsonraítear na speansas a d'éiligh na breithiúna go léir don bhliain 2012 gan ainmneacha na mbreithiúna a léiriú. D'argóin an tSeirbhís Chúirteanna gurb ionann nochtadh na sonraí faoi na speansas a d'éiligh gach breitheamh agus faisnéis phearsanta a bhí díolmhaithe óna heisiúint faoi alt 28 den Acht um Shaoráil Faisnéise. D'argóin sí freisin go raibh an fhaisnéis díolmhaithe óna heisiúint faoi alt 24 den Acht ar an mbonn go bhféadfaí le réasún a bheith ag súil leis go ndéanfaí dochar do shlándáil an Stáit dá n-eiseofaí na sonraí.

Ghlac mé leis gur féidir a rá, ar bhealach ginearálta, gurb ionann sonraí faoi na speansas a d'éiligh breithiúna aonair agus faisnéis a bhaineann le gnóthaí airgeadais na mbreithiúna sin agus, mar sin de, go dtagann siad faoin sainmhíniú ar ‘fhaisnéis phearsanta’ chun críocha an Achta. Thug mé faoi deara, áfach, go mbaineann an fhaisnéis leis na breithiúna ina ról mar oifigh phoiblí agus le híocaíochtaí a rinneadh leo i dtaca lena gcuid dualgas poiblí. I gceann

amháin de na cásanna ba luaithe ar thug an Oifig seo cinneadh air (Uimh. cháis 99168), chinn an Coimisinéir a bhí i seilbh oifige ag an am sin nach as gné phríobháideach éigin de shaol na n-éilitheoirí a d'éascair na speansais a íocadh leis na comhaltaí tofa de Thithe an Oireachtais chun íoc as na speansais a thabhaigh siad agus a gcuid feidhmeanna mar ionadaithe poiblí á gcomhlíonadh acu. Thug mé breithiúnas gur bhain na breithniúcháin chéanna leis an gcás seo. Dá bhrí sin, fuair mé gur sháraigh leas an phobail i gcuntasacht as úsáid cistí poiblí a chinntiú aon cheart chun príobháideachta a bhféadfadh breithiúna leas a bhaint as i dtaca le sonraí faoina n-éilimh speansas.

Foráiltear le halt 24(1)(a) go bhféadfaidh ceann diúltú do rochtain a thabhairt ar thaifead dá bhféadfaí le réasún a bheith ag súil leis, dá dtabharfaí rochtain ar an taifead, go ndéanfaí dochar do shlándáil an Stáit. Rinneadh an argóint, dá nochtfaí sonraí faoi speansais taistil a íocadh le breithiúna aonair, go bhféadfaí breithiúna atá ar shiúl ón mbaile go minic a shainiú, go bhféadfadh an fháil ar an fhaisnéis sin a bheith ina riosca do bhreithiúna agus/nó dá dteaghlach, go bhféadfaí bagairt do shábháilteacht an bhreithimh nó dá t(h)eaghlach a úsáid chun neamhspleáchas breithiúnach a chur i gcontúirt, rud a rachadh i bhfeidhm ar shlándáil an Stáit, go háirithe i gcásanna polaitiúla agus i gcásanna a bhfuiltear ag éisteacht leo sa Chúirt Choiriúil Speisialta.

Tar éis na hargóintí a rinneadh a bhreithniú, fuair mé amach gur tuairimeach ó thaobh cineáil de a bhí an dochar a sainiú agus nach bhféadfaí le réasún a bheith ag súil leis, dá nochtfaí na speansais a íocadh le breithiúna aonair in 2012, go ndéanfaí dochar do shlándáil an Stáit. Thug mé ar aird nach nochtfaí, dá ndéanfaí an iarraidh, ach méid iomlán na n-íocaíochtaí speansais a d'éiligh breithiúna sonracha as speansais a tabhaíodh agus a gcuid feidhmeanna á gcomhlíonadh acu le linn 2012. Ní fhacthas dom gur tugadh aird ar an bhfíric gur stairiúil a bhí an fhaisnéis i gceist agus nár tugadh sa leibhéal sonraí ach cur síos ar chineál ginearálta an speansais, i.e. i dtaca le taisteal, le cothabháil, le feisteas breithimh agus le speansais theagmhasacha. Thug mé ar aird freisin gur féidir go minic aitheantas na mbreithiúna atá ina suí i roinnt cúirteanna ar aon lá ar leith a aithint ón Dialann Dlí a fhoilsítear ar shuíomh Gréasáin na Seirbhíse Cúirteanna agus nár chosúil gur measadh an fhaisnéis sin a fhoilsítear sa Dialann Dlí, a bhí ar fáil don phobal cheana féin, a bheith ina riosca míchuí do shlándáil.

Chinn mé nár thug an tSeirbhís Chúirteanna údar lena breith diúltú do rochtain ar shonraí na speansas a d'éiligh gach breitheamh agus thug mé ordú go n-eiseofaí an fhaisnéis a bhíodhas ag iarraidh.

Comhairle Cathrach Chorcaí agus an Roinn Comhshaoil, Pobail agus Rialtais Áitiúil - Uimh. cháis 140144

Sa chás seo, rinneadh iarraidh chuig an Roinn Comhshaoil, Pobail agus Rialtais Áitiúil ar chóipeanna de litreacha lucht bainistíochta a eisíodh chuig bainisteoirí cathrach, bainisteoirí contae agus bainisteoirí baile i dtaca leis na hiniúchtaí reachtúla a rinne Seirbhís Iniúcháireachta an Rialtais Áitiúil (LGAS) de chuid na Roinne maidir leis na blianta airgeadais 2010, 2011 agus 2012. Chuaigh an Roinn i gcomhairle le gach Comhairle Cathrach agus

Comhairle Contae faoi alt 29 den Acht um Shaoráil Faisnéise sular tugadh breith na taifid a eisiúint le leas an phobail. Rinne Comhairle Cathrach Chorcaí iarratas chuig an Oifig seo ar athbhreithniú ar an mbreith sin.

Ba é a bhí sna taifid i gceist ná litreacha a d'ullmhaigh an Roinn mar chuid dá hiniúchadh ar ráitis airgeadais bhliantúla na Comhairle le haghaidh na mblianta ábhartha. D'argóin an Chomhairle go raibh na taifid a bhíodhas ag iarraidh díolmhaithe óna n-eisiúint faoi alt 27 den Acht um Shaoráil Faisnéise. Cé go bhforáiltear leis an alt sin go gcosnaítear faisnéis atá íogair ó thaobh na tráchtála de, is cosúil go bhfuil roinnt éiginnteachta ann maidir le cé acu a fhéadfar é a chur i bhfeidhm chun leasanna tráchtála comhlachtaí poiblí a chosaint nó nach bhféadfar. Mar phrionsabal ginearálta, glacaim leis go ndírítear go príomha le halt 27 ar leasanna tráchtála na bpáirtithe atá i mbun gníomhaíocht tráchtála a chosaint. Nílím cinnte, mar sin, go bhfuil sé cuí ar fad do chomhlacht poiblí, atá i mbun seirbhísí poiblí a chur ar fáil, díolúine a éileamh faoi alt 27 le haghaidh a leasanna airgeadais a chosaint. Táim den tuairim go dtagann cosaint den chineál sin go ginearálta leis an díolúine a ndéantar foráil di in alt 31 den Acht um Shaoráil Faisnéise a bhaineann le leasanna eacnamaíocha an Stáit agus leasanna eacnamaíocha comhlachtaí poiblí a chosaint.

Mar sin féin, bhí mé sásta i dtosca an cháis seo glacadh leis nach dtoirmisctear an Chomhairle brath ar fhorálacha alt 27(1)(b) leis an Acht um Shaoráil Faisnéise sa chás go bhfuil sí ag maíomh go bhféadfaí le réasún a bheith ag súil leis, dá nochtfaí na litreacha lucht bainistíochta i gceist, go dtabhódh sí cailteanas airgeadais ábhartha.

D'argóin an Chomhairle go bhféadfaí na litreacha béim a leagan ar laigí a d'fhéadfadh a bheith ina gcúis le cailteanais airgeadais ábhartha dá n-eiseofaí iad. Níor aithin sí, áfach, aon fhaisnéis shonrach a bhféadfaí le réasún a bheith ag súil leis, dá n-eiseofaí í, go ndéanfadh sí an dochar atá measta. Bhí an Oifig seo den tuairim go bhfuil leas ag an bpobal in eolas a bheith aige gur aithníodh na laigí sin agus go bhfuiltear ag iarraidh ar chomhlachtaí poiblí glacadh le freagracht as dul i ngleic leis na laigí sin sa chás go n-aithníonn iniúchtaí laigí i meicníochtaí rialaithe inmheánaigh.

Chomh maith leis sin, d'argóin an Chomhairle go bhfreastalaítear go maith ar an bprionsabal um oscailteacht agus trédhearcacht le tuarascálacha ar leith a d'fhoilsigh Seirbhís Iniúcháireachta an Rialtais Áitiúil agus an Coiste Iniúcháireachta ina bhféadtar, agus ina ndéantar, gach údar imní atá aici a bheith á chur in iúl agus á phlé ina dhiaidh sin ag comhaltaí tofa agus, go deimhin, a thuairisciú sa phreas. Chinn an Oifig seo, áfach, nach gciallaíonn sé sin nach le leas an phobail atá meicníochtaí breise le haghaidh oscailteacht agus trédhearcacht den chineál sin a mhéadú. Thug an Oifig seo breithiúnas gur sháraigh leas an phobail maidir le rochtain a dheonú aon leas atá ag an bpobal i dtarraingt siar na dtaifead i gceist agus, dá bharr sin, thug sí ordú go n-eiseofaí na taifid.

An tUas. X agus Údarás Craolacháin na hÉireann (BAI) - Uimh. cháis 120260

Ba é a bhí i gceist leis an gcás seo ná an t-imscrúdú a rinne an BAI ar an gclár “Prime Time Investigates - Mission to Prey” a craoladh ar RTÉ an 23 Bealtaine 2011 agus as ar tháinig clúmhillleadh sagairt Éireannaigh a bhí ina mhisinéir sa Chéinia roimhe sin. Foilsíodh Tuarascáil Imscrúdaithe an BAI ina hiomláine i mí na Bealtaine 2012. Mar sin féin, ba é an cheist a cuireadh orm ná cé acu a bhí nó nach raibh cúis mhaith ag an BAI le diúltú do rochtain ar na nótaí agallaimh agus ar na haighneachtaí scríofa a rinne RTÉ agus lucht déanta an chláir aonair nó a rinneadh thar a gceann i dtaca leis an imscrúdú.

Sa bhreith a thug mé, d’aithin mé gur prionsabal seanbhunaithe i ndlí na hÉireann agus i ndlí na hEorpa é an prionsabal um “pribhléid iriseoireachta”, i.e. go bhfuil ábhar bunaidh iriseoireachta i dteideal cosaint speisialta d’fhonn an saorshreabhadh faisnéise chuig iriseoirí a chinntiú agus, dá bhrí sin, d’fhonn saoirse tuairimíochta a chosaint. Ghlac mé leis sna tosca go dteastaíonn rúndacht ó imscrúduithe craolacháin de ghnáth le go mbeidh siad éifeachtach agus go raibh údar le breith an BAI faoi alt 21(1)(a) den Acht um Shaoráil Faisnéise mar thoradh ar an mórdhochar a thiocfaí as nochtadh na dtaifead lena mbaineann.

An tUas. X agus an Roinn Dlí agus Cirt agus Comhionannais - Uimh. cháis 120291

Níos moille sa bhliain 2015, beidh feidhm ag an Acht um Shaoráil Faisnéise 2014 maidir leis na taifid i seilbh an Gharda Síochána i dtaca le ceisteanna acmhainní daonna, airgeadais agus soláthair. Ní bheidh feidhm aige maidir leis na taifid ina sheilbh a bhaineann lena chuid feidhmeanna oibriúcháin. Mar sin féin, tagann cásanna aníos ó am go chéile ina n-ardaítear an cheist faoi rochtain ar thaifid a chruthaigh an Garda Síochána agus atá i seilbh comhlachtaí poiblí faoi réir Saoráil Faisnéise.

An taifead i gceist sa chás seo ba ea tuarascáil an Gharda Síochána chuig an Roinn faoi na ceolchoirmeacha i bPáirc an Fhionnuisce i mí Iúil 2012 as ar tháinig “eachtraí tromchúiseacha ainrialach poiblí”. Dhiúltaigh an Roinn rochtain a dheonú ar an tuarascáil faoi alt 23(1)(a)(iii) (forfheidhmiú an dlí agus sábháilteacht an phobail) agus faoi alt 26(1)(a) (faisnéis a fhaightear i modh rúin) den Acht um Shaoráil Faisnéise. Chuir an Roinn agus an Garda Síochána araon údair imní in iúl faoi thaifid ina bhfuil faisnéis maidir le modheolaíochtaí póilíneachta a bheith á gcur ar fáil don phobal. D’áitigh siad go bhféadfaí, dá nochtfaí an fhaisnéis sa tuarascáil, “beag beann ar cé chomh neamhshuntasach atá sí”, an cumas atá ag an nGarda Síochána beatha agus maoin a chosaint.

