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Explanatory Memorandum](#)

**AN BILLE UM SHAORÁIL FAISNÉISE (LEASÚ) 2008
FREEDOM OF INFORMATION (AMENDMENT) BILL 2008**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Public bodies for purposes of Freedom of Information Acts.
2. Non-application of certain enactments relating to non-disclosure of records.
3. Miscellaneous amendments.
4. Repeals and revocation.
5. Destruction, etc., of records.
6. Short title, collective citation and construction.

SCHEDULE

**ENACTMENTS EXCLUDED FROM APPLICATION OF
SECTION 32 OF FREEDOM OF INFORMATION ACT 1997**

PART 1

STATUTES

PART 2

STATUTORY INSTRUMENTS

ACTS REFERRED TO

Air Pollution Act 1987	1987, No. 6
Air Navigation and Transport (Amendment) Act 1998	1998, No. 24
Children Act 2001	2001, No. 24
Comhairle Act 2000	2000, No. 1
Commission to Inquire into Child Abuse Act 2000	2000, No. 7
Companies Act 1963	1963, No. 33
Companies Act 1990	1990, No. 33
Companies Acts 1963 to 2005	
Companies (Auditing and Accounting) Act 2003	2003, No. 44
Company Law Enforcement Act 2001	2001, No. 28
Competition Act 2002	2002, No. 14
Cruelty to Animals Act 1876	39 & 40 Vic. c. 77
Dentists Act 1985	1985, No. 9
Dormant Accounts Act 2001	2001, No. 32
Education Act 1998	1998, No. 51
Electoral Act 1997	1997, No. 25
Employment Equality Act 1998	1998, No. 21
Ethics in Public Office Act 1995	1995, No. 22
Fisheries (Amendment) Act 1997	1997, No. 23
Food Safety Authority of Ireland Act 1998	1998, No. 29
Freedom of Information Act 1997	1997, No. 13
Freedom of Information (Amendment) Act 2003	2003, No. 9
Freedom of Information Acts 1997 and 2003	
Health Insurance Act 1994	1994, No. 16
Industrial Designs Act 2001	2001, No. 39
Industrial Development (Enterprise Ireland) Act 1998	1998, No. 34
Industrial Development (Science Foundation Ireland) Act 2003	2003, No. 30
Industrial Relations Act 1946	1946, No. 26
Industrial Relations Act 1969	1969, No. 14
Industrial Relations Act 1990	1990, No. 19
Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993	1993, No. 10
Irish Sports Council Act 1999	1999, No. 6
Local Government Act 2001	2001, No. 37
Merchant Shipping (Investigation of Marine Casualties) Act 2000	2000, No. 14
National Archives Act 1986	1986, No. 11
National Development Finance Agency Act 2002	2002, No. 29
National Pensions Reserve Fund Act 2000	2000, No. 33
National Standards Authority of Ireland Act 1996	1996, No. 28
Nurses Act 1985	1985, No. 19
Ordnance Survey Ireland Act 2001	2001, No. 43
Pensions Act 1990	1990, No. 25
Personal Injuries Assessment Board Act 2003	2003, No. 46
Planning and Development Act 2000	2000, No. 30
Prices Act 1958	1958, No. 4
Private Security Services Act 2004	2004, No. 12
Public Service Management Act 1997	1997, No. 27
Radiological Protection Act 1991	1991, No. 9

Refugee Act 1996	1996, No. 17
Residential Institutions Redress Act 2002	2002, No. 13
Safety, Health and Welfare at Work Act 2005	2005, No. 10
Sustainable Energy Act 2002	2002, No. 2
Turf Development Act 1998	1998, No. 26
Unclaimed Life Assurance Policies Act 2003	2003, No. 2
Western Development Commission Act 1998	1998, No. 42



AN BILLE UM SHAORÁIL FAISNÉISE (LEASÚ) 2008
FREEDOM OF INFORMATION (AMENDMENT) BILL 2008

BILL

entitled

5 AN ACT TO AMEND THE FREEDOM OF INFORMATION
ACTS 1997 AND 2003 AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.**—(1) The First Schedule to the Freedom of Information Act
1997 is amended by substituting the following for subparagraph 5 of
paragraph 1:

Public bodies for
purposes of
Freedom of
Information Acts.

