



FREEDOM OF INFORMATION ACT (1997) Amendment Bill 2003

A Guide for Staff

AN INFORMATION GUIDE FOR THE
INSTITUTE OF TECHNOLOGY, SLIGO

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What is the Freedom of Information Act?

The Freedom of Information Act 1997 Amendment Bill 2003 provides that from 21st April 1998, every person has the following legal rights:

- access official records held by Government Departments or other public bodies listed in the Act
- have personal information held on them corrected or updated where such information is incomplete, incorrect or misleading
- be given reasons for decisions taken by public bodies that affect them

These rights mean that from 21st April 1998, people can seek access to personal information held on them no matter when the information was created and to other records created after 21st April 1998.

The Act makes reference to the following terms, within the act these are

“Head” - means head of public body

At the Institute the Director is the “Head”

“DM” - means decision makers

“Internal Reviewers” - review decision made by decision makers

Full details on the above are on (page 8).

What are the Main Objectives of the Act?

The main objective of the Freedom of Information Act, 1997/2003 is to foster and develop a culture of openness, transparency and accountability in public bodies.

The Act asserts the right of members of the public to obtain access to official information to the greatest extent possible, consistent with the public interest and the right to privacy of individuals.

It also establishes three new statutory rights:

- The right to obtain information held by the Institute
- The right to have official information relating to oneself amended where it is inaccurate, incomplete or misleading
- The right to obtain reasons for decisions made by Management directly affecting to oneself

This applies to Institute staff as well as the general public

When did the Freedom of Information Act (F.O.I. Act) come into force?

The Freedom of Information Act came into effect on 21st April 1998. This Act gives you the right to access records held by Government departments and certain public bodies. The FOI Act became effective in the Institute of Technology Sligo on 1st October 2001.

What kind of Information can be accessed?

Any official information held by public bodies can be sought under the Act.

Information Routinely Available

The Institute routinely makes information available to the public through various channels. This will continue.

Freedom of Information provides an additional source of information by facilitating access to records not routinely available. This is important. If the information is made available to the public through other means, its supply to an individual is not covered by the Freedom of Information Act. Thus we should publish through other means as much information as possible and reduce the number of requests through Freedom of Information legislation.

The primary sources of information are:

- Full-Time Prospectus
- Continuing Education Prospectus
- Student Information Handbook
- Annual Report

Personnel Files

The Institute's policy, since the establishment of the Human Resources Department, is to facilitate access to personnel records directly.

The Institute will accommodate any requests for information. Access will be provided, by allowing inspection of the original record or by arrangement and consistent with the need to protect privacy and the public interest.

Staff should apply in writing to the Human Resources Department.

Any, information of a personal nature is only available to the person it concerns.

Under Freedom of Information Section 6 of the Act staff are entitled to seek access to their personnel records, created on or after 21st October, 1995 (i.e. up to three years prior to the commencement of the Act).

An earlier record can be accessed if it is being used, or proposed to be used, in a way which adversely affects the staff member.

In general, no one else has the right of access to your personal records unless you give your consent in writing. Anyone who makes a request for records is asked for proof of identity.

What is a record?

According to the Act, a record can include:

- Paper records: books, files, letters, loose papers, diaries, post-it notes and computer print-outs.
- Electromagnetic records – disks, servers, databases.
- Audio-visual records – films, tapes, videos, CDs,
- Photographs – maps, plans, X-Rays, microfiche, microfilm.
- Voicemail is a record
- If a piece of artwork has been paid for by public money it is a record

Under the Act, a record includes any memorandum, text or other document, any photograph, film or recording, or any form in which data are held (whether manual, mechanical or electronic), and anything that is a part, or a copy, or a combination of the foregoing. Your personal notes scribbled on a page form a record, even yellow post-it stickers could count as a record, and all copies, in any form of a record shall be deemed, for the purposes of this Act, to have been created at the same time as the record. If a document has been photocopied, only one record exists. However, if additions/amendments have been made to a copy, another record may exist.

Correction of typographical errors, factual mistakes and mere rephrasing do not necessitate holding previous editions of a document. This does not constitute destruction or alteration of a record. However, draft editions of a document (e.g. of a policy) are records. They document the decision making process and, under the Act, a member of the public is entitled to this information.

All e-mails are Institute records not private records. They can be retrieved in collection of records for scheduling by a Decision Maker.

Information exempt under the Act?

In certain circumstances it will be necessary to exempt from release, certain types of information. These are set out in detail in the Act (*Section 46*). Some key exemptions are:-

- Personal information (other than information in relation to the person making the request) (*S.28*).
- Information supplied in confidence (*S.26*).
- Deliberations of Public Bodies (records being considered in the process of the Board arriving at a decision) (*S.20*)
- Records affecting the functions and negotiations of the Public Bodies (*S.21*).
- Information that has already been published and is available from the Institute.
- Commercially sensitive information (*S. 27*).

