DÁIL ÉIREANN

A

SELECT SUB-COMMITTEE ON PUBLIC EXPENDITURE AND REFORM

Dé Céadaoin, 13 Samhain 2013

Wednesday, 13 November 2013

The Select Sub-Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Michael Creed,	Deputy Kevin Humphreys,*
Deputy Stephen S. Donnelly,	Deputy Mary Lou McDonald,
Deputy Sean Fleming,	Deputy Dara Murphy,
Deputy Brendan Howlin (Minister for Public Expenditure and Reform),	Deputy Arthur Spring.
Deputy Heather Humphreys,	

* In the absence of Deputy Regina Doherty.

In attendance: Deputy Richard Boyd Barrett.

DEPUTY CIARÁN LYNCH IN THE CHAIR.

Freedom of Information Bill 2013: Committee Stage (Resumed)

Chairman: I again welcome the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, and his officials. The purpose of the meeting is to resume our consideration of the Freedom of Information Bill 2013 which was referred to the select sub-committee by Dáil Éireann on 3 October. Is it agreed that we will try to conclude our consideration of the Bill today, if possible? Agreed.

SECTION 12

Chairman: Amendments Nos. 33 and 47 to 52, inclusive, are in the name of the Minister and will be discussed together, by agreement. Is that agreed? Agreed.

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I move amendment No. 33:

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 res ponsibilities 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 re quest so that it no longer comprises more than one request.".

We had made a lot of progress last night on substantial matters contained in the Bill before we reached this amendment. This is very important legislation in that it seeks to restore the freedom of information legislative regime in this country, make it fit for purpose, take on board the advice we have received from the Information Commissioner and others since significant amendments were made to the original legislation in 2003.

There are several principles captured by the legislation: the establishing of several key statutory principles governing the operation of FOI legislation, all of which incorporate international best practice; creating a legal presumption that official records requested will be released; strongly promoting the proactive release of official information by public bodies; and requiring public bodies to draw requesters' attention to the scope to obtain records other than through FOI legislation. The freedom of information legislation is important, but I hope we are moving towards a different type of regime where we have open data. I made some commitments at the open government partnership, OGP, in London some time ago to indicate that our objective was

to move towards an open data regime. There are logistical and technical issues, but there should be a presumption that the default position is that information is in the public domain. I will be relaunching my own departmental website shortly with more data on it, including all invoices and so on. That is part of the regime we are working towards. However, couched within this is the issue of reforming the FOI regime. I said last night that I thanked the members of the committee for undertaking a lot of detailed analysis of the legislation and their thoughtful report. The Chairman mentioned last night that he was not overwhelmed by the interest garnered by the report once it was published, but it certainly was important work and is instructive in terms of what we want to do and what is being proposed.

The one point of contention from the very beginning was whether there should be a charge system for accessing information. I have indicated from the very beginning of this process that in the current climate I think that would be reasonable. It should be remembered that it has been, in some shape or another, a feature of the FOI system in this country from the very beginning. While the 1997 Act did not contain an up-front charge, there was a retrieval fee system that imposed a charge in recognition of the actual cost involved in the retrieval of information.

I thank all Deputies for their contributions on this net issue. We had a long debate on the fees issue at the outset of Committee Stage yesterday. I am conscious that it is a very small subset of what overall I regard as acknowledged progressive legislation, but it is an important one. I have listened very carefully to everything that has been said. In my response I made clear the Government's decision, following a very careful examination and taking into account the observations provided in the committee's pre-legislative scrutiny report, to maintain the FOI application fee, while providing for a significant reduction in the fees for internal review and any appeal that may be made to the Information Commissioner. The €15 fee was not a particular hurdle, but the higher charges for internal appeals or going to the Information Commissioner were. I am making proposals to provide for very substantial reductions in these fees.

As I said yesterday, there were a number of important considerations that informed the Government's decision-making, including the principle that there should be a charge, recognising the often significant and real cost of processing requests for non-personal information. Of course, requests for personal information which comprise the bulk of FOI requests will remain free of charge.

I heard clearly the views expressed by a number of members that there should be no application fees or no fees of any kind for standard freedom of information requests. I have indicated that in principle I broadly share that perspective, but there are realities that I must address, including the State's current fiscal position, the substantial reduction in public sector numbers, including Civil Service numbers, and the pressures in these circumstances on our administrative system in providing priority public services. The conclusion that the Government drew on the issue of FOI application fees was, therefore, that maintenance of the fee was required for the time being to ensure the administrative system would have the capacity to effectively and efficiently manage the demand.

This is a reality recognised in other countries. In that regard, I have noted the information reported in today's newspapers indicating that one in five of 94 countries with FOI laws in place have FOI application fees. This is broadly the same percentage as applies to the OECD countries. The right to information international rankings of national legal frameworks for FOI report that, in addition to Ireland, OECD member countries with FOI application fees include Canada, Switzerland, Japan, Portugal, the Czech Republic, Turkey and Israel.

I have listened carefully to the concerns expressed by members of the committee which were articulated clearly and well yesterday about the specific proposals contained in the Bill to unpackage entirely separate and unrelated issues included in a single FOI application and apply a separate charge for each. If we accept the principle that there should be an individual charge which I have said from the beginning I am proposing should remain - there is an up-front charge of €15 - we really have to follow through and acknowledge that it is not possible to simply bolt on completely separate and extraneous matters and bundle them together as one request. That undermines the principle of the fee system. If the fee system is to be used, this will be a requirement.

I have listened carefully to the views of members of the committee but also to what has been written in the past few days. There is a genuine fear that the actual amendment I put forward will not be interpreted in that way, in other words, that, somehow, requests for subsets of the same issue would be individually charged for. That is not the intention of the Government; it is not my intention, nor is it the intention of the legislation. Where there are separate, clearly unrelated issues bundled together, they should be disaggregated. However, where there is a very long set of questions on the same issue - as long as one likes - that is one issue, one request. That is the way I intend it to be and that is the way I have explained it to be. However, it is clear from much of the public comment on the proposal that there is confusion and a misinterpretation of the provision I have set out and its objective. Today I read one article, a dislodged article because I had written an op-ed piece on freedom of information which was not carried, but the alternative piece which was carried referred to fees running to thousands of euro. There are a lot of €15 fees in a sum running to thousands of euro, even with search and retrieval fees and so on. That is not the intention, nor will it be the consequence of what I am suggesting. Such estimates are based on a wrong interpretation of the intention of the legislation.

It is very important that the very great leap on freedom of information in Ireland which is being advanced by the Bill is not overshadowed by unnecessary uncertainty or lack of clarity on what is a simple and straightforward intention. An FOI request on a single issue or related issues requires the payment of one single fee. Where multiple unrelated requests are received, of which I provided examples for the committee yesterday - I can provide further examples today because they come in all the time - the principle of charging for a FOI request must apply. It is incumbent on me to take full account of the level of concern that the application of the legislative provision would in practice go much further than I have intended in a situation where there is such a sea-change in the legislative provision set out by me. While I firmly believe that will not be the case, I am committed to having the legal drafting of the provision reviewed and refined to ensure there can be no doubt, no uncertainty and no misinterpretation by anyone who subsequently reads the Bill, such as an information officer or agent or applicant, about the objective I have put to the committee. I hope that is crystal clear. A single up-front fee of €15 is required to capture as long an FOI request as is required on the same issue, but where there are separate, clearly distinct issues, they will be treated as such. My priority is to ensure the final provision, as enacted by the Oireachtas, will not support unreasonable concerns that the cost of freedom of information requests in Ireland is unaffordable, through requiring a single fee to be paid for entirely separate and unrelated FOI requests.

I have given some consideration to the views expressed by colleagues and, with my officials, re-examined the text of amendment No. 33. On a simple, plain English reading, I am confident that it will achieve the purpose I have set out. Nevertheless, I acknowledge that there are genuine concerns that the provision might be used by some on the administrative side of the house to implement a charging system that is not intended. To that end, with the permission of

the committee, I propose to withdraw the amendment and, in co-operation with my officials, devise a form of wording to take it beyond confusion, doubt or misinterpretation that what I have set out is what I intend to be achieved. We have already begun working on it with the Parliamentary Counsel; had we been able to do so, I would have brought forward the revised amendment today. I ask members to facilitate me to that end, with the objective of continuing our discussion on Report Stage.

I also acknowledge that some people hold the view that there should, on principle, be no fee regime. It is a perfectly legitimate point of view. However, I put it to the committee that if we accept that a contribution of €15 for a distinct application is reasonable, we cannot allow that provision to be circumvented by bolting entirely separate, extraneous and distinct matters onto the same FOI request.

Deputy Sean Fleming: I have listened carefully to the Minister and I am very pleased that he has been willing to listen to common sense and do a complete U-turn on this issue. I admire his courage. Some here seem to consider this a laughing matter, but others of us do not. I said I admired the Minister's courage before the skits came from the other side. It is unquestionably a U-turn, but it is a good man who is willing to change his view. One can look at it both ways.

In regard to the amendment, I was surprised that the Minister had referred to the State's fiscal position, as though charging a few additional €15 fees would somehow have a significant impact on that position. It is an argument I do not accept. The Minister went on to say one of the reasons he was seeking to maintain the fee structure was, to use his words, to "manage demand". What that means, of course, is keeping down the number of requests. The Minister is afraid that demand would increase in a situation where no fees applied. To reiterate, he is saying one of his reasons for preferring the retention of fees is to manage the demand for freedom of information requests, in other words, to restrict the number of requests.

The amendment deals specifically with the issue of multiple possible fees at the application stage. In due course, as we move through the amendments, we will deal with the broader issue of fees. I am pleased at this point that we are at least getting some honesty from the Minister in so far as he acknowledges that one of the purposes of fees is to keep the number of requests down or, as he has put it, manage demand. It seems clear that this is the Minister's and, by extension, the Government's position.

Deputy Brendan Howlin: What was the objective of the Deputy's party in introducing fees in the first place?

Deputy Sean Fleming: We did so for a variety of reasons. The Minister opposed our doing so when he was in opposition, but he is reinstating that provision now and proposing in this section to add to it. He pointed out in the course of his contribution that one fifth of countries in the European Union and the OECD charged application fees in respect of freedom of information requests. That means, of course, that fourth fifths do not and I argue that we should come into line with these countries.

I welcome the Minister's proposed withdrawal of amendment No. 33. However, it behoves me to point out that this provision could not have been read by any reasonable person in any other way than the way in which we have described it. Whoever drafted it is bound to say that was not the intention, but the reality is that the amendment goes even further than merely dealing with multiple requests. It provides that where a freedom of information request is made up of two or more parts seeking separate and distinct information-----

Deputy Brendan Howlin: That is the key point, that separate and distinct items of information are being sought.

Deputy Sean Fleming: Yes and I understand from where the Minister is coming on that issue. However, the amendment refers to separate and distinct information on functions and responsibilities carried out in different functional areas. I gave the example yesterday which seemed to surprise the Minister somewhat that an FOI request to do with pensions might end up going to the human resources section, the audit committee and the corporate affairs section of the same FOI body. My concern is that the amendment, as drafted, deals not only with separate and distinct requests for information but also refers specifically to requests going to different functional areas. That in itself creates a separate layer of opportunity for a second level of fees. One of the related amendments refers to the same issue and, I assume, will also have to be withdrawn.

In terms of where we go from here, the simplest thing would be for the Minister to give us sight of the revised amendment which, as he has indicated, is already being worked on. We might very well require an opportunity to amend his amendment on Report Stage. It should not simply be dropped on us with very little time to review it before the debate. I further suggest that between now and Report Stage, we have a separate session to deal specifically with this and the broader fees issue. These matters were examined in the report, but we did not have sufficient information on the cost of processing fees. Most people accept that, for many of the relevant organisations, the cost of processing the fee is greater than the fee charged. In fact, it is damaging the fiscal position of many organisations to be obliged to have an accounting system in place for a €15 fee. If the argument is being made that it is nothing to do with money at all and is really about managing demand, at least if we got down to the net issue at the committee, we might arrive at some consensus or at least come to our separate views on the matter.

I hope the Chairman and colleagues will agree to my proposal that we have a special meeting of the committee before Report Stage to discuss the fees issue. I would have liked to have seen a report at this point, from whatever source, showing the amount of fees collected in each of the public bodies that come under the FOI regime and the associated processing costs. That basic information would contribute significantly in informing our debate on the fees structure.

I do not accept the analogy the Minister made yesterday linking this issue with the prescription fees payable by holders of medical cards. It is not sound logic to argue that because people have to pay a prescription fee even though they have a medical card, there should also be a charge for FOI requests. If one accepts that people with medical cards have to make a contribution to the services they receive - I do not accept it, but I am trying to follow the logic - it follows that a fee should be payable, even where a person is making a request for personal information under the FOI system. I do not accept the parallel to which the Minister refers. If we were to use his logic, we would be moving towards introducing higher fees. I do not believe that is what he intends. Neither do I believe that anyone would agree with an increase in the fees. Trying to link what is involved here to the cost of medical cards is not the right way to go about it. I suggest that we agree to the withdrawal of all the amendments in this group and that we revisit and discuss them at a meeting to take place before Report Stage.

Deputy Dara Murphy: I did not make any contribution to yesterday's proceedings, which went on quite late into the evening. I welcome the fact that the legislation is before us. Regardless of the position in respect of fees, there has been an enormous gap in this area since the removal of the relevant provision approximately ten years ago. There are those who may wish to concentrate on the issue of fees but for most people this is but a small aspect of the overall

scheme. We have heard two narratives on this matter today, namely, during Taoiseach's Questions in the Dáil and at the very beginning of this meeting. In the report produced following the joint committee's hearings last June, it is stated that the greatest amount of debate and concern related to the issue of fees. There has been an attempt to suggest that this issue has been parachuted into the debate. I attended the joint committee's hearings and not only were fees discussed, they were the first issue of concern. I accept, however, that a recommendation was not made.

The Minister has indicated that he is going to reconsider this matter but I do not see what he said as constituting a U-turn. For what it is worth, I am of the view that a fee should be charged. In light of the prevailing economic climate and given the workload involved, it is not unreasonable to expect people to pay a small amount of money. As has already been stated, there will not be a charge in respect of personal information requests or subsets thereof. These represent in the region of 70% of the overall number of requests. Any private citizen who requires information on himself or herself will not, therefore, be obliged to pay a fee. We are currently charging people for all sorts of things for which we do not want to charge them. Given that the Minister is frequently credited with issuing requests to his colleagues in Cabinet in this regard, I am of the view that it is correct that there should not be a fee for personal information requests.

In the context of managing demand, the report relating to the joint committee's hearings refers to more automatic publication. The way to manage demand is to increase supply. We must get the message across that taxpayers are paying an average of €600 per request. I do not think taxpayers want this to be the case. The document submitted by the Minister in respect of multifaceted requests is very interesting and, perhaps, somewhat amusing. It highlights the fact that a large amount of the information involved should be made available as a matter of course in order to reduce the amount - currently €600 - which the taxpayer is obliged to pay. We have failed in this regard. The position which obtains in the United Kingdom in respect of an expense of over €500 for a local authority is reasonable. The figure could perhaps be higher and it could automatically be put in place. The Chairman and I previously served on the same local authority in Cork. That authority frequently received FOI requests in respect of councillors' travel and expenses, etc., and it eventually made a decision to publish these on its website. That people were previously obliged to submit requests for this information implies that it was hidden. Clearly journalists must be in a position to access such information.

The debate on this issue has been quite one-sided in nature to date. I am of the view that the fee is modest and reasonable and that personal information requests will not be affected. I accept that the Minister is reconsidering the position. We must continue to encourage all the public bodies which come under the stewardship of his Department to publish information because this will reduce expenditure. I spoke to the FOI officer of a large public body about the workload involved and the issue of the fee. He informed me that it may or may not be a cost to him but that the real cost emanates from being obliged to access the same documents year after year. The information contained in these documents should be published on the Internet at the start of each year in order to reduce both the amount of work and the costs involved.

Deputy Mary Lou McDonald: I am pleased the amendment is being withdrawn. I share the view that it does not contemplate the intention as set out earlier by the Minister. I have no doubt that the Parliamentary Counsel will find suitable language to clarify the matter. The Minister will not be surprised to hear me repeat that I am opposed to the imposition of any charge for freedom of information requests. He has conceded that the sum of money involved - namely, €15 plus the search and retrieval fees - is tokenistic. If one sets the money involved against

the big mathematics relating to the State's finances, one will see that it does not even count as peanuts. However, for people - not just journalists but also ordinary citizens - who might seek information through FOI, a charge of any nature will act as a barrier. That is why the Minister, quite correctly and accurately, stated that the charging of a fee relates to demand management. Of course that is the case. I am of the view that this is wrong and that it runs contrary to his position of openness and of having open data and open government. As he is aware, these are all matters on which I am very happy to support him.

In addition to withdrawing amendment No. 33, it would be useful if the Minister also withdrew all of the other amendments relating to this matter and reconsidered the entire position prior to Report Stage. For example, he needs to re-examine the position regarding the upfront payment of 20% of search and retrieval fees in light of the considerable concern that exists. The Minister referred to media reports which referred to me as seeing an open goal and being over the moon at the opportunity to have a go at him. That is not what this is about; what we are seeking to do here is get the legislation right. The Minister threw his eyes up to heaven when Deputy Sean Fleming took him to task on the issue of fees. Why should the Minister not have done so, particularly when we know who did the damage to the FOI legislation? His job is to put the matter to rights and I am of the view that the elimination of any fee should be part and parcel of what he does. The argument to the effect that what is being done involves easing the economic burden on the citizens of the State simply does not stand up to scrutiny and I believe the Minister knows that. I do not know why he continues to repeat that argument because it is ludicrous.

