

AIE REGULATIONS - CONSULTATION
SUBMISSION BY ALLONE CORPORATE SOLUTIONS LTD.

AllOne Corporate Solutions Ltd. is one of the only companies in Ireland who specialise in Freedom of Information (FOI) compliance. The company was established by Ms. Sinéad Byrne in January 2015 and in November 2019 signed contracts with the Office of Government Procurement as the Single Supplier of all FOI training to Irish public bodies.
hands-on experience of FOI who deliver training from the OGP FOI Training Framework.

In recent years and due to the demands of the market, Sinéad expanded the range of courses to include the General Data Protection Regulations and Access to Information on the Environment (AIE). Both regulations have become increasingly popular with requesters in recent years and many public agencies are struggling with the volume and complexity of requests.

AllOne prides itself on delivering clear and practical training; we worked hard to develop a step-by-step process for Decision Makers to follow to not only remain compliant with the legal requirements of the Act but to also ensure that resources are used efficiently during that process.

Based on our experience of working with Public Sector Bodies (PSB), we have set out below some suggestions that we believe will significantly improve the operation of the AIE Regulations in Ireland and bring them into line with our existing access process under the Freedom of Information (FOI) Act.

Q1 What, in your opinion, are the positive benefits of the AIE Regulations?

A1 The scope of the Regulations is broader than the current FOI legislation – there are many more “public authorities” covered under the AIE Regulations than under FOI and I see this as a positive. For example, ESB, Eirgrid, Gas Networks Ireland, etc. they are not FOI bodies for the purposes of that Act and therefore citizens cannot access records in their possession.

Q2 Should any specific part of the Regulations be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.

A2 I believe there are a number of provisions, if added to the Regulation, would make it much easier for public authorities to operate and would also ensure more consistency between the FOI access process and AIE access process. Please see below our detailed response. As we have referenced various provisions of the FOI Act, these are attached in the Appendix.

Article of AIE Reg	Suggested Amendment/Addition
Article 9 Discretionary Grounds for Refusal	Vexatious/Unreasonable/Repeat Requester – an addition to the provision similar to the FOI Act Section 15(1)(g) would be most helpful. We have worked with a number of public authorities to manage repeat requesters – there is good precedence under the FOI Act but little of solace under AIE. This leaves FOI bodies open to refusal under one piece of legislation and having to engage under another – this lack of consistency is not helpful when dealing with repeat or vexatious requesters.
Article 9(2)(a) manifestly unreasonable due to volume or range	The addition to or clarification of Article 9(2)(a) is urgently required – this is currently being challenged by a prolific user of the Regulations and he has a case awaiting hearing in the High Court. If he were to win this case, it would have very serious implications for public authorities’ abilities to manage future large requests. I believe wording similar to that used in Section 15(1)(c) of the FOI Act would be much more usable and clearer.
Article 9	The addition of the refusal where the records are already in the public domain
Article 9	The addition of a refusal where the requester has not paid a fee – this arises where a fee may be charged for the provision of records (we have a suggestion on fees too below) on the release of such records. Where the requester does not pay, the work is already done by the public authority – this leaves the public authority vulnerable to committing resources to process a request that the requester ultimately does not require
Article 15 Fees	This really requires an overhaul – the current guidance is significantly lacking on detail and process. We have attached below Section 27 of the FOI Act and the supporting Statutory Instrument and a process similar to this would be most welcome under AIE. It would provide a

	clear process for the calculation of fees, clear process on how and when the fee is payable and what happens when it is not paid. Additional refusals then for when a fee is not paid would significantly improve the process for public authorities.
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Further Details

We would be happy to provide further details or to engage in further exploration of some of these issues. In overall terms, making the AIE Regulations more similar to the FOI Act would be the best outcome of this review in our opinion – we do not believe there is any real need for two separate access regimes in Ireland. The FOI Act has been successfully operating here since 1997 and we have built a good repository of legal precedence and experience in processing these requests. It would make good business sense for public bodies to have only one scheme to deal with and build their expertise on that.

Sinéad Byrne
AllOne Corporate Solutions Ltd.