The Institute will seek to protect the privacy of individuals and information supplied in confidence, but in certain, exceptional circumstances it may be in the public interest to release such information.

Where the Director decides to disclose information obtained in confidence, on public interest grounds, there is an obligation on the head, under *S. 29*, to carry out a process of consultation. This consultation or 'reverse FOI mechanism' is aimed at giving people likely to be affected by FOI disclosures the opportunity to have an input into the decision of whether to release the information. The notice must be in writing and the person concerned has 3 weeks within which to make a submission in relation to the request. The Head is obliged to consider such submissions before deciding whether to grant the request. The outcome of the consultation process must be decided within two weeks of receipt of submissions or, if no submissions are received, within two weeks of the expiry of the three-week deadline for the making of submissions.

Where disclosure is necessary to avoid danger to life or health. For example, psychiatric records which reveal that a patient has a mental condition, which makes him a danger to others, or in the case of a youth worker or teacher who has been convicted of offences against children.

Service Providers - Are their records covered by the Act?

Under the Act, a record held by a person who is or was providing a service for the public body under a contract for services, shall in so far as it relates to the service, be regarded as being held by the public body.

What records can be sought from bodies under the Act?

The following manual and electronic records may be sought:

- All non-personal records created from commencement date (21 April 1998)
- All personal records irrespective of when created
- Any other records necessary to the understanding of a current record
- All personnel records of staff in public bodies created less than 3 years before commencement. Earlier records may be accessed if they are liable to be used in a way that might adversely affect the interests of the member of staff involved.

Under the FOI Act, some records are exempt from release and some records will be covered by exemptions to enable the Institute refuse access to the information.

The following records are among those exempt or covered by exemptions:

- Submitted (or proposed to be) to the Government for consideration by a Minister or the Attorney General
- Audit by the Comptroller and Auditor General
- Investigation by the Ombudsman
- Relating to the President
- Information received in confidence
- Commercially sensitive information
- Personal Information (requests from third party)

The Act protects sensitive information. Exemptions exist to enable the Institute refuse access to records in certain instances. In many exemptions, the decision has to comply with all (not just 2 out of 3) of the exemption criteria. However, even when exemptions exist, it may be decided that public interest outweighs the reasons not to release the records.

Personal information is, by nature, personal and can therefore only be accessed by the person involved.

All Institute records of a non-personal nature from 21 April 1998 are subject to the Act and (except under very stringent exemptions) the balance will weigh in favour of release of records.

Information will not come within the scope of the FOI Act where it is:

- already publicly available (e.g. Institute's of Technology's prospectus). In discussions with the Department of Finance, they have recommended that as much information/policies/procedures as possible should be made available in the public domain i.e. published on the Institute's website to allow members of the public immediate access to information without the necessity of making a formal request. A non-FOI solution cuts down on everyone's work. Function Heads are consulting with the Webmaster as to the most effective way to proceed in this regard having first satisfied themselves as to which material is appropriate.
- available under another enactment (except the Data Protection Act - requests for personal data may be made under either Act).

Role of Head, Decision Maker and Internal Reviewer

“Head”

The Director is the "Head" and is responsible for the successful implementation of Freedom of Information.

“Decision Maker”

The decision maker (DM) has to ensure that they identify all records relating to an issue, review the request, check for any exemptions, make a decision whether to release records, state reasons for decision and reference exemptions.

- DMs are nominated by the Head
- DMs must be employees of the Institute
- DMs are responsible persons (Heads of Department/Functions)
- DMs cannot take the motive of the requester into account in the decision whether to release records.

The requester can appeal the decision of the Decision Maker. This triggers the **Internal Review**.

The Decision Makers' motto will be "**Why Not?**" "What is your objection to not releasing that information?" Some information may be seen as confidential by a staff member but under the Act it may not be deemed confidential.

“Internal Reviewer”

Internal Reviewers will be at a higher grade than the Decision Makers and from a different School/Function to prevent biased decisions. As the review period is only 3 weeks, a rota of Internal Reviewers will be drawn up to cater for workload and vacation/illness.

List of Decision Makers and Reviewers

Area	Decision Maker 1	Reviewer
<i>Finance</i>	Michael Henahan	John Cosgrove
<i>HR</i>	Tom Reilly	John Cosgrove
<i>Computer Services Estates</i>	Philip McGuinness Ed Millar	Jim Hanley John Cosgrove
<i>Student Services Exams</i>	Padraic Cuffe	Brendan McCormack
<i>Library</i>	Sinead Kelly	Jim Foran
<i>Lifelong Learning</i>	Padraic Cuffe	Brendan McCormack
<i>Engineering</i>	Frank Carter Kevin Savage	Jim Hanley
<i>Business & Humanities</i>	Keith McManus Anne Higgins Pat Scanlon Perry Share	Terry Young
<i>Science</i>	Billy Fitzgerald James Brennan	Jerry Bird

How to make an FOI request?

