



TITHE AN OIREACHTAIS

**An Comhchoiste um Airgeadas, Caiteachas Poiblí
agus Athchóiriú**

**Tuarascáil maidir le héisteachtaí i
ndáil leis an Dreacht-Scéim
Ghinearálta-An Bille um Shaoráil
Faisnéise, 2012**

Meitheamh 2013

HOUSES OF THE OIREACHTAS

**JOINT COMMITTEE ON FINANCE PUBLIC
EXPENDITURE AND REFORM**

**Report on hearings in relation to
the Draft General Scheme
Freedom of Information Bill 2012**

June 2013

31/FPER/015

TABLE OF CONTENTS

Chairman's preface	5
Introduction	9
Observations	11

Appendices

Appendix 1 - Members of the Joint Committee	36
Appendix 2 - Orders of Reference of Joint Committee	37
Appendix 3 – List of Witnesses	40

1. Submissions to the Joint Committee can be accessed on the Oireachtas web site:-

http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/fper-committee/foiamendmentbill2012/

2. Transcripts of the public hearing can be accessed at Oireachtas web site:-

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2013011000002?opendocument> and

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2013020600003?opendocument#D00100> and

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2013020700003?opendocument#B00150> and

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2013032000003?opendocument#C00100>

3. The Draft Heads of General Scheme of the Freedom of Information Bill, 2012 is available on the Department of Public Expenditure and Reform web site:- <http://per.gov.ie/wp-content/uploads/Draft-consolidated-heads-9-Aug-12-21.pdf>

Chairman's Preface

The Minister for Public Expenditure and Reform, Mr. Brendan Howlin announced on the 25th July 2012 the Draft Heads of the General Scheme of the Freedom of Information Bill 2012. This outlined the Government's plans to reform and extend Freedom of Information legislation and also to extend the Ombudsman's jurisdiction to all public bodies.

The Joint Committee engaged in public hearings on 10 January, 6 and 7 February and 20 March 2013 to discuss with the Minister and invited parties their issues of concern. The hearings and submissions made by those attending raised some very important and interesting matters. The Joint Committee acknowledges that the Bill seeks to reform and extend the scope of freedom of information legislation and, therefore, the Joint Committee is not prescriptive in making recommendations which the Joint Committee regards as areas and issues that should be addressed by the Minister in the legislation.

This is a summary of the recommendations of the Joint Committee of Finance, Public Expenditure and Reform after an examination of the Draft General Scheme Freedom of Information Bill 2012 Oireachtas:

- The Joint Committee recommends separate legislation for access to both public and official information held by public bodies as distinct from legislation for 'personal information' held by both public and private bodies. Thereby mirroring the UK where data protection is used for 'personal information' and FOI for access to public and official info held by public bodies.
- The Joint Committee agreed that monopoly semi-state providers should have to comply to the rigours of the FOI, new bodies should have to comply with FOI from day one and commercial semi-states where there are alternative providers should have a limited inclusion.
- The Joint Committee recommends that the legislation should have the power to sanction and fine bodies when they are deemed to be non-

compliant. The Joint Committee favoured fines over the binary restrictions of a criminal charge.

- The Joint Committee endorses the views of the Information Commissioner that Part III of the bill is sufficiently robust to ensure the protection of records where a release would lead to any of the harm that the exemptions seek to protect.
- Following from Mr. Hammond's recommendation, the Joint Committee concurs that a **Public Interest Test** be carried out, but stipulates that any legislation in this regard needs to make decision-makers recognise that this is about public interest with a presumption that openness is better than non-disclosure.
- The Joint Committee recommends the re-establishment of the FOI process users' group.
- The Joint Committee recommends that the legislation addresses inconsistencies in the application of FOI among state bodies and that a subsequent oversight group be established to make recommendations for the training of officers and interpretation of the legislation.
- The Joint Committee recommends that the legislation should include the issue of officials using non-official e-mail addresses to disseminate information and avoid FOI. It also recommends making information available at the earliest possible opportunity, particularly among departmental websites.
- The Joint Committee recommends that the same level of legislative obligation on environmental information be placed in the legislation for FOI.
- The Joint Committee recommends that the legislation should address ethical issues pertaining to the FOI with a code of conduct that ensures that issues like the phone hacking scandal in the UK are not replicated in Ireland. Further, the Joint Committee recommends making a

provision for the right of response in relation to journalists' prerogatives.