I am glad amendment No. 33 is being withdrawn and I invite the Minister to withdraw all of the other amendments, which he tabled very late in the day, relating to fees.

Deputy Stephen S. Donnelly: I do not care whether it is a U-turn or a clarification, it is very welcome. I will leave the discussion on fees, upfront charges, etc., until we reach amendment No. 53 because we will be able to deal with them in some detail at that point. I will, however, use an example in order to clarify what I think the Minister is saying to us. I occupy an office in Agriculture House, the headquarters of the Department of Agriculture, Food and the Marine. Let us imagine that someone submits an FOI request to that Department in respect of the inoculation of cattle throughout the country. The officer who receives the request will recognise the need to contact local offices throughout the country - so there is a geographic break in functional area - the office charged with looking after the national herd, pharmaceutical experts, etc. If a single request, not a multifaceted one, is submitted and the receiving officer has to send it to multiple offices and functional areas to get a response to it, is it the Minister's clear intention that such a request will be treated as a single request with a single upfront fee of €15? I think that is what he is saying to the committee.

Deputy Brendan Howlin: Yes, that was always my intention. That is what I am advised is the import of what I have included in the Bill. For the avoidance of doubt, I will make it crystal clear and put it beyond doubt.

Deputy Stephen S. Donnelly: I thank the Minister. That is very welcome. Irrespective of what the new amendment will be, I echo the request that we be given it well in advance of Report Stage in order that if we want to tease it out at a committee meeting, we could do so.

Deputy Brendan Howlin: Yes, as soon as the Government approves it.

Deputy Stephen S. Donnelly: I thank the Minister.

Deputy Richard Boyd Barrett: While we have had a substantial discussion on the issue of fees and in response to Deputy Dara Murphy's question-----

Chairman: I ask the Deputy to address his comments through the Chair.

Deputy Richard Boyd Barrett: The word "freedom" includes the word "free", for which there is a good reason. If information is to be freely available and the Title of the Bill is to mean anything, the accessing of information must be free, otherwise some people who do not have the money required will not have access to information. That is as simple as A, B, C, as the Minister knows. That was the position of a previous Government, of which the Minister's party was a member, that brought forward the freedom of information legislation.

Deputy Brendan Howlin: There was-----

Deputy Richard Boyd Barrett: Not the €15 charge.

Deputy Brendan Howlin: It would actually be more in that it would be €21 an hour, as opposed to €15 for two hours.

Deputy Richard Boyd Barrett: To my mind, "freedom of information" means free access to information.

Deputy Brendan Howlin: Sure everything is free.

Deputy Richard Boyd Barrett: According to Emily O'Reilly, the full amount realised from all of the charging, whether of retrieval or up-front fees, in 2011 was €87,000. That is peanuts in terms of the public finances. I ask the Minister not to make fools of us by suggesting this is important for the finances of the State. Clearly, it is not. If it not about raising €87,000, it must be about something else. The Minister should be open and up-front on what that something else is. Deputy Sean Fleming was right when he said it was about managing demand. A sum of €15 is a good deal of money to some people, while €87,000 is not even small change for the Government. Applying a charge is a disincentive for ordinary people.

On a point of clarification - I do not care whether this is a U-turn or a climbdown; it does not make any difference - I gather that the outcry is that pressure is being experienced, but that is what this committee is for and if the Minister listens, that is excellent. That is what democracy is supposed to be about. Nobody should be ashamed to say, "I am responding to pressure in the media or from the public." That is precisely what we are all here for - to respond to that pressure.

I draw the Minister's attention to examples he gave yesterday. Deputy Stephen S. Donnelly gave a hypothetical example, to which the Minister gave a clear answer. He provided examples - I have only had a chance to look at them now - of what he described as multifaceted requests which ran foul of his concerns and which, presumably, even with the new amendment he is proposing, involved multiple charges rather than a single charge. FOI/213/1882 is a request I randomly read, a request for all records within the Department within the timeframe 9 March 2011 to 14 May 2013 related to a list of items. It is clear from these eight items that they all relate to expenses incurred by the Taoiseach during the Minister's party's period in government. That is what they are all about.

Deputy Brendan Howlin: The Deputy should read them.

Deputy Richard Boyd Barrett: I will read them. They cover the use of Farmleigh-----

Deputy Brendan Howlin: On the use of Farmleigh, that concerns use by all Ministers, foreign guests, international visitors and all the rest.

Deputy Richard Boyd Barrett: Okay. It is about the use by the Taoiseach and Ministers of what one might call-----

Chairman: The Presidency.

Deputy Brendan Howlin: The EU Presidency. We have also used it twice for conferences-seminars.

Deputy Richard Boyd Barrett: Yes, but the point is-----

Deputy Brendan Howlin: That is linked with the exercise equipment.

Deputy Richard Boyd Barrett: There is a coherence. It lists laundering, cleaning and ironing services for the Taoiseach-----

Deputy Brendan Howlin: Go to the next line.

Deputy Richard Boyd Barrett: -----new clothing orders for the Taoiseach, parking-----

Deputy Brendan Howlin: Go to the next line.

Deputy Richard Boyd Barrett: Stop interrupting me.

Deputy Brendan Howlin: The Deputy is engaged in selective reading; he should read it fully.

Deputy Richard Boyd Barrett: Does the Minister want me to go through all of them? The list also includes the helipad on the roof of Government Buildings; parking within the quadrangle of Government Buildings; exercise equipment for use by the Taoiseach or any member of his Department; new clothing orders for the Taoiseach - suits, ties shirts, cufflinks, etc.; refurbishment, extension or purchase of any office, room, accommodation, fixtures, fittings, furnishings and decorations intended for principal use by the Taoiseach.

Deputy Brendan Howlin: The Deputy forgot takeaways.

Deputy Richard Boyd Barrett: There is a consistent theme running through the list; the Minster knows damn well there is.

Deputy Brendan Howlin: There absolutely is not.

Deputy Richard Boyd Barrett: Come on, Minister.

Deputy Arthur Spring: That is outrageous.

Chairman: I will invite the Deputy to make whatever rebuttals members want to make to Deputy Richard Boyd Barrett's comments.

Deputy Arthur Spring: They are all the one, are they?

Deputy Richard Boyd Barrett: Yes. That was probably a request made by a journalist looking for a particular story about the costs incurred by the Taoiseach and perhaps Ministers - I acknowledge that point - which people might perceive to be superfluous or because there was

controversy around such expenditure because it might have been perceived to be excessive and indulgent against the background of an economic crisis. That is the logic behind that question and it is consistent through the eight parts. The Minister is now telling us that in the case of such a request which was almost certainly submitted by a journalist with a particular story in mind to reveal information that the public might want to know about this expenditure, there will be eight charges instead of one, which would be problematic, or is he telling us that there will be only one charge? His answer to that question will clarify if he has changed his position.

Chairman: I will not comment on the Deputy's position as to whether it is correct or incorrect, but I note the period covered in the request is two years, two months and two days.

Deputy Richard Boyd Barrett: Yes, the period of office of the Government.

Chairman: That is fine.

Deputy Richard Boyd Barrett: It relates to the period from when the Government came to power to the date of the question.

Chairman: I was pointing to the timeframe involved in the request.

Deputy Brendan Howlin: Thankfully, it will not be me who will make that determination. One judgment is that a reasonable person would not link the use of Farmleigh, including the steward's house, grounds, accommodation and overnight guest accommodation, all functions for which it is used, which would involve an extraordinary trawl of every Department, agency of State, the records of Farmleigh on who stayed there and all the rest - that is a very broad and distinct area - with the exercise equipment that might be used by the Taoiseach and then move on to the helipad and use of Government buildings-----

Deputy Richard Boyd Barrett: Mostly by the Taoiseach.

Deputy Brendan Howlin: The Deputy does not know that. I suppose one could say any question with the word "Taoiseach" in it is the same; that seems to be the logic of the argument. I do not think so, but the bottom line is, thankfully, that it will not be the Deputy or me who will make the determinations. There will be a code of conduct set down which, as I promised yesterday, we will bring to the committee. There will then be an appeal to the independent Information Commissioner who is probably more objective than either of us in these matters. He will make the determination on what it is appropriate to link. Deputy Fleming started off with talk of a U-turn. I have tried since I became a Minister and previously when I had the honour to be a Minister to engage on Committee Stage. I accepted the second amendment proposed by Deputy McDonald yesterday. I did not see the fireworks or U-turns announced when I accepted it because it was a sensible suggestion. That is what Committee Stage should be about. If we moved away from talk about U-turns and engage as mature people in a parliamentary committee, we could have more engagement and more sensible responses from both sides. One has to listen to the arguments made. I was never of the view that this side of the House or the Government in any guise was the repository of all wisdom. The purpose of the parliamentary system is to parse and analyse legislation. Let us grow up and stop trying to make political points on these matters.

Deputy Richard Boyd Barrett: The Minister interrupted me constantly-----

Chairman: Deputy Boyd Barrett.

Deputy Richard Boyd Barrett: -----when I was making my point.

Chairman: Deputy Boyd Barrett.

Deputy Richard Boyd Barrett: He did.

Chairman: Deputy Boyd Barrett, please.

Deputy Richard Boyd Barrett: I am sorry, Chairman.

Chairman: Deputy Boyd Barrett is not a member of the select committee but I am accommodating him because he is a member of the joint committee. Deputy Donnelly is the Independent representative and it is fine if Deputy Boyd Barrett wants to use his time but I will invite him to do so.

Deputy Richard Boyd Barrett: Thank you, Chairman.

Deputy Brendan Howlin: I shall refer briefly to a number of points made by Deputy Fleming. He talked about managing demand. What I meant by that was ensuring that the system works. We could have a Rolls Royce system that just does not work because we do not have the resources, capacity or wherewithal to do it. We must ensure that we are practical as well in terms of all the things we do. There is no point in us in any sphere of activity pretending to be able to do things we cannot. We must ensure that what we put in place is practical.

Deputy Fleming and Deputy Donnelly both asked for sight of the amendment. I will ensure they have adequate sight of it before we come to Report Stage. Charging is a feature of the legislation from its inception in 1997. It is a moot point whether one charges an upfront fee of €15 or an hourly rate of €21, which is what was specified in the original legislation. There is a real cost attaching. It does not make sense for Deputy Boyd Barrett to talk in terms of it being free. I know he comes from a tradition that thinks everything is free but there is a real cost.

Deputy Richard Boyd Barrett: The Minister used to come from that tradition as well.

Deputy Brendan Howlin: There is a real cost. I do not mind Deputy Boyd Barrett interrupting. However, there is a real cost and somebody is picking up the tab. If it is not the requester it is someone within the organisation.

Deputy Richard Boyd Barrett: Is it €87,000?

Deputy Arthur Spring: How much did the FOI request that Deputy Boyd Barrett made cost to research?

Deputy Richard Boyd Barrett: I suspect it was a fraction of the €87,000.

Deputy Brendan Howlin: There is a dialogue going on.

Chairman: The Minister should deal with the response to questions that have been asked.

Deputy Brendan Howlin: The average cost is €600 and we are asking for a contribution towards that of €15, which is modest. Deputy Dara Murphy made a compelling and clear case that there should be fees. He is correct that in the context of my ministry it is reasonable that I would ask for a contribution to maintain it. He made a much more profound and important point, namely, about the automatic publication of data. That is the direction in which we are going. Embedded in the legislation is a move towards having open data. I hope that in ten

years' time FOI will be a resort most people will not have to reach. The default system is that information should be published. We are working towards that now as part of the open government partnership. I have asked the chief information officer to work on systems that will allow that to happen. We are working in my Department to do that.

The final point Deputy Murphy made, which is a very good one, is that the main users other the general public seeking personal information are journalists. By and large, it would rank against the need of journalists to have open data because they want to have their own ownership of the data because if it is not an exclusive for them and everyone has the information, it is not worth printing. We must reflect on how we have open data.

Deputy Michael Creed: Does the Minister have information on the level of requests that come from journalists as opposed to non-journalistic sources?

Deputy Brendan Howlin: I am told that it is approximately 15%.

Deputy Michael Creed: Is that 15% of the non-personal requests, which is 70% of the total?

Deputy Brendan Howlin: No, it is 15% of the total, which is 70% plus 15% and the rest are from the general public.

Deputy Michael Creed: Half of the requests are personal.

Chairman: It is 15% of the €15 fee category because for persons seeking personal information it is fee-free.

Deputy Michael Creed: Is it 15% of the non-fee paying requests?

Deputy Brendan Howlin: I will get the data for Deputy Creed. I do not have the information with me. Deputy McDonald has restated her view on fees generally and I understand and accept it. I thank Deputy Donnelly for his contribution. We will debate the issues. I have dealt with Deputy Boyd Barrett.

Deputy Richard Boyd Barrett: In the spirit of what the Minister said about trying to genuinely engage and be co-operative and non-confrontational, I wish to ask about the example the Minister gave. One of the eight clauses does not refer to the Taoiseach and expenditures related to his activities. That is a fair point. However, seven of them do. Clearly, the logic of it is that it relates to the period since the Minister entered office. It is the trappings of the Taoiseach's office that is in question. According to the significance of the amendment proposed by the Minister, would the request encompass one charge, two charges or eight charges for the question?

Deputy Brendan Howlin: I am not going to get into parsing and analysing that. I would have to look at it in some detail. The bottom line is that there are clearly a number of questions involved that are distinctly separate. That is my judgment, but it will ultimately be a matter for the information officer who will be trained-----

Deputy Richard Boyd Barrett: I worry about that.

Deputy Brendan Howlin: I am sorry but I have not finished. The information officer will be trained and will work to an agreed code. It is important to say that there has been a huge disparity of interpretation. That has worked against applicants both from the general public and the media because different agencies and Departments had slightly different interpretations

of FOI. One of the things I have said from the very beginning and on which we have worked in the drafting of the legislation is that we must have a parallel code of conduct so that every information officer knows what is expected, that they are all trained properly and as the Deputy will have seen there is a requirement in the legislation on Departments and agencies to train staff. They will work on a common basis and that will greatly improve the handling of requests, the certainty of the applicant, the way Departments and agencies deal with requests and have consistency across the system which is important.

Deputy Dara Murphy: The document the Minister gave us is interesting. The request selected by Deputy Boyd Barrett is interesting. Some of the questions in FOI/2013/1882 are linked. Given that it is being re-examined, could the Minister take this as an example? I estimate that the cost of the request would be somewhere between €60 and €90. It would be interesting when the Minister comes up with the changes to take this as an example and to say that it would end up costing whatever amount. Equally, the public would be interested if he could tell us the cost to the Exchequer of compiling information. Every body that has a FOI officer is a public body. The cost to a journalist or someone else would be between €60 and €90 by my reckoning. If the Minister could provide the information I would love to see what the taxpayer will pay for it.

Many of the requests are very good. I do not wish to create any ripples with journalists as most of my best friends are journalists, but is there any scope once a request is returned that at some point it would be published? It may even be possible to have a lag or whatever and then that it would be republished the following year. If it is worth finding and publishing in 2013, it probably is worth publishing in 2014 and 2015. Many of course are once-off requests about specific events about the Presidency or whatever but this reverts to the point I made on managing the supply of information and it may be a starting point to consider.

Chairman: To summarise the position, the Minister is signalling that he will take away amendment No. 33 to refine it and that there has not been a change of intent but that further clarification is to be given to intent. Along with that intent and drawing on Deputy Dara Murphy's point, because freedom of information, FOI, legislation is about serving the public interest in the broadest terms, could consideration also be given that when the freedom of information request is published, the cost of putting it together is placed into the reply? In other words, were a freedom of information reply to be published in the morning, it would include the cost. Thereafter, if such requests come that have cost €5,000, one will note it took €15 to get it and €5,000 to produce it. Perhaps the Minister might consider that in this regard.

Deputy Richard Boyd Barrett: If the cost is to be included, may I make an additional request on the other side of the equation? While I acknowledge it cannot be done on the spot, could one come back with the same question and state how much it would cost?

Deputy Dara Murphy: That is what I asked.

Chairman: That has been asked already.

Deputy Richard Boyd Barrett: No, I mean how much would it cost a customer, that is, a member of the public or a journalist to ask that question?

Deputy Dara Murphy: It would be €60 to €90.

Deputy Richard Boyd Barrett: No, two things are being mixed up, namely the cost of-----

Deputy Arthur Spring: Deputy Murphy asked both questions. He estimates it may be €60-----

Chairman: Could I encourage members to listen to other members when they are talking, rather than simply listening to themselves? That might clear this up. We will move on.

Deputy Richard Boyd Barrett: That did not stop Deputy Murphy.

Deputy Brendan Howlin: I also wish to indicate that with the permission of the sub-committee, when amendments Nos. 47 to 52, inclusive, are reached, I intend, because they all are related, to move and withdraw each one.

Chairman: The other amendment, No. 53, that Deputy Donnelly indicated, is different.