Requests must be in writing and addressed to the FOI Officer, Institute of Technology, Ash Lane, Sligo.

Alternatively, requests can be made by FAX or e-mail.

The requester must specify that they are requesting the information under the FOI Act. This is necessary to obtain the rights conferred under the FOI act.

The application must be clear enough so that the Institute understands what records are being requested.

Where the Institute is not clear what records are being requested, assistance must be given to enable the requester to put the request in such a way that the records sought can be identified.

The Institute must explain records held to assist the requester to clarify requests.

What is the Response Time?

Under the Act, the Institute is obliged to :

- Acknowledge receipt of the request within two weeks;
- Make a decision on the request within 20 working days (or eight weeks in certain limited circumstances).

If a response is not issued within the specified time limit the request is deemed to have been refused and the requester can proceed to the review stage

If a request is refused, can it be appealed?

Yes. It may be appealed to an Internal Reviewer within four weeks of being notified of the initial decision. The review will be carried out by an official, senior to the person who made the original decision. The review must be completed within three weeks.

If the applicant is unhappy with the review, they have the right to appeal the decision to the Information Commissioner. (*Section 33*). Appeals, in writing, may be made to the Appeals Commissioner at the following address:

Office of the Information Commissioner,
18, Lower Leeson St.,
Dublin 2

There is a right of appeal to the High Court, on a point of law only, in certain circumstances.

Guidelines for Staff who may receive an FOI request

The FOI Office is the processing centre for every request received. Most requests will be posted to the FOI Officer. However, as there are strict timescales enforced by the Act, the following guidelines should be followed if you receive an FOI request.

- Record date and time of receipt on the request
- Write your name beside the date
- Staple the envelope to the request as evidence of post date
- Notify immediately the FOI Officer that you have received the request

As time is of the essence please ensure that this is done without delay.

- If you are contacted by an individual wishing to make a request under FOI, please refer them directly to the FOI Office
- If you receive a request in writing, which cites the FOI Act, please re-direct it immediately to the FOI Office, where it will be processed in accordance with statutory regulations
- If you are not sure about the nature of a request for information, please contact the FOI Office

If your job entails giving out routine information to staff, students and members of the public, continue to do so. FOI is used only to obtain information not routinely available.

Freedom of Information Officer is available to provide assistance and to deal with requests from public

Freedom of Information Officer

A Freedom of Information Officer has been appointed by the Institute to assist individuals in exercising their right to access information.

Enquiries to:

Marian Hargadon
Freedom of Information Officer
Institute of Technology Sligo
SLIGO
Telephone: 071 91 55204 Email: Hargadon.marian@itsligo.ie

Implications for Institute staff

The Act obliges the Institute to **provide assistance** to persons in exercising their rights under the Act and to advise them of the right of appeal at each stage.

The Office of the Information Commissioner recommends - when refusing (or partially refusing) a request, explain in detail - it may save a review of the decision - no need to create work but do need to justify decision.

Burden of Proof lies with the public body why the release of information is not appropriate. The OIC will take the point of view that you made the wrong decision. You have to prove that you were right not to release the records.

Staff **compiling reports** will need to ensure that reports are factual and that only relevant and objective details are recorded and that the names of those attending meetings, etc. are recorded for future information.

Records must be kept accurately, legibly, filed correctly and archived in accordance with good practice, and any record management policy adopted by the Institute

All **decisions** must be in accordance with the Institute's policies/guidelines and notification of such decisions should include reference to the policy/guidelines and be written in clear, precise language.

Impact of FOI on your work:

- Write objectively, support your opinion with facts
- Ensure what you write is relevant to the issue
- Record the context of the report/file note
- Document reasons for decisions generally
- Refer to policies in decision making.
- Manage records better: accurate recording, filing and retrieval.
- Improved standards of documentation, archiving of records.
- Advise people of FOI rights and assist them to exercise their rights.

Record Management and Retention Policy

Other aspects of the act pertain to the record management and retention records.

A Record Management and Retention Policy has been drawn up by the Institute. Our decisions relating to the retention of documents is stated in this policy.

Existing records may not be deleted or amended.

We are entitled to charge the requester per hour for searching for records and per page for photocopying records. However, if we cannot find records because our Record Management System is at fault, we can only charge **for the time it should take** to search for the records.

For further information on FOI please log onto www.foi.gov.ie