“(5) any body, organisation or group being—

(a) the Garda Síochána,

(b) a body, organisation or group established—

15 (i) by or under any enactment (other than the Com-
panies Acts 1963 to 2005) or any scheme admin-
istered by a Minister of the Government, or

20 (ii) under the Companies Acts 1963 to 2005 in pursu-
ance of powers conferred by or under another
enactment, and financed wholly or partly,
whether directly or indirectly, by means of
moneys provided, or loans made or guaranteed,
by a Minister of the Government or the issue
of shares held by or on behalf of a Minister of
25 the Government,

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

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

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

(f) any other body, organisation or group standing pre-
scribed for the time being, with the consent of such

other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government, on which functions in relation to the general public or a class of the general public stand conferred by any enactment, or 5

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

(2) *Subsection (1)* comes into operation on the day that is one year after the date of the passing of this Act. 10

Non-application of certain enactments relating to non-disclosure of records.

2.—The Third Schedule to the Freedom of Information Act 1997 is amended by—

(a) the addition of the matter specified in *Part 1* of the *Schedule* to this Act to Part I of that Schedule, and 15

(b) the addition of the matter specified in *Part 2* of the *Schedule* to this Act to Part II of that Schedule.

Miscellaneous amendments.

3.—The Freedom of Information Act 1997 is amended—

(a) in section 10(1)—

(i) by substituting the following for paragraphs (e) and (f)— 20

“(e) access to the record has previously been granted to the requester concerned,

(f) the request is, in the opinion of the head, frivolous or vexatious, or 25

(g) a fee or deposit payable under section 47 has not been paid.”;

(ii) by inserting the following as subsection (3)—

“(3) Where, in the opinion of the head of a public body, a particular person has persistently made frivolous or vexatious requests under section 7, the head may decide to refuse to consider any further requests from that person (other than requests for access to personal information relating to that person) for such period not exceeding 12 months as he or she considers appropriate.”; 30 35

(b) in section 15, by substituting the following for subsection (7)—

“(7) A publication referred to in subsection (1), (2) or (4)— 40

(a) shall be made available on the website of the public body concerned, and

(b) shall be made available for inspection free of charge, and for removal free of charge, at such

places as the head or, as may be appropriate, the Minister may determine and the head or the Minister, as may be appropriate, shall cause notice of those places to be published in such manner as he or she considers adequate for the purposes of this section and, if the publication relates to a local authority, a copy of it shall be given to each member of the authority.”;

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(c) in section 16—

(i) by substituting the following for subsection (1)(a)—

“(a) a publication (including an index and description of the range of material contained and its arrangement) setting out the rules, procedures, practices, guidelines and interpretations used by the body, and an index of any precedents kept by the body, for the purposes of decisions, determinations or recommendations, under or for the purposes of any enactment or scheme administered by the body with respect to rights, privileges, benefits, obligations, penalties or other sanctions to which members of the public are or may be entitled or subject under the enactment or scheme, and”;

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(ii) by substituting the following for subsection (5)—

“(5) A publication referred to in subsection (1) or (2)—

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(a) shall be made available on the website of the public body concerned, and

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(b) shall be made available for inspection free of charge, and for removal free of charge, at such places as the head concerned may determine and the head shall cause notice of those places to be published in such manner as he or she considers adequate for the purposes of this section and, if the publication relates to a local authority, a copy of it shall be given to each member of the authority.”;