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[Redacted]

[Redacted] [Redacted]

Refusal on administrative grounds to grant FOI requests

15. (1) A head to whom an FOI request is made may refuse to grant the request where—
- (a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,
 - (b) the FOI request does not comply with *section 12(1)(b)*,
 - (c) in the opinion of the head, granting the request would, by reason of the number or nature of the records concerned or the nature of the information concerned, require the retrieval and examination of such number of records or an examination of such kind of the records concerned as to cause a substantial and unreasonable interference with or disruption of work (including disruption of work in a particular functional area) of the FOI body concerned,
 - (d) the information is already in the public domain,
 - (e) publication of the record is required by law and is intended to be effected not later than 12 weeks after the receipt of the request by the head,
 - (f) the FOI body intends to publish the record and such publication is intended to be effected not later than 6 weeks after the receipt of the request by the head,
 - (g) the request is, in the opinion of the head, frivolous or vexatious or forms part of a pattern of manifestly unreasonable requests from the same requester or from different requesters who, in the opinion of the head, appear to have made the requests acting in concert,
 - (h) a fee or deposit payable under *section 27* in respect of the request concerned or in respect of a previous request by the same requester has not been paid, or
 - (i) the request relates to records already released, either to the same or a previous requester where—
 - (i) the records are available to the requester concerned, or
 - (ii) it appears to the head concerned that that requester is acting in concert with a previous requester.

Fees and charges

13. (1) 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.
- (2) For the purposes of *subsection (1)* “search for 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.
- (3) For the purposes of *subsection (1)*—
 - (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) subject to *subsection (12)* the total amount of a charge under *subsection (1)* shall not exceed such amount as stands prescribed for the time being as the appropriate maximum amount for search and retrieval and copying,
 - (d) there shall be no charge under *subsection (1)* if, in the opinion of the head concerned, the total amount of the charge would be less than such amount (if any) as stands prescribed for the time being as the appropriate minimum amount for search and retrieval and copying, and
 - (e) different maximum and minimum amounts may be prescribed under this subsection in respect of different public bodies or prescribed bodies and the power to prescribe such a maximum (in relation to any particular body) shall be exercised in a manner to take account of the greater amount that *subsection (12)* provides for the prescription of (in relation to that body) as concerns the overall ceiling limit.
- (4) Where the record or records concerned contains or contain only personal information relating to the requester concerned the charge under *subsection (1)* shall

not be made, unless the grant concerned relates to a significant number of records, and in considering whether or not such a charge shall be made, the means of the requester shall be taken into account.

- (5) Subject to *subsection (3)*, 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 notice in writing for payment of the deposit to be given to the requester and the notice 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.
- (6) A head may reduce the amount of or waive a search and retrieval and copying charge or deposit under *subsection (1)* 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.
- (7) In a case to which *subsection (5)* 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 (1)*,
 - (b) if amendments are specified under *paragraph (a)*, make such of them (if any) to the request as the requester may determine.
- (8) Where a deposit under *subsection (5)* is paid, the amount of the charge under *subsection (1)* payable in respect of the grant of the FOI request concerned shall be reduced by the amount of the deposit.
- (9) Where a deposit under *subsection (5)* 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.
- (10) 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.

- (11) *Section 13(1)* shall be construed and have effect—
- (a) in relation to a case in which a deposit is payable under *subsection (5)*, 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 notice under *subsection (5)(c)* 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 notice under *subsection (5)(c)* 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 (7)* 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.
- (12) (a) Where the amount of a search and retrieval and copying charge under *subsection (1)* exceeds or is likely to exceed the overall ceiling limit prescribed, under *paragraph (b)*, for the purposes of this subsection—
- (i) the body concerned shall so inform the requester,
 - (ii) 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 (1)* to an amount less than or equal to the overall ceiling limit so prescribed,
 - (iii) if the requester does not amend or limit the request such that the charges that arise or are likely to arise under *subsection (1)* are reduced to an amount less than or equal to the overall ceiling limit so prescribed, the body may refuse the request, and
 - (iv) where the body decides to process the request, the requester shall be required to pay the full cost of the charges likely to be payable and *subsection (5)* shall apply.
- (b) There shall be prescribed for the purposes of this subsection an amount to be called, and in this section referred to, as the overall ceiling limit; and different such amounts may be prescribed for those purposes in respect of different public bodies or prescribed bodies.
- (13) (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 applicant concerned to—
- (i) the body in respect of an application under *section 21*, or
 - (ii) the Commissioner in respect of an application under *section 22*.
- (b) A fee under this subsection shall be paid at the time of the making of the 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 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 applicant.
- (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.

We have also included a link below to the Statutory Instrument that supplements this provision...

<https://foi.gov.ie/regulations/freedom-of-information-act-fees-no-2-regulations-2014/>