Deputy Brendan Howlin: It is a different one but again, because it is related, it is my intention when that amendment is reached, to withdraw it. The amendments that are related to amendment No. 33 and which are under discussion here, that is, amendments Nos. 47 to 52, inclusive, will be withdrawn. However, when amendment No. 53 is reached-----

Chairman: That also will be withdrawn.

Deputy Brendan Howlin: ----- I intend to withdraw that amendment and will explain the reason when I get to it.

Amendment, by leave, withdrawn.

Chairman: Amendment No. 34 in the name of Deputy Sean Fleming, has been ruled out of order as it involves a potential charge on the Exchequer.

Amendment No. 34 not moved.

Question proposed: "That section 12 stand part of the Bill."

Deputy Stephen S. Donnelly: I have a quick question on the process. If the grouping was amendments Nos. 33 and 47 to 52, inclusive, are members not going through them?

Chairman: We will withdraw them as we come to them.

Deputy Stephen S. Donnelly: The other ones must be gone through first.

Chairman: They must be taken in sequence. When we come to amendment No. 47, we will then deal with it and when we come to amendment No. 52, we then will deal with that.

Deputy Stephen S. Donnelly: So how are they grouped?

Deputy Sean Fleming: They are grouped for discussion, not for voting.

Deputy Stephen S. Donnelly: Does that mean members have just had the full discussion on all that then?

Deputy Brendan Howlin: Yes.

Chairman: Yes.

Deputy Stephen S. Donnelly: Does that mean members have had the full discussion on

the issue of fees?

Deputy Sean Fleming: No.

Deputy Brendan Howlin: The issue of fees will be raised in the discussion of amendment No. 53.

Chairman: We will reach amendment No. 53 in a minute.

Deputy Sean Fleming: Amendment No. 53 is a big fees issue.

Chairman: We have had a discussion on amendments Nos. 33 and 47 to 52, inclusive.

Deputy Stephen S. Donnelly: I apologise - my mistake.

Question put and agreed to.

SECTION 13

Chairman: Amendment No. 35, in the name of Deputy Mary Lou McDonald, has been ruled out of order as it involves a potential charge on the Exchequer.

Amendment No. 35 not moved.

Chairman: Amendments Nos. 36 and 40 are related and may be discussed together by agreement.

Deputy Sean Fleming: I move amendment No. 36:

In page 28, between lines 27 and 28, to insert the following:

"(3) Subject to *section 16*, where a request is granted under *subsection (1)* the head

shall ensure that access to the record is provided as soon as

may be possible but no later than 10 weeks from the date the request was made.".

Amendment No. 40 also will be discussed at this point. The purpose, simply and straightforwardly, is to put in place a time limit. A request can go into the FOI system, in which, from recollection, there is a requirement to acknowledge it within 28 days or four weeks. However, it sometimes goes into a never-ending loop thereafter. In many cases, there is no set time limit as to when the information will come out. As a public representative, the reason I have proposed a time limit is that public authorities do not like legal timeframes. The obvious one, with which all members are familiar, is the timeframe by which local authorities must decide on planning applications. I am quite sure that if that had not been provided for in the legislation, some applications would run until we were all dead and buried. The existing system, in which there is an initial two-month period, a period for further information, a period for reply and then a period of four weeks by which time a decision must be made, really improves the system no end. It is probably the bane of planners' lives because they might realise in some weeks that they are obliged-----

Chairman: I am picking up a buzz from a telephone. I do not know whose telephone it is but there is a buzz affecting the microphones.

Deputy Sean Fleming: I thank the Chairman and will be brief. I am merely drawing a

parallel and that time-limited system works well. However, in the case of an application that reaches An Bord Pleanála, that body does not have such a time limit and it keeps extending matters *ad nauseam*. The same can happen in this case and I believe the adoption of legal time limits would lead to good public administration. When a system is left without such limits, matters can be left to run on for ages. The particular limit I included in this amendment was ten weeks and while some might suggest this is too long and I should have opted for a shorter period, at least it would provide absolute certainty. I acknowledge people probably would work to the ten-week clock when they saw such a limit in place but I believe it is better to have such a time limit. I would be satisfied, were the Minister to state he agreed with the principle and would agree to an eight-week time limit. As for amendment No. 40, it is the same issue and I seek a time limit in respect of publishing these matters. The essence of these amendments is a time limit.

Deputy Brendan Howlin: I checked when I saw these amendments and as I am not advised that there are serious problems with timelines being met in general in the provision of records, I am reluctant to accept the amendments. As the Deputy is aware, the Act already provides deadlines for the processing of requests and these are set out. If the request is straightforward, with, for example, no third-party consultation involved, then the public body must respond within a four-week period. I would be concerned that the Deputy's proposal would lead to public bodies actually moving towards a ten-week norm, instead of the four weeks. There are a number of circumstances in which it is permitted to take longer than four weeks. These include cases in which a request may need to be transferred to another public body, which can add two further weeks to what is promised. If third parties are involved, an additional three weeks can be added. If the party does not agree with the release of his or her information in the public interest, then a further two weeks are permitted before release of the records is permitted, to allow for the third party to make an appeal. If a deposit is required, the clock stops until the requestor pays the deposit. The public body may negotiate with the requestor, explaining, for whatever genuine reasons, the reason a request cannot be processed within a particular timeframe and a requestor himself or herself may extend the timeframe for a response, if he or she so chooses. If there is an internal review, the reviewer has three weeks in which to make a decision and even more time is permitted in the event of an appeal to the Information Commissioner. All this is set out, it is working reasonably well, and I do not discern valid reasons for setting new timelines, particularly ones that, for the generality of requests, might actually prolong, rather than shorten the process.

Deputy Sean Fleming: The Minister might add up all those timelines without-----

Deputy Brendan Howlin: If one pushed it all the way to the Information Commissioner-----

Deputy Sean Fleming: No, leaving the appeal to one side, I seek the timeline for requests only.

Deputy Brendan Howlin: Involving third parties?

Deputy Sean Fleming: Yes.

Deputy Brendan Howlin: If one involves a third party, that third party must be consulted. If he or she indicates a reluctance for information to be released about him or her, the third party also can appeal it. Therefore, it depends and one must allow for due process.

Deputy Sean Fleming: Right, however my main concern was with the Minister's first statement, whereby there must be a response within four weeks.

Deputy Brendan Howlin: Yes, that is the generality of it.

Deputy Sean Fleming: While that deadline is by and large being met, that sometimes is no more than simply an acknowledgement that the request has been received. It regularly can just be-----

Deputy Brendan Howlin: No, that is not my information.

Deputy Sean Fleming: On that response, people often tell me they just get word back that it is being dealt with. It is a response, but I am really trying to tie down the period of time after that.

Deputy Brendan Howlin: For a straightforward request, the current legislation requires one to give the answer, not an acknowledgement, within four weeks.

Deputy Sean Fleming: The Minister used the word "response", which is the bit that gets me.

Deputy Brendan Howlin: Give the information requested.

Deputy Sean Fleming: I do not know whether every freedom of information officer thinks a response means the answer, if the Minister understands what I mean.

Deputy Brendan Howlin: That goes to the other point I made already.

Deputy Sean Fleming: Consistent training.

Deputy Brendan Howlin: There is a haphazardness about it.

Deputy Sean Fleming: Yes.

Deputy Brendan Howlin: "Haphazardness" is too strong a word. There is a lack of consistency about the application now. That is why this new legislation will require a standard code of practice and training for FOI officers so that they are all on the same system, understand what is required and understand the law.

Deputy Sean Fleming: The Minister is satisfied the system is working well and there is no undue delays.

Deputy Brendan Howlin: When this is enacted, we will review it in a year.

Deputy Sean Fleming: Is that built into this legislation?

Deputy Brendan Howlin: That is a promise in terms of all new legislation now.

Amendment, by leave, withdrawn.

Chairman: Amendment No. 37 is in the name of Deputy McDonald. This has been ruled out of order as it involves a potential charge on the Exchequer.

Amendment No. 37 not moved.

Deputy Mary Lou McDonald: I move amendment No. 38:

In page 29, between lines 15 and 16, to insert the following:

"(7) Every six months, a head shall, submit to the Minister's FOI Data Manager all FOI decisions and determinations in a format to be agreed by the Minister prior to enactment of the Act. Failure by a head to submit information, in the absence of a business case for the same, will incur a €5,000 fine.".

Amendment put and declared lost.

Section 13 agreed to.

SECTION 14

Deputy Mary Lou McDonald: I move amendment No. 39:

In page 29, between lines 34 and 35, to insert the following:

"(4) Every six months, a head shall, submit to the Minister's FOI Data Manager all extensions of time for consideration of FOI requests in a format to be agreed by the Minister prior to enactment of the Act. Failure by a head to submit information, in the absence of a business case for the same, will incur a €5,000 fine.".

Amendment put and declared lost.

Amendment No. 40 not moved.

Section 14 agreed to.

SECTION 15

Deputy Mary Lou McDonald: I move amendment No. 41:

In page 30, line 7, after "concerned," to insert the following:

"and in such an instance the head will consider in consultation with the Minister publishing the requested information no later than six months after the request has been refused,".

This relates to refusal on administrative grounds to grant FOI requests, at section 15(1)(*c*) , where a refusal could be granted on the basis of an reasonable ask or something that would "cause a substantial and unreasonable interference with or disruption of work" to the particular functional area. It is reasonable to have such a provision in the legislation because I can imagine, perhaps in exceptional circumstances, a request would be made of a magnitude that would prove disruptive. That is fine.

I propose to insert with my amendment that "in such an instance the head will consider in consultation with the Minister publishing the requested information no later than six months after the request has been refused", in other words, rather than simply saying this is causing disruption and is unmanageable at this point and simply making a blanket refusal on that grounds, that there would be a capacity to return to the issue in different circumstances to see whether that information could be provided. Clearly it would involve a consultation between the head and the Minister. That is a more reasonable way to proceed. It is to take a necessary, but blunt, provision and add to it, merely in terms of the effectiveness of FOI.

Deputy Brendan Howlin: Deputy McDonald is correct in recognising that there will be circumstances where a request would be so burdensome that it is legitimately refused. I am of the view that if the processing of such a request is likely to cause substantial and unreasonable interference with the work of the body concerned, then it is correct that such a refusal be made. The Deputy has acknowledged that. If the FOI officer of the body is of the view that processing the request would cause substantial and unreasonable interference and disruption to its work, that would be the case six months hence as well.

Another concern I would have is that if somebody makes a request and it is viewed by the information officer of the body concerned that it should be refused on the basis that it is unreasonably disruptive of the work, the person has the right to appeal that to the Information Commissioner. Where the person appealed it, the independent Information Commissioner might make a determination that it was perfectly correct to refuse it, and yet the body would be required to provide the information under Deputy McDonald's amendment. That would be unreasonable.

Deputy Mary Lou McDonald: I will clarify what I am suggesting here. I recognise the right of appeal. I suppose there are a number of grounds upon which a request might be refused. For instance, we discussed at some length the issue of commercial sensitivity at yesterday's meeting. The grounds for this refusal is an excessive administrative burden. I am suggesting in that instance that there would be something short of a formal appeal which allows for a simple review. It could be that a review would prove that six months hence the administrative burden or the circumstance of the unit or function are still such that the request is excessively burdensome, but not necessarily so. Workplaces and units have a rhythm to their work. They have peaks and troughs. What could be burdensome in December might not be the case in June. I am offering this to avoid, if at all possible, a situation where the rationale for refusal is excessive burden and to allow merely that there would be that review process. It is in an attempt to be helpful to the Minister.

Deputy Michael Creed: I concur with the Minister's observations in respect of it cutting across the appeals process.

The amendment is equally dangerous in so far as it seeks to involve the Minister in politicising access to freedom of information requests and determination of such requests "in consultation with the Minister". That would be flawed. There is merit in what Deputy McDonald argues and the Minister's response is comprehensive in respect of why it should not proceed. Equally, the amendment is flawed in respect of involving the Minister, which would politicise the process and is something we should be getting away from. Even if we were to accept it, freedom of information officers should not be obliged to consult the Minister.

Chairman: If it were the Data Commissioner instead of the Minister, what would be the Minister's view?

Deputy Brendan Howlin: As we have seen, there will be cases of completely unreasonable requests, for example, a person who wants to do a PhD and would like somebody to research it for him or her. Where there is a decision that the request is so unreasonable that it would be disruptive of the work and that is a discernment made, the correct approach is to address it at that level.

One aspect in all the discussions I have had of late is something I have instituted in my own Department. Sometimes one gets FOIs which are not clear on what the requester is looking for. What happens is that significant chunks of information are gathered on the basis the staff hopes that within all of this the information is there. What I hope we will be working towards instead is that the freedom of information officer - this will be a matter for the training - will telephone, for instance, Deputy McDonald, to ask what specifically she needs so that the officer can identify it, and address it in that way. If it is not possible in terms of a request like this and it would be disruptive, then the correct procedure is for that to be appealed to the independent Information Commissioner. That is the process.

There should not be a parallel process. It certainly should not involve the Minister. I do not want to be involved at all in those determinations. I have enough on my plate, but I thank Deputy McDonald very much. It would not be proper in any event. Even with somebody else involved, there is an established mechanism for determining these matters, namely the mechanism of appeal to the Information Commissioner.

Deputy Mary Lou McDonald: I accept all that in respect of the appeals procedure. I note the points of Deputy Creed about the insertion of the Minister into the mix. I will withdraw my amendment on this and introduce a different formula on Report Stage, albeit with the same concept at play.

Amendment, by leave, withdrawn.

Deputy Mary Lou McDonald: I move amendment No. 42:

In page 30, to delete lines 13 to 16.

This amendment proposes a deletion. It concerns an FOI refusal on the basis that, in the opinion of the head, it is frivolous, vexatious or forms part of a pattern of manifestly unreasonable requests from the same requester or different requesters who, in the opinion of the head, appear to have made their requests acting in concert. That leaves a huge amount of discretion to the head to define what is frivolous or vexatious and what constitutes an orchestrated pattern. Therefore, I propose a deletion of the clause.

Deputy Stephen S. Donnelly: My question relates to the previous amendment, so I will ask it when discussing the section. I have a similar question about Deputy Mary Lou McDonald's amendment, which proposes the deletion of lines 13 to 16. Are there guidelines available on frivolous or vexatious requests?

Deputy Brendan Howlin: With regard to Deputy Mary Lou McDonald's question, it is important that an FOI body be in a position to refuse certain FOI requests on administrative grounds. The ability to refuse a request on set administrative grounds is not a new provision but has been in the legislation since 1997. The Information Commissioner specifically supports the provision. The outgoing commissioner made this clear. There needs to be a clear administrative basis for making a refusal.

The question on frivolous or vexatious requests arises in respect of a number of legal instruments. There are definitions that we can provide. I am advised that there are very few occasions on which the measures on frivolous or vexatious requests are invoked. Clearly, a vexatious or malicious request is manifest when it is manifest. All these matters are subject to appeal to the Information Commissioner if the determination is not reasonable.

Deputy Stephen S. Donnelly: If someone is refused on the basis that his request is frivolous, is he told that?

Deputy Brendan Howlin: Yes. One must quote the legal basis for the refusal. As I stated, the provision is in the original Act of 1997. I believed it would be in this Bill but it is not.

Deputy Stephen S. Donnelly: When a requester receives a reply, is any guidance provided to him or her? Is there a link to a definition of "frivolous or vexatious behaviour" so the decision can be challenged and so one can determine whether the matter is worth taking to the Information Commissioner?

Deputy Brendan Howlin: I believe one would appeal to the Information Commissioner. This is not a court of law; it is very open. As I stated in reply to the previous question, proper dialogue with a trained FOI officer would give pointers to people such that they would know what cannot be asked because it is vexatious. If a requester believes an official was rude to him and if he can point to a series of occurrences that are demonstrably vexatious on which he wants to make a request, that would be pointed out. That is a matter of the normal dialogue.

Deputy Stephen S. Donnelly: What I am suggesting might prevent some cases that are doomed to failure from going to the Information Commissioner. If a bank writes to a distressed borrower at present, self-empowering information must be given. The bank must state the law and the customer's rights and give links to relevant information. Similarly, an FOI officer should state the reason for refusal to the maker of a vexatious claim and direct the latter to where he may gain an understanding of what is meant by "vexatious". He should be told that, on gaining this understanding, he may appeal the matter to the Information Commissioner.

Deputy Brendan Howlin: That is the norm.

Deputy Stephen S. Donnelly: That is normal.

Deputy Richard Boyd Barrett: I agree with the amendment, as I believe the lines in question should be deleted. Let me refer the Minister to one of the expert witnesses we had from England, Mr. Hammond. Perhaps the Chairman could remind us of his credentials. He was an expert witness during the pre-legislative discussions.

Chairman: He was from the Centre for Public Scrutiny from the United Kingdom.

Deputy Richard Boyd Barrett: To the members of the committee, he stated:

> On fees and vexatious requests, the issue is understanding what makes a vexatious request vexatious. We should not be conflating a vexatious request with one that is a little difficult, annoying, embarrassing or persistent. For example, one cannot have a vexatious requester. The Commons justice committee examined how someone who made a lot of freedom of application requests could be classified as a vexatious requester. That is a point we strongly argue against. Just because someone makes a lot of requests does not necessarily mean they are not valid or valuable. Just because a person may have made a vexatious

request once before does not mean future requests will be vexatious.