- The Joint Committee recommends that any legislation should address the provision of information in machine readable formats.
- The Joint Committee recommends that the legislation should include a requirement to have ongoing training for all FOI officers.
- The Joint Committee recommends that there must be consistency on how decision makers operate within state and public bodies in relation to issues pertaining to the FOI Bill.
- The Joint Committee recommends that the legislation should use the UK model in relation to what is defined as a public authority regarding Public Limited Companies.
- In relation to refugees and asylum seekers, the JC recommends that the legislation should include provisions on how the Reception Integration Agency operates and functions.
- The Joint Committee recommends that a full audit of the various Departments be undertaken so as to eliminate what the Joint Committee regards as un-parliamentary practice.
- The Joint Committee recommends that the legislation should set the legislative basis for a FOI archive.
- The Joint Committee recommends the implementation of a 'review process' so as to avoid the 'big bang' approach of new legislation every five or ten years.
- The Joint Committee recommends clarification on Head 26 as information sent in a letter to a public body from a third party can be considered exempt from the regulations while the same information

received via phone call or noted by a member of a public body cannot attract such protection.

- The Joint Committee recommends that the legislation should establish aims and objectives for transparency.

I would like to express thanks to everyone who took part in this consultative process and look forward to further engagement with the Minister as the Bill progresses through the Houses.

I would like to express my appreciation to the Members of the Joint Committee, the Clerk, Mr. Ronan Lenihan and the Committee Secretariat Staff, Mr. Eoin Hartnett and Ms. Lorraine West for their commitment and dedication. I hope this work will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



Ciaran Lynch T.D.

Chairman

June 2013

Introduction

This Report forms part of the initial stages of a wider legislative process. The Joint Committee considers that information given in isolation is worse than useless because it encourages complacency and the misapprehension that we are being transparent. Freedom of Information is about culture. Opening up is as much about linking data as it is about publishing more data. Government and public bodies possess enormous amounts of data. The challenge is about linking the data so as to make it more useful, allowing policy makers, those who invigilate policy makers and legislators to draw the correct conclusions. This Report does not purport to be, and should not be construed as being, a definitive statement of all the issues pertaining to the subject matter of the Bill/Act in question.

The Joint Committee engaged in public hearings on 10 January, 6 and 7 February and 20 March 2013 to discuss with the Minister and invited parties' issues of concern. The hearings and submissions made by those attending raised some very important and interesting matters. And they can be accessed at the Oireachtas web site –

http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/per-committee/foiamendmentbill2012/

The Draft Heads of the General Scheme of the Freedom of Information Bill 2012 is available on the Department of Public Expenditure and Reform web site - <http://per.gov.ie/wp-content/uploads/Draft-consolidated-heads-9-Aug-12-21.pdf>

The Joint Committee acknowledges that the Bill seeks to reform and extend the scope of freedom of information legislation and, therefore, the Joint Committee is not prescriptive in making recommendations in areas which the Joint Committee regards as areas and issues that should be addressed by the Minister in the legislation.

The Joint Committee wishes to express its thanks to all those who participated in this process and valued the opportunity to engage with interested parties.

Observations

1. General

A. *GENEALOGY - 'PERSONAL INFORMATION ON INDIVIDUAL CITIZENS HELD BY THE STATE' OR 'PUBLIC INFORMATION HELD ON INDIVIDUAL CITIZENS BY THE STATE'*

The Joint Committee, given the 'Gathering' and the growing desire among those wishing to research their Irish heritage, notes that access to genealogical records is an important issue. The Joint Committee considers that the Freedom of Information legislation should be expanded to include the records of the General Register Office. The legislation should be specific in regarding these records as 'public information held on individual citizens by the State' as this should ensure public access and allow genealogical research.

The Joint Committee is concerned that, without this, genealogical records could or would be classified as 'personal information on individual citizens held by the State' and, therefore, there could result the unintended consequence of narrowing, rather than broadening, access for genealogical research. Access in those circumstances could require any requestor for information to establish a personal familial link with the individual recorded in order to have access to the information.

The Joint Committee does not wish to be prescriptive in regard to the inclusion of genealogical research under the Act as the Joint Committee notes that this would require a definition of 'genealogy'; for example, would 'genealogy' be the study of any family or individual whether related to the researcher or not; or could 'genealogy' be interpreted as 'one researching ones own ancestry' - the latter would have a very negative impact on public accessibility to such records.

