



Oifig an Choimisinéara Faisnéise  
Office of the Information Commissioner

**Review Application to the Information Commissioner**  
**Freedom of Information Act 2014 (the FOI Act)**

- Case Number:** 170501
- Applicant:** Mr. James Quigley,
- Public Body:** Houses of the Oireachtas Service ('the Service')
- Issue:** Whether the Service was justified in refusing access to records relating to the Joint Oireachtas Committee on the Future Funding of Domestic Water Services ('the Committee') on the grounds that, by virtue of section 42(k), the FOI Act does not apply to the records sought
- Review:** Conducted in accordance with section 22(2) of the FOI Act by the Information Commissioner by Stephen Rafferty, Senior Investigator, who is authorised by the Information Commissioner to conduct this review
- Decision:** The Senior Investigator affirmed the decision of the Service.
- Right of Appeal:** Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.

## **Background**

On 7 September 2017 the applicant submitted a request to the Service for access to all submissions, records and minutes of all Private Sessions and any information other than was made public through the Oireachtas site, relating to the Joint Oireachtas Committee on the Future Funding of Domestic Water Services ('the Committee'), that took place between 13 December 2016 and 11 April 2017.

The dates for which records were sought coincide with the period during which the Committee undertook its deliberations. In line with its mandate, the Committee concluded its work in April 2017 with the publication of a report into the future funding of water services in the State.

On 18 September, the Service refused the request under section 42(k) of the FOI Act and section 127(1) of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 ('the 2013 Act'). On 27 September, the applicant sought an internal review of the refusal. On 13 October the internal reviewer affirmed the original decision, relying on section 127(1) of the 2013 Act. On 25 October, the applicant sought a review by this Office of the Service's decision.

I have decided to conclude this review by way of a formal binding decision. In conducting this review, I have had regard to the submissions of the parties, and to the provisions of the FOI Act. I have also had regard to the relevant provisions of the 2013 Act as well as the Standing Orders of Dáil and Seanad Éireann.

## **Scope of the Review**

The scope of this review is concerned solely with whether the Service was justified in refusing to release the requested records to the applicant.

## **Preliminary matters**

Section 22(12)(b) of the FOI Act provides that when the Commissioner reviews a decision to refuse a request, there is a presumption that the refusal is not justified unless the public body "shows to the satisfaction of the Commissioner that the decision was justified". Therefore in this case, the onus is on the Service to satisfy the Commissioner that its decision to refuse to grant access to the records at issue was justified.

## **Analysis and Findings**

### **Section 42(k)**

Section 42(k) of the FOI Act provides that the Act does not apply to;

- a record relating to any of the private papers (within the meaning of Article 15.10 of the Constitution) of a member of either House of the Oireachtas, or
- an official document of either or both of such Houses that is required by the rules or standing orders of either or both of such Houses to be treated as confidential.

If records are deemed to fall within the parameters of the section then no right of access exists under the FOI Act. The Service contends that the records are official documents that are rendered confidential by virtue of Standing Orders 133 and 134 of both Dáil and Seanad Éireann.

Article 15.10 of the Constitution provides as follows:

Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

The Standing Orders of Dáil Éireann and Seanad Éireann include orders relating to Official Documents, Private Papers and Confidential Communications. Standing Order 134 of Dáil Éireann is described as having been made "for the purposes of giving effect to Article 15.10 of the Constitution in so far as it provides for the protection of the official documents of the Dáil".

For the purpose of Standing Order 134, official documents are described in Order 134(2) as all documents in the custody of, or belonging to, the Dáil or a Committee of the Dáil, or over which the Dáil or Committee exercises control, and which:

- (a) are or have been prepared for the purposes of, or purposes incidental to, transacting any business of the Dáil or of such a Committee,
- (b) are or have been created by or pursuant to these Standing Orders, or to an Order or direction of the Dáil or of such a Committee,
- (c) are or have been given in evidence to the Dáil or to such a Committee, or
- (d) are or have been presented or submitted to the Dáil or to such a Committee:

unless the document has been, or is presently to be, laid before the Dáil or has been, or is presently to be, otherwise lawfully placed in the public domain.

Schedule 1 of the Standing Orders describes a wide range of documents that are captured by parts (a) and (b) of Order 134(2), including the following:

- (c) Working papers of the Dáil or any of its Committees.
- (d) The following documents in respect of Dáil Committee meetings—
  - (i) agendas,
  - (ii) briefings,
  - (iii) minutes, and
  - (iv) transcripts.
- (g) Opinions, advice, recommendations, or the results of consultations, considered by the Dáil or a Committee of the Dáil, or prepared for that consideration.
- (o) Drafts not intended for publication of official documents.

(p) In respect of a document falling outside Standing Order 134(2) solely because it is in the public domain or has been laid before the Dáil or is presently to be published or so laid, drafts not intended for publication or not intended to be so laid.

Standing Order 133(4) provides that a document which is an official document for the purposes of Standing Order 134 must be treated as confidential, and is required by the Standing Orders to be kept confidential.

Standing Order 134(9) provides that "This Standing Order's protection extends to documents in the custody of, or belonging to, both Houses of the Oireachtas or a Joint Committee, or over which both Houses or a Joint Committee exercise control, provided that the terms of this Standing Order affording that protection have a counterpart in the Standing Orders of the Seanad'.

The Standing Orders of Seanad Éireann contain similar provisions covering official documents relating to Seanad Éireann.

The Joint Oireachtas Committee on the Future Funding of Domestic Water Services was created on 24 November 2016 by a motion of Dáil Éireann. Under its terms of appointment, it is described as 'a Special Committee ... appointed, to be joined with a Special Committee to be appointed by Seanad Éireann, to form the joint Committee on the Future Funding of Domestic Water Services'. I am therefore satisfied that the Committee is a committee of both Dáil and Seanad Éireann within the meaning of the relevant Standing Orders of both Houses.

Having regard to the Standing Orders as described above, I find that the records sought by the applicant are official documents under the Standing Orders of both Houses of the Oireachtas which are required to be treated as confidential.

I find, therefore, that all of the records sought fall within the parameters of section 42(k) and that the FOI Act does not, therefore, apply to those records.

As I have found that the FOI Act does not apply to the records sought, I do not consider it necessary to consider whether any other legislative provisions apply to justify the Service's decision to refuse the applicant's request.

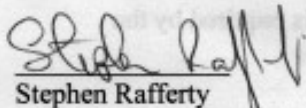
### **Decision**

Having carried out a review under section 34(2) of the Act, I hereby affirm the Service's decision. I find it was justified in refusing access to the records sought relating to the Joint Oireachtas Committee on the Future Funding of Domestic Water Services on the ground that, by virtue of section 42(k), the FOI Act does not apply to the records.

### **Right of Appeal**

Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a

party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.



Stephen Rafferty  
Senior Investigator  
5 December 2017

#### Decision

Having carried out a review under section 34(2) of the Act, I hereby affirm the Service's decision. I find it was justified in refusing access to the records sought relating to the Joint Ombudsman Committee on the Future Funding of Domestic Water Services on the ground that, by virtue of section 43(k), the FOI Act does not apply to the records.

#### Right of Appeal

Section 34 of the FOI Act sets out detailed provisions for an appeal to the High Court by a