He gave an example of a request to all councils in Britain on how much they spent on biscuits, which request one could construe as vexatious. He pointed out, however-----

Deputy Brendan Howlin: I would have said "voluminous" rather than "vexatious".

Deputy Richard Boyd Barrett: From the point of view of the requester, the information sought might be considered pretty important in that it might pertain to expenditure on hospitality in local authorities.

Deputy Brendan Howlin: The Deputy makes it sound like the "Life of Brian".

Deputy Richard Boyd Barrett: Maybe so, but Mr. Hammond was the expert witness making this argument, not me. I am simply reminding the Minister of what Mr. Hammond said. He made the point that what the Minister, I or a majority here might consider to be vexatious might be considered very important by the individual making the request. He stated that we should not second-guess the individual's right to gain access to that information. The point Mr. Hammond is making is that the notion of the vexatious requester is so problematic that we should not use it at all.

Mr. Hammond stated that there is no evidence that if there is no provision blocking so-called vexatious requests, there would be a massive avalanche of so-called vexatious requests. Therefore, the presumption should be one of free access to information. Mr. Hammond, the expert witness called in by the committee, was absolutely spot-on in that regard. The clause should be removed because its interpretation is too subjective.

Chairman: My reading of the matter was that Mr. Hammond was differentiating between a vexatious request and a difficult request. That was his real intent.

Deputy Richard Boyd Barrett: I read it differently.

Chairman: I do not believe he was advocating the accommodation of vexatious requests. He was saying that we should differentiate between a difficult or problematic request, or what might be described as a nuisance request, and a vexatious request. That is my recollection and what the report's recommendations indicated when we put the report together.

Deputy Brendan Howlin: We all understand what "vexatious" means in general terms.

Deputy Richard Boyd Barrett: I probably vex the Minister.

Deputy Brendan Howlin: Never, Deputy.

Let me give an example from outside the FOI area. I am aware of an individual who decided that he did not like a particular planning authority and declared publicly that he would forever more appeal every planning application granted by that local authority other than applications for a garden shed. When one makes that declaration in advance, obviously one is not looking at the merit of any other things. One can construe that as a vexatious view. There are issues where people can put in so many freedom of information requests on a small outfit that it would stop it functioning. That goes back to the previous discussions.

I am advised that this has been used in our system very rarely. I think it is necessary to have

it and it will be independently determined by the Information Commissioner. If people are not happy with that, they can have recourse to law, if they determine that the law is not being properly implemented, even by the Information Commissioner.

Deputy Richard Boyd Barrett: May I respond? Maybe such people exist but I put it to the Minister that there are not that many of them.

Deputy Brendan Howlin: True.

Deputy Richard Boyd Barrett: What is of concern is that there is the potential for the Minister to be using a sledge-hammer to crack a nut because there are not many of these people. This particular wording gives a hell of a lot of discretion for people to make quite a subjective judgment about people or issues that they may be annoyed by. They may consider them to be frivolous and vexatious, but the requestor may genuinely consider them to be really important. The point that Mr. Hammond made was that the bar should be very high. If the Minister believes that section must be included, he should consider reframing it in such as a way that it is made clear that the bar is very high. I do not know how we would put it. We will have to think about a wording.

Chairman: I am conscious that it is Deputy Mary Lou McDonald's amendment.

Deputy Richard Boyd Barrett: I am nearly finished, Chair. I am just making a proposal.

Chairman: We are moving into the area of repetition.

Deputy Richard Boyd Barrett: It is not repetition, it is a proposal.

Chairman: If the Deputy is repeating his point several times, then it is repetition.

Deputy Richard Boyd Barrett: I am just making a proposal.

Chairman: I am conscious that we have agreed to try to finish the Bill this evening. I welcome people talking on other people's amendments, but when the person who has moved the amendment has indicated that she will not be speaking any further on it and is awaiting the Minister's response, I would advise other committee members - although I cannot direct them - to facilitate the lead person who has moved the amendment.

Deputy Richard Boyd Barrett: Fair enough. Nobody wants to stay in here all day but our job is to scrutinise legislation. Any Deputy is entitled to come here and do so.

Chairman: Yes, they are and they are entitled to table amendments as well and speak to them.

Deputy Richard Boyd Barrett: Indeed, and I have tabled amendments. As the Chairman knows, I cannot table amendments in my name so they must be submitted via Deputy Donnelly. Committee Stage is also an opportunity for us to go through the legislation line by line and discuss issues as they arise. Therefore, my proposal to the Minister is-----

Chairman: To come back to the Deputy's earlier question, he cannot propose because Deputy Donnelly tables the amendments for him. Perhaps Deputy Donnelly can make a proposal.

Deputy Richard Boyd Barrett: I am asking the Minister to consider reframing section 15 to put a higher bar for frivolity.

Deputy Michael Creed: This was one of the areas I had flagged in my own notes. It struck me that one person's frivolous and vexatious issue may be another's burning issue of public interest. In so far as possible, I think we should avoid subjective decision-making on such matters. One of the freedom of information requests the Minister cited yesterday sought the menu for every lunch and dinner at the Irish embassies in Washington, London, Canberra, Ontario and Pretoria since April.

Deputy Brendan Howlin: That was from a gourmand.

Deputy Michael Creed: That does look like a pretty vexatious or frivolous request. It comes back to the information officer's code of practice. It is a pity we do not have that code concurrent with the legislation because it would inform us better.

Deputy Brendan Howlin: In fairness, we must have the legislation to shape it.

Deputy Michael Creed: We have the bones of the legislation, by and large, and that should contain some reference to a public interest being served. In many respects, that would mitigate against the worst excesses of a subjective interpretation of "frivolous" and "vexatious".

Deputy Mary Lou McDonald: The provision in the legislation allows for refusal on the basis of the opinion of the information officer that the request is either frivolous, vexatious or both, or that it forms part of a pattern of manifestly unreasonable requests. If one wanted to be literal in one's interpretation of that, it may not be the frivolity or vexatiousness of that particular request, but that it forms part of a pattern of such.

The Minister should re-examine that wording. We can all claim that we know what is frivolous or vexatious, and in the mind of a reasonable person that might be the case. It may also not be the case. It could be used as a pretext for not providing certain forms of information. The section should be re-examined. I will be pressing this amendment and will seek a vote on it. More to the point, I ask the Minister and his officials to re-examine and pick apart the wording of the section because it is subjective in its nature. It also allows three avenues for refusing a freedom of information request: frivolity, vexatiousness or being part of a pattern of manifestly unreasonable requests. The last bit could give cause for most concern, so the Minister should reconsider it.

Deputy Brendan Howlin: As I said, "frivolous" and "vexatious" are the terms that were in the original legislation. They have been in existence since 1997 and have not caused a difficulty. I do not think anybody here has heard of a difficulty concerning them. The Information Commissioner has given guidelines on what would constitute "frivolous" and "vexatious" requests. We will incorporate those into the guidelines we give to all information officers when we get to that point.

"Manifestly unreasonable" is a very strong term. It does not just refer to "unreasonable". Beyond that, it is not only that the request is manifestly unreasonable, but it has to be a pattern of manifestly unreasonable requests. There have not been issues concerning that terminology. When these things arise - and they are rare - there has to be some mechanism whereby requests which are demonstrably vexatious can be refused. Whether or not that refusal is correct can be objectively tested through the Information Commissioner and, if necessary, through the courts. The courts will determine these matters ultimately.

Deputy Stephen S. Donnelly: We all understand what "frivolous" and "vexatious" mean. I accept the Minister's important point that we are not all hearing from serious freedom of infor-

mation people that this is something that is being abused. None the less, given Deputy Creed's point, in individual cases an information officer somewhere could abuse something that is open to interpretation. I was thinking about the example used by the Minister of a person who has stated that they will oppose every planning application. We deal with similar wonderful characters in Wicklow. Even though they have stated they will do this, is the Minister saying we are going to deny them the right they have as a citizen to do this because we do not think they are serious about it and, in fact, they have said they are doing it for reasons we do not deem to be correct or appropriate. On that basis, I wonder if we are not entering dangerous territory by denying them the rights that other citizens have.

Deputy Brendan Howlin: To be vexatious?

Deputy Stephen S. Donnelly: Yes. I have not fully thought this through. Are we going down a dangerous path in saying that because someone is going to use this in a way that we do not think is appropriate, we will deny them the right to do it?

Deputy Brendan Howlin: There is the element of practicality, public administration, costs and the general public good. We all have rights, but we must site things in the general public good. I am advised that it is very rarely used. If this section was to be used in the future, the individual would have the right of appeal to the independent authority - the Office of the Information Commissioner. If the individual was not satisfied at that stage, he or she could have the matter adjudicated on by the courts. We have a very open system of public administration. If this is a rare issue, we need to provide for it, but that it would never arise is not a reasonable conclusion to reach. There must be protections for the general good where it does arise. If there is a situation where a section might be abused, that is why we have the checks and balances of the appeals mechanisms throughout this process.

Amendment put and declared lost.

Chairman: Amendment No. 43 has been ruled out of order.

Amendment No. 43 not moved.

Question proposed: "That section 15 stand part of the Bill".

Deputy Stephen S. Donnelly: I want to go through a few of the subsections with the Minister, but I have not tabled amendments to delete them. I just want to discuss them. As I looked at them, I thought there was good stuff in them if I was an officer or an official who just did not want to give out any information. We have talked about section 15(1)(*c*) which states that a request may be refused if:

> 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.

In a very small team an FOI request that is not mammoth could cause what the person in charge might consider to be interference or disruption of the work of the team. Let us say it was a very small team and the request took up a few days of its time. Are there guidelines on what constitutes a substantial and unreasonable interference with or disruption of work?

Deputy Brendan Howlin: I am informed that there are extensive guidelines.

Deputy Stephen S. Donnelly: Are they publicly available?

Deputy Brendan Howlin: Yes, from the Office of the Information Commissioner.

Deputy Stephen S. Donnelly: Great. The request can be refused on the grounds that 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. Why is that included? Why not just release it under the FOI legislation anyway?

Deputy Brendan Howlin: It is because there is a timeframe for patterns of annual releases that can be written into primary legislation. One does not use the FOI process to undermine what is included in statute law.

Deputy Stephen S. Donnelly: Will the Minister give an example?

Deputy Brendan Howlin: I cannot think of one instantly, but we can provide the Deputy with one.

Deputy Stephen S. Donnelly: Publication record required by law.

Deputy Brendan Howlin: There is a timeframe for different pieces of information to be published. One can submit an FOI request that would upset this.

Chairman: Or get a scoop.

Deputy Brendan Howlin: It is going to be published in an orderly time line in any event.

Chairman: With the quarterly assignment statistics, probably.

Deputy Brendan Howlin: Again, this has been the law since 1997 and it has not caused a problem.

Chairman: It is stuff like the register of electors and quarterly unemployment statistics.

Deputy Brendan Howlin: They might not be available instantly.

Deputy Stephen S. Donnelly: I am not sure that this one has not caused problems. Certainly, some of the people to whom I have spoken would talk about delaying tactics being used in order that if something is live and a story has momentum, if the information can be sufficiently delayed, although not ultimately refused, it becomes less useful. Is this just a reiteration of what in contained in the 1997 legislation?

Deputy Brendan Howlin: Yes.

Chairman: I can give Deputy Stephen S. Donnelly one case that this committee would deal with. There are requirements under law regarding information on bank statistics and targets which are subject to omerta because of stock exchange rules. For example, when we were looking for the banks to come before the committee in July after the targets had been set, we could not see them until September owing to stock exchange and company law. One could argue that because AIB is under State control, one should be able to request those statistics under FOI legislation, but there is a requirement in law that does not allow one to receive that information. This committee which was anxious to see the banks could not see the statistics until September

because of the same requirement.

Deputy Stephen S. Donnelly: Section 15(1)(*f*) states "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".

Deputy Brendan Howlin: Again, it relates to somebody saying he or she is going to do this is as a matter of course and somebody saying he or she is going to pre-empt it by submitting an FOI request to upset the normal orderly work of individuals who want to be proactive in giving information. It is a case of "I want me scoop."

Deputy Stephen S. Donnelly: Okay.

Chairman: The minutes of this committee's meetings are published on its website. Administration tries to have this done as quickly as possible. They would be available under FOI legislation if we were not doing this, but somebody could say he or she wanted the minutes of a meeting as quickly as possible. There is a time line for when I would expect the clerk and the administration to have this done. Therefore, it is just a matter of the sequencing.

Deputy Stephen S. Donnelly: That seems reasonable. My last point relates to section 15(1)(*i*)(ii) which states the request will be refused if "it appears to the head concerned that requester is acting in concert with a previous requester". That is subjective, is it not?

Deputy Brendan Howlin: I have to recheck my notes in that respect. I think the argument was that the information was already available. I cannot think of a reason it should not simply be re-presented, if that is the case.

Deputy Stephen S. Donnelly: There are other reasons for a refusal which include the fact that the information is already in the public domain or has already been provided. I am not hugely concerned. It is just that in the spirit of creating as transparent a process as possible, we should-----

Deputy Brendan Howlin: If one looks at the actual catching phrase in section 15(1)(*i*), it reads, "the request relates to records already released". That is the key point.

Deputy Stephen S. Donnelly: It states it applies "where it appears to the head concerned...". This one does not work for me.

Chairman: Let me give an example. It would be like requiring Deputies by law to respond to every single person who contacted us. We are not required to respond and do not respond to every single person who contacts us. There is a filtering system, particularly if it comes as a spam e-mail all the time. If there was a request and a constituency colleague of the Deputy decided to send him 1,000 e-mails every day, he or she would just bring the Deputy's office to a standstill. He might give the same reply to the 1,000 e-mails, but his office would come to a standstill.

Deputy Stephen S. Donnelly: That seems reasonable.

Chairman: The offices are required by law to give a response. If 1,000 people send in the same FOI request, they would bring the Deputy's office to a standstill. That is just common sense.

Deputy Stephen S. Donnelly: I thank the Chairman.

Chairman: That is why I am here. I am not being vexatious; I am providing clarification.

Deputy Stephen S. Donnelly: I thank the Chairman for those answers.

Question put and agreed to.

SECTION 16

Question proposed: "That section 16 stand part of the Bill."

Chairman: Do sections 15 and 16 of the earlier Bill still stand or are we changing them?

Deputy Brendan Howlin: They will be subsumed into this Bill.

Chairman: The existing sections will be subsumed into the Bill.

Deputy Brendan Howlin: They have been consolidated.

Deputy Stephen S. Donnelly: This is in the same vein. It is not something about which I am terribly concerned, but I would like an explanation. It relates to section 16(1)(*c*) which states there is a deferral on the basis that the record concerned is held by a Department of State where the record or part thereof or any matter to which it relates is of such interest to the public generally that he or she intends to inform either or both Houses of the Oireachtas of the contents of the record or part thereof. It seems convenient to a given Minister of State. I am slightly nervous about this because it gives a Minister or a Minister of State a get-out clause. If a brilliant FOI request finds something, the Minister can get out ahead of it. It is quite loose: "the record or part thereof or any matter to which it relates". It allows the Minister to go into the Seanad, say something vaguely related to one part of the record and then it can be deferred. It seems handy.

Deputy Brendan Howlin: This is part of the consolidation, a replication of the law since 1997. It seemed good and appropriate to the Oireachtas then; it has stood the test of time and not been abused, to my knowledge.

Deputy Stephen S. Donnelly: Perhaps the then Minister of State, Eithne Fitzgerald, thought it was handy.

Deputy Brendan Howlin: The former Minister of State did a sterling job on this legislation in 1997.

Deputy Stephen S. Donnelly: This looks like a handy clause for a Minister. What is the rationale for it?

Deputy Brendan Howlin: If a Minister determined that a particular piece of information, because of its sensitivity, importance or standing, should be divulged in the first instance to the Oireachtas rather than through an FOI request, it would be deferred. If I planned to launch something in five weeks' time and received an FOI request, I could defer it for one week until I had brought it first to the Dáil. That sounds reasonable.

Deputy Stephen S. Donnelly: It would sound reasonable to me if I had the Minister's job. I thank the Minister.

Question put and agreed to.

SECTION 17

Chairman: Amendments Nos. 45 and 46 are alternatives to amendment No. 44. Therefore, amendments Nos. 44 to 46, inclusive, will be discussed together. If amendment No. 44 is agreed to, amendments Nos. 45 and 46 cannot be moved.

Deputy Brendan Howlin: I move amendment No. 44:

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.".

This amendment is being proposed to ensure the policy objective underlying the original provision in the Bill is delivered. The intention and implications of the original provision were questioned by some commentators following publication of the Bill. It was clear from their comments that there was confusion surrounding the provision as set out in the Bill. I want to address that issue.

The provision, as originally drafted and included in the published Bill, was designed to take account of technological developments since the 1997 Act in so far as the searching for and extracting records from data banks was concerned. We had a discussion about this issue on Second Stage. The provision was intended to confirm that FOI bodies were required to take reasonable steps to search for and extract electronic data using the search and extraction facility available to them, but they were not required to develop new programmes or code to interrogate databases. Since the current Act is silent on this issue, public bodies have found it necessary on occasion to have programmes coded to meet particular FOI requests which often do not seek particular official records but rather request information that can sometimes only be obtained by interrogating data banks of official information requiring analysis of the records contained in them.