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(d) in section 17—

(i) by substituting the following for subsection (1)—

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

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- (a) by altering it so as to make the information complete or correct or not misleading, as may be appropriate,
 - (b) by adding to the record a statement specifying the respects in which the body is satisfied that the information is incomplete, incorrect or misleading, as may be appropriate, or
 - (c) by deleting the information from it.”;
- (ii) by substituting the following for subsection (4)(b)—
 - “(b) Paragraph (a)(i) does not apply in relation to a case in which the head concerned is of opinion that the application concerned is frivolous or vexatious or defamatory or the alterations or additions to which it relates to the record concerned would be unnecessarily voluminous.”;
- (e) in section 18—
 - (i) by substituting the following for the definition of “act” in subsection (6)—
 - “ “act”, in relation to a public body, includes a decision (other than a decision under this Act) of the body done (or taken) after the commencement of this Act;”;
 - (ii) by inserting the following as subsection (7)—
 - “(7) An application under subsection (1) shall not be made after the expiration of 12 months from the date on which the person concerned first had knowledge that he or she was affected by an act of the public body concerned; but the head of the public body may extend the time limit for making an application if he or she considers that there are good reasons for doing so.”;
- (f) in section 26, by substituting the following for subsection (2)—
 - “(2) Subsection (1) shall not apply to a record solely on the ground that confidentiality attaches to records prepared by a head, director, or member of the staff of, a public body, or by a person who is providing a service for a public body under a contract for services, in the course of the performance of his or her functions.”;
- (g) in section 28, by substituting the following for subsection (5B) (inserted by section 23 of the Freedom of Information (Amendment) Act 2003)—
 - “(5B) Notwithstanding paragraph (a) of subsection (2), a head shall, subject to paragraphs (b) to (e) of that subsection and subsections (5) and (6), refuse to grant a request under section 7 if, in the opinion of the head, access to the record concerned would, in addition to involving the disclosure of personal information—

(a) relating to the requester, also involve the disclosure of personal information relating to an individual or individuals other than the requester,

5 (b) relating to an individual who is dead or who belongs to a class specified in regulations for the purposes of subsection (6)(a), also involve the disclosure of personal information relating to some other individual or individuals.”;

10 (h) in section 29(1), by substituting “section 28(5)(a)” for “section 28(5)”;

(i) in section 34—

(i) by substituting the following for subsection (3)—

15 “(3) A decision under subsection (2) shall be made as soon as may be and, in so far as practicable, not later than 3 months after the receipt by the Commissioner of the application; but the Commissioner may at any time suspend a review pending the furnishing of further information, the determination of relevant court proceedings or for such other reason as the Commissioner considers appropriate.”;

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(ii) by substituting the following for subsection (5)—

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

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(iii) by substituting the following for subsection (6)—

35 “(6) As soon as may be after the receipt by the Commissioner of an application under subsection (2), the Commissioner shall cause a copy of the application (excluding personal or confidential information which could be more appropriately dealt with as a submission by the application under subsection (8)) to the public body to be given to the head concerned, and, as may be appropriate, to the relevant person concerned and, if the Commissioner proposes to review the decision concerned, he or she shall cause the head and the relevant person and any other person who, in the opinion of the Commissioner, should be notified of the proposal to be so notified and, thereupon, the head shall give to the Commissioner particulars, in writing or in such other form as may be determined, of any persons whom he or she has or, in the case of a refusal to grant a request to which section 29 applies, would, if he or she had intended to grant the request under section 7 concerned, have notified of the request.”;

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(iv) by substituting the following for subsection (9)—

“(9) (a) The Commissioner may refuse to grant an application under subsection (2) or discontinue a review under this section if, in the course of the review, access to the records concerned has been granted by the public body or if he or she is or becomes of the opinion that—

(i) the application aforesaid or the application to which the review relates (“the application”) is frivolous or vexatious or forms part of a pattern of manifestly unreasonable applications from the same requester or from different requesters who, in the opinion of the Commissioner, appear to have made the applications acting in concert,

(ii) the application does not relate to a decision specified in subsection (1),

(iii) the matter to which the application relates is, has been or will be, the subject of another review under this section, or

(iv) the applicant has failed to provide the Commissioner with sufficient information or has otherwise failed to cooperate with the Commissioner in the conduct of a review.

