

# **Freedom of Information Act 1997**

## **A Guide for Staff Working in Voluntary Organisations**

### **Introduction**

The position regarding application of the Freedom of Information Act, 1997 to voluntary organisations has recently been confirmed as follows.

With effect from October 21<sup>st</sup> 2000 the following organisations in the physical and sensory disability sector will be scheduled under the Act;

Cheshire Foundation in Ireland  
Enable Ireland  
Irish Wheelchair Association  
Multiple Sclerosis Society of Ireland  
National Association for Deaf People  
National Council for the Blind of Ireland.

Disability Federation of Ireland was requested to facilitate and co-ordinate the preparations for implementation by the Department of Health and Children and the organisations concerned. Whilst each organisation is unique with its own characteristics, ethos, policies and procedures a common approach to implementation is being adopted in as far as possible.

In the first instance, a working group established from the six organisations and Disability Federation of Ireland with assistance from the Department of Health and Children and the Federation of Voluntary Bodies. The main purpose of the working group was to provide advice and assistance to the organisations in the following areas:

- Project Management
- Publication Development
- Organisation of Training
- Networking

Training has been completed for the Freedom of Information Co-Ordinators, Decision Makers, and Internal Reviewers in each of the organisations and this Guide is another step in informing all staff about the implications of the Act. A separate information leaflet is available for circulation to your service users and their families.

The demands in the organisations in achieving the deadline have been significant and the ongoing demands for resources, training, preparing comprehensive documentation, introducing and maintaining new records retention systems will continue.

I know that the organisations being scheduled with effect from October 21<sup>st</sup> 2000 warmly embrace the principles that are founded in the Act and its provisions.

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## **Why this manual?**

The Freedom of Information Act 1997 will affect how you operate on a day to day basis. The purpose of this manual is to explain what the Freedom of Information Act is and how you should adapt your working procedures to ensure compliance.

## **How does the Freedom of Information Act affect Voluntary Organisations?**

The Freedom of Information Act will be extended to include certain voluntary organisations on Saturday 21 October 2000. Where voluntary organisations provide a service under contract to the Health Board, their records insofar as they relate to the provision of the service, may be accessible under the Freedom of Information Act, as if they were the Health Board's own records. With effect from the above date your organisation is being scheduled as a Public Body under the Act and all applications will fall to be dealt with by your organisation.

## **What is Personal Information in the context of the Act?**

**Personal Information is considered to be information about an identifiable individual which:**

- Would ordinarily be known only to the individual or their family or friends; or
- Is held by a public body on the understanding that it would be treated as confidential.

Personal Information includes information relating to:

education, medical, psychiatric, or psychological history;

financial affairs of individual;

employment and employment history;

personnel records;

criminal history;

religion, age, sexual orientation or marital status;

social welfare entitlements;

assessment of liability to pay tax or duty to State, Local Authority or Health Boards;

property of the individual;

name, symbol or code identifying an individual in public records containing personal information;

views or opinions of another person about the individual;

**Personal information for staff, or persons providing a service under contract for services, does not include:**

- name of Staff or Director;
- information relating to office/position held;
- terms of occupancy of position or terms of the contract;
- anything written or recorded by staff in the course of performing their functions of office or position;
- Information relating to service or terms of contract;

This type of information, on staff or management may be released by an organisation, subject to other exemptions relating to confidentiality.

**What is a record according to the Freedom of Information Act?****According to the Act a record can include:**

paper records, books, files, letters, loose papers, diaries, post-it notes, and computer printouts.

Electromagnetic records – films, tapes, videos, CDs.

Photographs – maps, plans, X-rays, microfiche, microfilm

## **Does a Freedom of Information request have to be in a specific form?**

Requests must be in writing and must specify that they are being under the Freedom of Information Act. They must also specify the records required and the manner in which access is sought e.g. inspect the originals or obtain photocopies.

In the case of a request for non-personnel records, the letter must state that the request is being made under the Freedom of Information Act.

## **To whom are requests for access under the Act Addressed?**

The Act stipulates that the applications are to be made to the 'head of the public body' i.e. the Chief Officer. In practice this function will be delegated by the Chief Officer to the Decision Maker who will decide whether or not information can be released bearing in mind the requirements of the Act to protect confidentiality, privacy and the public interest.

## **Who within our organisation is responsible for releasing information?**

It is recommended that organisations appoint a Freedom of Information Co-Ordinator and a Freedom of Information DecisionMaker.

### **FOI Co-Ordinator**

The Co-Ordinator should be the first port of call when an organisation receives an FOI request. The Co-Ordinator should take a record of the request, noting the date of arrival and date stamp the request. The Co-Ordinator should in consultation with the Decision Maker start to assemble all the records covered by the request. Once records have been located they should be numbered and copied. The Co-Ordinator is responsible for requests being dealt with within the stated time frame. The Act demands that all requests be dealt with within 4 weeks. When all records relating to the requests have been collated they must then be passed to the Freedom of Information Decision Maker.

### **Freedom of Information Decision Maker**

The Decision Maker decides if the records fall within the FOI Act and if any exemptions apply. It is imperative that the Decision Maker views the records to ensure, in particular, that they do not contain third party information, the disclosure of which would not be allowed by the FOI Act. The FOI Central Policy Unit, Department of Finance, has produced a step by step guide to requests involving third parties which may be consulted when such circumstances arise.

It is recommended that both the Co-Ordinator and the Decision Maker keep a record of where they located the records and of the time spent on processing FOI requests.

The Organisation's Decision Maker will try to make records available in the format preferred by the requester. However, this may not always be

possible, bearing in mind the need to protect the privacy of other persons, confidentiality or to preserve an old or delicate record.