In addition, the current legislation provides for access to official records which are available and do not require the creation of new records. This provision can represent an impediment in responding to FOI requests as the argument could be made that extracting information from a data bank of necessity required the creation of a new record. To continue to provide access to the extracted data from data banks of electronic records, the amendment allows bodies to reproduce the relevant data in a new record and in such cases the record shall be deemed to have been created on the date of receipt of the request. The proposed amendment is intended to make the same provision, but it uses more straightforward text.

Chairman: It is coming up to 6 p.m. and on the basis that we might try to complete the Bill

this evening, I propose that we take a 35 minute break on completion of section 17. Once we move beyond section 17, there are some matters that will require time and I would like to take them together. Is that agreed? Agreed.

Deputy Stephen S. Donnelly: I have a technical question.

Deputy Brendan Howlin: The Deputy is asking a non-technical person.

Deputy Stephen S. Donnelly: I am sorry. Let us say we have a big relational database and a SQL code is required to extract the information-----

Deputy Brendan Howlin: I have no idea what a SQL code is.

Deputy Stephen S. Donnelly: It can be thought of as a few lines of-----

Deputy Brendan Howlin: Does anybody know what a SQL code is?

Deputy Stephen S. Donnelly: SQL is-----

Deputy Brendan Howlin: Is it a sequential code?

Deputy Stephen S. Donnelly: It is a query language, a type of code used to extract information from large data sets. My concern is that this amendment states that if pulling information from a large data set requires a few new lines of code, the small programme that finds the information, that code will not be required to be written.

Deputy Brendan Howlin: I am afraid I am not very technical. The mechanism to interrogate data and create a new database will not exempt information on the new database from being released. I do not know if there are technical issues that are so unreasonable that one has to write a new code that is so burdensome that it has to be excluded. I will ask somebody technical to respond to the Deputy.

Deputy Stephen S. Donnelly: Yes, please. I am sure that is not the intention, but the amendment states, "being steps that involve the use of any facility for electronic search or extraction that existed on the date of the request". Therefore, if 20 lines of new code are required to obtain the information, the organisation may state it is a new tool, that it does not have to create it and the applicant cannot have the data.

Deputy Michael Creed: If the tool was available-----

Deputy Brendan Howlin: No, the data are available. Deputy Stephen S. Donnelly is talking about the mechanism to extract the data. I presume that would be fully covered. The issue is reasonableness. If it is extraordinarily convoluted and complicated to write new code to extract the data, that is a reasonable line for refusal. I do not understand the systems to which the Deputy refers, but normal interrogation systems to extract the data and provide it by creating a new record are perfectly provided for.

Deputy Stephen S. Donnelly: If an entirely new programme is required that calls for months of coding work, that is fine. If it requires a reasonable amount of code, a few lines of new code, that should not be grounds to refuse an FOI request.

Deputy Brendan Howlin: That is captured by the notion that it is reasonable to do it. The organisation does not have to get IBM to write a new system for it.

Chairman: Deputy Stephen S. Donnelly is learning. He has just received an IT lesson and has a question.

Deputy Stephen S. Donnelly: Yes, great. For one person, coming up with ten new lines of code might be highly unreasonable, while for someone else, it might be ten minutes work. A new search algorithm being required to extract information falls within an FOI request. No FOI request will be refused on these grounds.

Deputy Brendan Howlin: Correct, if it is a matter of normal usage.

Deputy Stephen S. Donnelly: Yes, it is.

Chairman: A database is designed to extract information; therefore, if a question is submitted, it should be extractable. If there is a difficulty with extracting information from a database, there are questions about the viability of the database.

Deputy Stephen S. Donnelly: I shall talk to the Chairman outside about this.

Deputy Mary Lou McDonald: Please do not open up that conversation again or we will be here for months.

I support this amendment. It is much more tightly drafted than what went before and it answers my concern and the reason for my amendment No. 46, which I will withdraw at the appropriate time.

Amendment agreed to.

Amendments Nos. 45 and 46 not moved.

Section 17, as amended, agreed to.

Sitting suspended at 6 p.m and resumed at 6.45 p.m.

SECTION 18

Question proposed: "That section 18 stand part of the Bill".

Deputy Sean Fleming: The essence of the section is that someone can refuse a request that he or she might normally grant because it is connected to another record that is exempt. He or she can redact or edit it, but he or she may believe that might give misleading information. It is another way to not properly release information. The information being sought would normally be granted, but it relates to a record that is exempt.

Deputy Brendan Howlin: It is the application of the law since 1997 to avoid building a Trojan horse around an exemption.

Chairman: Is "fall to be granted" correct rather than "fail to be granted"?

Deputy Brendan Howlin: "Fall to be granted."

Question put and agreed to.

SECTION 19

Question proposed: "That section 19 stand part of the Bill".

Deputy Sean Fleming: The section provides that if the decision is not made within the legal timeframes referred to by the Minister, it is deemed to be a refusal. Can the applicant make an appeal straightaway?

Deputy Brendan Howlin: Yes. This is designed to prevent people from sitting on them forever.

Deputy Sean Fleming: Are many decisions deemed to be refusals because a deadline has been missed? I am sure this issue must have been discussed with bodies. Does this happen often?

Deputy Brendan Howlin: I am informed it does, but I do not have numbers.

Deputy Sean Fleming: The applicant can then take it further.

Deputy Brendan Howlin: Yes.

Question put and agreed to.

Section 20 agreed to.

SECTION 21

Amendments Nos. 47 to 49, inclusive, not moved.

Question proposed: "That section 21 stand part of the Bill".

Deputy Stephen S. Donnelly: This section relates to internal review. One of my requests has been the subject of such a review and in fairness to the person who wrote the review, it was fine and thorough. It should not be charged for, but we will get to that issue later. Two of the committee's recommendations are tangentially related to this issue. The first was that a user group be set up to review the operation of the legislation, while the second was that an oversight group be set up within public bodies, which is related to the section. Is the Minister considering the establishment of a user group to review how all of this will play out in the coming months? Did he do anything about the recommendation to establish an internal oversight group to do the same from the perspective of officials?

Deputy Brendan Howlin: We had an external review leading up to this legislation and it was indicated that it might be useful to have a user group in tandem with the recommendation of the committee. I am giving consideration to this recommendation. It is not necessary to provide for it in legislation.

Deputy Stephen S. Donnelly: Great. What about the second recommendation in respect of having an internal version called an oversight group?

Deputy Brendan Howlin: I prefer the Houses of the Oireachtas to operate the committee system to oversee these issues, to discuss how they are working with the Information Commissioner and to seek and make recommendations rather than having a parallel process.

Deputy Stephen S. Donnelly: The advantage of an oversight group which would not replace the need for Oireachtas oversight, as an internal working group, is it would allow officialdom to review how the regime was working and to continuously improve, share best practice and so forth. Is there an ongoing review in that regard?

Deputy Brendan Howlin: I am advised that it is intended to provide for this in the code of practice. There will be a users network.

Deputy Stephen S. Donnelly: Will it be an internal network of officials?

Deputy Brendan Howlin: Yes.

Deputy Stephen S. Donnelly: When I refer to users, I mean requesters.

Deputy Brendan Howlin: Many bodies follow this regime closely and we have heard from a number of them in the past few days. They work with a variety of networks, including the Open Government Partnership, for example, and review the operation of the system, make recommendations, network and comment on them all the time.

Question put and agreed to.

Amendments Nos. 50 and 51 not moved.

Section 22 agreed to.

Section 23 agreed to.

Amendment No. 52 not moved.

Sections 24 agreed to.

Sections 25 and 26 agreed to.

Sitting suspended at 7 p.m. and resumed at 7.15 p.m.

NEW SECTION

Deputy Brendan Howlin: I move amendment No. 53:

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.

(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.

(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 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.".

I have indicated to the committee my intention to withdraw. The amendment relates to the introduction of a cap of €500 on freedom of information search and retrieval fees. The intention of the amendment from the point of view of requesters and public bodies was that there was a sharp focus on the estimation of freedom of information requests that would require up to 25 hours of search and retrieval time. If the time spent examining records by the decision maker were included, this could account for approximately seven days' administrative work.

The concept of a cap, as members of the committee will recall, was first suggested by Deputy Fleming in his Private Members' Bill on freedom of information. Having reflected on the provision further, in light of the debate on the application fee, my assessment is that the same objective can be achieved by allowing a public body make the case, if it considers it appropriate, that a request exceeding the threshold of 25 hours in search and retrieval time, and €500 in fees, is voluminous, and such a request can be refused on this basis under the relevant provisions of the Bill. I propose retaining the €500 cap on maximum search and retrieval fees and removing the provision allowing a public body refuse a request on the basis that the search and retrieval costs to the body would be above €500. This will complement the further provision included in this amendment to provide that the first number of hours of search and retrieval time

be free of charge to the requester, as I have indicated. This is a significant confirmation of the fundamental objective of the legislation to facilitate access to public information to the greatest extent possible, consistent with the public interest. It is my intention after this debate to withdraw the amendment and restate it with the cap but removing the capacity of the public body to refuse to process an application that would involve work beyond the 25 hours or the €500 cap.

Chairman: I take it that what will be the case with amendment No. 53 will also apply to amendment No. 33, in a reformatted sense, as indicated earlier.

Deputy Brendan Howlin: We are going to restate it in the way I am now describing. I will hold the cap but am removing the notion that the public body could refuse to process an application if it was determined that the volume of work involved would exceed the cap that could be charged.

Deputy Sean Fleming: Did the original section in the legislation have the €500?

Deputy Brendan Howlin: No, it was in the amendment.

Deputy Sean Fleming: The Minister's amendment included the €500.

Deputy Brendan Howlin: The cap.

Deputy Sean Fleming: It is a cap.

Deputy Brendan Howlin: Yes.

Deputy Sean Fleming: I am very pleased, as that is the figure I recommended in my Private Members' Bill last year, as the Minister acknowledged. On Second Stage of that Bill I detailed the replies of a parliamentary question to every Department on the maximum and average fee charged for search and retrieval. Some of the averages were approximately €7. One or two exceptional cases were in thousands of euro. My concern was when a requester was told a search and retrieval fee would be €3,000. I put in a request once to the Department of Finance and was told that the search and retrieval fee was €1,200, so I abandoned my request. That is how I have first-hand experience and believe there should be a cap. The Department of Social Protection does not charge a search and retrieval fee, as the overwhelming majority - although not all - information would be personal. It is important that in the code of practice, Departments are told that €500 should not be a standard search and retrieval fee. It should be the cap.

Deputy Brendan Howlin: It is related to hours worked.

Deputy Sean Fleming: Perhaps it will be included in the code. I am pleased the amendment is being redrafted. The Minister is essentially indicating that if the search and retrieval fees to get information become expensive and venture into thousands of euro, there may be a way of dealing with the issue by refining the request.

Deputy Brendan Howlin: Exactly.

Deputy Sean Fleming: That is probably why he got into the other issue of separate requests.

Deputy Brendan Howlin: Sleeping dogs, Deputy.

Deputy Sean Fleming: One follows the other. I know the Minister is withdrawing the amendment but fees and charges are detailed at section 27(5). I tabled an amendment and

thought it would be grouped for discussion purposes. Subsection (5) of the amendment indicates:

> 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.

Although it still relates to a personal request, a door was being opened to charge search and retrieval fees.

Deputy Brendan Howlin: That is in the law already.

Deputy Sean Fleming: I propose that we could revisit that. There is an amendment-----

Deputy Brendan Howlin: It is only where there would be significant cost and where somebody would have to do much retrieval and copying, etc. It is so the cost could be charged.

Deputy Sean Fleming: The Minister has examined the matter and felt the €500 fee was more reasonable than €200, €300 or €1,000. It is a balanced figure. Deputies on the committee may have disagreed in saying that €500 was too high. The Minister has accepted the figure and is establishing a ceiling. It is moot as to whether it should be €500 or a lower figure at this point. The ceiling will give great certainty to people putting in a request, and they will not get a bill for €2,000 or €3,000.

Deputy Brendan Howlin: It will make the provision I am coming back to all the more necessary.

Deputy Sean Fleming: I understand how they are linked as one may have to aggregate a request in order to get search and retrieval fees below the €500 cap. That is another issue. Overall, I welcome that the Minister is taking up my suggestion and returning with refined wording.

Deputy Brendan Howlin: I will give adequate time to the committee to have a look at it.

Deputy Sean Fleming: The committee might discuss the fees issue on its own.

Deputy Brendan Howlin: That is a matter for the committee.

Deputy Stephen S. Donnelly: I welcome the change, as I was concerned about amendment No. 53. To clarify, if somebody submits a freedom of information request and the estimated or actual cost is €2,000, the request will go ahead, notwithstanding issues around vexations etc., and the requester would be charged a maximum of €500.

Deputy Brendan Howlin: I will start from the back. The maximum charge permissible when the Bill becomes law will be €500 but whether the request will go ahead depends on whether it fits the other criteria. If it fits into those, it should go ahead, although the cost - rather than the amount charged - might be greater than €500.

Deputy Stephen S. Donnelly: I thank the Minister. He is withdrawing this substantial amendment, which has probably received the most commentary over recent days. The paragraph he refers to is 27(13)(*c*), which states:

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

I presume the amount prescribed refers to the cap.

Deputy Brendan Howlin: Yes.

Chairman: Is the cap of €500 inclusive of the €15?

Deputy Brendan Howlin: No, it is separate.

Chairman: It could be €515 in total.

Deputy Brendan Howlin: This refers to search and retrieval fees. They are a separate entity.

Deputy Stephen S. Donnelly: Will any other changes be made to the amendment?

Deputy Brendan Howlin: I have indicated my intention and we will get the draft of the proposal in good time in order that the committee can have deep consideration of it before Report Stage.

Deputy Stephen S. Donnelly: My understanding of the Minister's intention is that this is the only change being made. The amendment lays out the fees regime.

Deputy Brendan Howlin: Yes.

Deputy Stephen S. Donnelly: It is reasonable for us to engage in the rest of the amendment and the issues it raises.

Deputy Brendan Howlin: We would probably be as well to do it when we see the context of the new draft.

Deputy Stephen S. Donnelly: May I ask a procedural question? That is fine if we can engage in Committee Stage.

Deputy Brendan Howlin: That is not a matter for the committee as it would be a matter for the Dáil at that Stage. We can have a good debate on Report Stage.

Deputy Stephen S. Donnelly: Or now.

Deputy Brendan Howlin: Yes.

Deputy Stephen S. Donnelly: We could do it now. I am going to be discussing the amendment as it stands but without the paragraph described by the Minister. That is section 17(13)(*c*), although there may be other bits and pieces.

I and others disagree with an upfront fee for a variety of reasons. The Minister has indicated two reasons to the committee for having a fee regime. The first is that in the current economic reality, where citizens are being asked to undergo much hardship as public services must be reduced in certain areas, it would be unreasonable to take away the fees of the freedom of information regime. A second reason, as given at the start of the meeting, is that this would also help manage the workload when the new Bill comes in. Are these the two reasons for the fees?

Deputy Brendan Howlin: They are among the reasons. There is a real cost to doing this. Asking people who avail of a service to contribute to its cost is a principle that I do not disagree with. If we were in the time when, as a Tánaiste of long ago described it, the country was awash with money, we might have a different focus. As of now, we are required to charge for a variety of services, many of which I would like to see to delivered free, but it is reasonable to maintain that principle.

Much was made of my comment about managing the process. That is done to ensure that the service we provide and the expanded requirement that is implicit in the legislation is delivered and that we are not being tokenistic by providing a legislative base for a service that we do not have the resources to provide. In essence, when the legislation is enacted I want to provide the service that we have promised in it.

Deputy Stephen S. Donnelly: I thank the Minister. The first issue is cost, which comprises two separate aspects. The first is an issue of principle which says that as one is availing of a public service, it is reasonable that one contributes to the cost of or pays for the service. I contend that such a measure amounts to double taxation because we will already have paid for the service through taxes. One would not expect a garda to say to a person who reports a crime that the additional work will incur a fee, or a social welfare officer to tell the person who goes into a social welfare office to get something processed that he or she will have to pay a fee. It is fine that the Minister and I disagree about the matter. In my opinion, access by citizens to information held by public bodies for which they already pay is a service that has already been paid for. I would prefer to see a regime under which the only additional cost - as in international best practice - is that of reproduction, be it photocopying or whatever. That is simply my opinion.

The second aspect is quite relevant, regardless of one's opinion. Dr. Nat O'Connor has provided analysis that suggests that the revenue generated by charging fees is used entirely to administer their collection. Does the Minister have data on the total projected revenue from the proposed fee structure? Has it been compared with the total estimated cost of administering the fee structure?

Deputy Brendan Howlin: With regard to the Deputy's first comment, the same argument was made about water charges and a variety of other services - that people have paid their taxes over time, so a service fee is a double tax. The claim that one has already paid for a service is an argument that can be applied at will.

We will bring in a new fees regime but we do not know how much revenue will be generated. As the Deputy can see from the attached schedule of fees, we will charge a fixed €15 fee that has been place since 2003, and we will reduce the fee for appeal, including the review fee and the fee for appeal to the information commissioner. I do not know what the take will be. The cost structure depends on the organisation. It would be onerous to embark on the analysis.

