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AN BILLE UM SHAORÁIL FAISNÉISE COMHSHAOIL, 1997
FREEDOM OF ENVIRONMENTAL INFORMATION BILL,
1997

Mar a tionscnaíodh
As initiated

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Acts Referred to

Environmental Protection Agency Act, 1992	1992, No. 7
Harbours Act, 1946	1946, No. 9
Health Act, 1970	1970, No. 1
Local Government Act, 1941	1941, No. 23
Ombudsman Act, 1980	1980, No. 26



AN BILLE UM SHAORÁIL FAISNÉISE COMHSHAOIL, 1997
FREEDOM OF ENVIRONMENTAL INFORMATION BILL,
1997

BILL

5 *entitled*

AN ACT TO ENABLE MEMBERS OF THE PUBLIC TO
ACCESS, SUBJECT TO CERTAIN LIMITATIONS, INFOR-
MATION RELATING TO THE ENVIRONMENT; TO SET
OUT THE DUTY OF CERTAIN PUBLIC BODIES IN THIS
10 REGARD; TO PROVIDE FOR THE ESTABLISHMENT OF
AN APPEALS OFFICER; AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—This Act applies to information relating to the environment General.
15 other than—

- (a) information held in connection with or for the purposes of
any judicial or legislative function, or
- (b) information which, under any statutory provision apart from
this Act, is required to be made available whether for
20 inspection or otherwise to persons generally.

2.—For the purposes of this Act—

Definitions.

“appeals officer” means any person authorised in writing by the
Minister to exercise the powers conferred on an appeals officer by
this Act;

25 “information” includes anything contained in any records;

“information relating to the environment” means any available infor-
mation in written, visual, aural or data base form on the state of
water, atmosphere, soil, fauna, land and natural sites, and on actions
(including those which give rise to nuisances such as noise) or
measures adversely affecting, or likely to so affect these, and on
30 actions or measures designed to protect these, including administra-
tive measures and environmental management programmes;

“the Minister” means the Minister for the Environment;

“public authorities” means—

- (a) any Government department or associated agency as set out in Part I of the First Schedule of the Ombudsman Act, 1980, as amended;
- (b) a health board established under the Health Act, 1970; 5
- (c) a Minister of the Government;
- (d) a State sponsored body or any commercial or non-commercial State sponsored body as set out in the Second Schedule of the Ombudsman Act, 1980 as amended;
- (e) a local authority for the purposes of the Local Government Act, 1941; 10
- (f) a harbour authority within the meaning of the Harbours Act, 1946;
- (g) the Commissioners of Public Works in Ireland;
- (h) a board or other body established by or under statute; 15
- (i) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government; or
- (j) a company in which all the shares are held by a board, company or other body referred to in *paragraph (h) or (i)*; 20

“records” includes registers, reports and returns, as well as computer records and records kept otherwise than in a document;

“statutory provision” means any provision made by or under any enactment.

Community Acts
given effect to by
this Act.

3.—The purposes for which the provisions of this Act are enacted include the purpose of giving effect to the Community Acts specified in the Table to this Section. 25

TABLE

Council Directive 90/313/EEC on the Freedom of Access to Information on the Environment. 30
OJ No. L158 23rd of June, 1990.

Scope of Act.

4.—The provisions of this Act shall also apply to any person other than a public authority, which is under the control of such a public authority and has public responsibilities for the environment and possesses information relating to the environment. 35

Duty to provide
information.

5.—(1) A public authority shall, notwithstanding any other statutory provision and subject only to the conditions and exceptions provided for in this Act, make available any information relating to the environment to which this Act applies to any person who requests it. 40

(2) Without prejudice to the foregoing, information shall be presumed to be available to a person who requests it.

(3) A request for information in accordance with *subsection (1)* shall—

- (a) be made in writing,
- (b) state the name and address of the person making the request, and
- (c) state, in terms which are as specific as possible, the information which is the subject of the request.

6.—A public authority shall not make available information in accordance with *section 5* where the information requested relates to—

Mandatory grounds for refusal of information.

- (a) information which relates to or directly affects an individual's personal privacy unless the person concerned consents to the disclosure of the information, or
- (b) material supplied to the public authority by a third party where that third party was not or is not capable of being required to, or put under a legal obligation to, supply the material, or
- (c) material which is graded confidential by, or pursuant to, statutory law or regulation.