Mar sin féin, ní dhíolmhaítear tuarascálacha an Gharda Síochána chuig an Aire mar aicme leis an Acht um Shaoráil Faisnéise. Níor shainaithin an Garda Síochána ná an Roinn na gnásanna póilíneachta nó na modheolaíochtaí póilíneachta a measadh a bheith i mbaol sa chás seo. Níor míníodh ach oiread conas a d’fhéadfaí le réasún a bheith ag súil leis go ndéanfaí dochar ar bith dá n-eiseofaí an tuarascáil. Mar sin féin, níor aimsigh mé aon bhunús le teacht ar an

gconclúid gur dóigh go n-imreodh eisiúint na tuarascála drochthionchar ar sholáthar faisnéise den chineál sin don Aire nó don Roinn sa todhchaí. Tháinig mé ar an gconclúid gur cheart an tuarascáil a eisiúint ina hiomláine, faoi réir eagrán chomhaontaithe áirithe.

An tUas. P agus Feidhmeannacht na Seirbhíse Sláinte (FSS) agus Ospidéal Naomh Muire um Leanaí Breoite - Uimhreacha cáis 090261/62/63

Bhí sé seo ina chás tarchurtha ón mbliain 2009 (a tionscnaíodh in 2000 ar dtús) a bhaineann le hiarrataí a rinne an t-iarratasóir ar thaifid a bhaineann leis féin agus le hIníon X, a iar-leasiníon, a bhí ina mac léinn ollscoile 20 bliain d'aois tráth mo bhreithe. Bhain na taifid sin le mí-úsáid ghnéasach leanaí líomhnaithe ach bhí fianaise ann go ndearnadh na líomaintí sin chun críocha mailíseacha. Beag beann ar an bhfianaise ar mhailís, áfach, bhain na taifid le tosca teaghlach ag a raibh fadhbanna.

Agus an bhreith á tabhairt agam, shoiléirigh mé an cur chuige a ghlac mé maidir le triail cothromaithe leas an phobail, ag tabhairt aird ar bhreithiúnas na Cúirte Uachtaraí i gcás Ospidéal an Rotunda. Thug mé faoi deara go bhfuil slat tomhais oibiachtúil in ionad slat tomhais shuibiachtúil i gceist maidir le leas an phobail. I dtaca leis an gceist faoi chothroime nós imeachta, mhínigh mé go bhfuil leas mór ag an bpobal i bhfaisnéis a nochtadh a shoiléireadh cé acu a chomhlíon FSS agus an tOspidéal a gcuid feidhmeanna ar bhealach a bhí ag teacht leis na prionsabail um cheartas nádúrtha agus um cheartas bunreachtúil agus leis an gceart chun príobháideachta. Chuir mé in iúl go láidir, áfach, nach dtugann triail leas an phobail an t-údarás dom gearáin in aghaidh comhlachtaí poiblí a imscrúdú ná gníomhú mar mheicníocht mhalartach díospóide i dtaca le bearta a rinne comhlachtaí poiblí. Mar thoradh ar na taifid a eisíodh chuig an iarratasóir cheana féin, ar taifid iad a chomhlíon leas an phobail in oscailteacht agus cuntasacht go pointe éigin, tháinig mé ar an gconclúid nár leor, tríd is tríd, leas an phobail i rochtain ar na taifid eile i gceist a dheonú chun leas an phobail i seasamh leis na cearta chun príobháideachta a bhí ag na tríú páirtithe lena mbaineann a sháru.

[Tabhair faoi deara: Rinne an t-iarratasóir achomharc in aghaidh na breithe sin chuig an Ard-Chúirt.]

An tUas. X agus an Roinn Iompair, Turasóireachta agus Spóirt - Uimh. cháis 090077

Go mall sa bhliain 2008, rinne an t-iarratasóir iarraidh a chuimsigh 34 cuid chuig an Roinn ar thaifid a bhaineann leis na nithe seo: bealaí agus seirbhísí bus, Státchabhair, iniúchtaí, cigireachtaí, léirmhíniú reachtúil, comhairle, cumarsáid, lacáiste agus praghsanna díosail agus cúrsaí eile. Rinne sé an iarraidh sin tar éis don Roinn iarraidh den chineál céanna a rinneadh roimhe sin a chúngú. Phróiseáil an Roinn an iarraidh mhionathraithe ansin agus rinne an t-iarratasóir achomharc in aghaidh a breithe chuig an Oifig seo sa deireadh i mí an Mhárta 2009. Eisíodh an bhreith a thug mé an 13 Samhain 2014.

Is mór an trua gur thóg sé cúig bliana leis an mbreith a thug mé sa chás seo a eisiúint. Go bunúsach, ní raibh ag an Oifig seo go dtí seo na hacmhainní foirne ba ghá a shannadh don iomad gné leathan éagsúil den iarratas seo ar athbhreithniú. Cibé scéal é, tá impleachtaí ag moill den chineál sin maidir le cé chomh comhaimseartha atá na taifid arna n-eisiúint. Sa chás ar leith seo, aistríodh feidhmeanna áirithe na Roinne agus a rialú ar thaifid ghaolmhara chuig an Údarás Náisiúnta Iompair (NTA) sna blianta idir eatarthu. Ós rud é nárbh fhéidir an tÚdarás Náisiúnta Iompair a cheangal le m'athbhreithniú, bhí mé den tuairim nach raibh de shainchúram orm a thuilleadh breithniú a dhéanamh ar na taifid a bhaineann leis an iarraidh a bhí i seilbh an Údaráis Náisiúnta Iompair ag an am sin. Cé go bhfuarthas amach sa deireadh gur díolmhaithe a bhí na taifid sin, glacaim leis ina ainneoin sin nach féidir glacadh leis an moill ar an athbhreithniú seo a phríoiseáil. Mar sin féin, táim cinnte go n-áiritheoidh próisis athbhreithnithe na hOifige seo nach dtiocfaidh moill dhoghlacltha den chineál sin aníos an athuair.

Cé gur breithníodh i m'athbhreithniú cé acu a thug an Roinn seo údar lena breith gan na taifid a measadh a bheith ábhartha do na codanna éagsúla den iarraidh a dheonú go hiomlán (ar diúltuithe iad ar sheas mé leo den chuid ba mhó), measaim go raibh an Roinn i dteideal diúltú d'iarraidh an iarratasóra ina hiomláine ar an gcéad dul síos faoi alt 10(1)(c) den Acht um Shaoráil Faisnéise. Is údar riaracháin é sin le diúltú a bheadh infheidhmithe dá n-éileadh géilleadh don iarraidh go ndéanfaí líon taifead chomh mór sin a aisghabháil agus a scrúdú go gcuirfí bac nó go gcuirfí isteach, go substaintiúil agus go míréasúnach, ar obair eile an chomhlachta poiblí lena mbaineann. Aithnítear leis an bhforáil an méid a d'fhéadfadh aisghabháil agus scrúdú na dtaifead tionchar a imirt ar obair comhlachtaí poiblí agus is féidir brath uirthi a luaite is a thugann an comhlacht cúnamh nó a thairgeann sé cúnamh a thabhairt d'iarthóir a (h)iarraidh a leasú le go mbeadh sé níos fusa í a bhainistiú ó thaobh an chomhlachta de (tá tagairt in alt 10(2)).

D'iarr an iarraidh sa chás seo 34 ceann de chatagóirí éagsúla taifid, a bhfuil roinnt díobh liostaithe thuas. Cuireadh na gnéithe go léir den iarraidh, gan trí cinn a áireamh, go han-leathan agus go doiléir (amhail "doiciméadúchán de chineál ar bith atá bainteach [leis]" an ábhar ar leith). Iarradh roinnt taifid ón mbliain 1990 i.e. roimh thosach feidhme an Achta um Shaoráil Faisnéise. Tugaim spreagadh do chomhlachtaí poiblí go rialta dul i mbun iarrataí ar Shaoráil Faisnéise ar bhealach réamhghníomhach agus ba léir gur le brí an Achta um Shaoráil Faisnéise a bhí breith na Roinne déileáil leis an iarraidh sin ar Shaoráil Faisnéise. Is léir, áfach, gur leagadh ualach ar an Roinn de chineál nach raibh beartaithe, i mo thuairimse, ag an Oireachtas agus an tAcht um Shaoráil Faisnéise á rith aige le príoiseáil na hiarrata agus an athbhreithnithe inmheánaigh agus le déileáil le hathbhreithniú na hOifige seo.

An tUas. X agus Comhairle Contae na Mí - Uimh. cáis 120210

Is é cúlra an cháis seo bearta a rinne Comhairle Contae na Mí i gceist a bhain le forfheidhmiú pleanála. D'iarr an t-iarratasóir taifid a bhaineann le dhá Fhógra Feidhmiúcháin a d'eisigh an Chomhairle chuige in 2004 agus in 2009. Bhain an dá cheann díobh le sáruithe líomhnaithe

ar chead pleanála a deonaíodh don iarratasóir agus dá chuideachta tógála in 2002. In 2006 agus in 2010, chinn na Cúirteanna go raibh na Fógraí neamhbhailí agus lochtach ó thaobh nós imeachta de faoi seach.

Mhaígh an Chomhairle gur lean na taifid a bhreithnigh sí, a bhí ina dtaifid a chruthaigh an Chomhairle de bharr na gcásanna cúirte, ar aghaidh ag mealladh pribhléid dlíthíochta. Taifid a bheadh díolmhaithe óna dtaispeáint in imeachtaí i gcúirt ar fhoras pribhléid ghairmiúil dlíodóra, tá siad díolmhaithe óna n-eisiúint faoi alt 22(1)(a) den Acht um Shaoráil Faisnéise.

Agus breithniú á dhéanamh agam ar mhaíomh na Comhairle maidir le pribhléid dlíthíochta, thug mé aird ar an mbreithiúnas a thug Finlay Geoghegan, J., an 21 Márta 2014 sa chás seo: an Coláiste Ollscoile, Corcaigh - Ollscoil na hÉireann v Bord Soláthair an Leictreachais [2014] IEHC 135. Agus a breithniú á tabhairt aici, chuir an Breitheamh Onórach Finlay Geoghegan in iúl go soiléir go bhfuil dualgas ar an bpáirtí a dhearbhaíonn pribhléid “a dhéanamh amach ... de réir dóchúlachta an ndearnadh dlíthíocht ... a thabhairt faoi deara nó a bhagairt ó [dáta ar leith].” Maidir le pribhléid dlíthíochta, murab ionann is pribhléid comhairle dlí, thug sí breithiúnas freisin “nach go huathoibríoch a leanann sí ar aghaidh tar éis chinneadh deiridh na dlíthíochta sin nó ... tar éis cinneadh deiridh dlíthíochta neasghaolmhaire.”

D’iarr an Oifig seo ar an gComhairle a dhéanamh amach go ndearnadh, de réir dóchúlachta, dlíthíocht maidir le sárúithe pleanála líomhnaithe a mhachnamh nó go raibh sí ar feitheamh nó a dhéanamh amach nár cuireadh dlíthíocht neasghaolmhar i gcrích, go ndearnadh í a mhachnamh nó go raibh sí ar feitheamh. Ba é freagra na Comhairle ná go bhfuil a “comhad dlíthíochta i dtaca leis [an iarratasóir] ina chomhad reatha fós” mar nach ndearnadh stádas pleanála fhorbairt an iarratasóra “a bhreith go breithiúnach go dtí seo”. D’argóin an Chomhairle go bhfuil féidearthacht ann fós go bhféadfadh an cheist teacht os comhair na gCúirteanna ní ba mhoille agus go bhféadfadh pribhléid dlíthíochta leanúint ar aghaidh tar éis chinneadh na nImeachtaí a tionscnaíodh go dtí seo.

Chinn mé nár thug an Chomhairle údar lena dearbhú go bhféadfadh pribhléid dlíthíochta leanúint ar aghaidh i dtosca an cháis. Ní hionann an fhéidearthacht go dtiocfaidh imeacht aníos am éigin, faoi mar atá sa tslat tomhais a éilíonn na Cúirteanna, agus go dtarlóidh sé de réir dóchúlachta. Dá bhrí sin, níor mheas mé gur thug an Chomhairle údar lena maíomh go nglacfaidh na Cúirteanna leis go bhfuil feidhm ag pribhléid ghairmiúil dlíodóra maidir leis na taifid ar an mbonn gur lean siad ar aghaidh ag mealladh aon phribhléide dlíthíochta a d’fhéadfadh a bheith acu tráth.

