

DÁIL ÉIREANN

AN BILLE UM SHAORÁIL FAISNÉISE, 2013 —ROGHFHOCHOISTE

FREEDOM OF INFORMATION BILL 2013 —SELECT SUB-COMMITTEE

Leasuithe Amendments

SECTION 6

In page 15, lines 26 to 28, to delete all words from and including “Subject” in line 26 down to and including “Act:” in line 28 and substitute the following:

“Subject to *subsections (2) and (3)*, each of the following (other than an entity specified in *Part 2 of Schedule 1*, a subsidiary of such an entity, a body directly or indirectly controlled by such an entity, or an element of an entity specified in *Part 1 of Schedule 1*) shall be a public body for the purposes of this Act.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 17, between lines 14 and 15, to insert the following:

“(8) A regulated financial service provider within the meaning of section 2 of the Central Bank Act 1942 shall not be deemed to be a public body by reason of the exercise of supervisory, regulatory or resolution powers over that provider by the Central Bank of Ireland or the Minister for Finance.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

SECTION 7

In page 17, to delete lines 20 to 22 and substitute the following:

“referred to in *subsection (6)* and the need for such entities to adhere to the principles of transparency and accountability in government and public affairs as respects those of their activities as are relevant to *subsection (6)*, by”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 17, line 41, to delete “Without prejudice to the generality of *subsection (1)*, the Minister” and substitute “The Minister”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 18, to delete lines 12 to 15 and substitute the following:

“(c) a subsidiary (within the meaning of the Companies Acts) of, or any entity directly

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or indirectly controlled by, an entity referred to in this subsection;

- (d) an entity (being a body corporate) that directly or indirectly controls any entity referred to in this subsection.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 18, line 29, to delete “shall be” and substitute “shall”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

SECTION 12

In page 27, to delete lines 33 and 34 and substitute the following:

“(9) (a) Where a request to an FOI body under *subsection (1)* is made up of 2 or more parts seeking separate and distinct information relating to functions and responsibilities carried out by different functional areas of the FOI body, the head of the FOI body concerned shall treat each part of the request as a separate FOI request. The requester shall be required to pay a further fee for each separate request under this paragraph, or the requester shall pay the fee for whichever request or requests he or she may specify or modify the request so that no further fee is payable.

- (b) A head shall assist or offer to assist the requester concerned in amending the request so that it no longer comprises more than one request.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

SECTION 17

In page 32, to delete lines 30 to 39, and in page 33, to delete lines 1 to 6 and substitute the following:

“(4) Where an FOI request relates to data contained in more than one record held on an electronic device by the FOI body concerned—

- (a) subject to *paragraph (b)*, the FOI body shall take reasonable steps to search for and extract the records to which the request relates, being steps that involve the use of any facility for electronic search or extraction that existed on the date of the request and was used by the FOI body in the ordinary course, and
- (b) if the reasonable steps referred to in *paragraph (a)* result in the creation of a new record, that record shall, for the purposes of considering whether or not such new record should be disclosed in response to the request, be deemed to have been created on the date of receipt of the FOI request.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

SECTION 21

In page 34, line 36, to delete “or”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

[SECTION 21]

In page 34, line 38, to delete “*section 27.*” and substitute the following:

“*section 27, or*

- (h) a decision under *section 12(9)* to treat an FOI request as a number of separate requests.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 35, line 29, to delete “or (g)” and substitute “, (g) or (h)*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

*[*This is a reference to the paragraph proposed to be inserted by an earlier amendment.]*

SECTION 22

In page 36, line 28, after “to (f)” to insert “or (h)*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

*[*This is a reference to the paragraph proposed to be inserted by an earlier amendment.]*

In page 37, line 19, after “or (g)” to insert “or (h)*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

*[*This is a reference to the paragraph proposed to be inserted by an earlier amendment.]*

SECTION 24

In page 41, line 9, to delete “to (g)” and substitute “to (h)*”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

*[*This is a reference to the paragraph proposed to be inserted by an earlier amendment.]*

SECTION 27

In page 43, between lines 4 and 5, to insert the following:

“Fees and Charges

27. (1) (a) A fee of such amount (if any) as may be prescribed shall be charged by the FOI body concerned under this subsection and paid by the requester or, as the case may be, the applicant concerned to the body in respect of an FOI request, or an application under *section 21* or an application under *section 22*.
- (b) A fee under this subsection shall be paid at the time of the making of the request or application concerned and, if it is not so paid, the head concerned or, as the case may be, the Commissioner shall refuse to accept the request or application, and it shall be deemed, for the purposes of this Act, not to have been made.
 - (c) Fees of different amounts may be prescribed under *paragraph (a)* in respect of different classes of requester or different classes of applicant.