I have not read the TASC report referenced by the Deputy, but perhaps the officials accompanying me have done so.

Deputy Stephen S. Donnelly: Yes, TASC.

Deputy Brendan Howlin: I understand, though I did not hear it myself, that the Deputy mentioned the report during Leaders' Questions earlier. I do not know what that analysis was based on.

Deputy Stephen S. Donnelly: It is unacceptable to propose a fee structure for a service

such as freedom of information without knowing how much money will be generated or how much its administration will cost.

Deputy Brendan Howlin: How can one possibly predict how the service will be used in the next period?

Deputy Stephen S. Donnelly: Really?

Deputy Brendan Howlin: Yes.

Deputy Stephen S. Donnelly: I suggest that the Minister take the current volume, apply the new fee structure, multiply the first figure by the second one and add. I am not being smart, but one can estimate the projected revenue.

Deputy Brendan Howlin: We did. We asked for various projections-----

Deputy Michael Creed: Everybody is covered under the new legislation, so one cannot assume that the pattern of usage will be the same as at present.

Deputy Stephen S. Donnelly: One can still make an estimate-----

Deputy Brendan Howlin: As the Deputy probably knows, we have established in my old Department-----

Deputy Stephen S. Donnelly: -----just to work out whether it is worth the fee.

Chairman: Excuse me; I ask Deputies to comment through the Chair. They can have their own conversation outside the meeting.

Deputy Brendan Howlin: Sorry; I thought I was interrupting.

Deputy Richard Boyd Barrett: The Deputies had a cosy little chat.

Deputy Brendan Howlin: The economic evaluation unit found it difficult to make projections. There are all sorts of projections that are very difficult to nail down. In truth, I cannot give the Deputy reliable data.

Deputy Stephen S. Donnelly: Can the Minister give a range of estimates?

Deputy Brendan Howlin: Nothing reliable.

Chairman: The Minister could give us a list of State services to which a charge already applies and to which citizens have an entitlement. Citizens pay for birth certificates, planning applications and passports; these are some things to which an Irish citizen is entitled. Perhaps the Minster can provide a list.

Deputy Brendan Howlin: Sure we all know the list.

Deputy Stephen S. Donnelly: What was the take for last year?

Deputy Brendan Howlin: Does the Deputy mean for the whole system?

Deputy Stephen S. Donnelly: Yes.

Deputy Brendan Howlin: I shall try to get the answer for the Deputy. I do not carry such

information with me.

Deputy Richard Boyd Barrett: In 2011 it was €85,000.

Deputy Brendan Howlin: I did not realise that the Deputies would give me information, as opposed to asking me for same. Deputy Donnelly now has the information.

Deputy Richard Boyd Barrett: Ms Emily O'Reilly told us.

Deputy Stephen S. Donnelly: With respect, I do not believe that is acceptable. It is pretty easy to produce a ballpark figure for the projected revenue from the scheme. One takes the current volume, applies the new fee schedule, makes some sensible assumptions on how the volume will change and comes up with a range. That would mean we would know whether we are talking about €10,000, €100,000 or €1 million.

Deputy Brendan Howlin: With all due respect to the Chair, Deputy Donnelly is badgering me. I have answered his question.

Deputy Michael Creed: Is the Minister accusing Deputy Donnelly of being vexatious?

Deputy Brendan Howlin: No. The Deputy can do his own research. The Information Commissioner annually publishes the factual information produced by the statutory body charged with doing the work.

With regard to projecting into the future, when we establish the new regime, I do not know what the impact will be. I do not know whether there will be a new awareness of FOI, and the broad new range of bodies encompassed might be particularly attractive for FOI, but I do not know-----

Deputy Stephen S. Donnelly: They might be.

Deputy Brendan Howlin: -----and the Deputy does not know.

Deputy Stephen S. Donnelly: I do not know. With the analytical resources available to the Minister for projections of national finances over the next number of years for taxation purposes, expenditure and all sorts of stuff, the calculation would be a doddle.

On the basis that the Minister has no idea how much the provision will cost or whether it will save the State money, and based on the report that says it is almost cost-neutral, it is not unreasonable to say that it is cost-neutral.

Deputy Brendan Howlin: I answered the questions but I do not want words put in my mouth. Of course if one sets up a new fee regime one expects that it will be a plus to the State. I am saying that there are economic terms for fundamentally altering a regime by broadening the scope in the way that we are doing. It is a structural break and we do not know what the consequences will be. I do not know whether all of the publicity generated will result in vast interest and an increase in FOI applications.

With loads of respect to the Chair, we are saying that this is the regime and one can accept or reject it, but to parse and analyse it in the way the Deputy is trying to do will take us all night and will have little effect. I did answer his question directly.

Deputy Stephen S. Donnelly: I do not think it is unreasonable to ask how much money the Minister thinks he is going to get out of a new fees regime and how much it is going to cost to

administer the scheme. He may think I am being unreasonable, but I do not think I am badgering him. I think my line of questioning is reasonable.

Deputy Brendan Howlin: No; the Deputy's comment is entirely unfair. I never objected to his asking the question. The problem is that he rejected my answer.

Deputy Stephen S. Donnelly: No; I have not rejected his answer. I said his answer was unacceptable.

Deputy Brendan Howlin: I will parse and analyse the Deputy's response. He did not reject my answer but said that it was unacceptable. I shall contemplate his response for a while.

Deputy Stephen S. Donnelly: We do not know how much the new scheme will cost or how much revenue will be raised, yet the Minister is comfortable making the assertion that it is required even in these challenging times. Clearly, analysis has not been carried out. The Minister clearly said there had been no analysis. Dr. Nat O'Connor has carried out an analysis and concluded that the fees regime was cost-neutral. I do not know whether it is cost-neutral. If it is cost neutral, the first argument, that we cannot afford to do this because it comes at too much cost to the State, is a nonsense. Maybe it is not a nonsense but the Minister cannot back it up as a credible argument.

The second argument concerns the workload. The Minister said that he is bringing in a new regime and that the fees will help to deal with the workload and the volume. In 2003, the introduction of fees by Fianna Fáil halved the number of freedom of information requests. It is reasonable to assume the fees regime will significantly reduce the volume of requests.

Deputy Brendan Howlin: It reduced it by 75%.

Deputy Stephen S. Donnelly: Yes, it was 75%. It is reasonable to assume that is what the Minister is doing.

Deputy Brendan Howlin: Again, I am not increasing fees. I am decreasing appeal fees. I am not increasing any fee.

Deputy Stephen S. Donnelly: The Minister is maintaining a fees regime. There will be fees. The Minister had the option to abolish the fees regime but is maintaining it.

Deputy Brendan Howlin: Deputy Donnelly says that reducing the appeal fees will have a further impact on altering a regime that has been in place for a decade.

Deputy Stephen S. Donnelly: The Minister said that one of the reasons for keeping the fees in place was to manage the workload, to keep down the volume of freedom of information requests.

Deputy Brendan Howlin: I said no such thing.

Deputy Stephen S. Donnelly: The Minister said so at the start of the meeting.

Deputy Brendan Howlin: I said no such thing. The Deputy is interpreting what I said. I said "manage", I did not say "keep them down". These are Deputy Donnelly's words.

Deputy Stephen S. Donnelly: What are the Minister mean by "manage demand"? Did he mean increase demand?

Deputy Brendan Howlin: If Deputy Donnelly is going to answer his own questions, there is no need for me to be here.

Deputy Stephen S. Donnelly: What are the Minister mean by "manage demand"?

Deputy Brendan Howlin: I have answered that question but I will do so for a third time. It is to ensure the structure is in place to work properly.

Deputy Stephen S. Donnelly: I will move on to a less contentious issue. It concerns electronic versus paper records. I talked to someone involved in trying to retrieve a record. It was a 400-page document and the answer the person received was that a charge would cover the cost of finding, retrieving and printing a 400-page document. Someone else had seen that the official in question had the document in electronic format. It probably does not happen very often but it is a single example. Is the Minister satisfied there is sufficient meat in the legislation to stop this happening, whereby fees are applied as if documents were paper records when, in fact, the electronic version is available?

Deputy Brendan Howlin: The current freedom of information regime is patchy, as I said already. We will have a single code of practice and all freedom of information officers will be trained in it. We will have simplicity and consumer focus in respect of training. I have said repeatedly that a freedom of information officer will propose that a document can be sent electronically and ask whether that would be better and have a dialogue about whether the person wants all of it or part.

Chairman: This is something we dealt with during the consultation process. If the information is held in an Excel document, the difficulty in issuing an Excel document is that it is open to further manipulation. Someone can insert new figures into an Excel document and it can be transferred onwards. The concern raised is that if information is provided in electronic format it should be issued in a format that is closed, like a PDF. The person can get a copy of it but it cannot be manipulated. The committee's recommendation was to provide records in machine-readable formats. That is the concern of the committee.

Deputy Brendan Howlin: That is what is implied in section 17(1)(*c*), "where available in such form and subject to *subsection (2)*, with a searchable electronic version of the record".

Deputy Stephen S. Donnelly: I think this is a mistake and a missed opportunity. Some measures in the Bill are very welcome but are undermined by what the Minister is doing with the fees regime.

Deputy Sean Fleming: On the amendment proposed by the Minister, we concentrated on the big issue. I am very pleased the Minister's accepting the principle of €500. Perhaps he can tell us where it comes in the amendment.

Deputy Brendan Howlin: It will be in the regulations.

Deputy Sean Fleming: The Minister is giving us the figure now but it is not in the legislation. We may consider putting it into primary legislation.

Deputy Brendan Howlin: Figures of that sort are dealt with in this way so that inflation can be accounted for.

Deputy Sean Fleming: Yes, so that it does not have to come back to the Oireachtas each time that it is increased or decreased by €5. We keep talking about €500 but I do not see it.

Deputy Brendan Howlin: The fee structure is one of the orders required to be laid before the Houses of the Oireachtas.

Deputy Sean Fleming: Amendment No. 34 was ruled out of order by the Chairman and I am not arguing with that decision. Opposition Members cannot propose amendments that amount to a charge on the Exchequer. The amendment states "An FOI body shall establish a facility by which payment or refund of any fees due under this Act may be made electronically". I am pleased to see that the Minister has inserted, at the end of the amendment No. 53, "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". It is not verbatim, or an absolute commitment with the phrase "endeavour", but it is almost the same as my amendment.

The Minister has taken my amendment and has added a word to give himself a bit of latitude. I acknowledge that although my amendment was ruled out of order, the Minister has taken the exact same amendment on board. It is important to say that because we give the Minister grief if we are not happy and we may as well recognise when the Minister does something good.

We have not yet come to amendment No. 57, which was also ruled out of order. Amendment No. 57 deals with cases where the records concern only personal information and suggests no search and retrieval fee should apply. In our discussion a few minutes earlier, the Minister said he wanted to provide for cases where there was a substantial amount of information. I am sure the Minister will be prepared to reconsider this point. The Minister tabled amendment No. 53, which states that the search and retrieval and copying charge under subsection (2) shall be disregarded unless the grant concerned relates to a significant number of records. I was asking for no search and retrieval fees for personal requests. In this amendment, the Minister provides for a search and retrieval fee if it amounts to a significant number of records.

I draw the attention of the Minister to the legislation as published and as discussed on Second Stage. Until last Friday, the legislation had the following provision in respect of search and retrieval fees in cases where someone makes a personal request. The section states the fees for search and retrieval shall be disregarded for a personal request if, in the opinion of the head concerned, it would not be reasonable, having regard to the means of the requester and the nature of the record concerned, to include the cost specified in that paragraph. Up to last Thursday, the legislation stated that if the head of the section believed it was reasonable, having regard to the means of the person, not charge any search and retrieval fees, he need not do so. The Minister's amendment now states that the head can charge a fee if there is a significant amount of records involved. Will the Minister go back to what was in the legislation? He is creating another row for himself by introducing search and retrieval fees where there is a large amount of records involved and where it is personal information.

It is important that when this legislation is passed, the Minister can say there are no fees, whether for applications or search and retrieval for one's own personal information. That is the way it was until last Thursday. The head had the discretion not to charge fees. Will the Minister give the head the discretion he had until last Thursday? He is after opening up a row for himself by introducing a fee for search and retrieval of personal information. Bad and all as what we did in 2003, we did not make specific provision for a fee for search and retrieval of personal information. We left personal information-----

Deputy Brendan Howlin: It is in the-----

Deputy Sean Fleming: The head had discretion based on the means of the person not to

implement it. I am asking the Minister to go back to what he had last week. Will he consider the point and go back to what he had-----

Deputy Brendan Howlin: I understand the point the Deputy is making.

Deputy Sean Fleming: The Minister has made a change.

Deputy Brendan Howlin: It is a practical thing. It was put to me by practitioners. How would they do means tests? How would they know the means of the requester? It is an administrative difficulty.

Deputy Sean Fleming: At the moment, there is a lower fee for medical card holders.

Deputy Brendan Howlin: Medical card holders are straightforward enough.

Deputy Sean Fleming: There are 1.8 million people before we start. I do not like giving extra concessions just because a person has a medical card.

Deputy Brendan Howlin: I will reflect on that but as I said, I do not want to put impracticable bits in which are too burdensome on the system.

Deputy Sean Fleming: What was in place was probably in place since Eithne FitzGerald brought forward the legislation and I suspect it has not caused a major problem in the intervening years. If it has, the Minister should tell us but I do not believe it caused a major problem.

Deputy Brendan Howlin: I will reflect on it.

Deputy Sean Fleming: We should give the discretion to the head. We know the head will not do a means test but one is giving a far bit of latitude to the head-----

Deputy Brendan Howlin: Let me see if I can do it without too much burden-----

Chairman: The Minister has said he will look at it. I think Deputy Fleming has a win there, so let us move on.

Deputy Richard Boyd Barrett: Most of the arguments have been fairly well rehearsed at this stage but I would like to challenge the Minister a little on the issue of the economic climate. The two main reasons he gave to Deputy Donnelly for retaining the €15 upfront fee were that the economic climate requires it and to make it workable, or manage the demand. The Minister said he did not say "manage the demand". Am I right?

Deputy Brendan Howlin: "Reduce demand" were the words Deputy Donnelly put in my mouth, which I certainly did not say.

Deputy Richard Boyd Barrett: Managing demand is completely different.

Deputy Brendan Howlin: Managing demand is to manage the way the process works to ensure it is efficient and that we have the resources to deal with it effectively. There is no point in crafting legislation and giving people all sorts of rights which we do not have the wherewithal to deliver so people are on their own. We have done that too often in the past.

Deputy Richard Boyd Barrett: Let me put a couple of points to the Minister about each of those reasons he gave. I also put it to him that there is another reason. In regard to the economic climate, the Minister told Deputy Donnelly he cannot make an estimate of the cost. I

refer to the evidence given by the former Ombudsman, Ms Emily O'Reilly. She said we currently get €85,000 per year. The number of areas covered by freedom of information has been expanded but surely we can make some sort of estimate. Let us say it doubles or even trebles, is it not fair to say the amount of money about which we are talking is really quite negligible? It is hard for me to understand how one can make a claim on economic or financial grounds for the retention of the fee when the money about which were are talking is so small. What is the worst case scenario? Is it a quadrupling of the volume? Will the Minister comment on that point because the money seems so small?

Deputy Brendan Howlin: I do not know how much it will increase but in times when we are charging for a whole lot of things, I do not agree with the notion that we would say this particular public service is fee, even though we know the unit cost is on average about €600 per request. There is a real cost. Is the Deputy saying we should recoup more of the cost so that would bite better? I am saying the economic reality of the times require a contribution for the service to be made by the service user.

Deputy Richard Boyd Barrett: The Minister is not directly answering my point. I am reading directly from Ms Emily O'Reilly's evidence. She said the total amount of money between research, search and retrieval fees amounts to €85,000 in a year. Even if it quadrupled under the new regime, which I do not think it would, the Minister cannot seriously claim, in terms of the Government's finances, that this is a significant amount of money, although it would be for an individual.

Deputy Brendan Howlin: The Deputy is missing the principle here. I am not saying it will solve the national debt but in a climate where we are charging for basic services, it is reasonable to ask for a contribution, however small, to be made towards the cost of freedom of information. That is my principled position. I was in the Seanad today dealing with the legislation on reducing by 10% the leaders' allowance, which we will now call the parliamentary activities allowance. That reduction will not make an enormous contribution but it is important in terms of giving the signal that we are reducing things.

There is a real cost for services. If we are going to charge for other basic services, many of which I would not like to have to charge, it is reasonable to maintain a charge system for freedom of information in the current climate. That is the point I have been making repeatedly.

Deputy Richard Boyd Barrett: If I might say, the analogy of the leaders' allowance is pretty tenuous because that is about what the leaders of political parties get and somewhat controversial-----

Deputy Brendan Howlin: Independents and all parties.

Deputy Richard Boyd Barrett: Yes, indeed. The leaders of political parties get it while Independents get a different allowance. All parties get a leaders' allowance per Deputy, something which the Minister sometimes does not mention. The bigger parties get a bonus on top of that but let us not get into that. That is a contentious area and some people would say politicians get too much.