(b) In determining whether to refuse to grant an application under subsection (2), to suspend a review under subsection (3) or to discontinue a review under this section, the Commissioner—

(i) may decide to refuse to grant part only of an application or may discontinue part only of a review,

(ii) shall have regard to any material change in circumstances relevant to the decision under review, and

(iii) shall, subject to the provisions of this Act, act in accordance with his or her own discretion.”;

(v) by substituting the following for subsection (14)—

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

(i) in so far as it is inconsistent with the decision to which this section applies concerned have effect in lieu thereof, and

(ii) be binding on the parties concerned.

5 (b) Where a public body fails or refuses to
comply with a decision under subsection
(2), the High Court may, on application to
it in a summary manner in that behalf by
the Commissioner, order the person to
comply with the decision and make such
other order as it considers necessary and
just to enable the decision to have full
10 effect.”;

(j) in section 37(7), by substituting “€5,000” for “€1,500”;

(k) in section 40—

(i) by substituting the following for subsection (1)(b)—

“(b) append to the report—

15 (i) a review of the operation of this Act in
the previous year, including statistics
relating to applications to and
decisions by such public bodies or
classes of public bodies as the Com-
missioner may from time to time
20 decide to report upon, and

(ii) a copy of any report furnished to him
or her under section 25(11),”;

(ii) by inserting the following as subsection (4)—

25 “(4) A public body shall, not later than 2 months
after the end of each year, provide the Commissioner
with such information as he or she may require for
the purposes of subsection (1)(b)(i).”;

30 (l) in section 42, by substituting the following for subsection
(4)—

35 “(4) An appeal under subsection (1), (2) or (3) shall be
initiated not later than 4 weeks after notice of the decision
concerned was given to the person bringing the appeal:
Provided that, in a case where the requester concerned
was given access to part only of the records requested, the
requester may initiate an appeal not later than 2 weeks
after the date on which such access was given.”;

(m) in section 46(1), by deleting—

40 (i) paragraph (db), inserted by section 29 of the Freedom
of Information (Amendment) Act 2003,

(ii) paragraph (dc), inserted by section 74 of the Safety,
Health and Welfare at Work Act 2005.

4.—(1) Sections 14, 15, 19 and 30 of the Freedom of Information
(Amendment) Act 2003 are repealed. Repeals and
revocation.

45 (2) The Freedom of Information Act 1997 (Fees) Regulations
2003 (S.I. No. 264 of 2003) are revoked.

Destruction, etc., of records.

5.—A person who—

- (a) knows or suspects that an application for access to a record under section 7 of the Freedom of Information Act 1997 is likely to be made, and
- (b) falsifies, conceals, destroys or otherwise disposes of the record or causes or permits its falsification, concealment, destruction or disposal,

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is guilty of an offence and is liable—

- (i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months, or both,
- (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 7 years, or both.

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Short title, collective citation and construction.

6.—(1) This Act may be cited as the Freedom of Information (Amendment) Act 2008.

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(2) This Act and the Freedom of Information Acts 1997 and 2003 may be cited together as the Freedom of Information Acts 1997 to 2008 and shall be construed together as one Act.