Therefore, given the above concerns the Joint Committee consider it appropriate to seek the inclusion, in the legislation, of the following as a guiding principle by which record holders (State and State Agencies) would give public access to records with a genealogical potential by the inclusion of a Section that states that the legislation endorses and fully supports the *Principle of Public Ownership and Right of Access to our*

genealogical heritage' - this will allow Statutory Instruments and Departmental Guidelines to take cognisance of this Principle when assessing public accessibility to records with a genealogical potential.

The Joint Committee note that such a principle may have no implications for copyright as the Joint Committee's understanding is that copyright, as such, does not exist in respect of Parish Registers.

B. *THE NEED FOR TWO SEPARATE ACTS*

Mr. Ed Hammond, Centre for Public Scrutiny (Britain) advised the Joint Committee that *"There are two separate regimes in the UK, covered by separate Acts - one for official information and one for personal information."*

The Joint Committee notes that in the UK the Freedom of Information Act; the Environmental Information Regulations and the INSPIRE Regulations give rights to access official information. The Environmental Information Regulations give specific rights to obtain environmental information, and the INSPIRE Regulations give the right to view spatial or geographic information. Under the Freedom of Information Act and the Environmental Information Regulations a citizen has a right to request any recorded information held by a public authority, such as a government department, local council or state school. Under the UK legislation *"You don't have to know whether the information you want is covered by the Environmental Information Regulations or the Freedom of Information Act. When you make a request, it is for the public authority to decide which law they need to follow."*¹

In regard to personal information; in the UK a person has the right to get a copy of the information that is held about them. This is known as a subject access request. This right of subject access means a person can make a request *"...under the Data Protection Act to any organisation processing your personal data. The Act calls these organisations 'data*

¹ Seen at http://ico.org.uk/for_the_public/official_information

*controllers’.*² A person can ask the organisation they think is holding, using or sharing the personal information they want, to supply them with copies of both paper and computer records and related information.

Noting the foregoing and the views of the Minister when he appeared before the Joint Committee and advised the members that "... *On fees, the bulk of applications are for personal information in respect of which no fees accrue. Some 70% of all applications fall into that category. As such, only 30% of freedom of information requests accrue a fee...*" the Joint Committee is of the very strong opinion that the Minister should move to legislate separately for 'personal information' held by both public and private bodies and how the individual citizen can access 'personal information' held and their right to access such information and the need to legislate separately for access to both public and official information held by public bodies.

The Joint Committee recommends that the Minister should move to introduce 2 separate pieces of legislation 1) for access to both public and official information held by public bodies and 2) legislation for 'personal information' held by public and private bodies. This mirrors the UK, which uses Data Protection legislation for access to 'personal information' and Freedom of Information legislation for access to both public and official information held by public bodies.

C. *PROFESSIONAL SECRECY PROVISIONS (AS INSERTED AND AMENDED IN VARIOUS ACTS) SINCE THE PASSING OF THE CENTRAL BANK ACT 1942.*

The Joint Committee received correspondence in regard to the Professional Secrecy Provisions (as inserted and amended in various Acts) since the passing of the Central Bank Act 1942. The Committee understand from the correspondent that a complaint was made in regard to dealings (unspecified) with a Bank. The Joint Committee understand from the correspondent that they were advised that due to the professional secrecy provisions of the Central Bank Act, 1942 the Central Bank cannot disclose to a complainant whether a matter has been

² Seen at http://ico.org.uk/for_the_public/personal_information

investigated or the outcome of any such an investigation. The Joint Committee understand that the Financial Regulator, Mr. Matthew Elderfield, has now committed to publish such settlements.

The Joint Committee, not knowing the full nature of the dispute, note that it is difficult to be definitive in regard to the relevance of the issue raised to Freedom of Information legislation and it could, probably, be more germane to Data Protection; the Financial Ombudsman's or Central Bank legislation. Notwithstanding this, the Joint Committee considers that Head 46 and the professional secrecy provisions must be examined and updated as a matter of urgency with the provision being that the Freedom of Information legislation will apply to the Central Bank of Ireland other than in relation to records which are subject to professional secrecy obligations under ECSB Statute or EU Financial Services Directives, as set out in the explanatory note to Head 46. Accordingly, if the matter is not proper to, or cannot be addressed within the context of Head 46 of the General Scheme on the Freedom of Information legislation, it should be addressed in a revision of the legislation that governs the Central Bank, the Financial Regulator or the Financial Ombudsman.