The purpose of this Bill, according to the Government, is to give the public access to information. Therefore, if the money the Government is likely to drive is very small, but acts as an impediment to members of the public getting the information, then it is self-defeating in terms of the Bill. It is self-defeating in terms of the Bill and I will quote what Ms Emily O'Reilly,

whom everyone praised as a wonderful Ombudsman, said in that regard: "The fee is an impediment to the public seeking records". What she said is very straightforward - the fee is an impediment. Does the Minister accept what she said?

Deputy Brendan Howlin: There are many quotes we could use selectively and I will not go into that now. I have set out my position, *ad nauseam*, almost 40 times at this stage. Deputy Boyd Barrett has a different position.

Chairman: We are moving into the realm of repetition.

Deputy Brendan Howlin: We can go around the roundabout as often as the Deputy likes. The Deputy does not agree with fees, with water charges-----

Chairman: I am trying to be fair here. The Minister has indicated that the-----

Deputy Brendan Howlin: He does not agree with lots of things, but there we are.

Chairman: The Minister has indicated that the amendment is being withdrawn. There are other Members who wish to contribute to this debate. We can stay here until midnight, I do not mind, but I will be much stricter about repetition. If I am hearing the same argument being repeated over and over, I will intervene. That is not to say Members do not have something valuable to say, but if they are making the same fundamental point in different ways, that is repetition.

Deputy Richard Boyd Barrett: I have no desire to spend longer than is necessary here and this is the last, but one, of the major contentious areas of this Bill. I wish to make a number of points and do not believe I am repeating myself. I am asking the Minister a direct question. Does he accept what Emily O'Reilly said, that the fee is an impediment to the public accessing information?

Deputy Brendan Howlin: A fee of €15 is not a significant impediment-----

Deputy Richard Boyd Barrett: I put it to the Minister-----

Deputy Brendan Howlin: Nor is a fee of €10 for medical card holders. There is no fee for those looking for personal information.

Deputy Richard Boyd Barrett: It is self-evident that a fee of €15 is an impediment for those who are less well off. I do not think the Minister can claim otherwise. The Minister's argument is difficult to sustain. Emily O'Reilly also said in her evidence that she knew that the Minister was of the view that the fee acts as a brake on people who might be using the Act in a frivolous way. Was that just Ms O'Reilly's opinion or did the Minister tell her that?

Deputy Brendan Howlin: I am not going to start discussing private conversations I have had with anybody. She says what she says and that is that.

Deputy Richard Boyd Barrett: I raise this because the Minister was asked for his reasons-----

Chairman: I am sorry but I must intervene now. I ask Deputy Boyd Barrett to cite the section of the amendment to which he is speaking. We can have a conversation on the report of the committee, a conversation about the NUJ and so forth and we can have further arguments on this issue but I am going to be strict about the rules from now on. I am now asking Members

to refer specifically to the part of the amendment to which they are speaking. Members have been indulged quite a bit on this issue. We have dealt with it under amendment No. 33 and we are discussing it again in reference to amendment No. 53. I am hearing the same arguments in the debate on amendment No.53 as I heard during the debate on amendment No.33. I am trying to be fair and will point out again that both amendments have been withdrawn. We will not be voting on either amendment today.

Deputy Richard Boyd Barrett: I am finished now except to say that in terms of the procedure here, at the outset of the discussion on this section, the Minister said that the amendment he intends to resubmit is this one, minus one part. We accept that this is an improvement and are now debating the rest of the section, which is the most controversial section, dealing with the upfront fee. In that context, I do not see why it is not acceptable to discuss it. The secretariat is saying that we should make these points when we are dealing with the section. Is that correct?

Chairman: In general, we deal with the broader points when discussing the section itself.

Deputy Richard Boyd Barrett: We can do it then.

Chairman: If the Deputy wants to be pedantic-----

Deputy Richard Boyd Barrett: I do not want to be pedantic.

Chairman: -----I can take a pedantic position too. Then we will not have a functioning committee. I am asking people to operate within the procedures laid down. The amendments are being withdrawn. The Minister has indicated that any revised amendments will be given to the committee in advance. There will be plenty of scope for engagement on that and Members can enter into correspondence with the Minister and the Department. I have not operated before on the basis of enforcing a rule and insisting that Members indicate what specific amendment they are speaking to, but if we wander like this, I will be forced to operate thus.

Deputy Richard Boyd Barrett: With all due respect, we are not wandering. We are dealing with the substantial issue of the fee.

Chairman: Yes, but that has been dealt with several times. We are now in repetition mode.

Deputy Richard Boyd Barrett: This is the section of the Bill that deals with it.

Chairman: I call Deputy McDonald.

Deputy Mary Lou McDonald: I will be as brief as I can. I am speaking to the Minister's amendment, which I accept he is withdrawing. I welcome that he is withdrawing this piece but that is as far as my welcome can go. The Minister has referred to the issue of the fees as though it were a distraction or some bogus attempt to undermine or attack what is otherwise very good legislation. Given that the Minister is withdrawing this element for redrafting, I put it to him that the reason the fees issue is so contentious and has been the subject of such long debate is that it cuts to the very heart of the commitment to freedom of information. We know, and I am sure the Minister accepts, that in 2003, when Fianna Fáil introduced this fee, freedom of information requests halved in the following year. Nobody is challenging that. It is an established matter of fact. We do not have to speculate but know that the mere fact of a fee reduces the likelihood of individuals making freedom of information requests. That is also a matter of established fact.

I want to support this legislation and was extremely pleased to read in the programme for

Government the commitment to reinstate full freedom of information. That meant, for me and many others, by definition, a removal of any form of fee. Unfortunately, the Minister has chosen not to do that. I do not fully understand why although I am not going to exacerbate the situation by inviting the Minister to set out his position again. He has cited reasons related to economics, fairness and management, none of which really add up. The legislation contains significant checks and balances in terms of limiting freedom of information in the context of commercial sensitivity, vexatious or frivolous requests or where freedom of information requests impose such an administrative burden as to be disruptive. All of those checks, balances and limitations are built in and should be sufficient to address any concerns the Minister may have about the prudent management of the system.

The introduction of a fee, as the Minister is well aware, is a straight-up mechanism to depress demand and, as the NUJ might put it, to keep the light out. It is a huge mistake on the Minister's part. I do not say that to be patronising in any way because I know these are matters the Minister has considered long and hard. I do not question his commitment but believe he is making a very big mistake. The amount of revenue that might be returned to the State in respect of the fees must be balanced against the administrative burden involved in collecting those fees, particularly in the context of a civil and public service that is already under strain because of cutbacks and so on. That has not been weighed up. For me, this is a matter of principle. I am not trying to be pedantic, to give the Minister a headache or to keep us in this committee room until all hours. This is a fundamental mistake and goes against the very essence and grain of what the Minister is doing. It is a mistake to maintain fees introduced by Fianna Fáil in 2003 in a very deliberate ploy to halt the flow of information, which they succeeded in doing. We have the evidence to show that. This is a huge mistake on the Minister's part, especially if he is serious about open government, a principle which I support. If he brings forward proposals for more open government, I will support him, of that he can be sure. Not for one second, however, could I support a regime that attaches an additional charge to a citizen, journalist or anyone else for seeking out public information that rightfully belongs within the public domain. It is outrageous and I cannot understand why the Minister has come to this position. I am not inviting a long narrative on that but am genuinely surprised that it is the case.

Deputy Brendan Howlin: I had better say something in response but will be brief. I understand Deputy McDonald's position. She has restated it, but I do not want her to misrepresent the position of a Bill or of the Government. Virtually every regime I have looked at has some sort of fee structure. Some have basic fees for administration and photocopying while some have more elaborate search and retrieval fees. There have been fees attached to the FOI regime since the then Minister, Eithne FitzGerald, brought it in. We have decided to retain the up-front fee but, in acknowledgement of that, to give the first two hours of search and retrieval - which was to be charged at €21 per hour - free. For the vast bulk of simple requests, one will get two hours' work for the up-front fee of €15. We are reducing all the other appeal fees significantly, so I do not think it is fair to characterise it as anything but a reduction in fees.

I have made my point on the requirement to have some level of contribution to the actual cost, which is a real cost to an administrative system that, as we have acknowledged, has involved a greatly increased workload in recent times because of the financial situation we are in. I think it would be reasonable to maintain some contribution to that. Perhaps in the future we will be able to revisit these issues when our economic fortunes improve. To have it characterised in any other way is unfair.

Deputy Stephen S. Donnelly: For the information of members, I would like to provide

a context for the scale of the amounts we are talking about. In 2009, €115,000 was collected in fees from FOI. Under reasonable assumptions, about €64,000 was from the up-front fee of €15. Using a conservative assumption of a processing charge of €7 per fee, the net gain to the Exchequer from the up-front fees in 2009 would have been about €34,000.

The analysis I mentioned earlier used less conservative assumptions and found that the net gain was zero. We are talking about a potential net gain to the Exchequer of €30,000 to €35,000 from a regime that virtually no other country has and that is explicitly against the recommendations of the OECD and the EU. I think it is worth sharing with members the amount of money involved.

Deputy Brendan Howlin: Deputy Donnelly and others are speaking with an agenda. It is their view, but there is more to the issue than the quantum of money. In the current economic regime in which we are living, it is reasonable to expect, as we do for other services, a contribution to the real net cost. The fact is that I am reducing the fees across the board, except for the up-front fee, which has not been increased.

The argument could be made for dramatically increasing the fees, as the take is so low so that it would be worthwhile to do it. I will not go down that road.

Amendment, by leave, withdrawn.

SECTION 27

Chairman: Amendments Nos. 54 to 63 have been ruled out of order.

Amendments Nos. 54 to 63, inclusive, not moved.

Question proposed: "That section 27 stand part of the Bill."

Deputy Sean Fleming: I had proposed that we oppose the section. I acknowledge the improvements made by the ministerial amendments. The Minister has suggested revisions, such as the cap on search and retrieval fees, electronic payments and refunds, which were included in the amendment that was withdrawn, but I hope they will be better on Report Stage.

As a matter of principle we oppose the section for the reasons we have ventilated.

Deputy Richard Boyd Barrett: The arguments have been made for the deletion of this section. I concur with the view put forward by a person who I consider to be expert in the area, the former Ombudsman, Ms Emily O'Reilly. In her view, the reason the fee was introduced was to dampen people's ardour for seeking public records. It certainly worked. Retaining the fee will have that effect, notwithstanding the fact that I accept that the Bill moves things forward. Charges are being reduced in some areas, but I echo the point made by Ms O'Reilly: as long as we retain the up-front charge it can have no other effect than to dampen people's ardour for seeking out public information. I believe the Minister knows that.

Deputy Mary Lou McDonald: I have said my piece. I have listened to the Minister but I do not accept his view. I do not believe it. I do not believe he actually believes his own position.

Question put.

The Committee divided: Tá, 6; Níl, 3.	
Tá	Níl
Creed, Michael.	Donnelly, Stephen S.
Howlin, Brendan.	Fleming, Sean.
Humphreys, Kevin.	McDonald, Mary Lou.
Lynch, Ciarán.	
Murphy, Dara.	
Spring, Arthur.	

Question declared carried.

NEW SECTION

Deputy Mary Lou McDonald: I move amendment No. 64:

In page 45, between lines 22 and 23, to insert the following:

"**28.** An FOI body shall provide information regarding policy decisions and actions, to include but not exclusive to financial decisions and service delivery which impact on citizens in all instances.".

I would like to explain the thinking behind this amendment. The manner in which policy decisions are made, and the equality impacts and outcomes associated with them, as assessed, have been the subject of live and ongoing debate for some time. I am proposing that a new section providing that freedom of information bodies "shall provide information regarding policy decisions and actions, to include but not exclusive to financial decisions and service delivery which impact on citizens in all instances," be inserted before section 28, which relates to meetings of the Government. It would be good to include in this legislation a provision that will ensure citizens can use the freedom of information mechanisms to interrogate and get information on issues relating to decisions that have an impact on their circumstances or those of particular identifiable sectors of society, such as people with disabilities or women. Along with other Deputies, I intend to continue to argue for mechanisms such as equality budgeting. This is not the appropriate forum at which to rehearse that precise argument. Nonetheless, I believe this amendment would add significantly to the legislation.

Deputy Brendan Howlin: The Deputy will be aware that one of the main intentions behind this legislation is to reverse the amendments to the Freedom of Information Act 1997 that were imposed in the 2003 Act, which was considered to represent a significant curtailment of the principle of the right of access to records provided for in the 1997 legislation. One of the main areas I have addressed relates to the treatment of Government records under section 28. In that regard, section 28 now provides that the mandatory power to refuse a freedom of information request relating to Government records or records to be submitted to the Government, which was introduced by Fianna Fáil in the 2003 legislation, is being removed and the discretionary power contained in the original Act is being restored. The five-year rule for the release of Government records is also being restored. The strict definition of what constitutes a Cabinet record and the definition of "government" are also being restored to what they were under the original Act. The anomaly created in 2003 by the creation of a mandatory exemption for Cabinet records containing factual information which is already largely in the public domain

is being reversed, and communications between members of the Government will also no longer be exempt. Although I have reversed those unwelcome amendments that were introduced in 2003, I accept that there is an inherent need to protect sensitive Government records for a certain period of time. Five years seems reasonable to me in that regard. Exemptions are also needed to protect Cabinet confidentiality, as provided for in the Constitution, and the doctrine of collective responsibility. I believe the protections afforded in the original 1997 Act, which we are restoring, constitute the correct way to proceed in the case of Government records.

Deputy Mary Lou McDonald: Okay. That is fine. My difficulty is that the Minister has not actually commented on the merits or otherwise of the amendment I am proposing. He has set out his own stall. Is that just a way of saying-----

Deputy Brendan Howlin: I am saying that we have put the legislation back to what it was in 2003, verbatim. As the Deputy has outlined, Ministers have many opportunities to provide information to the public on policy decisions and actions. She will be aware that after the Government has made a decision on a policy issue, it is the practice for Ministers to make a detailed announcement, for the most part detailing what is intended in the policy proposal and outlining how much it will cost. In the case of legislation, the practice is to conduct a regulatory impact assessment, which sets out details of the policy options and the expected cost to the Exchequer. When the general scheme of a Bill has been agreed, the matter is discussed in the relevant Oireachtas committee as part of the new system of pre-legislative scrutiny. All aspects of the policy can be considered in that context. Of course it is up to the committees to bring Ministers before them at any time to discuss any policy issue. I have asked various working groups in my Department to talk about policies such as the public service reform agenda. That is done as a matter of routine.

Deputy Mary Lou McDonald: I am not denying any of that. It is all true. I am asking whether it would be a good thing, notwithstanding all of the other parliamentary channels that exist, if this legislation provided explicitly that people could - in the here and now or retrospectively - obtain information relating to a policy decision, such as whether factors such as possible equality impacts were considered when that policy decision was being made.

Deputy Brendan Howlin: I am not sure the proposal in question would add to the panoply of options I have described. Many factors, including the impact of a policy, are considered when a policy is being made. They are matters of routine analysis in the Houses of the Oireachtas. I am not sure what specifically would be looked for in such a request. If it is all the data germane to a particular policy decision that is doable.

A Member: Is that published under section 8 of the Bill?

Deputy Brendan Howlin: I am not sure what is not captured that could be captured in this proposal.

Chairman: How stands the amendment?

Deputy Mary Lou McDonald: I will press it.

Amendment put and declared lost.

Section 28 agreed to.

Sections 29 to 31, inclusive, agreed to.

SECTION 32

Chairman: Amendments Nos. 65 and 74 are related and may be discussed together by agreement.

Deputy Brendan Howlin: I move amendment No. 65:

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.".

The existing section 32(1)(*c*) and section 42(*l*) both deal with the protection of records disclosing the identity of a person who provided information to an FOI body but section 32 references the administration of civil law and section 42 references criminal law. The provisions of those two sections are being merged into section 42(*l*) in amendment No. 74 while section 32(1)(*c*) is being deleted. The first part of amendment No. 74 merely provides for an amendment to the FOI Act 1997, which exempts from FOI certain papers within the meaning of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, in lines which are proposed for deletion in section 32. In amendment No. 65 the lines are being amalgamated with the text of section 42 in amendment No. 74. The reason for this is that the protections currently afforded under section 32 are such that records might lead to the revelation or an identity of a person who has given information in confidence to an FOI body in respect of the administration and enforcement of the civil law and that may be refused. There is a similar provision in section 42 which provides that the FOI does not apply to records which might lead to the revelation or the identity of a person who has given information in confidence to an FOI body in respect of the administration and enforcement of criminal law.

Amendment agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

SECTION 34

Deputy Mary Lou McDonald: I move amendment No. 66:

In page 52, between lines 32 and 33, to insert the following:

"(*e*) a detailed explanation for the refusal,".

The amendment refers to the certificate where the refusal to grant the FOI request is concerned. The amendment proposes to introduce paragraph (*e*) to subsection (5).

Deputy Brendan Howlin: A certificate is only issued under section 34 in very exceptional circumstances and only where the record is of sufficient sensitivity or seriousness to justify such an action. In a case of that nature it would not be appropriate for the certificate to include a detailed explanation for the refusal to grant the record concerned as that would lead to the revelation of what information is to be protected in the first instance. For the information of the Deputy, the section is used very infrequently. In fact, only two certificates are in effect at the

moment and only 12 have been made since 1997.