Amach ón bhfíric gur theip uirthi na hargóintí a iarradh uirthi a dhéanamh a chur i láthair, bhí an-díomá orm gur theip ar an gComhairle páirt a ghlacadh san iarraidh seo ar Shaoráil Faisnéise agus i m’athbhreithniú. Chuaigh ceithre mhí thart sular admhaigh an Chomhairle gur theip uirthi déileáil le cuid ghlan shoiléir amháin den iarraidh ach níor thug sí aon mhíniú ar a cliseadh déanamh amhlaidh ná ar cén fáth ar thóg sé an oiread sin ama freagairt do na hiarratais a rinne an Oifig seo arís is arís eile ar an míniú sin.

Chomh maith leis sin, chuaigh trí mhí thart sular dheimhnigh an Chomhairle gur chuir sí taifid ar fáil don iarratasóir faoi nósanna imeachta follasaithe Cúirte. Is toisc í sin atá ábhartha don bhreithniú ar cé acu a bheadh nó nach mbeadh eisiúint na dtaifead sin faoi Shaoráil Faisnéise ina dhíspeagadh cúirte agus is toisc í ag a bhfuil feidhm ag alt 22(1)(b) ina leith. Theip uirthi na taifid a aimsíodh amhlaidh a shainaithint. Anuas air sin, is go bunúsach a bhain sé den iarratasóir an deis le hiarratas gaolmhar a tharraingt siar agus aisíocaíocht a tháille iarratais a fháil ós rud é nár chuir sí in iúl don Oifig seo go raibh an taifead i gceist sa chás sin faoi réir athbhreithniú sa chás reatha freisin.

Agus aird á tabhairt agam ar an dóigh ar phléigh an Chomhairle leis an iarratasóir agus leis an Oifig seo araon, mheas mé go raibh sé cuí an beart annamh a dhéanamh ordú a thabhairt don Chomhairle na taifid sin a fuair mé amach nach raibh díolmhaithe a eisiúint chuig an iarratasóir laistigh de 10 lá oibre tar éis dhul in éag na tréimhse le haghaidh achomharc a dhéanamh chuig an Ard-Chúirt.

HSE expects outpatient waiting times to be public later this year

Medical Independent – 11/09/2014

Revealed: public patients face two year delay for scans

Sunday Business Post – 07/09/2014

Caibidil 4: Staitisticí



Caibidil 4: Staitisticí

Roinn I - Comhlachtaí Poiblí – 2014

Tábla 1:	Forbhreathnú ar iarratais saorála faisnéise ar dhéileáil comhlachtaí poiblí leo
Tábla 2:	Iarratais saorála faisnéise ar dhéileáil comhlachtaí poiblí leo agus a rinneadh a achomharc ina dhiaidh sin
Tábla 3:	Iarratais saorála faisnéise a fuarthas, anailís de réir chineál iarratasóra
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Tábla 5:	Anailís ar iarratais ar dhéileáil earnáil na seirbhíse poiblí leo
Tábla 6:	Iarratais shaorála faisnéise a fuair ranna/oifigí na státseirbhíse
Tábla 7:	Iarratais saorála faisnéise a fuair údaráis áitiúla
Tábla 8:	Iarratais saorála faisnéise a fuair feidhmeannacht na seirbhíse sláinte (FSS)
Tábla 9:	Iarratais saorála faisnéise a fuair ospidéal dheonacha, rialaitheoirí na seirbhísí meabhairshláinte agus gníomhaireachtaí gaolmhara
Tábla 10:	Iarratais saorála faisnéise a fuair comhlachtaí oideachais tríú leibhéal
Tábla 11:	Iarratais saorála faisnéise a fuair comhlachtaí eile
Tábla 12:	Táillí ar dhéileáil comhlachtaí poiblí leo

(Tugtar d'Aire: Figiúirí do na tablaí thuas arna soláthar ag An Roinn Caiteachais Phoiblí agus Athchóirithe, Feidhmeannacht na Seirbhíse Sláinte, Grúpa Idirchaidrimh Saorála Faisnéise na nÚdarás Áitiúil, an Roinn Sláinte, Cónaidhm Náisiúnta na gComhlachtaí Saorálacha, an Grúpa Idirchaidrimh don Earnáil Ard-Oideachais agus arna dtiomsú ag Oifig an Choimisinéara Faisnéise).

Roinn II - Oifig an Choimisinéara Faisnéise - 2014

- Tábla 13:** Anailís ar iarratais ar athbhreithnithe a fuarthas
- Tábla 14:** Anailís ar chásanna athbhreithnithe
- Tábla 15:** Iarratais ar athbhreithnithe ar glacadh leo i 2014 - de réir comhlacht poiblí
- Tábla 16:** Toradh athbhreithnithe críochnaithe - comparáid trí bliana
- Tábla 17:** Ábhar na niarratas ar athbhreithniú ar glacadh leo - comparáid trí bliana
- Tábla 18:** Iarratais ar glacadh leo de réir cineáil - comparáid trí bliana
- Tábla 19:** Gnathfhiosruithe
- Tábla 20:** Iarrataí a mheastar a bheith diúltaithe de bharr nár thug comhlachtaí poiblí freagra orthu

Roinn I – Comhlachtaí poiblí - 2014

Tábla 1: Forbhreathnú ar iarratais saorála faisnéise ar dhéileáil comhlachtaí poiblí leo

Iarratais idir lámha - 01/01/2014	3,232
Iarratais a fuarthas i 2014	
Pearsanta	15,548
Neamhphearsanta	4,600
Measctha	96
Iomlán	20,244
Iomlán na n-iarratas idir lámha le linn na bliana	23,476
Iarratais ar déileáladh leo	19,262
Iarratais idir lámha - 31/12/2014	4,214

Tábla 2: Iarratais saorála faisnéise ar dhéileáil comhlachtaí poiblí leo agus a rinneadh a achomharc ina dhiaidh sin

	Líon	Céatadán
Iarratais saorála faisnéise ar dhéileáil	19,262	100%
Comhlachtaí poiblí leo athbhreithnithe inmheánacha	586	3%
a fuair comhlachtaí poiblí iarratais ar ghlac an Coimisinéir leo	252	1%

Tábla 3: Iarratais saorála faisnéise a fuarthas, anailís de réir chineál iarratasóra

Iarratasóirí	Líon	Céatadán
Iriseoirí	2,346	12%
Lucht gnó	775	4%
Comhaltaí den Oireachtas	114	0%*
Baill foirne comhlachtaí poiblí	644	3%
Cliaint foirne comhlachtaí poiblí	13,765	68%
Eile	2,600	13%
Iomlán	20,244	100%

* Is ionann an céatadán iarbhír agus 0.6%

Tábla 4: Torthaí ar iarrataí Saoráil Faisnéise ar dhéileáil comhlachtaí poiblí leo

Iarratasóirí	Líon	Céatadán
Iarratais a géilleadh dóibh	11,896	62%
Iarratais a géilleadh dóibh i bpáirt	3,691	19%
Iarratais a diúltaíodh dóibh	1,958	10%
Iarratais a aistríodh chuig an gcomhlacht cuí	294	2%
Iarratais a tarraingíodh siar nó a láimhseáileadh lasmuigh de shaoráil faisnéise	1,423	7%
Iomlán	19,262	100%

Tábla 5: Anailís ar iarratais ar dhéileáil earnáil na seirbhíse poiblí leo

	% Céatadán dár géilleadh	% Céatadán dár géilleadh ibpáirt	% Céatadán a diúltaíodh	% Céatadán a aistríodh	% Céatadán a tarraingíodh siar nó a láimhsíodh lasmuigh de raon an Achta
Ranna/Oifigí Státseirbhíse	42%	33%	13%	1%	11%
Údaráis Áitiúla	50%	31%	14%	0%	5%
FSS	75%	12%	9%	1%	3%
Ospidéal Shaoráacha, Seirbhísí Sláinte Meabhracha agus Gníomhaireachtaí Gaolmhara Eile	77%	4%	6%	2%	11%
Institiúidí Tríú Leibhéal	65%	21%	7%	0%	7%
Comhlachtaí Eile	54%	30%	6%	1%	9%

Tábla 6: Iarratais shaorála faisnéise a fuair ranna/oifigí na státseirbhíse

	Pearsanta	Neamh- phearsanta	Measctha	Iomlán
Rannóg/Oifig na Státseirbhíse				
An Roinn Coimirce Sóisialaí	2,070	119	4	2,193
An Roinn Dlí agus Cirt agus Comhionannais	720	198	2	920
An Roinn Oideachais agus Scileanna	172	127	4	303
Na Fórsaí Cosanta	205	18	1	224
An Roinn Sláinte	10	199	0	209
An Roinn Caiteachais Phoiblí agus Athchóirithe	104	104	0	208
An Roinn Talmhaíochta, Bia agus Mara	112	89	4	205
Oifig na gCoimisinéirí Ioncaim	103	102	0	205
An Roinn Comhshaoil, Pobal agus Rialtais Áitiúil	14	166	0	180
Roinn an Taoisigh	13	160	0	173
An Roinn Airgeadais	3	162	0	165
Oifig Achomharc Leasa Shóisialaigh	134	0	0	134
An Roinn Gnóthaí Eachtracha agus Trádála	34	83	0	117
An Roinn Iompair, Turasóireachta agus Spóirt	5	88	0	93
An Roinn Ealaíon, Oidhreachta agus Gaeltachta	4	80	0	84
An Roinn Cumarsáide, Fuinnimh agus Achmhainní Nádúrtha	3	71	0	74
Seirbhís Tithe an Oireachtais	1	70	1	72
An Roinn Post, Fiontar, agus Nuálaíochta	12	49	1	62
Oifig na nOibreacha Poiblí	8	33	2	43
Seirbhís Chúirteanna	8	29	6	43
An Roinn Leanaí agus Gnóthaí	2	35	0	37
An tSeirbhís um Ceapacháin Phoiblí	16	6	0	22
Oifig Stiúrthóir na nIonchúiseamh Poiblí	11	3	0	14
Oifig an Ombudsman	10	4	0	14
An Roinn Cosanta	5	6	0	11
Oifig an Choimisinéara Faisnéise	1	1	2	4
Iomlán	3,780	2,002	27	5,809

Tábla 7: Iarratais saorála faisnéise a fuair údaráis áitiúla

Údaráis Áitiúil*	Pearsanta	Neamh- phearsanta	Measctha	Iomlán
Comhairle Cathrach Bhaile Átha Cliath	132	168	3	303
Comhairle Chontae Chorcaí	37	69	4	110
Comhairle Cathrach Chorcaí	5	87	0	92
Comhairle Chontae Bhaile Átha Cliath Theas	34	43	0	77
Comhairle Cathrach Luimní	29	44	0	73
Comhairle Chontae Dhún Laoghaire-Rath an Dúin	30	41	0	71
Comhairle Chontae Mhuigh Eó	7	50	0	57
Comhairle Chontae Fhine Gall	16	38	0	54
Comhairle Chontae na Gaillimhe	5	46	0	51
Comhairle Chontae an Chláir	10	38	1	49
Comhairle Chontae Chiarraí	2	38	7	47
Comhairle Chontae na Mí	5	41	1	47
Comhairle Chontae Dhún na Gall	9	37	0	46
Comhairle Chontae Chill Dara	10	35	0	45
Comhairle Chontae Lú	15	28	2	45
Comhairle Chontae Thiobraid Árann Thuaidh	7	32	3	42
Comhairle Chontae Loch Garman	11	30	0	41
Comhairle Chontae Chill Mhantáin	2	37	0	39
Comhairle Cathrach na Gaillimhe	16	21	0	37
Comhairle Chontae Cheatharlocha	6	26	0	32
Comhairle Chontae Laoise	18	10	0	28
Comhairle Cathrach Phort Láirge	9	19	0	28
Comhairle Chontae Chill Chainnigh	4	23	0	27
Comhairle Chontae Ros Comáin	2	19	1	22
Comhairle Chontae Sligeach	5	16	0	21
Comhairle Chontae na h-Iarmhí	3	17	0	20
Comhairle Chontae Liatroma	2	17	0	19
Comhairle Chontae Longfoirt	7	9	1	17
Comhairle Chontae Uibh Fhailí	3	11	1	15

Comhairle Chontae Mhuineacháin	4	9	1	14
Comhairle Chontae Thiobraid Árann Theas	0	13	0	13
Comhairle Chontae Luimní	1	7	0	8
Comhairle Chontae Phort Láirge	1	7	0	8
Comhairle Chontae an Chabháin	0	5	0	5
Iomlán	447	1,131	25	1,603
Údaráis Réigiúnda	0	7	0	7
Comhthionóil Réigiúnda	0	4	0	4
*Tá figiúirí le haghaidh Comhairlí Baile agus Comhairlí Buirge istigh sna figiúirí den Chontae sin				

Tábla 8: Iarratais um SF a fuair FSS (seachas gníomhaireachtaí áirithe a chlúdaítear i dTábla 9)

