



An Roinn Caiteachais
Phoiblí agus Athchóirithe
Department of Public
Expenditure and Reform

Review of the Freedom of Information Act

Progress Update

December 2022

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Introduction

The Review of the Freedom of Information Act has been an open and collaborative process, taking in the views of a wide range of stakeholders, both in terms of scope and substance.

The process is now at an advanced stage, however given the breadth and complexity of the issues involved will not be concluded until early 2023.

Pending presentation of the final review report, the Minister for Public Expenditure and Reform would like to provide stakeholders with an update on the progress of the review and highlight for information some key issues that have been identified.

Overview of the Review Process

- The review was announced by the Minister for Public Expenditure and Reform Michael McGrath T.D. in June 2021.
- A roadmap document was published in September 2021 providing stakeholders with details of the process.
- This was followed by a consultation on the scope of the review which concluded in December 2021. Approximately 1,200 responses were received from stakeholders across all sectors.
- A customer satisfaction survey was undertaken, concluding in May 2022, which received almost 1,100 further responses.
- Based on the previous stages of information gathering, a full public consultation was undertaken around key themes in the review, which closed in September 2022. 60 further responses were received.
- Alongside this process, focus group sessions and interviews were carried out with key stakeholder groups, including:
 - The National Union of Journalists
 - The Patient Advocacy Service
 - The Federation of Voluntary Bodies
 - The HSE National Open Disclosure Office
 - The Office of the Information Commissioner
 - The Data Protection Commission.

Initial analysis of the evidence gathered in this process has been completed, with initial findings and recommendations now under consideration.

Impact of the 2014 Act and Subsequent Trends

As part of the review, the FOI Central Policy Unit with the assistance of the Irish Government Economic and Evaluation Service has carried out a longitudinal analysis of key indicators in order to better understand how the FOI System is performing.

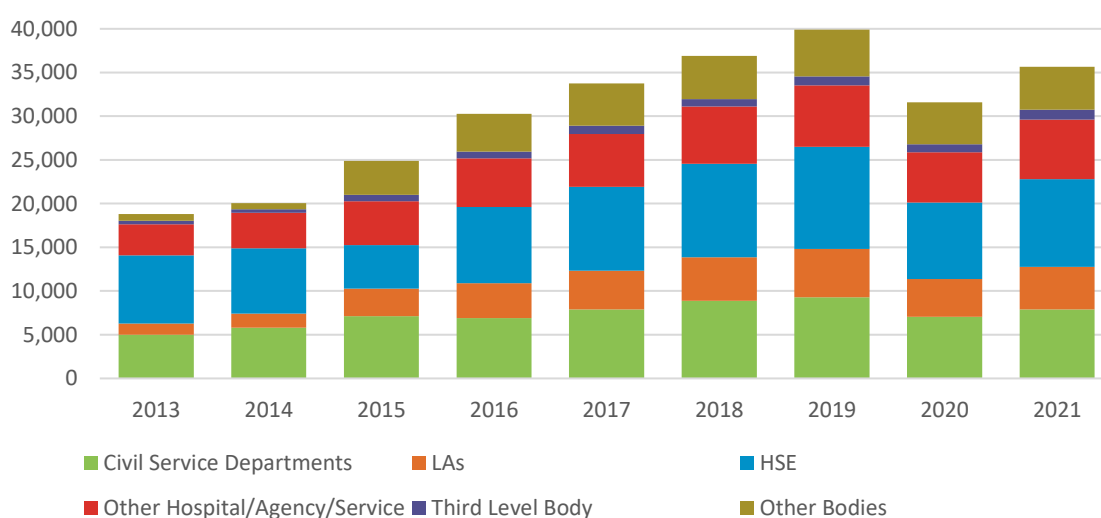


Figure 1: Annual volume of requests made to public bodies since 2013 by sector

The updated Freedom of Information Act 2014 was commenced on 14th October 2014, with 2015 being its first full year of operation. Between 2013, the last full year of operation of the 1997 Act to 2019 the annual number of requests more than doubled from approximately 18,000 to 41,000. The impact of the pandemic saw a decrease in 2020, with the previous upward trend resuming in 2021, although without yet reaching 2019 levels.

Some of this increase can be attributed to new bodies coming within scope of FOI for the first time under the 2014 Act, many of which are grouped under the “Other Bodies” heading in the chart above. However, all sectors, notably Local Government, saw a marked increased demand for FOI services across this timeframe.