SCHEDULE

ENACTMENTS EXCLUDED FROM APPLICATION OF
SECTION 32 OF FREEDOM OF INFORMATION ACT 1997

PART 1

STATUTES

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Number and Year	Short Title	Provision
39 & 40 Vic. c. 77	Cruelty to Animals Act 1876	Section 12C(1), inserted by Article 2(1) of the European Communities (Amendment of Cruelty to Animals Act 1876) Regulations 2002 (S.I. No. 556 of 2002)
No. 26 of 1946	Industrial Relations Act 1946	Section 22
No. 4 of 1958	Prices Act 1958	Section 25
No. 14 of 1969	Industrial Relations Act 1969	Section 14
No. 9 of 1985	Dentists Act 1985	Section 38(5)
No. 18 of 1985	Nurses Act 1985	Section 38(5)
No. 11 of 1986	National Archives Act 1986	Section 8(4)
No. 6 of 1987	Air Pollution Act 1987	Section 16
No. 19 of 1990	Industrial Relations Act 1990	Section 25(6)
No. 25 of 1990	Pensions Act 1990	Section 145
No. 33 of 1990	Companies Act 1990	Section 21
No. 9 of 1991	Radiological Protection Act 1991	Section 36(1)(d)
No. 10 of 1993	Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993	Section 12
No. 16 of 1994	Health Insurance Act 1994	Section 34(1) and (2)
No. 22 of 1995	Ethics in Public Office Act 1995	Section 35
No. 17 of 1996	Refugee Act 1996	Section 19
No. 28 of 1996	National Standards Authority of Ireland Act 1996	Second Schedule, paragraph 5
No. 23 of 1997	Fisheries (Amendment) Act 1997	Section 30
No. 25 of 1997	Electoral Act 1997	Section 14
No. 27 of 1997	Public Service Management Act 1997	Section 5(3)
No. 21 of 1998	Employment Equality Act 1998	Section 61(5) and 97(2)
No. 24 of 1998	Air Navigation and Transport (Amendment) Act 1998	Section 36
No. 26 of 1998	Turf Development Act 1998	Section 32
No. 29 of 1998	Food Safety Authority of Ireland Act 1998	Section 43(1)
No. 34 of 1998	Industrial Development (Enterprise Ireland) Act 1998	Section 16
No. 42 of 1998	Western Development Commission Act 1998	Section 18
No. 51 of 1998	Education Act 1998	Section 53
No. 6 of 1999	Irish Sports Council Act 1999	Section 21
No. 1 of 2000	Comhairle Act 2000	Section 18

Number and Year	Short Title	Provision	
No. 7 of 2000	Commission to Inquire into Child Abuse Act 2000	Section 28	
No. 14 of 2000	Merchant Shipping (Investigation of Marine Casualties) Act 2000	Section 18	
No. 30 of 2000	Planning and Development Act 2000	Section 113	5
No. 33 of 2000	National Pensions Reserve Fund Act 2000	Section 13	
No. 24 of 2001	Children Act 2001	Section 178(1) and (2)	
No. 28 of 2001	Company Law Enforcement Act 2001	Section 17	10
No. 32 of 2001	Dormant Accounts Act 2001	Section 26(2)	
No. 37 of 2001	Local Government Act 2001	Section 80	
No. 39 of 2001	Industrial Designs Act 2001	Sections 38(3) and 39(2) and (5)	15
No. 43 of 2001	Ordnance Survey Ireland Act 2001	Section 23	
No. 2 of 2002	Sustainable Energy Act 2002	Section 19	
No. 13 of 2002	Residential Institutions Redress Act 2002	Section 28	20
No. 14 of 2002	Competition Act 2002	Sections 21(3), 22(4) and 32	
No. 29 of 2002	National Development Finance Agency Act 2002	Section 18	
No. 2 of 2003	Unclaimed Life Assurance Policies Act 2003	Section 24(2)	25
No. 30 of 2003	Industrial Development (Science Foundation Ireland) Act 2003	Section 17	
No. 44 of 2003	Companies (Auditing and Accounting) Act 2003	Section 31	30
No. 46 of 2003	Personal Injuries Assessment Board Act 2003	Section 73	
No. 12 of 2004	Private Security Services Act 2004	Section 18, paragraph 9 of Part 1 of Schedule 2	