7.—(1) A public authority may refuse to make available information in accordance with *section 5* where the information requested affects—

Discretionary grounds for refusal of information.

- (a) matters of significance for the security of the State, relations with foreign powers and international organisations, or the country's defence, or
- (b) matters which are *subjudice*, or which may prejudice the conduct of any inquiry (including disciplinary inquiries), or which are the subject of preliminary investigation proceedings, or
- (c) matters to which any substantial commercial or industrial confidentiality attach or matters which infringe any intellectual property rights.

(2) A public authority may refuse to make available information in accordance with *section 5* the disclosure of which would make it more likely that the environment to which such information relates will be damaged.

8.—Nothing in *section 6* or *section 7* shall authorise a public authority not to make available, or refuse to make available, information which, although held with information to which *section 6* or *section 7* relates, may be separated from this latter information.

Separation of information.

9.—Documents which fall under *section 6* or *section 7* shall be publicly accessible when, because of the lapse of time or for other reasons, it is obvious that the considerations which have justified exception from public accessibility no longer apply.

Lapse of time.

Access to
information in
section 6(1)(a).

10.—If the request pursuant to *section 5* relates to the content of information which according to *section 6 (1) (a)*, is not publicly accessible without the consent of the person whom the information concerns, then—

- (a) the request shall be submitted in writing to the person concerned for his written comments within the prescribed time limit; and 5
- (b) if the person concerned does not reply in writing within the prescribed time limit, this shall be considered as consent to grant access. 10

Appeals.

11.—(1) Where a public authority refuses a request made pursuant to *section 5* the person who made the request may appeal the refusal to an appeals officer.

(2) The Minister shall appoint a person to be an appeals officer to conduct the appeal referred to in *subsection (1)*. 15

(3) The person appointed under *subsection (2)* shall be a person who in the opinion of the Minister has satisfactory experience and competence in one or more of the following areas; land use, planning, law, environmental matters or administration.

(4) Whenever an appeals officer decides to uphold a public authority’s refusal to provide information pursuant to *section 5*, he or she shall forward to the said person within four working days of such decision a comprehensive statement in writing of the grounds of such refusal and the facts relied upon in making the said decision. 20

(5) An appeals officer appointed under this section shall be independent in the performance of his or her functions. 25

(6) The Minister may, if he or she so thinks fit, appoint more than one person to be an appeals officer for the purposes of this section and references in this section to an appeals officer shall be construed accordingly. 30

(7) An appeal under this section shall—

- (a) be made in writing, and
- (b) state the name and address of the person making the appeal, and
- (c) shall be made not later than six weeks from the receipt by the person who made the request, of the refusal by a public authority of a request pursuant to *section 5*. 35

(8) The Minister may make regulations which may provide for the procedures to be followed on appeals under this section and such regulations may contain such incidental, supplemental and consequential provisions as may appear to the Minister to be necessary or expedient for the purposes of this section. 40

Timescale for
response to request
for information.

12.—(1) A public authority shall respond in writing as soon as possible to a request for information in accordance with *section 5* and, in any case, subject to *subsection (2)*, not later than 14 working days from the date on which such request is received. 45

(2) Where a public authority is unable because of the nature or extent of a request for information to respond within 14 working days from the date on which such request is received, it shall give notice in writing to the person making the request of the reasons why it is not possible to do so and shall specify the date not later than one month from the date on which the request was received under *subsection (2)* before which the response was made.

(3) Where in accordance with *section 6* a public authority does not make available information, or where in accordance with *section 7* it refuses to make available information, it shall forward within four working days of such decision or refusal a comprehensive statement in writing of the grounds of such refusal and the facts relied on in the decision and such statement shall include the following information:

- (a) the right of appeal to an appeals officer; and
- (b) the procedures of the appeal and the means of lodging an appeal; and
- (c) the right to have an appeal determined within 1 month of lodgment; and
- (d) the right to be advised, within a period of four working days of lodging an appeal within the meaning of this section, of the identity of the person empowered with the task of determining the appeal.

13.—(1) A public authority may make a charge for the making available of information in accordance with *section 5*. Charges.

(2) Any charge for information, pursuant to this section shall be in accordance with the schedule of charges, published by the Minister from time to time.

