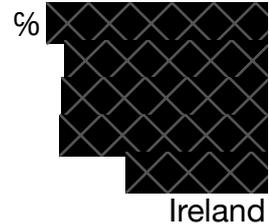


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1st March 2021

Attn: Mr Stephen Rafferty
Senior Investigator
Office of the Information Commissioner,
6 Earlsfort Terrace,
Dublin 2,
D02 W773.

Re: Policy Regarding Inadequate Fol Responses

Dear Mr Rafferty,

I refer to your correspondence dated 7th January 2021, with respect to the the policy of your Office regarding inadequate Fol responses. I accept entirely the figures you quoted, describing the high rates of compliance for the majority of non-controversial Fol requests. However, the issue that I raised with you related specifically to situations wherein public bodies might have reason to be less than forthright, and may consider providing inadequate Fol responses. Since you supplied no figures whatsoever about those situations in particular, I assume that you don't have any metrics illustrating how public bodies respond to Fol requests when the documents requested may embarrass those same public bodies. Consequently, you have no reason at all to be sanguine about the behaviour of public bodies in such situations. The "*satisfaction*" that you expressed in your letter to me is entirely misplaced, since you are using figures relating to the vast majority of non-controversial requests, in order to arrive at conclusions about how public bodies deal with more contentious requests.

Moreover, since the cases I had raised with your Office related to public bodies offering inadequate Fol responses (and providing false statements in reply to Fol requests) your boast about developing a "*spirit of cooperation*" with such public bodies also seems misplaced. You have told me that this spirit achieves "*optimum results for applicants*". Speaking as one of those applicants, it seems to me that a culture of enforced compliance would be much preferable to merely bragging about how cooperative you are with those who make false statements within their Fol responses.

In this regard, I hope you can consider some specific issues relating to Case Number OIC-97611-K4F1J2. This is one of the cases I had raised in my letter to your Office and to which you responded in your correspondence of 7th January 2021. During my correspondence to your office in the course of this review, I explicitly and repeatedly asked that you would address the fact that false statements had been made by the National Director of the PDST in response to my original Fol request. I note that your decision has instead decided to ignore this. Perhaps drawing attention to public bodies making false statements in Fol responses, would be detrimental to the “*spirit of cooperation*” you are trying to foster with those public bodies?

It seems difficult to argue that this approach has achieved “*optimum results*” for either me as the applicant, or for your Office. Specifically, within our correspondence in the course of this review, your Office informed me that “*the two records released on 4 September 2020 are the only records that the Department states it holds in relation to the Fol request at issue*”. Even though this was yet another transparently false statement made by the Department, your Office responded to it by informing me that “*the most expedient course of action for you to take in this case would be to withdraw from this review*”. In this instance, I’m not so much concerned with expedience, but rather with the frequency of false statements that have been made to both me and also to your Office. Whereas the trumpeted “*spirit of cooperation*” did not help me get a straight answer from the Department on the content of my Fol request, neither did it help you get a straight answer from Department on whether they are responsible for Fol requests to the PDST or not.

My reaction to these false statements is that they are entirely unacceptable and that if unaddressed, they will set at practically zero the value of the Fol Act. If public bodies can just offer false replies with impunity to the small minority of Fol requests where truthful replies would embarrass them, then it seems unlikely that there will ever be “*optimum results for applicants*”. In contrast, if I understand correctly your reaction to such false statements, you will studiously avoid commenting on them even when explicitly asked to, and instead boast about your “*spirit of cooperation*” with those who make the false statements.

Conversely, perhaps I am in error here and I have simply misunderstood your position as described in your correspondence of 7th January 2021? Maybe my interpretation of your correspondence mis-states the approach of your Office to such false statements? In that case, I would be grateful if you could comment not on the large majority of non-controversial Fol requests, but instead on the small minority of Fol requests where the results may embarrass the public body involved. Specifically, where a public body provides a false statement in response to a Fol request, instead of a truthful response that may be embarrassing to that public body, what is the policy of your Office in dealing with such situations?

Yours Sincerely,

John Hamill.