Limistéar Fheidhmeannacht na Seirbhíse Sláinte*	Pearsanta	Neamh-phearsanta	Measctha	Iomlán
FSS Deisceart	3,012	62	0	3,074
FSS Iarthair	2,282	121	4	2,407
FSS Baile Átha Cliath Thoir-Thuidh	837	26	1	864
FSS Baile Átha Cliath-Lar Laighean	771	22	1	794
Iarrataí Náisiúnta	6	321	0	327
Iomlán	6,908	552	6	7,466
*De réir struchtúr réigiúnach Fheidhmeannacht na Seirbhíse Sláinte				

Tábla 9: Iarratais um SF a fuair ospidéal dheonacha, rialaitheoirí na seirbhísí meabhairshláinte agus gníomhaireachtaí gaolmhara

Ospidéal/Seirbhís/Gníomhaireacht*	Pearsanta	Neamh- phearsanta	Measctha	Iomlán
Ospidéal na hOllscoile na Trócaire, Corcaigh	712	3	0	715
Ospidéal Naoimh Shéamais	495	6	0	501
Ospidéal Thamhlachta	404	5	0	409
Ospidéal Rotunda	267	13	0	280
Ospidéal Mater Misericordiae	263	13	0	276
Ospidéal Beaumont	253	15	0	268
Ospidéal Náisiúnta Máithreachais, Sráid Holles	201	8	0	209
Ospidéal na hOllscoile Naoimh Uinseann	183	10	0	193
Ospidéal Mhuire do Leanaí Breoite, Cromghlinn	183	6	0	189
Ospidéal Naoimh Eoin, Luimneach	163	0	0	163
Ospidéal na Leanaí, Sráid an Teampaill	147	7	0	154
Ospidéal Ban an Chúm	149	3	0	152
Ollscoil Otharlann an Deiscirt - Ospidéal Viceoria, Corcaigh	115	1	0	116
Ospidéal Náisiúnta Ortaipéideach Cheapach	96	0	0	96
Ord Spidiléirí N. Eoin Dé	36	0	0	36
Ospidéal Ríoga Victeoiriach Súl agus Cluas	34	0	0	34
An tÚdarás Um Fhaisnéis agus Cáilíocht Sláinte	11	21	1	33
Comhairle na nDochtúirí Leighis	22	11	0	33
Ospidéal Náisiúnta Athslánúcháin, Dún Laoghaire	31	1	0	32
An Lárchlinic Feabhais	21	4	0	25
Ospidéal Naoimh Uinsionn - Fionnradharc	24	0	0	24
Coimisiún Meabhair-Shláinte	18	4	0	22
Ospidéal Naoimh Micheál, Dún Laoghaire	16	0	0	16
Údarás Sábháilteachta Bia na hÉireann	0	14	0	14
Ospidéal Déadach Bhaile Átha Cliath	11	0	1	12
Enable Ireland	10	1	0	11
Eile	32	20	5	57
Iomlán	3,897	166	7	4,070

*Agus an Tuarascáil seo á priontáil, ní raibh fáil ar na figiúirí le haghaidh iarrataí Saoráil Faisnéise a rinneadh chuig TUSLA - an Gníomhaireacht um Leanaí agus an Teaghlach

Tábla 10: Iarratais saorála faisnéise a fuair comhlachtaí oideachais tríú leibhéal

Comhlacht Oideachais Tríú Leibhéal	Pearsanta	Neamh-phearsanta	Measctha	Iomlán
Coláiste na hOllscoile, Baile Átha Cliath	77	26	0	103
Ollscoil na hÉireann, Gaillimh	22	18	0	40
Coláiste na hOllscoile, Corcaigh	14	15	3	32
Coláiste na Tríonóide	11	19	1	31
Ollscoil Luimnigh	7	18	1	26
Institiúid Teichneolaíochta Chorcaí	5	20	0	25
Ollscois Chathair Bhaile Átha Cliath	6	13	0	19
Institiúid Teichneolaíochta Bhaile Átha Cliath	6	13	0	19
Institiúid Teichneolaíochta Phort Láirge	2	11	1	14
Ollscoil na hÉireann, Má Nuad	2	8	0	10
Coláiste Phádraig	4	6	0	10
Institiúid Teichneolaíochta na Gaillimhe-Maigh Eo	1	9	0	10
Comhlachtaí Eile	14	58	2	74
Iomlán	171	234	8	413

Tábla 11: Iarratais saorála faisnéise a fuair comhlachtaí eile

Comhlacht Poiblí	Pearsanta	Neamh-phearsanta	Measctha	Iomlán
Uisce Éireann	11	77	0	88
RTÉ	1	55	0	56
Údarás Slainte agus Sabáilteachta	32	4	1	37
Príomh-Oifigeach Míochaine don Státseirbhís	27	0	0	27
Comhairle Ealaíon	3	21	0	24
Seirbhís Fuilistriúchain na hÉireann	8	12	3	23
Coimisiún Rialáil Cumarsáide	15	5	0	20
Coimisiún um Rialáil Fuinnimh	7	12	0	19
Comhairle Spóirt na hÉireann	6	13	0	19
Pobal	2	16	1	19

Seirbhís Phromhaidh	17	2	0	19
Údarás Craolacháin na hÉireann	0	18	0	18
Údarás Náisiúnta Iompair	6	12	0	18
An tÚdarás Rialála Táirgí Sláinte	0	17	0	17
Iascach Intíre Éireann	1	12	4	17
Bord um Chúnadh Dlíthiúl	12	3	1	16
Comhairle Náisiúnta um Oideachas Speisialta	13	3	0	16
An tSeirbhís Oideachais Leanúnaigh agus Scileanna	1	13	2	16
GFT Éireann	0	15	0	15
Fáilte Éireann	1	12	0	13
Coimisiún um Chaighdeán in Oifigí Poiblí	0	12	0	12
Údarás um Bóithre Náisiúnta	0	10	0	10
Eile (92 chomhlacht le níos lú ná 10 iarrataisí an ceann)	32	141	8	181
Iomlán	195	485	20	700

Tábla 12: Táillí ar dhéileáil comhlachtaí poiblí leo

	Iarratas Bunúsach	Cuardach & Aisfháil	Athbheirteánú Inmheanach	Ais íocaíochtaí	Táillí Glan
Ranna/Oifigí Státseirbhíse	€21,540.35	€12,941.01	€4,615.00	€2,579.87	€36,516.49
Údaráis Áitiúla	€11,320.00	€2,054.01	€2,995.00	€235.00	€16,134.01
FSS	€4,880.00	€728.00	€215.00	€895.00	€4,928.00
Ospidéal Shaorálacha, Seirbhísí Sláinte Meabhracha agus gníomhaireachtaí Gaolmhara Eile	€1,750.00	€3,803.70	€450.00	€45.00	€5,958.70
Institiúidí Tríú Leibhéal	€1,831.35	€119.23	€255.00	€285.00	€1,920.58
Comhlachtaí Eile	€0.00	€0.00	€0.00	€0.00	€0.00
Iomlán	€41,321.70	€19,645.95	€8,530.00	€4,039.87	€65,457.78

Roinn II - Oifig an Choimisinéara Faisnéise - 2014

Tábla 13: Anailís ar iarratais ar athbhreithnithe a fuarthas

larratais ar athbhreithniú idir lámha - 01/01/2014	30
larratais ar athbhreithniú a fuarthas i 2014	355
lomlán na n-iarratas ar athbhreithniú idir lámha i 2014	385
Scoradh den iarratas	7
larratais neamhbhailí	95
larratais a tharraingíodh siar	15
larratais a dhiúltóidh	3
larratais ar glacadh leo le haghaidh athbhreithnithe i 2014	252
lomlán na n-iarratas ar athbhreithniú a bhreithníodh i 2014	372
larratais ar athbhreithniú lámha - 31/12/2014	13

Tábla 14: Anailís ar chásanna athbhreithnithe

Athbhreithnithe idir lámha - 01/01/2014	204
larratais ar glacadh leo le haghaidh athbhreithnithe i 2014	252
lomlán na n-athbhreithnithe idir lámha i 2014	456
Athbhreithnithe a críochnaíodh i 2014	340
Athbhreithnithe ar chuirthear ar aghaidh go 2015	116

Tábla 15: Iarratais ar athbhreithnithe ar glacadh leo i 2014 - de réir comhlacht poiblí

Feidhmeannacht na Seirbhíse Sláinte		62
FSS Iarrataisí Náisiúnta	22	
FSS Deisceart	16	
FSS Iarthair	11	
FSS Baile Átha Cliath Lár Laighean	9	
FSS Baile Átha Cliath Thoir Thuaidh	4	
An Roinn Coimirce Sóisialaí		23
An Roinn Dlí agus Cirt agus Comhionannais		18
Óglaigh na hÉireann		8
An Roinn Talmhaíochta, Bia agus Mara		7
An Roinn Airgeadais		5
An Roinn Caiteachais Phoiblí agus Athchóirithe		5
Comhairle Cathrach Bhaile Átha Cliath		5
Bord na gCon		5
Bord um Chúnamh Dlíthiúl		5
Eile (chomhlacht le níos lú ná 5 athbhreithniú an ceann)		109
Iomlán		252

Tábla 16: Toradh athbhreithnithe críochnaithe - comparáid trí bliana

	2014	%	2013	%	2012	%
Breith Dearbhaithe	154	45%	104	40%	84	42%
Breith Neamhnithe	17	5%	29	11%	12	6%
Breith Athraithe	31	9%	18	7%	8	4%
Scoradh den Iarratas	19	6%	8	3%	6	3%
Thangthas ar shocrú	74	22%	35	14%	39	20%
Tarraingthe siar	45	13%	64	25%	51	25%
Athbhreithnithe Críochnaithe	340	100%	258	100%	200	100%

Tábla 17: Ábhar na niarratas ar athbhreithniú ar glacadh leo – comparáid trí bliana

	2014	%	2013	%	2012	%
Diúltú Rochtanna	211	84%	217	84%	212	90%
Agóidí ag tríú pairtithe i gcoinne scaoilte faisnéise fúthu nó arna soláthar acu	8	3%	16	6%	8	3%
Leasú ar thaifid faoi alt 17	7	3%	9	3%	8	3%
Ráiteas cúiseanna faoi alt 18	24	9%	11	4%	6	3%
Breith chun táille a ghearradh	2	1%	7	3%	2	1%
Iarratais ar Glacadh leo	252	100%	260	100%	236	100%

Tábla 18: Iarratais ar glacadh leo de réir cineáil - comparáid trí bliana

	2014	%	2013	%	2012	%
Pearsanta	110	44%	102	39%	94	40%
Neamhphearsanta	108	43%	125	48%	115	49%
Measctha	34	13%	33	13%	27	11%
Iomlán	252	100%	260	100%	236	100%

Tábla 19: Gnathfhiosruithe

Bliain	Líon
2014	1,274
2013	1,218
2012	1,262
2011	824
2010	622
2009	857
2008	1,100
2007	1,315
2006	1,551
2005	1,396

Tábla 20: Iarrataí a mheastar a bheith diúltaithe de bharr nár thug comhlachtaí poiblí freagra orthu

Gan Breith tugtha ar Bhuniarratais ná ar Athbhreithniú Inmheánach			
Comhlacht Poiblí	2014	2013	2012
FSS – Náisiúnta	6	2	12
FSS Deisceart	5	1	-
FSS Baile Átha Cliath-Lar Laighean	4	4	-
An Roinn Dlí agus Cirt agus Comhionannais	3	4	3
FSS Iarthair	3	1	1
TUSLA: An Ghníomhaireacht um Leanaí agus an Teaghlach	3	-	-
Comhairle Contae Chorcaí	2	3	1
Bord na gCon	2	-	2
Comhairle Cathrach Chorcaí	1	-	-
An Roinn Ealaíon, Oidhreachta agus Gaeltachta	1	-	-
An Roinn Leanaí agus Gnóthaí	1	-	1
FSS Baile Átha Cliath Thoir-Thuaidh	1	-	-
Shannon Development	1	-	-
Ospidéal Naoimh Shéamais	1	-	-
Iomlán 2014	34		

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Oifig an Choimisinéara um Faisnéis Comhshaoil
Office of the Commissioner for Environmental Information

Cuid II – An Coimisinéir um Fhaisnéis Comhshaoil



Réamhrá

Sa bhliain faoi thrácht, arbh í an chéad bhliain iomlán a chaith mé mar Choimisinéir Faisnéise agus mar Choimisinéir um Fhaisnéis Chomhshaoil, b'éigean dom roghanna deacra a dhéanamh maidir leis an leithdháileadh acmhainní idir an dá oifig. Déanfaidh mé mionphlé ar cheist na n-acmhainní thíos. Bunaíodh Oifig an Choimisinéara um Fhaisnéis Chomhshaoil (OCFC) faoi Airteagal 12 de Rialacháin na gComhphobal Eorpach (Rochtain ar Fhaisnéis faoin gComhshaoil). Tá na Rialacháin maidir le Rochtain ar Fhaisnéis faoin gComhshaoil bunaithe ar Threoir 2003/4/CE maidir le rochtain phoiblí ar fhaisnéis faoin gcomhshaoil. Foráiltear leis na Rialacháin do chóras rochtana a chur ar bun in Éirinn atá ar leithligh ó chóras rochtana an Achta um Shaoráil Faisnéise. Dá bhrí sin, tá an ról atá agam mar Choimisinéir um Fhaisnéis Chomhshaoil neamhspleách ó thaobh an dlí de ar an ról atá agam mar Choimisinéir Faisnéise. Mar sin féin, foráiltear le hAirteagal 12(10) de na Rialacháin maidir le Rochtain ar Fhaisnéis faoin gComhshaoil go bhfaighidh an Coimisinéir um Fhaisnéis Chomhshaoil cúnamh ó fhoireann Oifig an Choimisinéara Faisnéise (OCF) agus, dá bhrí sin, ó acmhainní eile atá ar fáil don Oifig sin. Mar sin, imríonn feidhmiú OCF tionchar dosheachanta ar fheidhmíocht OCFC, mar a pléadh i dTuarascáil na bliana seo caite. Mar fhocal dearfach, rinneadh leasú a raibh an-fhálte roimhe ar na Rialacháin maidir le Rochtain ar Fhaisnéis faoin gComhshaoil, rud lenar foráladh do laghdú sna táillí achomhairc. Tháinig an laghdú sin sna sála ar achtú an Achta um Shaoráil Faisnéise 2014, rud lenar áiríodh laghdú i dtáillí Saoráil Faisnéise freisin.