14.—The public authority shall decide, out of consideration for the proper conduct of public business, the manner in which information shall be made available to the person who requested it, and so far as possible provide upon request a copy or transcript of the information. Furnishing of information.

15.—(1) The Minister may make regulations generally for the purpose of giving effect to this Act and, if in any respect any difficulty arises during the period of 2 years after the commencement of this section in bringing into operation this Act, may by regulations do anything which appears to be necessary or expedient for bringing this Act into operation. Regulations.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

16.—Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. Laying of Regulations before Houses of Oireachtas.

Revocation and transitional provisions.	17.—(1) The Access to Information on the Environment Regulations, 1996 (S.I. No. 185 of 1996) are hereby revoked. (2) Notwithstanding the revocation effected by <i>subsection (1)</i> the said regulations shall continue to apply to any request for information made pursuant to those Regulations prior to the first day of the commencement of this Act. 5 (3) Section 110 of the Environmental Protection Agency Act, 1992 is hereby revoked.
Expenses.	18.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be authorised by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 10
Commencement.	19.—This Act shall come into force on the date and day specified by the Minister by regulation.
Short title.	20.—This Act may be cited as the Freedom of Environmental Information Act, 1997. 15



[CLICK HERE FOR BILL](#)

**AN BILLE UM SHAORÁIL FAISNÉISE COMHSHAOIL, 1997
FREEDOM OF ENVIRONMENTAL INFORMATION BILL,
1997**

EXPLANATORY MEMORANDUM

Section 1 outlines the scope of the Bill and defines the information to which the Bill applies.

Section 2 provides a definition of “public authorities”. The terms “information”, “information relating to the environment” and “records” are defined so as to capture information held in either electronic or any other form.

Section 3 is a standard provision relating to the EU legislation given effect to by this Bill.

Section 4 provides that the provisions of the Bill will apply to any person other than a public authority, which is under the control of a public authority and has public responsibilities for the environment and possesses information relating to the environment.

Section 5 imposes an obligation on public authorities, to provide information, subject to the conditions and exceptions set out in the Bill. There is a presumption that information should be made available. This section also sets out the format in which a request for information should be made.

Section 6 sets out the mandatory grounds for refusal of information. A public authority shall not make available information where the information requested relates to, or affects an individual's personal privacy, or material supplied by a third party, or material which is graded confidential by virtue of statute law or regulation.

Section 7 sets out the discretionary grounds for refusal of information. A public authority may refuse to make available information, where the information requested affects matters relating to the security of the State or relations with foreign powers, matters which are *sub judice* or may prejudice the conduct of any inquiry, or matters affecting commercial or intellectual property rights. This section also provides for refusal of information where the disclosure of information would make it more likely that the environment to which such information relates will be damaged.

Section 8 provides that nothing in *section 6* or *section 7* shall authorise a public authority from refusing to make available information which, although held with information to which *section 6* or *section 7* relates, can be separated from such information.

Section 9 provides that information to which *section 6* or *section 7* applies shall be publicly accessible where, due to lapse of time or

other reasons, continued exemption from public accessibility is no longer justified.

Section 10 provides that in the case of a request for information which relates to an individual's personal privacy, non reply within a prescribed time limit shall be considered as consent to grant access to such information.

Section 11 sets out an appeals process whereby a person who makes a request may appeal the refusal to make information available to an appeals officer. Provision is made for the appointment of an appeals officer, and the procedures to be followed in making an appeal.

Section 12 imposes a general obligation on public authorities to make available information within 14 working days of the date of request. In the event of a refusal to make available information, the public authority must furnish a comprehensive statement of the grounds of refusal and the facts relied upon in the decision and details of the right of appeal.

Section 13 provides that a public authority may impose a charge for the making available of information. Any charge must be in accordance with the schedule of charges published by the Minister from time to time.

Section 14 provides for the procedures to be followed by public authorities in the furnishing of information.

Section 15 provides for the making of regulations in implementing the Bill.

Section 16 is a standard provision relating to the bringing of regulations before the Houses of the Oireachtas.

Section 17 is a standard provision relating to revocation and transition provisions.

Section 18 is a standard provision relating to expenses.

Section 19 provides for the commencement of the Bill.

Section 20 provides for the short title.

*An Teachta Nollaig Ó Díomasaigh,
Feabhra, 1997.*