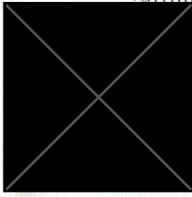




An Coimisinéir Faisnéise
Information Commissioner

Mr John Hamill



7 January 2021

Re: Policy Regarding Inadequate FOI Responses

Dear Mr Hamill,

Thank you for your letter of 1 January 2021 concerning the above matter. The Commissioner has asked me to issue this response on his behalf.

The essence of your concern appears to relate to our practice of affirming decisions of public bodies in circumstances where the applicant has achieved some benefit from the review through the release of information not previously released. This is not a new issue for us and is one that we have given considerable thought to in the past.

The key rationale for the approach we take is based on the fact that our reviews are “de novo”, as confirmed by the courts. In essence, this means that the Commissioner’s decision is based on the circumstances and the law as they pertain at the time of his decision. The Commissioner issues his decision based on the issues that remain to be determined at that time, and not based solely on the decision originally made by the public body.

It is quite common for the scope of a review to change over the course of the review. Often, issues will arise during the review that were not considered during the public body’s processing of the request. Such issues may include a consideration of exemptions not previously claimed, new arguments in support of the refusal of a request, additional records uncovered during the review etc. Where we decide to conclude a review by issuing a binding decision, our decision addresses the outstanding issues to be considered at that time.

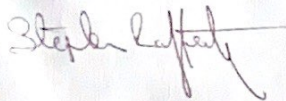
In case OIC-91536, you sought a review of the decision taken by the DDLETB on your request for records on the ground that the body had not considered all relevant records for release. During the review, the body discovered and released additional records. At that stage, our Investigating Officer wrote to you and offered you an opportunity to settle the review by withdrawing your application which would have allowed us to refund your application fee.

As is your right, you sought a binding decision on the matter. Accordingly, the scope of the review was confined to whether the body was, at **that stage**, justified in refusing access to any additional records on the ground that no further relevant records existed or could be found. As such, the decision considered whether the body had, at that stage, taken all reasonable steps to ascertain the whereabouts of relevant records. The decision found that it had. I believe the decision that was published makes that point clear.

I should add that I do not agree with your contention that our practice creates a disincentive for public bodies to deal with FOI requests in a diligent manner. I am satisfied that in the vast majority of cases, public bodies are diligent and act in good faith when dealing with FOI requests. It is worth noting that 73% of all requests processed by public bodies in 2019 were granted in full or in part. Furthermore, from a total of almost 40,000 requests received by public bodies in 2019, less than 2% were appealed to this Office. I should add that I am also of the view that our processes allow us to develop a spirit of co-operation with public bodies which provides for optimum results for applicants.

In all of the circumstances, while I appreciate the time you have taken to suggest process improvements, we are satisfied that our current processes are appropriate and as such, we do not propose to implement the changes suggested.

Yours sincerely,



Stephen Rafferty
Senior Investigator