Each organisation will have its' own FOI operating processes, taking into account it's branch and/or regional structures and in some cases the Co-Ordinator and the Decision Maker might be one and the same person.

**Access may be granted as follows:**

- Inspect original records.
- Obtain copy of the records.
- Hear/view audiovisual records.
- Obtain a transcript of tape or shorthand.
- Obtain a copy of a computer disk or another electronic device.

Shorthand or code must be decoded.

If a request is refused or the requester is unhappy with the decision and the requester wishes to appeal, their first contact should be with Freedom of Information Internal Reviewer in the voluntary organisation they requested the information from. The Internal Reviewer is a more senior officer than the Decision Maker. If they are not satisfied with the result they should then take their complaint to the Information Commissioner, 18 Lower Leeson Street, Dublin 12.

## **Are there any reasons for refusing to grant access?**

Yes, there are a number of circumstances where access can be refused or deferred. One of the functions of the Decision Maker, is to decide if any of these exemptions apply. The circumstances can be grouped into two categories:

### **Administrative Grounds, e.g.**

- The record is of a type not covered by the Act, e.g. documents of the President, Courts and Tribunals or tribunals or contain Judicial records.
- The request is not in the specified format, i.e. does not state that the request is made under the Act, or is not specific as to the record or records required. In accordance with Section 6(2) there is statutory duty on public bodies to assist the requester and the Body should never refuse information solely because the requester does not refer to FOI.
- The record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken.

### **Exemptions under the Act**

*These exemptions are designed to protect the right to privacy and the public interest.*

- Law enforcement and Public Safety (Section 23)
- Information Obtained in Confidence (Section 26)
- Commercially Sensitive Information (Section 27)
- Personal Information (Section 28)

## **Does the Client's Health Professional have any say in whether access to health records may be granted or refused?**

Yes, when a request for access is received it is regarded as good practice that the application is discussed with the treating health professional; i.e. Medical Practitioner, Psychologist, Social Worker etc, for a number of reasons:

- The records may contain information which could, in the body's opinion, have a detrimental effect on the client.
- Access to the information sought may best be dealt with initially outside the scope of the FOI Act, i.e. by arranging a meeting between the client and the treating health professional.
- The treating health professional may have information on the content and context of the records. This may be helpful to the Decision Maker's understanding of the issues involved.

## **Which Voluntary Organisations are being included under the Act with effect from October 21 2000?**

Cheshire Foundation in Ireland, Enable Ireland, Irish Wheelchair Association, Multiple Sclerosis Society of Ireland, National Association for Deaf People and National Council for the Blind of Ireland.

These national service providers and advocates for people with physical and sensory disabilities are committed to issues concerning good practice, transparency and accountability.

It is likely that the Freedom of Information Act will be extended to other voluntary organisations funded partially, or otherwise, by the State over time.

## **Who within our organisation will be affected by FOI?**

Everyone within your organisation will have to ensure that their work practices are such that if information is requested the reports they have written are legible and stored in an easily retrievable way. Staff must keep to the forefront of their minds that all reports on clients and other members of staff, including notes made in the margins, fall within the scope of the Act.

The Act obliges organisations to provide assistance to persons in exercising their rights under the Act and to advise them of the right of appeal at each stage.

Staff compiling reports will need to ensure that reports are factual and that only relevant and objective details are recorded and that names of those attending case – conferences are recorded for future information. Reports on individual clients must be recorded individually and filed on their file only.

Records must be kept accurately, legibly, filed correctly and archived in accordance with good practice, and any record management policy adopted by the organisation.

All decisions must be in accordance with the organisation's policies/guidelines and notification of such decisions should include reference to the policy/guideline and be written in clear, precise language.

### **Must the Voluntary Organisation provide reasons for decisions it takes?**

Yes, a person who is materially affected by a decision by the body may seek, under Section 18 of the Act, a statement of the reasons for the decision and any findings of fact made for the purpose of reaching that decision. This includes candidates for recruitment.

This is intended to allow individuals access to decisions made which may affect them personally, and not decisions which affect the whole class persons or the population generally.

## **What is a Section 15 Manual?**

The manual published under Section 15 should provide a general overview of the structure, functions, powers and duties, services provided and the procedures by which those services may be access by the public. It also should contain a general description of the classes of records held by the organisation giving particulars, within reason, as to how the public can access these records. This manual should be made available to the public.

## **What is a Section 16 Manual?**

This manual should cover in detail the criteria for access to all of the organisations services, schemes and benefits together with details of how such schemes are administered, appeal and complaints procedures etc. This means that any decision relating to access to services or eligibility for schemes or services, must be in accordance with rules or procedures published in the Section 16 manual of each service provider. This manual should be made available to the public.

Some organisations combine both manuals into one publication.

## **How can an organisation reduce the need for the public to use the Freedom of Information Act to gain access to records and information?**

By improved communications between clinicians, nursing staff, paramedical staff, administrative staff and the public and clients.

By drafting and publishing eligibility criteria used to determine access to schemes and services.

By informing persons who apply for services of reasons for decisions, rights of appeal, other options etc.

By allowing access to the greatest extent possible to the organisation's records and information, without resort to the procedures under the Freedom of Information Act.

**The Freedom of Information Act should be used only as a last resort, where access is unavailable, for good reasons, through the avenues referred to above.**

## **Conclusion**

The Act is, as stated at the beginning of the guide, a means of promoting more openness and accountability in the public service.

If you have any further queries about the Act and how it affects you please do not hesitate to contact your Freedom of Information Co-Ordinator.