Deputy Mary Lou McDonald: Twelve.

Deputy Brendan Howlin: This is law enforcement or security and it would need to be certified.

Deputy Mary Lou McDonald: In order that we are clear, the intent of the amendment is not to give the information but simply cite a piece of statute to give something more than that. We almost work on the assumption that it all professional bodies, NGOs or journalists who make requests but that is not case. Often it is-----

Deputy Brendan Howlin: There are only certificates in place. The way it works is that there is a review panel in place. If the Minister for Justice and Equality certifies, it is reviewed by the Taoiseach and two other designated Ministers. I have been on that review panel in some instances and have read the file. If I am in agreement I am required to certify that I am in agreement, as is the Taoiseach and another designated Minister. It is very infrequent.

Amendment, by leave, withdrawn.

Section 34 agreed to.

Sections 35 and 36 agreed to.

SECTION 37

Deputy Sean Fleming: I move amendment No. 67:

In page 57, between lines 36 and 37, to insert the following:

"(10) Subject to *subsections (1)* to *(9),* where the information relates to personal information of the requester, such information shall be released even where the information is provided by a third party.".

The issue here, which I raised on Second Stage, is very simple. I had a case where a person sought personal information from the Department of Social Protection as to why he or she was refused illness benefit payment. I advised the person to get a copy of the file from the Department in order to see what the medical assessment showed. It took a long time to come through, the reason being that the applicant's doctor had completed a medical assessment and this is deemed to be information provided by a third party. The doctor had to be asked if the information he released about his patient could be made available to his patient. I put quite a loop and a hoop in the system when I said that on Second Stage. Perhaps the case was dealt with by an over-zealous person in the Department and it went to a very high level. Week after week we were getting clearance, we were told there were FOI issues and that, in effect, it was information provided by a third party. Perhaps the doctor did not want to release to the patient the report he or she felt entitled to. That was my suspicion of what happened in the case. Perhaps the Minister would deal with that issue. I will not force a vote on the issue. I have made the point and I think the Minister understands it.

Deputy Brendan Howlin: It is important that the code of practice provides guidance on the aspect of seeking personal information on the legislation. It is probably the most difficult and contentious area because there is sensitive information. The Deputy is correct that it should be dealt with under clear guidelines and that is what I propose.

Amendment, by leave, withdrawn.

Amendment No. 68 not moved.

Section 37 agreed to.

Sections 38 and 39 agreed to

SECTION 40

Deputy Seán Fleming: I move amendment No. 69:

In page 61, lines 2 to 5, to delete all words from and including ", or" in line 2 down to and including "2000)" in line 5.

This amendment concerns the financial and the economics interests of the State. A head may refuse to grant an FOI request for several items which are listed - national interest, foreign investment and so on. I was surprised when it came to paragraph (r), lines 2 to 5, on page 61 of the legislation, that it seems to be inserted at the end.

It states that a head of a section may refuse to grant information that contains information "advising on or managing on public infrastructure projects, including public private partnership arrangements (within the meaning of the State Authorities (Public Private Partnership Arrangements) Act 2002)." I do not agree with giving authority to a head of a department to refuse information concerning public private partnerships or with stitching that into legislation relating to the release of information. This does not just relate to a commercial act , but to information advising on the "managing" of a public private partnership. This provision in the Bill would block the provision of information from the National Development Finance Agency or anybody else who gave advice to the NRA or the Department of Education and Skills etc. It is not right that this provision blocking information on the giving of advice should be stitched into the legislation.

There are already ample measures in the Bill, and we have supported them, to ensure that where there are commercial interests at stake, they will be safeguarded. We do not want to jeopardise that, but this is a step too far.

Deputy Brendan Howlin: I understand what the Deputy is saying. Section 40(2) lists a range of records to which subsection (1) applies in addition to the class of records which could be protected under the original Act. This is because we are extending the scope of this Act to the NTMA group of companies. We have had discussions with those who will be affected and they have serious concerns regarding the impact of their discussions on advising and managing PPP projects and others.

I assure the Deputy that the section does not restrict access to records automatically, but only in the circumstances where the grounds set out in section 40(1) apply. Information may be released where the public interest would, on balance, be better served by granting rather than by refusing the request. It is a balance between expanding the scope of the FOI legislation to this new range of companies, which had been preserved in purity from FOI requirements up to now, and doing it in a way consistent with not compromising the important State work they do. We are inserting a caveat that they are not automatically exempt unless they prove that to release the information would impact on the way determined in section 40(1).

Deputy Sean Fleming: All I can say is that the NTMA has got another one over the Min-

ister here. That happened with regard to its terms and conditions and the NTMA won that. It looks like it will win this too.

Deputy Brendan Howlin: The NTMA was not included until I came along.

Deputy Sean Fleming: Well done so far, but the NTMA nobbled the Minister on these two areas.

Deputy Brendan Howlin: Thank you. Tús maith.

Amendment put and declared lost.

Section 40 agreed to.

NEW SECTION

Deputy Sean Fleming: I move amendment No. 70:

In page 61, to delete line 10 and substitute the following:

"41. (1) The 52 non-disclosure provisions recommended for exclusion in *Schedule 3*, where the Information Commissioner disagreed with the views of the relevant Departments, shall be deleted from *Schedule 3*.

(2) A head shall refuse to grant an FOI request if—".

This is straightforward. The Minister will be aware this committee has considered the issue of 100 non-disclosure secrecy provisions littered through various pieces of legislation, crossing every Department. These are listed in Schedule 3. The committee did not get to complete its work on this issue, but the Information Commissioner attended this committee and she recommended that some 52 of these non-disclosure provisions should no longer exist. I support that and ask that these provisions be removed from the Schedule. I will not list the 52 provisions as we would be here all night.

Deputy Brendan Howlin: Section 41, as contained in section 32 of the original 1997 Act, upholds the operation of specific confidentiality and non-disclosure provisions in other legislation that has been passed, unless such provisions are listed in Schedule 3 of this Bill, in which case they are subordinate to this FOI regime. Provision is made in this legislation for the review of secrecy provisions in other Acts by a committee of the Oireachtas from time to time - the Joint Oireachtas Committee on Finance, Public Expenditure and Reform - with a view to its recommending whether they should be amended or repealed. If the committee recommends they should remain in force, the committee has the power to recommend that they should override FOI or that they should be included in Schedule 3. I am advised that such a review is currently under way and it will be a matter for the committee to recommend which of the non-disclosure provisions should be included within Schedule 3.

Deputy Sean Fleming: In view of the fact the committee has not completed its work, I had to take direct action through this amendment and raise this matter, because we will not have the legislation before us again. I felt this was an appropriate time to submit the amendment. I urge the Minister to take the initiative and accept the figure of 52 recommended by the commissioner, without waiting for the report from the committee.

Deputy Brendan Howlin: I will wait to receive the proper guidance from the committee.

Deputy Sean Fleming: I left it open to the Minister, but I will revisit the issue on Report Stage.

Amendment put and declared lost.

Deputy Brendan Howlin: I move amendment No. 71:

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

This is an important technical amendment to provide explicitly in section 41 that FOI requests for records whose disclosure is prohibited under EU law shall also be refused. This is based on strong advice I have received.

Amendment agreed to.

Section 41, as amended, agreed to.

SECTION 42

Deputy Brendan Howlin: I move amendment No. 72:

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

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

In line with the programme for Government commitment, the Government decided that FOI should apply to An Garda Síochána in respect of administrative records, subject to security exemptions. Section 42(*b*) provides the FOI Act shall not apply to a record held or created by An Garda Síochána in a range of areas related to security and intelligence matters. The Minister for Justice and Equality requested that this exemption be extended to include records relating to persons who provide confidential information to the Garda under the covert human intelligence sources scheme. That is the purpose of this amendment.

Amendment agreed to.

Amendment No. 73 not moved.

Deputy Brendan Howlin: I move amendment No. 74:

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.".

Amendment agreed to.

Section 42, as amended, agreed to.

Sections 43 and 44 agreed to.

SECTION 45

Deputy Stephen S. Donnelly: I move amendment No. 75:

In page 68, to delete lines 1 to 8.

This is a minor issue to do with the Information Commissioner being allowed to visit Garda stations. I understand that under the proposed Bill, the commissioner cannot visit Garda stations. I am told by people who understand this issue better than me that this is not normal European practice. My amendment proposes to allow the commissioner to visit Garda stations in the course of his or her work

Deputy Brendan Howlin: Section 45(2) permits the Information Commissioner to enter a premises of an FOI body to examine and copy records which in his or her view are relevant to his or her investigation, and the commissioner may remove those records from the premises for a reasonable period. Section 45(10) prevents the Information Commissioner from entering Garda premises or from taking documents designated by regulation, under section 126(1)(a) of An Garda Síochána Act 2005. It was necessary to provide this provision because the information contained in some premises could be of such a highly sensitive and confidential nature that it would compromise criminal investigation. I am advised it would not be appropriate or in the public interest for the Information Commissioner to have power to enter Garda premises to take those records and potentially remove them.

A similar provision prevents the Garda Ombudsman from entering certain premises of An Garda Síochána. It could not be the case that the Information Commissioner could enter premises and seize documents where the Garda Ombudsman was not so allowed.

Deputy Stephen S. Donnelly: Is there any case in which the Information Commissioner might want to go into a Garda station but not seize documents? Have we gone slightly too far here and is there a happy medium?

Deputy Brendan Howlin: The premises that are off-limits have to be designated in the regulations. It is not all Garda stations. So I imagine it would be the crime and security division in Harcourt Street and places that by nature would have highly sensitive documents.

Deputy Stephen S. Donnelly: Who makes that decision?

Deputy Brendan Howlin: I draw up the regulations in consultation with the Department of Justice, Equality and Defence. They would have to be laid before the House.

Deputy Stephen S. Donnelly: There are existing regulations.

Deputy Brendan Howlin: I beg the Deputy's pardon, I am advised that it is the Minister for Justice, Equality and Defence who will make those regulations and they have not yet been made.

Deputy Stephen S. Donnelly: Do they exist for the current Bill or is this a new power, a new restriction?

Deputy Brendan Howlin: This is new. The Garda Síochána were never encompassed within the FOI up to now.

Deputy Stephen S. Donnelly: So this is to limit that.

Deputy Brendan Howlin: As the Deputy can imagine, in negotiating with the Minister for Justice, Equality and Defence about these matters the extension of FOI in general to the Garda Síochána had to be carefully discussed and there was a balance to strike to make sure that we would not compromise criminal investigation in providing FOI.

Deputy Stephen S. Donnelly: So this is new and provides a boundary condition on including the Garda Síochána.

Deputy Brendan Howlin: Not on the FOI side because that will be on the administrative side but there is a very strong power given to the Information Commissioner to enter the premises of a designated body and seize documents. I do not imagine that it will be used very often. I do not know if it has been used very often to date. I am told it was only ever threatened but never done.

Deputy Stephen S. Donnelly: Sometimes that is enough.

Deputy Brendan Howlin: Yes it is enough.

Deputy Stephen S. Donnelly: This is new but it is not limiting the issue around the gardaí. It is a boundary on a new power.

Deputy Brendan Howlin: The FOI is encompassing An Garda Síochána for the first time.

Deputy Stephen S. Donnelly: I know this is not the Minister's call but it is not the spirit of the legislation that this would apply to all Garda stations.

Deputy Brendan Howlin: The regulations will be made by the Minister for Justice, Equality and Defence but I presume that they will have to come before the Oireachtas in the normal way. I will check that point for the Deputy and come back to him.

Deputy Stephen S. Donnelly: I know it is not the Minister's call but am I right in thinking that it is not his intention that all Garda stations would be designated.

Deputy Brendan Howlin: It is agreed that it will not be all Garda stations.

Amendment, by leave, withdrawn.

Section 45 agreed to.

Sections 46 and 47 agreed to.

Amendments Nos. 76 to 78, inclusive, not moved.

Section 48 agreed to.

Sections 49 to 55, inclusive, agreed to.

SCHEDULE 1

Deputy Brendan Howlin: I move amendment No. 79:

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);".

Amendment agreed to.

Deputy Stephen S. Donnelly: I move amendment No. 80:

In page 73, line 2, after "matters" to insert the following:

", or the factors and policy choices made by the Commissioner and his or her staff when determining the deployment of Garda personnel in the State".

Deputy Brendan Howlin: The Deputy has given me further information to which I wish to respond this evening in the Dáil.

Amendment, by leave, withdrawn.

Amendments Nos. 81 to 84, inclusive, not moved.

Deputy Mary Lou McDonald: I move amendment No. 85:

In page 75, to delete lines 19 to 37, and in page 76, to delete lines 1 to 23.

Amendment put and declared lost.

Deputy Brendan Howlin: I move amendment No. 86:

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.".

Amendment agreed to.

Amendments Nos. 87 to 91, inclusive, not moved.

Deputy Brendan Howlin: I move amendment No. 92:

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

"Irish Bank Resolution Corporation Limited (in Special Liquidation)".

Amendment agreed to.

Amendment No. 93 not moved.

Deputy Brendan Howlin: I move amendment No. 94:

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

"permanent tsb Group Holdings p.l.c.".

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 95:

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

"Private Security Appeals Board".

Amendment agreed to.

Amendments Nos. 96 and 97 not moved.

Question proposed: "That Schedule 1, as amended, be Schedule 1 to the Bill."

Deputy Stephen S. Donnelly: We do not need to go over all of this again but I wish to make one or two additional points. The Minister's position is clear. He may respond if he wishes. I am not trying to get back into a debate on the issue. The committee recommended in its report that monopoly semi-State providers should have to comply with the rigours of the FOI Bill. I think it is worth pointing that out to colleagues on the committee. That would include Eirgrid and the harbour authorities.

I know that the Minister will not get rid of the lists now. I have thought more about the conversation we had last night about the public good of bringing these bodies in, while protecting the commercial sensitivity, which I fully support, particularly for the monopolies such as the harbours, Eirgrid the airport authorities, local or national monopolies. It was the recommendation of the committee that these would be exposed to FOI, notwithstanding commercial sensitivity. I know that the Minister will not move on it. That is fine but I want to reiterate the idea that in the future it could be considered. The more I thought about the interaction we had, the more I thought that the commercial sensitivity does what it needs to do. There are a few examples in which there is a value in citizens' being able to access information. By way of example, there is one that I deal with in Wicklow, and I will leave it at this. Bus Éireann runs a service with which the Minister is probably familiar because the No.2 bus goes from Wexford to Dublin. It passes along the road by St. Vincent's Hospital. The company decided to change that part of the route. We contacted the chief executive; he and his office were very helpful and they reversed many of the changes. For example, in the case of the bodies dealing with disabled adults or children in my constituency or the Minister's constituency, there is a public good to those organisations, or the parents of children, being able to seek information about policies on access to health care and disability services that would not be commercially sensitive. The Minister and I argued this point yesterday but I believe there is a potential opportunity to review it at a later date.

Deputy Richard Boyd Barrett: We had our discussion and I intend to raise this issue on Report Stage. The semi-State sector encompasses a great number of employees and it has a significant impact on society, on our economy and on our environment. Consequently I do not think it is acceptable to exempt those bodies. I appeal to the Minister to vary the approach by deciding they should be subject to FOI unless they need to make a case around specific areas of sensitivity. I wish to give one example. It was suggested to me by an environmentalist who is very concerned-----

Deputy Brendan Howlin: We debated this point at length last night.

Deputy Richard Boyd Barrett: This is a particular example.

Chairman: There is a vote being called in the Dáil and I wish to finish this meeting.

Deputy Richard Boyd Barrett: The felling by Coillte may have had an impact on the problems in Ballymore Eustace. That is a serious issue and it should be subject to FOI.

Deputy Brendan Howlin: I refer to provisions which I may amend on Report Stage. I intend to make Iarnród Éireann subject to FOI. It became clear that the inclusion of Irish Rail will have to be refined to ensure that no unintended consequences would result. Rosslare Europort is operated by Irish Rail but operates in a commercial environment and should be treated in the same manner as the commercial ports. I do not intend that the commercial freight operations of Iarnród Éireann would be subject to FOI. I have been advised by the Minister for Finance that certain tax and legal advisers in certain tax avoidance schemes are using FOI to seek details of Revenue's expert reports and analysis of the schemes prior to the issuing of a notice of opinion under section 811 of the Taxes Consolidation Act 1997 or relating to the formation of an opinion under that section. I have agreed that my officials and the Revenue Commissioners would see whether an exemption from FOI might be appropriate. I wish to signal these matters in case I need to bring an amendment on Report Stage, together with the other amendment I have signalled on the multifaceted aspect, and on fees. I am also considering the administrative functions of the Office of the President.

Deputy Stephen S. Donnelly: I ask if the Minister could provide that information in writing as it is quite detailed.

Deputy Brendan Howlin: Yes.

Question put and declared carried.

Schedules 2 to 5, inclusive, agreed to.

Title agreed to.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 87, the following message will be sent to the Dáil:

> The Select Sub-Committee on Public Expenditure and Reform has completed its consideration of the Freedom of Information Bill 2013 and has made amendments thereto.

The select sub-committee adjourned at 9.05 p.m. until 4.30 p.m. on Tuesday, 3 December 2013