PART 2

STATUTORY INSTRUMENTS

	Number and Year	Short Title	Provision
5	S.I. No. 538 of 1998	St. James's Hospital Board (Establishment) Order 1971 (Amendment) Order 1998	Article 8
	S.I. No. 288 of 1976	European Communities (Recognition of Medical Qualifications) Regulations 1976	Article 8(b)
10	S.I. No. 237 of 1980	European Communities (Recognition of General Nursing Qualifications) Regulations 1980	Article 7(b)
15	S.I. No. 20 of 1983	European Communities (Recognition of Midwifery Nursing Qualifications) Regulations 1983	Article 8(b)
	S.I. No. 226 of 1993	Nursing Homes (Care and Welfare) Regulations 1993	Article 20
20	S.I. No. 253 of 1994	European Communities (Active Implantable Medical Devices) Regulations 1994	Article 20(1)(c)
	S.I. No. 97 of 1997	National Social Work Qualifications Board (Establishment) Order 1997	Article 37
25	S.I. No. 120 of 1997	National Health Council on Ageing and Older People (Establishment) Order 1997	Article 24
	S.I. No. 278 of 1997	Women's Health Council (Establishment) Order 1997	Article 24
	S.I. No. 376 of 1999	National Council for the Professional Development of Nursing and Midwifery (Establishment) Order 1999	Article 25
35	S.I. No. 253 of 1999	Saint Luke's Hospital Board (Establishment) Order 1999	Article 25
	S.I. No. 165 of 2000	European Communities (Hygiene of Foodstuffs) Regulations 2000	Article 18(8)
40	S.I. No. 109 of 2000	Pre-Hospital Emergency Care Council (Establishment) Order 2000	Article 35
	S.I. No. 444 of 2001	European Communities (Medical Devices) (Amendment) Regulations 2001	Article 12
45	S.I. No. 73 of 2001	Genetically Modified Organisms (Contained Use) Regulations 2001	Article 9
	S.I. No. 304 of 2001	European Communities (In Vitro Diagnostic Medical Devices) Regulations 2001	Articles 17(4)(c) and 20
50	S.I. No. 446 of 2001	Crisis Pregnancy Agency (Establishment) Order 2001	Article 24
55	S.I. No. 280 of 2002	Industrial Designs Regulations 2002	Regulation 31(2)

Number and Year	Short Title	Provision	
S.I. No. 279 of 1986	Health Research Board (Establishment) Order 1986	Article 23, as substituted by Article 2(z) of the Health Research Board (Establishment) (Amendment) (No. 2) Order 2002 (S.I. No. 205 of 2002)	5
S.I. No. 160 of 2002	Irish Health Services Accreditation Board (Establishment) Order 2002	Article 25	10
S.I. No. 83 of 2003	European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003	Article 11	15
S.I. No. 500 of 2003	Genetically Modified Organisms (Deliberate Release) Regulations 2003	Article 10	
S.I. No. 451 of 2004	National Haemophilia Council (Establishment) Order 2004	Article 23	20
S.I. No. 179 of 2004	National Treatment Purchase Fund Board (Establishment) Order 2004	Article 16	



**AN BILLE UM SHAORÁIL FAISNÉISE (LEASÚ) 2008
FREEDOM OF INFORMATION (AMENDMENT) BILL 2008**

EXPLANATORY MEMORANDUM

Purpose of the Bill

Background.

The introduction in 1997 of the Freedom of Information Act was a milestone on the road to good governance and best practice in terms of openness and accountability. It was grounded in the belief that public bodies must be accountable to the ordinary public they are there to serve and that accountability requires openness.

Freedom of information, everywhere it has been introduced, has brought about more open government and better administration of public services. Doing business in the open is the best guarantee of efficiency.

But what is in the interests of the citizen and the State is not necessarily in the interests of the government of the day. In 2003 the Freedom of Information (Amendment) Act was introduced, which many people regarded as diminishing the value of the original 1997 Act.

At the same time that Ministers have increasingly delegated authority — and thereby reduced their own Dáil accountability — through a plethora of “quangos”, further restricting the capacity of the media and public representatives the information they need to hold the government to account.

In addition, the fee structure introduced in 2003, ranging from €15-€150, is prohibitive and does not exist in any other country with FOI legislation similar to Ireland’s. There has been a marked decline in the number of queries made by members of the public since these fees were introduced.