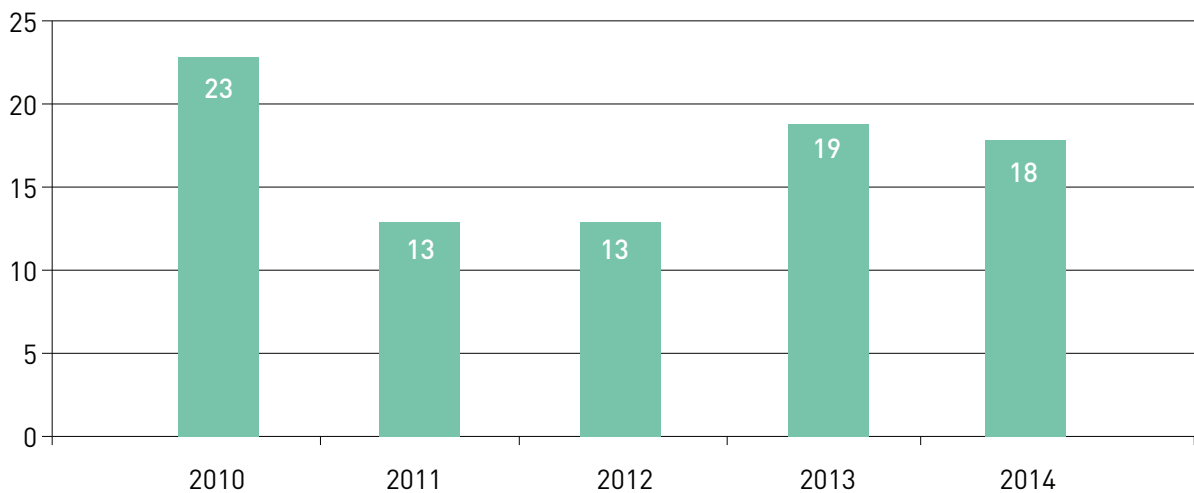
Baineann an ceart rochtana faoi na Rialacháin maidir le Faisnéis faoin gComhshaoil le “faisnéis faoin gcomhshaoil” atá á sealbhú ag “údarás poiblí”, de réir bhrí na Rialachán, nó thar a cheann. Is é an ról atá agam mar Choimisinéir um Fhaisnéis Chomhshaoil athbhreithniú a dhéanamh ar bhreitheanna údarás poiblí atá á n-achomharc ag iarratasóirí nach bhfuil sásta leis an toradh ar a n-iarrataí ar fhaisnéis faoi na Rialacháin. Tagann ceart achomhairc chuig an Oifig seo chun cinn freisin i gcásanna ina maíonn an comhlacht nó an duine lena mbaineann iarraidh ar rochtain ar fhaisnéis faoin gcomhshaoil nach údarás poiblí é de réir bhrí na Rialachán. Tá mo chuid breitheanna ar achomharc críochnaitheach agus ceangailteach ar na páirtithe lena mbaineann, ach amháin i gcásanna ina ndéantar achomharc eile chuig an Ard-Chúirt ar phoncanna dlí laistigh de dhá mhí ó dháta na breithe lena mbaineann.

Le haghaidh tuilleadh faisnéise a fháil faoi fheidhmiú an chórais rochtana ar fhaisnéis faoin gcomhshaol in Éirinn, tabhair cuairt ar ár suíomh Gréasáin ag www.ocei.gov.ie, áit a bhfuil nasc le Tuarascálacha Bliantúla ón Oifig seo, nasc le suíomh Gréasáin na Roinne Comhshaoil, Pobail agus Rialtais Áitiúil, agus Treoir 2003/4/CE.

Achomhairc agus ceisteanna

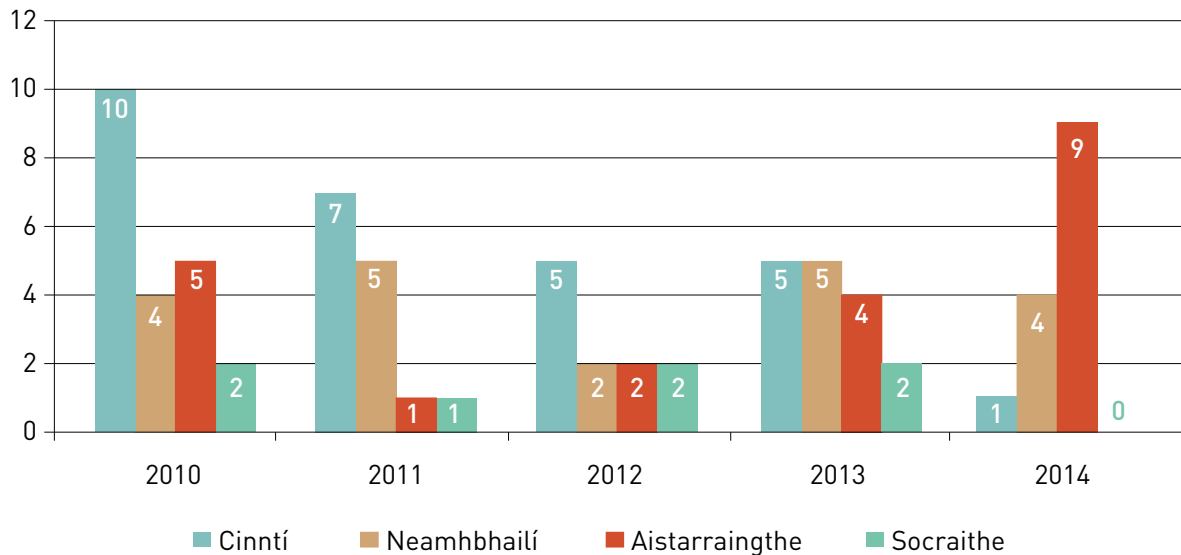
Le linn na bliana 2014, fuair an Oifig seo 18 n-achomharc. Thuairiscigh an Oifig seo gur bhain 3 cinn de na hachomhairc sin le cásanna inar measadh an iarraidh lena mbaineann a bheith diúltaithe ag an gcéim bhunaidh agus/nó ag céim bhreith an athbhreithnithe inmheánaigh, figiúr arbh fheabhas suntasach é ar an bhfigiúr don bhliain roimhe. Meastar iarraidh a bheith diúltaithe i gcásanna ina dteipeann ar an údarás poiblí breith ar an iarraidh a eisiúint laistigh den teorainn ama iomchuí a shonraítear sna Rialacháin (mí amháin, de ghnáth).

Líon na n-achomharc a fuarthas



Dúnadh ceithre achomharc déag le linn na bliana. Níor tháinig breith fhoirmiúil ach as ceann amháin de na hachomhairc sin. Tá buaicphointí ina leith sin leagtha amach thíos. Tá an bhreith foilsithe ina hiomláine ar shuíomh Gréasáin na hOifige seo ag www.ocei.gov.ie.

Toradh ar achomhairc chuig CFC de réir bliana



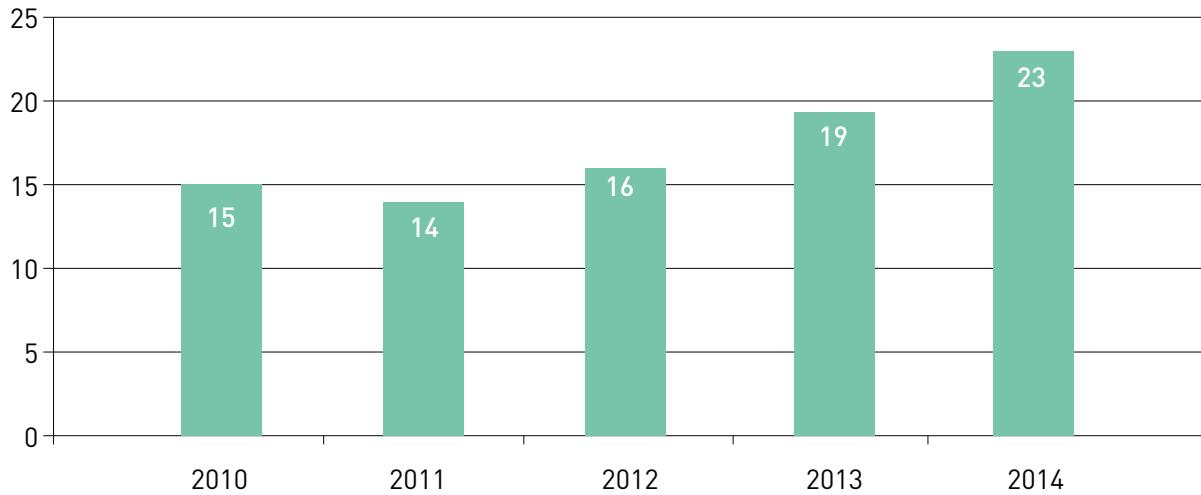
Rinneadh sé achomharc a tharraingt siar nó a mheas a bheith tarraingthe siar toisc gur aontaigh an t-údarás poiblí lena mbaineann an fhaisnéis a iarradh a chur ar fáil trína foilsíú nó ar shlí eile. Bhí idirghabháil dhíreach ón Oifig seo i gceist le dhá cheann de na cásanna sin. Pléifear na cásanna sin thíos. I gceithre cinn de na cásanna, áfach, d'aontaigh an t-údarás poiblí lena mbaineann an fhaisnéis a iarradh a chur ar fáil as a stuaim féin tar éis an t-achomharc a chur isteach.

Tarraingíodh dhá achomharc eile siar i bhfianaise na breithe a thóg an Oifig seo go luath sa bhliain 2014 an t-achomharc a rinne sí chuig an gCúirt Uachtarach a tharraingt siar sa chás An Taoiseach v. An Coimisinéir um Fhaisnéis Chomhshaoil [2010] IEHC 241. Tarraingíodh achomharc eile siar toisc gur ghlac an t-achomharcóir le tuairim na hOifige seo nach raibh an fhaisnéis a iarradh i seilbh an údaráis poiblí lena mbaineann. Measadh gurbh achomhairc neamhbhailí iad na hachomhairc eile a dúnadh sa bhliain 2014, go príomha mar gheall nach ndearnadh aon iarraidh ar athbhreithniú inmheánach ina leith.

Ba as iarrataí chuig ranna rialtais agus chuig údaráis áitiúla a tháinig leath na n-achomharc anuraidh. I measc na n-údarás poiblí eile a ndearnadh achomharc in aghaidh a mbreitheanna, bhí an Bord Pleanála, Bord na Móna, Coillte, Líonraí Bhord Soláthair an Leictreachais agus EirGrid. In dhá chás, mhaígh na comhlachtaí nach údaráis poiblí iad de réir bhrí na Rialachán.

Bhí trí chás is fiche idir lámha ag deireadh na bliana. B'ionann é sin agus méadú ceithre chás ar an bhfigiúr don bhliain roimhe. Thuairiscigh an fhoireann go bhfuarthas 42 ceist ghinearálta faoi na Rialacháin.

Líon na n-achomharc idir lámha de réir bliana



Airteagal 12(6) de na Rialacháin

Le hAirteagal 12(6), tugtar cumhachtaí áirithe dom maidir le déileáil le hachomharc. Féadfaidh mé:

- ceangal ar údarás poiblí faisnéis faoin gcomhshaol a chur ar fáil dom,
- scrúdú a dhéanamh ar fhaisnéis faoin gcomhshaol atá i seilbh údarás áitiúil agus cóipeanna a dhéanamh den fhaisnéis sin, agus
- dul isteach in aon áitreabh atá á áitiú ag údarás poiblí d'fhonn faisnéis faoin gcomhshaol a fháil

Tá áthas orm a thuairisciú nár ghá dom an fhoráil sin a agairt sa bhliain 2014.