Further, in regard to the Office of the Financial Ombudsman and the Office of the Data Protection Commissioner, the Joint Committee would be concerned that these offices are fully included under the Freedom of Information Legislation and in that regard, notes that the Office of the Ombudsman, the Office of the Ombudsman for the Defence Forces, the office of the Ombudsman for Children, the Office of the Pensions Ombudsman and the Office of the Legal Services Ombudsman are encompassed within the draft General Scheme and there would appear to be no reason, subject to any legislative provisions, to have, as a minimum, the operation and administration of these offices included within the scope of Freedom of Information; quis custodiet ipsos custodies.

D. *REVIEW OF NON-DISCLOSURE PROVISIONS (SECTION 32) OF THE FREEDOM OF INFORMATION ACT 1997.*

The Joint Committee, at its meeting of 5 June 2013, with the Information Commissioner considered the Third Report of Review of Non-Disclosure Provisions (Section 32) of the Freedom of Information Act 1997. The considerations of the Joint Committee in regard to the Section 32 provisions will be published in a report, however, notwithstanding this members do regard that an overall 'cultural' issue has arisen in regard to Freedom of Information. The 'culture' is one where, post the enactment of the Freedom of Information Legislation subsequent primary legislation is making more and more use of provisions whereby *de facto* the result is legislating for the exclusion of Freedom of Information.

It is the considered view of the Joint Committee that the Minister should address this by the insertion of a provision that requires any future primary legislation that is proposing the non-application of a provision or provisions of the Freedom of Information, to have the Minister lay before the Houses of the Oireachtas a report detailing the reasons why, in the Minister's opinion, the provisions of the Freedom of Information legislation are not sufficient to afford the protections required and why the legislative provisions proposed by the Minister can only be achieved by the additional protection of an exclusion from the provisions of Freedom of Information legislation.

Further, the Joint Committee notes in the Information Commissioner's report: "*Third Report of the Information Commissioner to the Joint Committee on Finance, Public Expenditure and Reform for the purpose of Review of Non-Disclosure Provisions in accordance with The Freedom of Information Act, 1997 [section 32]*" - May 2013, that the Commissioner's report was structured as follows;

1. Where a Department recommends that a non-disclosure provision be added to the Third Schedule, my commentary will not generally deal with that matter where I agree with the recommendation.
2. Where a Department recommends that a non-disclosure provision, not already included in the Third Schedule, should remain outside

the Schedule, I will not generally comment further where I agree with that recommendation. Where I disagree with such a recommendation, my commentary will set out the grounds on which I recommend that the provision be included in the Third Schedule.

Therefore, generally, in approximately 50 % of cases where a Department recommends that a non-disclosure provision, not already included in the Third Schedule, should remain outside the Schedule the Information Commissioner disagreed with this recommendation. The Joint Committee recommends that the Minister should undertake a full review in each instance where in the Information Commissioner's report the Information Commission disagreed with the Department and that the Minister in each case should affirm or not that the non-disclosure provision be added to the Third Schedule.

E. *CENTRAL BANK: CONSUMER PROTECTION CODE 2006; PROPERTY VALUATIONS AND CONFLICT OF INTEREST.*

As with C above, the Joint Committee received correspondence in regard to a person who, in dealings with a Central Bank, raised the Consumer Protection Code 2006; property valuations and conflict of interest. The Joint Committee, not knowing the full nature of the dispute, note that it is difficult to be definitive in regard to the relevance of the issue raised to Freedom of Information legislation and it could, probably, be more germane to the Financial Ombudsman's or Central Bank legislation. Notwithstanding this, the Joint Committee considers that an extension of the Freedom of Information to include the Central Bank Of Ireland provisions must be to the greatest extent possible and that where a conflict of interest occurs or where non-compliance with the Consumer Protect Code arises there should be provision made to release this information to fullest extent. Accordingly, if the matter is not proper to, or cannot be addressed within the context of the General Scheme on the Freedom of Information legislation, it should be addressed in a revision of the legislation that governs the Central Bank, the Financial Regulator or the Financial Ombudsman.