For several years the Information Commissioner has argued that Freedom of Information charges should be reduced or abolished. Effectively, this concurred with the long-held Labour Party position. We also want to see a return to the more transparent FOI regime of 1997.

And we want to see the remit of FOI radically extended rather than reduced. In particular, we believe its scope should be extended to include a number of key bodies including the Garda Síochána.

That is also the position of at least one member of the Garda Ombudsman Commission.

A fully functioning Freedom of Information Act would allow light to be shone on government mismanagement; it would allow cock-ups to be detected, made public, and then corrected; it would address much of the chaos surrounding the HSE; and most importantly, it would foster a spirit of transparency, accountability and good governance. Ireland needs and deserves real Freedom of Information. If there are low standards in high places, the Irish people have a right to know about it.

The purpose of this Bill is therefore to extend the ambit of operation of the Freedom of Information Acts 1997 and 2003 in a number of important respects, falling under four headings.

1. Public Bodies covered by FOI.

The definition of “public body” is amended by the Bill so as to apply FOI automatically to many public bodies, rather than having to await their individual designation by the Minister for Finance following consultation with other relevant Government Ministers.

The principal public body affected by this amendment is the Garda Síochána. It is at present listed in the First Schedule to the Freedom of Information Act 1997 as a body to which the Act can be applied by order. However, no such order has yet been made.

Other affected bodies would include the Garda Ombudsman Commission, the Office of the Refugee Applications Commissioner, the Office of the Refugee Appeals Tribunal, the Judicial Appointments Advisory Board, the Central Bank and Financial Services Authority of Ireland, the Irish Financial Services Regulatory Authority, the National Treasury Management Agency, the National Pension Reserve Fund Commission, the State Claims Agency, Vocational Educational Committees, the State Examinations Commission, the Residential Institutions Redress Board, the Central Applications Office, the Adoption Board, the Irish Red Cross, the Personal Injuries Assessment Board and the Law Society of Ireland (to the extent that it performs statutory functions under the Solicitors Acts).

2. Statutory secrecy provisions.

Section 32 of the 1997 Act dealt with the interaction between the disclosure policy of FOI and the provisions in various other statutes under which disclosure of information is prohibited or non-disclosure is authorised. Essentially, section 32 says that a public body is entitled to rely on the secrecy provisions of another Act as a ground for refusing access to information unless that secrecy provision is listed in the Third Schedule. If the provision is scheduled, then the disclosure regime of the Freedom of Information Acts overrides the other Act.

This Bill proposes to insert more than 70 additional Acts and statutory instruments into the Third Schedule of the 1997 Act, thereby restricting those secrecy provisions and conferring a primacy on the disclosure policy of the Freedom of Information Acts.

3. Fees.

A retrograde amendment was introduced by the Freedom of Information (Amendment) Act 2003, under which fees were made chargeable for applying for records under the Act, where previously fees were charged only if access was actually granted. In addition, fees were to be charged for applying for an internal review of a refusal

to give access and for appealing a refusal to the Information Commissioner. The fees regime subsequently introduced by statutory instrument resulted in a marked decline in usage of the Freedom of Information Acts.

The Bill proposes to repeal the amendment and to revoke the statutory instrument.

4. Miscellaneous amendments.

The Information Commissioner and her predecessor, in their statutory commentaries on the Acts, have put forward a series of proposals for the improvement of the legislation — including by deleting some of the changes made in 2003. Opportunity is taken to implement most of those proposals.

Provisions of Bill

Section 1 amends the First Schedule to the Freedom of Information Act 1977, which defines a “public body”. The present version of paragraph 5(1) refers to any body, organisation or group “standing prescribed for the time being, with the consent of such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister of the Government . . .”.