Cásanna suntasacha

Cás CEI/13/0006 – An tUas. Stephen Minch agus an Roinn Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha (an Roinn) – Breith an 18 Nollaig 2014

Maidir le cé acu a bhí nó nach raibh údar ag an Roinn le diúltú géilleadh do rochtain ar an tuarascáil dar teideal “Analysis of options for potential State intervention in the roll out of next-generation broadband” ar an bhforas nach faisnéis faoin gcomhshaol de réir bhrí na Rialachán í an fhaisnéis lena mbaineann.

Chun go bhféadfaidh an fhaisnéis cáiliú mar “faisnéis faoin gcomhshaol” chun críocha na Rialachán, dheimhnigh mé sa bhreith sin gur gá go dtiocfaidh an fhaisnéis faoi cheann amháin de na sé chatagóir atá leagtha amach sa sainmhíniú in Airteagal 3(1); ní leor baint a bheith ag

an bhfaisnéis a iarradh le ceann amháin de na sé chatagóir, is cuma cé chomh mór nó chomh beag atá an bhaint sin. Thug mé faoi deara freisin go dtugtar le fios leis an mbreithiúnas ó Chúirt Bhreithiúnais an Aontais Eorpaigh i gCás C-524/09, Ville de Lyon (22 Nollaig 2010), inar pléadh le hiarraidh ar rochtain ar shonraí trádála a bhain le lamháltais i gcomhair astaíochtaí gás ceaptha teasa, nach gá go gcáilíonn gach cineál faisnéise a bhfuil baint de chineál éigin acu le hastaíochtaí gás ceaptha teasa mar fhaisnéis faoin gcomhshaoil de réir bhrí na Treorach. Tar éis dom scrúdú a dhéanamh ar a bhfuil sa tuarascáil, tháinig mé ar an tuairim go mbaineann an tuarascáil leis na himpleachtaí costais don Stát atá ag gabháil le cineálacha éagsúla bhonneagar leathanbhanda na chéad ghlúine eile a chur i bhfeidhm i gceantair a ndéanann an earnáil phríobháideach tearcfhreastal orthu faoi láthair. Níor aimsigh mé aon bhonn le teacht ar an gconclúid go gcáilíonn an fhaisnéis mar fhaisnéis faoin gcomhshaoil de réir bhrí Airteagail 3(1)(b) ná (c), mar a dúirt an t-achomharcóir.

Rinne mé breithniú freisin ar an gceist maidir le cé acu is “beart” an Plean Náisiúnta Leathanbhanda féin de réir bhrí Airteagal 3(1)(c) nó nach ea, rud a d’fhágfadh go gcáileodh an tuarascáil a iarradh mar fhaisnéis faoin gcomhshaoil faoi mhír (e). Thug mé faoi deara, áfach, nach bhfuil an Plean Náisiúnta Leathanbhanda ach ina straitéis ardleibhéil lena leagtar spriocanna síos chun leathanbhanda ardluais a sholáthar ar fud na hÉireann. Fuair mé amach nach bhfuil an Plean Náisiúnta Leathanbhanda féin ina bheart a théann i bhfeidhm, nó ar dóigh dó dul i bhfeidhm, ar na gnéithe comhshaoil nó ar na tosca comhshaoil dá dtagraítear i míreanna (a) agus (b) den sainmhíniú toisc gur an-bheag atá an nasc idir an plean agus aon tionchar a bheidh ann ar an gcomhshaoil, murab ionann agus na bearta agus na gníomhaíochtaí a d’fhéadfaí a ghlacadh chun an plean a chur chun feidhme. Tháinig mé ar an gconclúid go raibh an ceart ag an Roinn diúltú don iarraidh ón achomharcóir sa chás seo.

[Tabhair faoi deara: Rinne an t-iarraitasóir achomharc in aghaidh na breithe sin chuig an Ard-Chúirt; beidh an éisteacht ar siúl an 25 Meitheamh 2015.]

Cás CEI/12/0007 – An tUas. David Healy, Cairde Chomhshaoil na hÉireann, agus an Roinn Comhshaoil, Pobail agus Rialtais Áitiúil (an Roinn) – Measadh an t-achomharc a bheith tarraingthe siar an 11 Meitheamh 2014

Maidir le cé acu a bhí nó nach raibh údar ag an Roinn le diúltú géilleadh do rochtain ar leagan neamhchurtha in eagar de “Irish Water: Phase 1 Report” agus de na hAguisíní leis an tuarascáil sin.

Bhain an cheist sa chás seo le cé acu a bhí nó nach raibh údar ag an Roinn le diúltú géilleadh do rochtain ar fhaisnéis a bhain le riachtanais mhaoiniúcháin Uisce Éireann agus le muirir uisce amach anseo. Níor dhíospóid an Roinn gurbh fhaisnéis faoin gcomhshaoil í an fhaisnéis a iarradh, a bhí curtha in eagar ó leagan foilsithe den tuarascáil lena mbaineann, ach dhiúltaigh sí géilleadh do rochtain faoi Airteagail 8(a)(iv) (rúndacht imeachtaí údarás poiblí), 8(b) (rúndacht Comh-aireachta), agus 9(1)(c) (rúndacht tráchtála nó thionsclaíoch) de na Rialacháin.

Le linn an athbhreithnithe, bhuail an Oifig seo le hoifigigh ón Roinn chun roinnt ábhair imní a phlé, go háirithe an spleáchas a bhí ag an Roinn ar dhíolúintí Saoráil Faisnéise a úsáid mar bhonn le diúltú géilleadh d'iarrataí faoi Airteagal 8(a)(iv) de na Rialacháin. Ní rabhtas in ann teacht ar aon réiteach ar an ábhar ag an gcruinniú. Ina dhiaidh sin, agus ag féachaint don bhreithiúnas ó O'Neill, J. sa chás *An Taoiseach v. An Coimisinéir um Fhaisnéis Comhshaoil* [2010] IEHC 241, rinne an Roinn éileamh nua ar dhiúltú faoi Airteagal 9(2)(d), rud a bhain le cumarsáid inmheánach údarás poiblí.

Tar éis tuilleadh comhfhreagrais eadrainn, áfach, chuir an Roinn in iúl ar deireadh go mbeadh sí sásta an tuarascáil a fhoilsiú ina hiomláine faoi réir cead a fháil ón Rialtas. Thug an Roinn fógra don Oifig seo an 29 Bealtaine 2014 gur thug an Rialtas cead di an tuarascáil a fhoilsiú ina hiomláine agus go raibh sí ar fáil ar shuíomh Gréasáin na Roinne. Chuir an Oifig seo an méid sin in iúl don achomharcóir. Níor ardaigh sé aon ábhair imní eile ina dhiaidh sin. Dá bhrí sin, measadh an t-achomharc a bheith tarraingthe siar.

Cás CEI/12/0009 – An tUas. Damien McCallig agus EirGrid – Measadh an t-achomharc a bheith tarraingthe siar an 8 Iúil 2014

Maidir le cé acu atá nó nach bhfuil achomharc ag teastáil i gcásanna nach bhfuil aon saincheist eile le socrú iontu

Bhain an cás seo le diúltú ag EirGrid géilleadh do rochtain ar fhaisnéis faoin gcomhshaoil a bhain le hiarratas ar nasc eangaí ó thríú páirtí. Ba é Airteagal 9(1)(c) an príomhfhóras le diúltú, ag féachaint do Threoir ón mbliain 2009 agus do Rialacháin ghaolmhara lenar foráladh do rúndacht faisnéise tráchtála íogaire a bhí i seilbh an oibreora córais tarchurtha.

Le linn an athbhreithnithe, bhuail an Oifig seo le hionadaí ó EirGrid agus chuaigh sí i gcomhairle leis an tríú páirtí lena mbaineann. Leag an Oifig seo béim ar an bhfíric go bhfuil sé soiléir i scéim na Rialachán maidir le Rochtain ar Fhaisnéis faoin gComhshaoil, agus i scéim na Treorach ar a bhfuil na Rialacháin bunaithe, go bhfuil toimhde ann i bhfabhar faisnéis faoin gcomhshaoil a eisiúint. Aontaíodh ar deireadh go bhféadfaí an fhaisnéis a iarradh a eisiúint go hiomlán. Tar éis an fhaisnéis a iarradh a eisiúint, d'ardaigh an t-achomharcóir ceisteanna a bhain le cineál rochtana agus cuardaigh, agus dhéileáil EirGrid go sásúil leis an dá cheann díobh. Dá bhrí sin, mhol an Oifig seo don achomharcóir go measfaí an t-achomharc uaidh a bheith tarraingthe siar.

Chuir an t-achomharcóir ina aghaidh sin agus d'iarr sé orm breith fhoirmiúil a eisiúint ar an ábhar. Luaitear in Airteagal 15(5) de na Rialacháin: “Féadfaidh an Coimisinéir achomharc a mheas a bheith tarraingthe siar i gcásanna ina gcuireann an t-údarás poiblí an fhaisnéis a iarradh ar fáil go hiomlán nó go páirteach roimh bhreith fhoirmiúil ón gCoimisinéir faoi airteagal 12(5) [aistriúchán neamhoifigiúil].” Sa chás seo, rinneadh an fhaisnéis ábhartha ar fad a bhí i seilbh EirGrid a eisiúint don achomharcóir agus ní raibh aon saincheist eile le socrú ann. Sna cúinsí sin, chinn mé leas a bhaint as mo rogha chun an t-achomharc a mheas a bheith tarraingthe siar beag beann ar agóid luaite an achomharcóra ina aghaidh sin.

Imeachtaí san Ard-Chúirt agus sa Chúirt Uachtarach

Aon pháirtí in achomharc chuig an Oifig seo, nó aon duine eile a ndéanann breith uaim difear dó/dí, féadfaidh sé/sí achomharc a dhéanamh chuig an Ard-Chúirt ar phoncanna dlí a thagann as an mbreith sin. Ní dhearnadh aon achomhairc nua chuig an Ard-Chúirt sa bhliain 2014. I mí na Nollag, áfach, rinne Cairde Chomhshaoil na hÉireann iarratas ar athbhreithniú breithiúnach chuig an Ard-Chúirt, agus iad ar lorg ordú mandámuis a fháil i ndáil le hachomharc a rinneadh chuig an Oifig seo i mí Iúil 2014.

Chríochnaigh an Chúirt Uachtarach a héisteacht i mí Iúil sa chás An Ghníomhaireacht Náisiúnta um Bainistíocht Sócmhainní (GNBS) v. An Coimisinéir um Fhaisnéis Comhshaoil (CEI/10/0005), rud a bhaineann leis an gceist maidir le cé acu is údarás poiblí í GNBS de réir bhrí na Rialachán nó nach ea. Táthar ar feitheamh breithiúnais agus é seo á scríobh.

Iarrataí a mheastar a bheith diúltaithe

Meastar iarraidh a bheith diúltaithe i gcásanna ina dteipeann ar an údarás poiblí breith ar an iarraidh a eisiúint laistigh den teorainn ama iomchuí a shonraítear sna Rialacháin (mí amháin, de ghnáth).

Sa bhliain 2014, thuairiscigh an Oifig seo iarrataí a measadh a bheith diúltaithe i gcás trí údarás poiblí nár thug freagra ar iarraidh laistigh de na teorainneacha ama dá bhforáiltear sna Rialacháin. B'ionann an figiúr sin agus feabhas suntasach ar na seacht gcinn a bhí ann an bhliain roimhe, arbh í an bhliain inar thosaigh mé ag tabhairt tuairisc ar shonraí na n-údarás poiblí lena mbaineann.

Iarrataí a measadh a bheith diúltaithe ag an gcéad chéim

Thuairiscigh an Oifig seo dhá iarratas chuig údaráis poiblí mar chinn a measadh a bheith diúltaithe ag an gcéad chéim den iarraidh. Is iad seo a leanas na húdaráis poiblí lena mbaineann:

- Bord na Móna, agus
- Comhairle Contae Loch Garman.