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- (2) Such amount as may be appropriate having regard to the provisions of this section shall be charged by the FOI body concerned under this subsection and paid by the requester concerned to the body in respect of the grant of an FOI request. The amount of a charge under this subsection shall be equal to the estimated cost of the search for and retrieval and copying of the record concerned by the FOI body concerned for the requester.
- (3) For the purposes of *subsection (2)* “search and retrieval” includes time spent by the FOI body in—
 - (a) determining whether it holds the information requested,
 - (b) locating the information or documents containing the information,
 - (c) retrieving such information or documents,
 - (d) extracting the information from the files, documents, electronic or other information sources containing both it and other material not relevant to the request, and
 - (e) preparing a schedule specifying the records for consideration for release.
- (4) For the purposes of *subsection (2)*—
 - (a) the amount of the cost of the search for and retrieval of a record shall be calculated at the rate of such amount per hour as stands prescribed for the time being in respect of the time that was spent, or ought, in the opinion of the head concerned, to have been spent, by each person concerned in carrying out the search and retrieval efficiently,
 - (b) the amount of the cost of the copying of a record shall not exceed such amount (if any) as stands prescribed for the time being, and the determination of that amount shall be in compliance with any provisions standing prescribed for the time being in relation to such determination,
 - (c) the total amount of a charge under *subsection (2)* shall not exceed the maximum amount prescribed for the time being as the appropriate limit for search and retrieval and copying,
 - (d) there shall be no charge under *subsection (2)* if, in the opinion of the head concerned, the total amount of the charge would be less than the amount (if any) as stands prescribed for the time being as the appropriate search and retrieval and copying minimum, and
 - (e) different maximum and minimum amounts may be prescribed under this section in respect of public bodies and prescribed bodies.
- (5) Where the record or records concerned contains or contain only personal information relating to the requester concerned—
 - (a) no fee under *subsection (1)* shall be payable, and
 - (b) the search and retrieval and copying charge under *subsection (2)* shall be disregarded unless the grant concerned relates to a significant number of records.

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- (6) Subject to *subsection (4)*, where, in the opinion of the head concerned, the estimated cost, as determined by the head, of the search for and retrieval and copying of a record the subject of an FOI request is likely to exceed the appropriate minimum level as prescribed—
 - (a) a deposit of such amount as may be determined by the head (not being less than 20 per cent of such cost) shall be charged by the FOI body concerned and paid by the requester concerned to the body,
 - (b) the process of search for and retrieval of the record shall not be commenced by the body until the deposit has been paid, and
 - (c) the head shall, not later than 2 weeks after the receipt of the request aforesaid, cause a request in writing for payment of the deposit to be given to the requester and the document shall include an estimate of the length of time that the process of searching for and retrieving the record will occupy and a statement that the process will not begin until the deposit has been paid and that the date on which a decision will be made in relation to the request will be determined by reference to the date of such payment.
- (7) A head may reduce the amount of or waive a search and retrieval and copying charge or deposit under *subsection (2)* or *(5)* if, in his or her opinion, some or all of the information contained in the record concerned would be of particular assistance to the understanding of an issue of national importance.
- (8) In a case to which *subsection (6)* applies, the head concerned shall, if so requested by the requester concerned—
 - (a) assist the requester if the requester wishes to amend or limit the request in order to reduce or eliminate the charges that arise or are likely to arise under *subsection (2)*,
 - (b) if amendments are specified under *paragraph (a)*, make such of them (if any) to the request as the requester may determine.
- (9) Where a deposit under *subsection (6)* is paid, the amount of the charge under *subsection (2)* payable in respect of the grant of the FOI request concerned shall be reduced by the amount of the deposit.
- (10) Where a deposit under *subsection (6)* is paid and, subsequently, the grant of the FOI request concerned is refused or is granted in relation to a part only of the record concerned, the amount of the deposit or, if a charge under this section is payable in respect of the grant, so much (if any) of that amount as exceeds the amount of the charge shall be repaid to the requester concerned.
- (11) Where a charge or a deposit under this section is paid and, subsequently, the charge or deposit is annulled or varied under *section 21, 22* or *24*, the amount of the charge or deposit so annulled or, as the case may be, any amount thereof in excess of the amount thereof as so varied shall be repaid to the requester concerned.
- (12) *Section 13(1)* shall be construed and have effect—
 - (a) in relation to a case in which a deposit is payable under *subsection (6)*, as if the