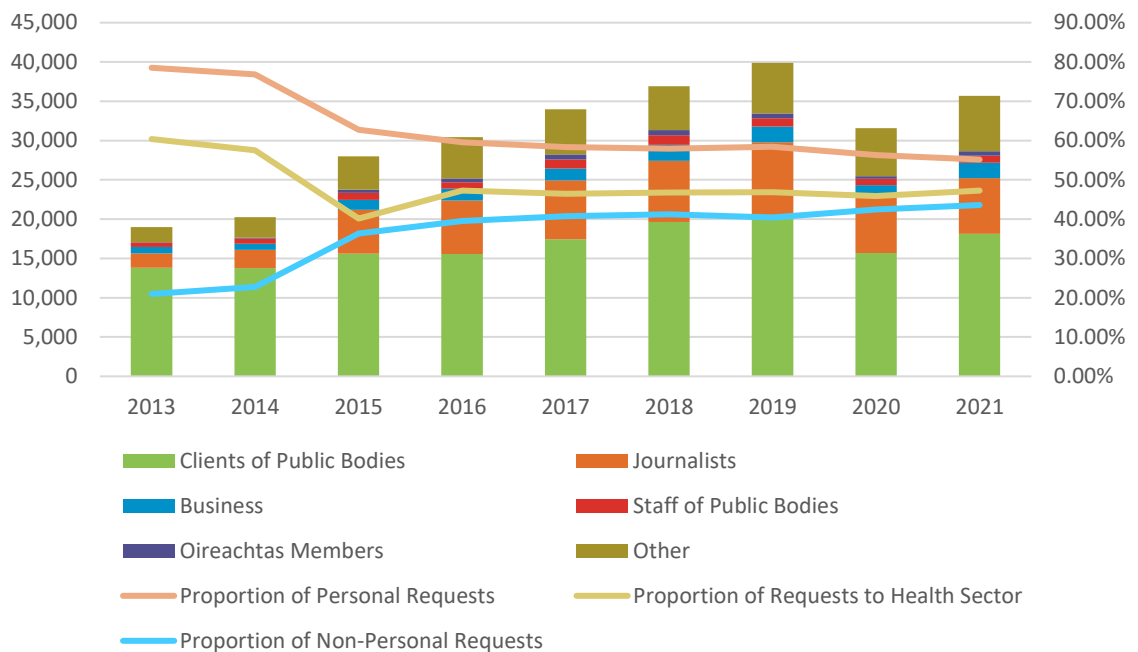


Figure 2: Profile of Requester and Request Type

The introduction of the 2014 Act led to a significant change in the types of requests received by public bodies. In 2013, the final full year where the 1997 Act applied, almost four out of every five FOI requests were for personal information, that is information relating to the requester themselves, and only 20% for non-personal information. From 2015 this ratio dropped to and stabilised at around 60% personal and 40% non-personal requests.

The proportion of requesters who identified themselves as journalists doubled from 9.7% in 2013 to around 20% of requesters annually from 2015 onwards. There was also a consistent increase in the proportion of requesters who identified themselves as “Other”, from 10% in 2013 to nearly 20% in 2021.

While the proportion of requesters who identified themselves as clients of the public body dropped significantly from its peak of 73% in 2013, this is still by far the largest single cohort of requesters, making around half of annual requests in each year from 2015.

The health sector, taking in the HSE, hospitals, agencies and services, accounts for almost half of total annual requests in the years from 2016, from a peak of 80% in 2013.