Iarrataí a measadh a bheith diúltaithe ag an dara céim

Thuairiscigh an Oifig seo trí iarratas chuig údaráis poiblí mar chinn a measadh a bheith diúltaithe ag an dara céim den iarraidh. Is iad seo a leanas na húdaráis poiblí lena mbaineann:

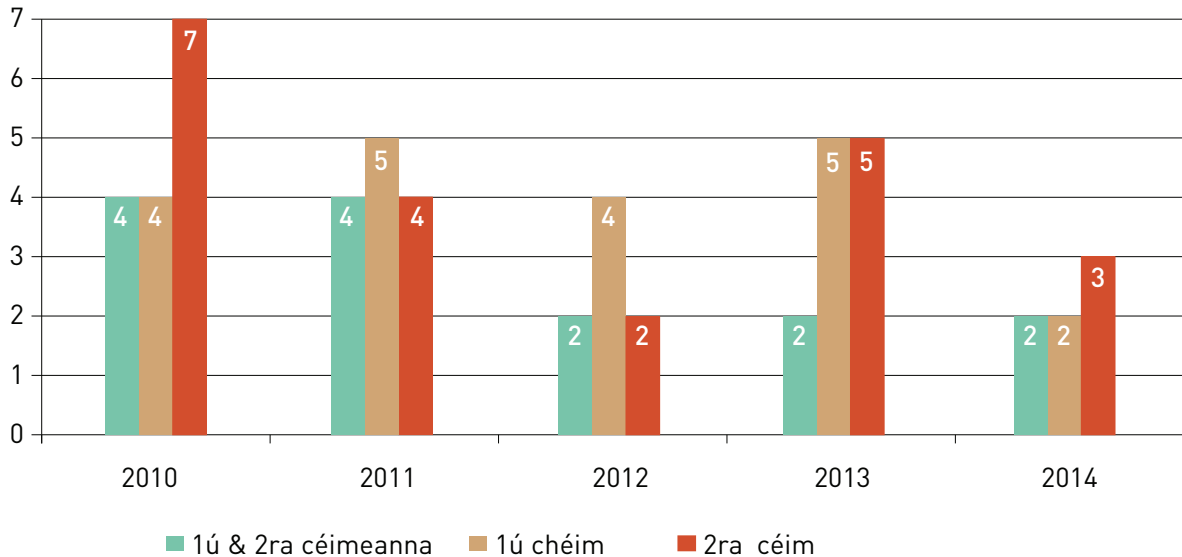
- Bord na Móna,
- Comhairle Contae Loch Garman, agus
- An Roinn Talmhaíochta. (Ba é an 18 Iúil 2014 an dáta ar bhreith athbhreithnithe inmheánaigh na Roinne, ach níor eisíodh í go dtí an 5 Lúnasa 2014 agus bhí sí lá amháin déanach dá bharr sin.)

Iarrataí a measadh a bheith diúltaithe ag an dá chéim

Thuairiscigh an Oifig seo dhá cheann de na hiarrataí atá luaite thuas mar chinn a measadh a bheith diúltaithe ag an dá chéim den iarraidh. Is iad seo a leanas na húdaráis phoiblí lena mbaineann:

- Bord na Móna, agus
- Comhairle Contae Loch Garman. (Tugaim faoi deara, áfach, go ndíospóideann an Chomhairle a bhailí atá an iarraidh i bhfianaise cheanglais theicniúla Airteagal 6(1) de na Rialacháin.)

Iarrataí a measadh a bheith diúltaithe



Saincheistanna a tháinig chun cinn agus ábhair eile spéise

Sa bhliain 2014, tharla sé gurbh iad na roghanna a rinne mé maidir le leithdháileadh na n-acmhainní teoranta a bhí ar fáil dom ba chúis leis an méadú a tuairiscíodh thuas i riaráiste na gcásanna idir lámha a bhí ag OCFC. Os a choinne sin, áfach, bhí a lán forbairtí dearfacha ann anuraidh as a dtiocfaidh feabhsuithe i bhfeidhmiú chóras na rochtana ar fhaisnéis faoin gcomhshaol in Éirinn. Tá athrú dearfach amháin i bhfeidhm cheana féin. Is é sin, an laghdú ar tháillí achomhairc ó €150/50 go €50/15.

Acmhainní

Mar a thuairiscigh mé cheana féin, tá tearcacmhainní á gcur ar fáil do OCFC le fada an lá. Cé gur Oifig í atá neamhspleách ó thaobh an dlí de, ní bhfuair OCFC aon leithdháileadh maoiniúcháin ar leith ón Stát ach go dtí le gairid agus, dá bharr sin, b'éigean di brath ar na hacmhainní a d'fhéadfadh Oifig an Choimisinéara Faisnéise (OCF) a chur ar fáil di. Mar sin féin, tá dúshlán mhóra roimh OCF féin óna bunú maidir le leibhéal cuí maoiniúcháin a fháil ag féachaint don éileamh ar a cuid seirbhísí. Dá bhrí sin, ba bheag acmhainn le spáráil ag OCF agus meastar go mbeidh méadú suntasach ann ar éileamh nuair a thosófar ag fáil iarratais ar athbhreithniú faoin Acht um Shaoráil Faisnéise 2014.

Sa chomhthéacs sin, b'éigean dom smaoineamh faoin dóigh ab fhearr chun obair fhoriomlán na hOifige a chur ar aghaidh laistigh de na hacmhainní teoranta a bhí ar fáil dom. Bhí sé mar thosaíocht dom sa bhliain 2014 gan aon athbhreithnithe Saoráil Faisnéise a bhí ar bun le breis agus 12 mhí a bheith idir lámha ag deireadh na bliana agus bhain mé leas, de réir mar ba ghá, as na hacmhainní a bronnadh ar Vóta na hOifige seo chun an sprioc sin a bhaint amach. Tá áthas orm a rá gur éirigh leis an obair sin agus go raibh fíorbheagán cásanna Saoráil Faisnéise a bhí ar bun le breis agus aon bhliain idir lámha faoi dheireadh na bliana agus go raibh feabhas suntasach tagtha ar agaí slánúcháin na gcásanna mar thoradh ar na hathchóirithe eagrúcháin a cuireadh chun feidhme i mí an Mheithimh 2014.

Mar sin féin, feictear don Oifig seo gur minic a bhíonn tosca casta ag gabháil le hachomhairc a bhaineann le rochtain ar fhaisnéis faoin gcomhshaoil, rud a fhágann go mbíonn sé an-doiligh iad a phróiseáil go tapa; dá bhrí sin, cé gur íseal a bhíonn líon na n-achomharc a bhaineann le rochtain ar fhaisnéis faoin gcomhshaoil, is gnách go mbíonn méid díreireach acmhainní ag teastáil ina leith. Mar sin, ní bheadh OCF in ann a riaráiste a laghdú ná agaí slánúcháin na gcásanna a fheabhsú dá dtabharfadh sí tosaíocht d'achomhairc a bhaineann le rochtain ar fhaisnéis faoin gcomhshaoil freisin.

Ag an am céanna, ní dhearna mé dearmad ar an ngá atá le nós imeachta athbhreithnithe atá éifeachtach agus tráthúil a chur ar fáil faoi na Rialacháin maidir le Rochtain ar Fhaisnéis faoin gComhshaoil. A luaithe a bheidh siad leabaithe, is dóigh go n-imreoidh athchóirithe eagrúcháin OCF tionchar dearfach ar phróiseáil na n-achomharc a bhaineann le rochtain ar fhaisnéis faoin gcomhshaoil. Chomh maith leis sin, in aighneacht buiséid a chuir sí faoi bhráid na Roinne Caiteachais Phoiblí agus Athchóirithe don bhliain 2015, rinne an Oifig seo cás láidir ar mhaoiniúchán a fháil do OCFC a bhí bunaithe ar a raibh ag teastáil uaithi go stairiúil ar mhaithe le freastal ar a riachtanais acmhainní agus ar mhaithe le mórfheabhsuithe a bhaint amach ó thaobh soláthar seirbhísí de. Tá an-áthas orm a thuairisciú gur i mí Dheireadh Fómhair 2014 a cheadaigh an Roinn Caiteachais Phoiblí agus Athchóirithe leithdháileadh buiséid a léirigh na riachtanais atá ag OCFC mar a bhí sainaitheanta san aighneacht ón Oifig seo. Tá acmhainní curtha ar leataobh do OCFC den chéad uair riamh anois. Mar thoradh ar na hacmhainní sin, beidh OCFC in ann a riaráiste a laghdú agus agaí slánúcháin na gcásanna a fheabhsú faoi mar a rinne OCF.

Rannpháirtíocht dhearfach leis an Roinn Comhshaoil, Pobail agus Rialtais Áitiúil agus le comhlachtaí eile

Rud dearfach eile sa bhliain 2014 ba ea an rannpháirtíocht mhéadaithe a bhí ann idir oifigigh ón Roinn Comhshaoil, Pobail agus Rialtais Áitiúil (RCPRÁ) agus oifigigh ón Oifig seo. Ag teacht sna sála ar an gcruinniú le RCPRÁ maidir le Cás CEI/12/0007, dar tagraíodh thuas, tionóladh cruinniú eile chun roinnt saincheistanna éagsúla a phlé, lenar áiríodh Treoirchás (réamhsháraithe) AE a thionscain an Coimisiún Eorpach mar fhreagairt do ghearán a bhain leis an dóigh a raibh an Treoir maidir le Rochtain ar Fhaisnéis faoin gComhshaoil á cur chun feidhme ag Éirinn. Thapaigh an Oifig seo an deis a bhí ann a cás ar son acmhainní a bhrú chun cinn agus a mholadh do RCPRÁ na táillí ar achomharc a dhéanamh chuig OCFC a laghdú ar aon dul leis an laghdú i dtáillí ar iarratas a dhéanamh ar athbhreithniú ag an Oifig seo faoin Acht um Shaoráil Faisnéise 2014. Ba iad seo a leanas i measc na saincheistanna eile a pléadh: leasuithe féideartha ar na Rialacháin chun aghaidh a thabhairt ar chúrsaí amhail an mearbhall agus an t-ualach méadaithe riaracháin atá ag teacht chun cinn toisc nach bhfuil an córas rochtana ar fhaisnéis faoin gcomhshaoil agus an córas Saoráil Faisnéise ar chomhréim le chéile, mar is amhlaidh i gcás na Ríochta Aontaithe agus na hAlban; easnaimh sna Rialacháin amhail an easpa forála sainráite don dualgas cruthúnais i ndáil le húdar a thabhairt le diúltú d'fhaisnéis a chur ar fáil; agus ábhair imní faoi ionchorprú airbheartaithe dhíolúintí an Achta um Shaoráil Faisnéis isteach sna Rialacháin faoi Airteagal 8(a)(iv). Chomh maith leis sin, d'aontaigh an Oifig seo páirt a ghlacadh in imeacht oiliúna maidir le rochtain ar fhaisnéis faoin gcomhshaoil, rud a bhí á phleanáil ag an am lena sholáthar do bhaill foirne de chuid údarás poiblí i mí Mheán Fómhair.

Díreach tar éis an chruinnithe, thug an Oifig seo fógra foirmiúil i scríbhinn do RCPRÁ gur measadh go raibh beirt imscrúdaitheoirí ar a laghad a bhfuil taithí chuí acu ar dhlí an chomhshaoil ag teastáil chun gur féidir léi mórfeabhsuithe a bhaint amach ó thaobh soláthar seirbhísí de. Ina theannta sin, rinne an Oifig seo aighneacht mar fhreagairt don chomhairliúchán poiblí a bhí ar siúl ag an am maidir leis na forálacha um rochtain ar an gceartas de Choinbhinsiún Aarhus. Ba san aighneacht sin a pléadh arís eile le táillí achomhairc, le hacmhainní agus le hathrú reachtach.

Tá áthas orm a thuairisciú gur thacaigh Ard-Rúnaí RCPRÁ le mo chás ar son acmhainní a fháil, agus é ag scríobh go díreach chuig an Roinn Caiteachais Phoiblí agus Athchóirithe (RCPA) an 28 Samhain 2014 chun feasacht a ardú ar an gceist sin agus chun moladh do RCPA féachaint go fabhrach ar an togra foirne ó OCFC. Ina dhiaidh sin, thug RCPA cead do OCFC an 23 Nollaig 2014 dhá phost mar imscrúdaitheoir a líonadh. Tá an próiseas earcaíochta do na poist sin ar siúl agus é seo á scríobh.

Chomh maith leis sin, d'aontaigh RCPRÁ táillí achomhairc a laghdú. Dá réir sin, rinne an tAire Rialacháin na gComhphobal Eorpach (Rochtain ar Fhaisnéis faoin gComhshaoil) (Leasú) 2014 (Uimh. I.R. 615 de 2014), lenar laghdaíodh an táille chaighdeánach achomhairc ó €150 go €50 le héifeacht láithreach, a shíniú mar dhlí an 19 Nollaig 2014.

Ina theannta sin, bhí freastal maith ar an imeacht oiliúna maidir le rochtain ar fhaisnéis faoin gcomhshaoil a réachtáladh do bhaill foirne de chuid údarás poiblí i dTulach Mhór, Co. Uíbh Fhailí, an 16 Meán Fómhair. Fuarthas aiseolas dearfach ó roinnt de na daoine a bhí i láthair freisin. Bhí an Oifig seo an-sásta cur leis an imeacht agus cuireann sí fáilte mhór roimh thionscnaimh den sórt sin atá deartha chun oiliúint agus feacht a fheabhsú i measc ball foirne de chuid údarás poiblí. Tionscnamh gaolmhar is ea an tairseach “Environlink” atá curtha ar bun ag RCPRÁ, rud trína gcuirtear ábhar oiliúna ar fáil do bhaill foirne de chuid údarás poiblí, cur i láthair a thug an Oifig seo ina measc.