2. Main points as raised at the public hearings and submissions received and which the Joint Committee considers should be addressed in the legislation.

Topic/Issue to be addressed	Comments of the Joint Committee
<p>Non-public bodies falling under the remit of the legislation - for example, NGOs that receive the majority or a portion of their funding from the State's coffers.</p>	<p>The Minister was most specific in seeking the views of the Committee: <i>"I do not have a fixed view of what constitutes a substantial public contribution to bring a voluntary or other group within the remit of the freedom of information legislation. I am interested in the view of the committee on it and if it may be something the committee could debate. Should 50%, greater than 50% or 80% of an organisation's funding come from the public purse before the organisation comes within the remit of freedom of information? Should it be calculated over a period of time? If a sports club receives a substantial capital grant, I am not minded that it could be suddenly subject to freedom of information legislation. The natural course of events means that when a significant portion of an organisation's running costs, whatever proportion we determine, comes from the public purse, the organisation should be subject to freedom of information legislation."</i>³</p> <p>The Joint Committee considers that this issue is one that should be addressed by two separate pieces of legislation as noted in 1.B. above where the Joint Committee recommends that the Minister should move to provide separate legislation 1) for access to both public and official information held by public bodies and 2) legislation for 'personal information' held by public and private bodies. This, in the view of the Joint Committee, obviates then the need to prescribe what constitutes 'public funding' and moves the emphasis to where it should be; that a member of the public has the right to access 'personal information' held by a body whether public or private, part or fully funded by the state.</p>
<p>Commercial semi-state bodies being excluded from the FoI legislation</p>	<p>This was an area that on closer examination raised further issues, as follows;</p> <ol style="list-style-type: none"> 1. Monopoly Commercial semi-state bodies should be included; 2. Other Commercial semi-state bodies where there are alternative providers should have a limited inclusion 3. In respect of new bodies, it should be stated in the legislation that every new legal entity set up is subject to FOI from day one – it is the opinion of the Joint Committee that if this was forced on a new body from day one, they would get it right

³ Seen at

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/\(\\$vLookupByConst ructedKey\)/committees~20130110~FIJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/($vLookupByConst ructedKey)/committees~20130110~FIJ/$File/Daily%20Book%20Unrevised.pdf?openelement)

	from day one.
Commercial sensitivity	<p>Members noted that certain semi-State commercial organisations operate in a fully competitive market and should, therefore, not be put at a commercial disadvantage. However, there is no arguable case for commercial disadvantage in the case of a monopoly. Members noted several examples of how information was refused on grounds of 'commercial sensitivity', as follows;</p> <ol style="list-style-type: none"> 1. How Bus Éireann, for example, refused to give passenger numbers. 2. The public are not privy to the contents of the contract for a pay parking scheme. 3. Significant amounts of money are being put into projects and because we are in a partnership with some private entity all information is blocked out because it is commercially sensitive. 4. There can be full transparency in contracting. As a matter of course public bodies should publish contract-monitoring information. Control of management accountability for decisions reached requires that those at the top of public bodies should account for the effective delivery by contractors and state bodies of public-private partnerships
Fees	<p>This caused the greatest amount of debate and raised a series of issues, as follows;</p> <ol style="list-style-type: none"> 1. Examine a registered user fee. This can be renewed each year. 2. Retrieval fees - The Minister could address the issue of retrieval fees by way of putting in place a maximum fee, say, €100, €200, €300 – members believed <i>"that the fees being charged by some Departments are an abuse of the current system"</i>. 3. The Minister advised the members that the cost burden, the management and the levying of fees charged is a fraction of the real cost. Members made the point that if the Minister is to make an informed judgment on fees, a central piece of information would be to know the administrative burden of the fees process because there is a cost involved. If the cost of processing the application fee is far greater than the value of the fee, it actually is a net cost to the Irish taxpayer to have that fee in place to start with. 4. Vexatious requests – it was pointed out to the Joint Committee that there are only two reasons for fees, the first of which is to deal with vexatious requests. Section 10 of the legislation already deals with that by allowing that a request will not be answered because it is vexatious. The Joint Committee note that the issue is understanding what makes a vexatious request vexatious. It should not be conflating a vexatious request with one that is a little difficult, annoying, embarrassing or persistent. For example, one