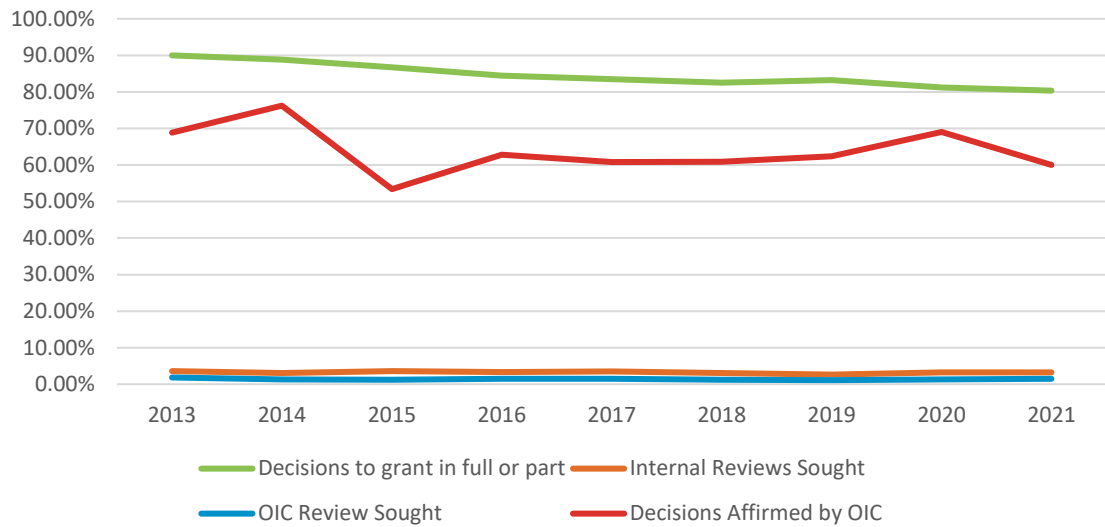


Figure 3: FOI Outcomes – Key Indicators

Slightly over four out of every five FOI requests annually were granted in full or in part in the years following the introduction of the 2014 Act. Reviews are available where a requester is dissatisfied with an FOI decision, first at a higher level in the body concerned and independently by the Information Commissioner. The levels of reviews have remained consistently low, at about 3% and 1% of requests annually. Where the Commissioner’s Office made a formal decision following its review, it tended to uphold the public body’s approach in roughly 60% of cases in most years, with about 20% being varied, and 20% overturned.

It must be acknowledged that high level statistics covering the system as a whole will by their nature tend to elide a much more nuanced picture. For example, outcomes vary significantly by sector. The statistical categories are broad, such that a part-grant may cover anything from effectively a full release subject to minor redactions to release of only limited amounts of material, while a refusal also includes cases where the requested records do not exist.

While inferences may be drawn from the outcome of cases where the OIC has made a formal decision, it is difficult to reach any conclusions in relation to cases that were ultimately withdrawn, discontinued or settled, which amounts to approximately 40% of the total OIC workload in most given years. Moreover, as previously noted, in any event only a relatively small number of cases come before the Commissioner on review.

Nevertheless, it is possible to make some general observations based on the analysis undertaken to date. It is clear that the 2014 Act led to significant changes in patterns of requesting, as well as a large expansion in the usage of FOI. Following an initial adjustment, many key indicators settled fairly quickly and indeed have subsequently shown a remarkable degree of consistency, even against the backdrop of increasing demand and pandemic-related disruption. This would tend to suggest that the system is operating in a stable and predictable way on its own terms.

While requests for personal information remain the most common use of FOI, since 2014 the proportion of requests for non-personal information has greatly expanded. This may be attributable in large part to the removal of the application fee that previously applied to such requests. With that said, while non-personal requesting showed an almost four-fold increase from 2013 to its peak in 2019, personal requesting also almost doubled in that time. No application fee applied to such requests at any stage, which would suggest that the removal of the fee alone does not provide a full explanation for these trends.

In addition, factors external to the FOI system may be of relevance in some instances, for example the slight further decrease in the proportion of personal requests since 2018 may reflect increased usage of data protection subject access requests since the enactment of the GDPR.

Analysis remains ongoing of the available statistics, as well as consideration of improvements that might be made into the future to ensure that timely and useful data is available to inform policy-making around FOI and to assess the effectiveness of any interventions that may be undertaken.

Highlights from the Customer Satisfaction Survey

The customer satisfaction survey sought to gauge attitudes and issues around the FOI process, and was directed to requesters, public sector FOI Officers and decision-makers.

It took the form of an online survey circulated to the requester and the staff involved in processing the request once an FOI decision issued during the sampling period. Key high level findings include:

- Satisfaction levels with the handling of the particular requests are reasonably high:
 - 60% of requesters satisfied with the general handling of their request as against 25% dissatisfied.
- However, there is a seeming disconnect between perceptions of how the system operates on its own terms and perceptions of how it is structured:
 - 24% of requesters agree that the FOI system is fit for purpose (50% disagree)
 - 39% of public servants agree that the system is fit for purpose (27% disagree).
- Among public servants, responses were markedly positive in relation on transparency culture in their organisations, for example:
 - 96% agree that the public has a right to be informed about the activities of public bodies (1% disagree)
 - 92% agree that their organisations are committed to handling FOI requests effectively (3% disagree)
 - 88% agree that transparency is essential to a properly functioning public service (4% disagree)