Forbairt dhearfach eile, nó céim sa treo ceart ar a laghad, ba ea gur cuireadh foráil isteach san Acht um Shaoráil Faisnéise 2014 lena dtagraítear go sainráite do na Rialacháin maidir le Rochtain ar Fhaisnéis faoin gComhshaoil. Foráiltear le halt 12(7)(b) den Acht um Shaoráil Faisnéise anois go bhféadfaidh comhlacht Saoráil Faisnéise cur in iúl do dhuine a bhfuil iarraidh á déanamh aige/aici cé acu a fhéadfar nó nach bhféadfar na taifid lena mbaineann a fháil faoi na Rialacháin seachas faoin Acht. Ar a laghad, ba cheart go méadófaí leis an bhforáil sin feacht ar chearta an iarrthóra faoi na Rialacháin maidir le Faisnéis faoin gComhshaoil agus d’fhéadfaidh go laghdófaí léi cuid den mhearbhall a thagann as dhá chóras um rochtain phoiblí ar fhaisnéis atá ag forluí ar a chéile agus atá ar leithligh ó chéile a bheith againn.

Chomh maith leis sin, d’fhreastail mé ar chomhdháil an-fhaisnéiseach Eorpach maidir leis an gcóras rochtana ar fhaisnéis faoin gcomhshaoil an 4 Samhain. Ba é an Lárionad um Shaoráil Faisnéise i nDún Éideann, Albain, a d’eagraigh an chomhdháil agus áiríodh inti cainteanna ar Choinbhinsiún Aarhus agus an sainmhíniú atá ar fhaisnéis faoin gcomhshaoil. I measc na gcainteoirí a bhí i láthair, bhí Rosemary Agnew, Coimisinéir Faisnéise reatha na hAlban, an tOllamh Kevin Dunion, Coimisinéir Faisnéise roimhe na hAlban, agus acadóirí agus cleachtóirí suntasacha eile.

Ábhair imní maidir le hAirteagal 8(a)(iv)

Mar a tugadh faoi deara, ba i measc na n-ábhar a pléadh le hoifigigh ó RCPRÁ a bhí ábhair imní na hOifige seo maidir le hAirteagal 8(a)(iv) de na Rialacháin. Tagann na hábhair imní as an tagairt don Acht um Shaoráil Faisnéise i dtaca le rúndacht imeachtaí údarás poiblí a chosaint.

Ba sa bhliain 2006 ar dtús a chuir an Oifig seo a cuid ábhar imní ina leith sin in iúl i gcomhfhreagras a bhain leis na dréacht-Rialacháin a bhí i bhfeidhm ag an am. Tar éis cruinniú i dtaca le Cás CEI/12/0007 a thionól leis an Roinn i mí na Samhna 2013, lorg an Oifig seo comhairle dhlíthiúil ar an gceist maidir le cé acu a d’fhéadfaí nó nach bhféadfaí a mheas go dtugtar leis an Acht um Shaoráil Faisnéise an chosaint dhlíthiúil riachtanach do rúndacht imeachtaí údarás poiblí agus maidir le cé acu a bheadh nó nach mbeadh an chosaint sin i gcomhréir leis an Treoir i bhfianaise chásdlí ábhartha Chúirt Bhreithiúnais an Aontais Eorpaigh. Tugann an chomhairle dhlíthiúil a fuairamar le fios nach gá gur bunoscionn leis an Treoir atá sé díolúintí an Achta um Shaoráil Faisnéise a ionchorprú sa chóras rochtana ar fhaisnéis faoin gcomhshaoil toisc go bhféadfaí a mheas go gciallaíonn “rúndacht dá bhforáiltear le dlí” nach

bhfuil aon cheart rochtana ag an bpobal ina leith sin. D'aontaigh ár sainchomhairleoir, áfach, nach bhfuil sé leath chomh simplí sin ach oiread.

Ag an gcruinniú le hoifigigh ó RCPRÁ i mí Lúnasa 2014 agus i gcomhfhreagras ina dhiaidh sin, thug an Oifig seo faoi deara gur ar roinnt cúiseanna éagsúla a bhaineann an-deacracht go fóill le díolúintí an Achta um Shaoráil Faisnéise a ionchorprú sna Rialacháin maidir le Rochtain ar Fhaisnéis faoin gComhshaol. Áirítear iad seo a leanas leis na cúiseanna sin:

- Níor tugadh aon sainmhíniú soiléir ar “choincheap imeachtaí”, rud a chuir Cúirt Bhreithiúnais an Aontais Eorpaigh síos air mar bheart riachtanach faoin dlí náisiúnta;
- Cé gur cosúil go mbíonn sé níos coitianta i gcónaí, bíonn sé deacair ó thaobh cúrsaí riaracháin de píosa reachtaíochta amháin a chur i bhfeidhm chun tagairt do pháosa reachtaíochta ar leith;
- Má chuirtear díolúintí an Achta um Shaoráil Faisnéise i bhfeidhm ar an mbealach sin, is dóigh go mbeidh siad faoi réir agóid dhian.

Tá sé beartaithe ag an Oifig seo a cuid ábhar imní faoi na deacrachtaí sin agus faoi dheacrachtaí eile a thagann as na Rialacháin a shaothrú i dteagmháil eile le RCPRÁ roimh i bhfad.

Right of access
to public data
a crucial tool
in democracy

Irish Examiner – 07/11/2014

Journalist describes four-year legal battle
with Nama over meaning of ‘including’

Irish Times – 20/10/2014

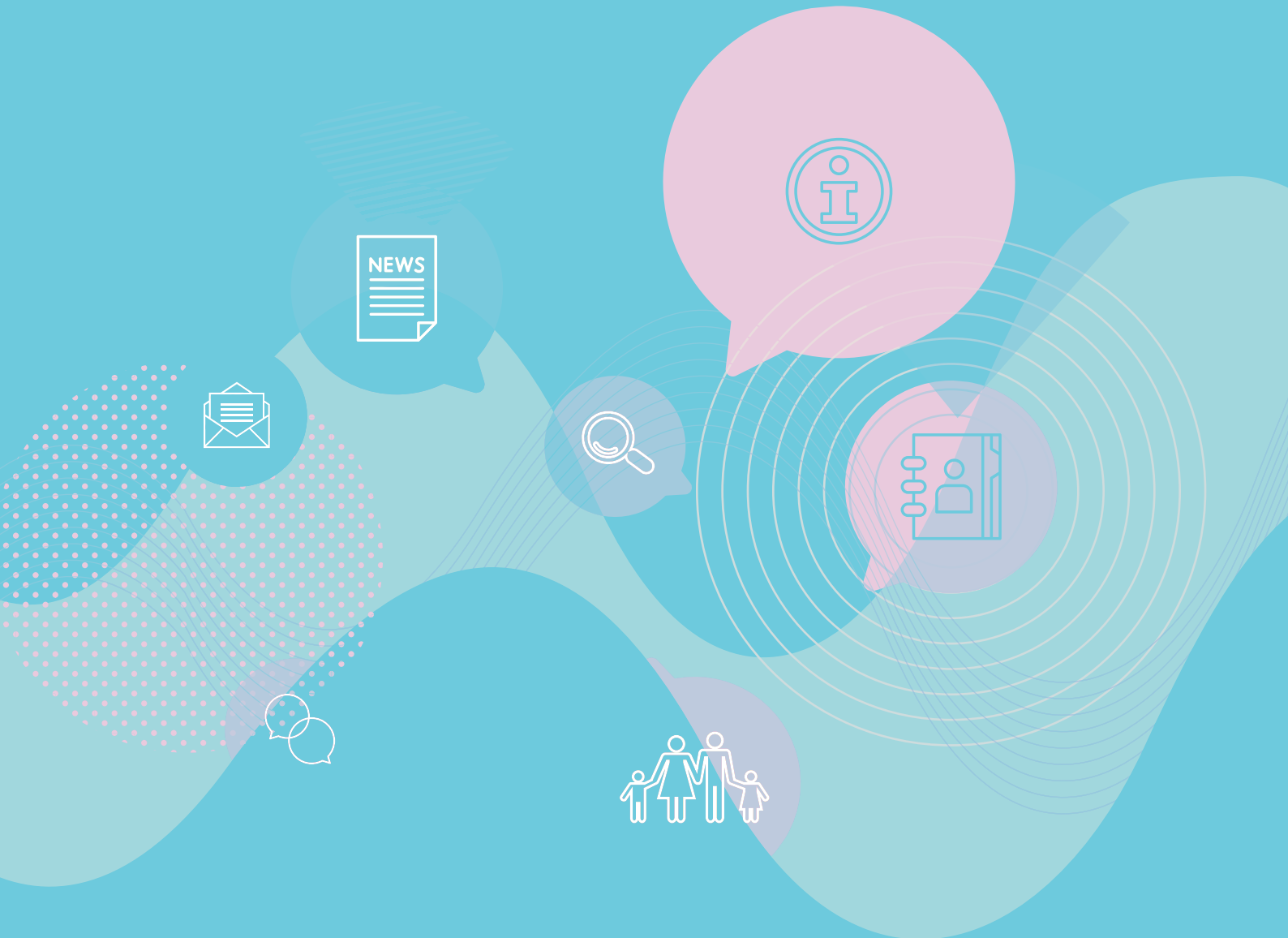
Commissioner says public interest
outweighs judges’ right of privacy

Concerns about
judicial safety were
‘speculative in
nature’

Irish Times – 17/10/2014

Aguisíní

Aguisíní



Aguisíní

Aguisín I

Deimhnithe Reachtúla arna n-eisiúint ag Airí agus ag Ard-Rúnaithe in 2014



OIFIG AN ARD-RUNAÍ, AN RIONN DLÍ AGUS CIRT AGUS COMHIONANNAIS
OFFICE OF THE SECRETARY GENERAL, DEPARTMENT OF JUSTICE AND EQUALITY

Ms Bernadette McNally
Director General
Office of the Information Commissioner
Lower Leeson Street
Dublin 2

21 January 2015

Dear Ms. McNally,

I wish to refer to your letter of 9 January 2015 regarding Ministerial Certificates. The Department of Justice and Equality have 7 Ministerial Certificates.

Three certificates were renewed in 2014 and one new certificate was issued. Copies are attached as requested.

Yours sincerely,

Noel Waters
Secretary General (Acting)

Aguisín I



An Roinn Gnóthaí Eachtracha agus Trádála
Baile Átha Cliath 2

Department of Foreign Affairs and Trade
Dublin 2

26 January 2015

26 JAN 2015

Ms Bernadette McNally
Director General
Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

**Notification under Sections 20 and 25 of the Freedom of Information Acts, 1997 and 2003 and
Section 34 of the Freedom of Information Act 2014**


Dear Ms McNally

I refer to your recent letter on the above.

I confirm that, during 2014, I did not issue any certificates under Section 20 of the Freedom of Information Acts, 1997 and 2003.

In 2014 the Minister for Foreign Affairs and Trade did not issue any certificates under Section 25 of the Freedom of Information Acts, 1997 and 2003. On 16 November 2014, the Minister issued three certificates in accordance with Section 34 of the Freedom of Information Act 2014 by reference to which the records are exempted under Section 32 (1)(a)(i) and Section 33(1)(c). The certificates related to three requests for the same set of records.

Yours sincerely


Niall Burgess
Secretary General

Aguisín II

Tuarascáil Bhliantúil um Éifeachtúlacht Fuinnimh 2014

Tuarascáil Mhíosúil Fuinnimh		OOP – Oifig na nOibreacha Poiblí Oifig an Ombudsman	
Nollaig 2014			
Achoimre			
Mí go mí			
Laghdaigh úsáid fuinnimh faoi -19.1% ó 58,955kWh i mí na Nollag 2010 go 47,719kWh i mí na Nollag 2014. Mar thoradh air seo, laghdaigh astaíochta CO2 don tréimhse seo faoi -15.4% ó 19,886kg go 16,828kg, [-3,058Kg].			
Bliantúil			
Is é 2010 an bhonnblhain do na háirimh seo.			
I gcomparáid leis an mbonnbhlain seo, laghdaigh tomhaltas fuinnimh ar an suíomh faoi -100,512kWh nó -21.7% le 12 mhí anuas.			
I dtéarmaí an CO2 iomlán, le haghaidh táirgeacht faoi -19.7%, ó 2010 nó faoi -40,650Kg.			
Agus é normalaithe le haghaidh athruithe san aimsir, laghdaigh CO2 faoi -15.3%, ó 2010 nó faoi -31,590Kg			
Úsáid fuinnimh Nollaig 2014			
Úsáid bhliantúlaithe fuinnimh			
Cur Síos	Leictreachas	Gás	Iomlán
Bliain Tagarmhairc	284,062	179,086	463,148
An 12 mhí roimhe	232,449	130,187	362,636
% Difríocht	-18.2%	-27.3%	-21.7%