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reference to 4 weeks were a reference to a period consisting of 4 weeks together with the period from the giving of the request under *subsection (6)* concerned to the requester concerned to the date of the receipt of the deposit,

- (b) in relation to a case in which such a deposit is annulled following a review under *section 21* or *22* or an appeal under *section 24*, as if the reference to 4 weeks were a reference to a period consisting of 4 weeks together with the period from the giving of the request under *subsection (6)* to the requester concerned to the date of the decision under *section 24* or, as the case may be, of the giving to the requester concerned of notice under *section 21* or *22* of the decision, and
 - (c) in relation to a case in which an amendment pursuant to *subsection (8)* has the effect of eliminating such a deposit, as if the reference to the receipt of a request under that section were a reference to the making of the amendment.
- (13) Where the amount of a search and retrieval and copying charge under *subsection (2)* exceeds or is likely to exceed the maximum amount prescribed for the purposes of this paragraph—
- (a) the body concerned shall so inform the requester,
 - (b) the body shall assist the requester if the requester wishes to amend or limit the request in order to reduce the charges that arise or are likely to arise under *subsection (2)* to an amount less than or equal to the amount prescribed under this subsection,
 - (c) if the requester does not amend or limit the request such that the charges that arise or are likely to arise under *subsection (2)* are reduced to an amount less than or equal to the amount prescribed under this subsection, the body may refuse the request, and
 - (d) where the body decides to process the request, the requester shall be required to pay the full cost of the charges likely and *subsection (6)* shall apply.
- (14) An FOI body shall endeavour to establish a facility by which payment or refund of any fees due under this Act may be made electronically.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

[Acceptance of this amendment involves the deletion of section 27 of the Bill.]

SECTION 32

In page 49, to delete lines 24 to 29 and substitute the following:

- “(b) endanger the life or safety of any person, or
- (c) facilitate the commission of an offence.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

SECTION 41

[SECTION 41]

In page 61, line 11, after “by” to insert “law of the European Union or”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

SECTION 42

In page 63, between lines 2 and 3, to insert the following:

“(vi) the management and use of covert intelligence operations;”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 65, lines 20 to 25, to delete all words from and including “or” where it secondly occurs in line 20 down to and including “body.” in line 25 and substitute the following:

- “(l) unless consent has been lawfully given for its disclosure, a record relating to any private paper or confidential communication, within the meaning of Part 10 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, or official document, within the meaning of Part 11 of that Act, or
- (m) a record relating to information whose disclosure could reasonably be expected to reveal, or lead to the revelation of—
 - (i) the identity of a person who has provided information in confidence in relation to the enforcement or administration of the law to an FOI body, or where such information is otherwise in its possession, or
 - (ii) any other source of such information provided in confidence to an FOI body, or where such information is otherwise in its possession.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

SCHEDULE 1

In page 72, between lines 22 and 23, to insert the following:

“(c) a record held or created under the Companies Acts by the Director of Corporate Enforcement or an officer of the Director (other than a record concerning the general administration of the Director’s office);”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 75, between lines 23 and 24, to insert the following:

“A bridge bank within the meaning of section 17 of the Central Bank and Credit Institutions (Resolution) Act 2011

Allied Irish Banks p.l.c.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 76, between lines 5 and 6, to insert the following:

“Irish Bank Resolution Corporation Limited (in Special Liquidation)”.

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—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 76, between lines 12 and 13, to insert the following:

“permanent tsb Group Holdings p.l.c.”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.

In page 76, between lines 14 and 15, to insert the following:

“Private Security Appeals Board”.

—An tAire Caiteachais Phoiblí agus Athchóirithe.