- 78% value the transparency culture in their organisation (3% disagree)
 - 76% feel supported by management in carrying out their work on FOI (8% disagree).
- However, perceptions of the FOI process itself among public servants were also mixed:
 - 51% of respondents and 58% of decision makers feel that FOI “gets in the way of doing their job” (28% disagree)
 - 40% agree that their work on FOI “makes a real difference” (18% disagree).
- It is perceived to be very straightforward to put in an FOI request, but difficult to process one:
 - 66% of requesters agree that it is straightforward to make an FOI request (17% disagree)
 - 20% of public servants agree that processing an FOI request is a straightforward task (63% disagree).
- There is an appetite for more straightforward and routine access to information:
 - 50% of requesters agree that the FOI process is unnecessarily bureaucratic (24% disagree).

High Level Themes in the Review

The review was shaped by the submissions received throughout the process. Issues arose both in terms of immediate updates and fixes to perceived issues with the operation of the current legislation, but also structural issues that will require an ongoing program of work and engagement in the medium to long term. In the public consultation, the following themes were identified, which summarise and aim to address the issues that were raised in the scoping stage:

<u>Structural Issues</u>	<u>Incremental Reforms</u>
<ul style="list-style-type: none"> • Streamlining access regimes and related functions • Transparency by design • Proactive publication • Informal release • Managing the increased volume of “records” 	<ul style="list-style-type: none"> • Improving the request process • Fees and charges • Designating FOI Bodies • Role of the Information Commissioner • Abuse of FOI

The review has brought into focus the diverse range of bodies covered by the FOI system and the varying issues and considerations that apply in different sectors. There is evidence that a “one size fits all” may be unrealistic, purporting to apply the same standards to discrete requests for policy information as to, for example, bulk requests for personal information.

Assessing the resource burden of FOI with an appropriate degree of accuracy proved difficult in the context of the review. However, as set out earlier in this document, work was undertaken to assess the available statistics in order to better understand how the system operates. Improved data and information gathering processes around FOI are under consideration.

On paper, based on the currently available evidence, the FOI system would seem to be functioning well on its own terms. The volume of requests has almost doubled since the introduction of the 2014 Act and has resumed its upward trend following the disruption caused by the pandemic. At least four out of five requests are granted in full or in part in most years, together with stable outcomes over time across many other key indicators as outlined earlier in this document. However, as reflected in the customer satisfaction survey, this does not appear to translate to a perception among either requesters or public servants that the system as it currently stands is fit for purpose.

Many stakeholders expressed a preference for a more holistic, routine and collaborative approach to release of information, which would require significant changes to the process as it is currently structured to emphasise release of information in the course of day-to-day work, as well as a greater emphasis on engagement and proactive publication.

In addition, various approaches to better supporting public bodies and decision-makers to promote more efficient and consistent ways of handling FOI requests are under consideration, as well as a wide variety of issues raised by stakeholders in relation to the operation of the legislation as it stands.

While the preliminary findings and recommendations in the review are yet to be finalised, overall they tend cluster around following key themes:

A more coherent approach to information governance and access

- The evidence shows a fragmented landscape of various access regimes, complaints, appeals, etc., as well as rules around data protection and record management, and supporting processes / systems

Supplementing formal FOI requests

- As outlined earlier in this document, the evidence would tend to show an appetite among stakeholders across all sectors for a general change in the approach towards a more holistic, routine and collaborative approach to release of information

Improving the request process

- This heading takes in a broad and diverse range of issues, many of which are highly granular and technical in nature. Examples of matters under consideration around this theme include timeframes and extensions, third party consultation, and enabling an approach that emphasises active engagement with requesters to ensure that their objectives are met in the most effective and efficient possible way.

What's Next?

The review is now at an advanced stage, with information gathering having been completed, and findings and recommendations are under active consideration. Given the wide-ranging and complex nature of the issues that have arisen, further detailed analysis is required in order to inform appropriate recommendations for improvements.

To finalise the review, the Department will be taking the following steps:

- Engagement with key stakeholders in the public sector on draft preliminary recommendations.
- Final findings and recommendations in the form of a draft review report be brought to the Minister for Public Expenditure and Reform for consideration in early 2023.
- Presentation of the review report to Government for approval and publication in Q1 2023.
- If required, amending legislation will then be tabled and an implementation process will commence.

More information can be found at <http://www.gov.ie/FOIreform/>



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