The amended version deletes words in quotation marks above, so as to drop the requirement that a body must be specified and prescribed by the Minister. It then proceeds along the lines of the existing subparagraph and lists the following bodies—

- the Garda Síochána,
- statutory bodies, organisations and groups,
- companies and other bodies, organisations and groups financed out of public funds,
- companies a majority of the shares in which are held by or on behalf of a Minister of the Government,
- any other body, organisation or group appointed by the Government or a Minister of the Government,
- any other body, organisation or group that is prescribed for the time being (with the consent of such other Minister as the Minister for Finance considers appropriate having regard to the functions of that other Minister), on which functions in relation to the general public or a class of the general public are conferred by any enactment, or
- a subsidiary of a body, organisation or group specified in any of the foregoing.

As with the original Act of 1997, affected public bodies are given a period of 12 months before the section comes into operation. This is necessary in order to prepare and collate records for FOI purposes.

Section 2 amends the Third Schedule to the Freedom of Information Act 1997, which lists the secrecy provisions of statutes upon which a public body cannot rely as grounds for refusing access to a record.

The Schedule is amended by adding more than 70 additional enactments to the original list.

Section 3 sets out a series of amendments to the original Freedom of Information Act 1997. These amendments derive from proposals made by the Information Commissioner and her predecessor in reports to the Oireachtas. Some are technical in nature. The significant amendments include provisions:

- to allow access to a record be refused where it has previously been granted to the requester,
- to deal with persistently frivolous or vexatious requests for access to records,
- to provide for internet publication of public body handbooks and guides under section 15 and 16 of the 1997 Act,
- to clarify the procedure for correcting personal information held by a public body that is incomplete, incorrect or misleading,
- to enable the Information Commissioner to suspend a review pending further information, the outcome of court proceedings or for any other appropriate reason,
- to allow an application to the Information Commissioner for a review to be withdrawn informally,
- to enable the Information Commissioner to excise personal information from an application for a review, prior to circulating that application to interested persons,
- to extend the grounds available to the Commissioner for refusing a review or discontinuing a review, so as to include failure by an applicant to provide information or to co-operate or the fact that the application is frivolous or vexatious or forms part of a pattern of manifestly unreasonable applications,
- to enable the High Court, where a public body fails or refuses to comply with a decision of the Information Commissioner, to order the person to comply with the decision,
- to provide for an annual statistical review of the operation of FOI,
- to delete the exemption from disclosure of material prepared for the purpose of replying to Dáil questions,
- to delete the exemption from disclosure of records relating to the enforcement functions of the Health and Safety Authority.

Section 4 repeals in their entirety sections 14, 15, 19 and 30 of the Freedom of Information (Amendment) Act 2003. These sections:

- change the discretionary exemption for the protection of “Government records” to a mandatory exemption, extend period for protection of certain Government communications from 5 to 10 years and extend the definition of “Government” for the purpose so as to include a committee of officials, not one of whom need be a member of the Government and, indeed, some or none of whom may be civil servants of the Government or the State;
- create a mandatory exemption in the case of a record in respect of which a Secretary General of a Department has certified that it relates to the deliberative processes of a Department of State;

- create a mandatory, class exemption for certain records which fall within the wider category of records relating to the security or defence of the State, international relations or matters relating to Northern Ireland. As the exemption is mandatory, it applies to all records within the class irrespective of their sensitivity or of any harm which release may cause; and
- authorise the charging of fees for requests for access to records, for applications for internal review of a refusal of access and for appeals to the Information Commissioner.

The section also revokes the Freedom of Information Act 1997 (Fees) Regulations 2003 (S.I. No. 264 of 2003).

Section 5 provides for a criminal offence, as proposed by the Information Commissioner, in relation to the deliberate falsification, concealment, destruction or disposal of records in order to prevent their release under FOI. The offence is made punishable on summary conviction by a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months, or both, and, on conviction on indictment, by a fine or imprisonment for a term not exceeding 7 years, or both.

Section 6 makes standard provision for the short title and collective citation and construction of the Bill.

Na Seanadóirí Alex White, Dominic Hannigan, Brendan Ryan, Alan Kelly, Michael McCarthy, Phil Prendergast, Aibreán, 2008.