	<p>cannot have a vexatious requester.</p> <p>5. The principle of having no fees was in the original legislation. It is important to re-establish in the view of members as it is a psychological matter for the citizen to know that there is no fee to find out about open government.</p> <p>6. Retrieval costs – as opposed to retrieval fees. Members were sceptical that the level of retrieval costs indicated for freedom of information requests are the actual costs of retrieval. Members also noted that requestors should not have to pay for an inefficiently held record in a search and retrieval process. If records are held efficiently it should not be that hard to get them. Search and retrieval fees reinforce the notion that accessing information is a privilege rather than a right.</p> <p>7. The manner in which records are maintained in the public sector. Members noted how retrieval costs and the difficulty in retrieving information is due to the failure to keep good records, particularly in local authorities. It would make a significant difference if all public sector bodies maintained information in a more transparent and accountable manner.</p> <p>8. Electronic submission and payment. If the legislation is to retain the payment of fees it is the view of members that with the ever greater move to electronic banking the legislation should make provision for electronic submission and payment.</p>
Enforcement powers	The members note that the draft General Scheme does not make mention in a meaningful way as to the enforcement powers the Minister envisages for the Commissioner? The Joint Committee considers that they should have the power to sanction and fine bodies which they deem to be non-compliant.
Enforcement and criminal charges	The Joint Committee considered that the enforcement and criminal charges contained in the Draft General Scheme are too binary in terms of enforcement. The members suggest that a criminal charge would be a rather heavy instrument. Perhaps a small fine to bring the body back in line would be preferable so that a softer option is available to the Information Commissioner
Garda Síochána	The Joint Committee concur with the Information Commissioner, Ms. O'Reilly, when she advised the members: <i>"While I am very conscious of the need to protect sensitive information in the areas of security and intelligence, I have expressed my concerns in my written response to the committee as to the overly restrictive nature of the protections afforded to the records of the Garda Síochána. The definition of what constitutes "a record concerning general administration" goes so far as to exclude records which, in any other circumstance, would clearly be accepted as concerning general administration. For example, records relating to accommodation matters do not appear to be captured by the definition proposed. I also note with some concern that it is</i>

	<p><i>proposed that my powers under section 37 to enter the premises of a public body and require the production of relevant records are to be restricted in relation to the Garda Síochána, particularly given that the Act will apply to records concerning general administration only. I have previously expressed my views that the exemptions contained in Part III of the Act are sufficiently robust to ensure the protection of records where release would be likely to give rise to any of the harms which the exemptions seek to protect. As such, I question the need to restrict the application of the Act to the extent suggested for the Garda Síochána. In my opinion, if it is accepted that the exemptions contained in Part III are sufficiently robust to ensure the protection of records where release would be likely to give rise to any of the harms which the exemptions seek to protect, a strong case can be made for full application of the Act to all relevant bodies, including those where partial access only is now proposed."</i></p> <p>In addition to the views of the Information Commissioner the Joint Committee note, in very sanguine terms, that perusal of the An Garda Síochána web site will give details as to where safety cameras are located, this is an operational matter but public information is available which would be not covered under the Draft General Scheme as "a record concerning general administration". Therefore, there is now currently more information available on the Garda website than would be the case if the proposed legislation were enacted.</p> <p>The Joint Committee endorse the views of the Information Commissioner and agree with the Information Commissioner that exemptions contained in Part III are sufficiently robust to ensure the protection of records where release would be likely to give rise to any of the harms which the exemptions seek to protect.</p>
<p>Extending FoI to all new bodies and existing exceptions</p>	<p>The Joint Committee considers that Mr. Hammond was correct in regard to the extension of FoI to all new bodies and removing existing exceptions. The Joint Committee considers that the 'kernel of the issues' is that there should be two principal forms of exception under the Freedom of Information Act, as follows;</p> <ol style="list-style-type: none"> 1. There must be absolute exceptions for national security and 2. There are also qualified exceptions whereby a public body must carry out a Public Interest Test to establish whether information should be released when it could be covered by a qualified exception. <p>The Joint Committee note that there has been much debate about that public interest test and, therefore, recommends that the public interest test should be interpreted broadly. The legislation must make decision makers recognise that this is about public interest with a presumption that openness is better than non-disclosure, rather than public interest being</p>

	the same as what is the interest of the organisation itself.
Legal protection for information issued on foot of correspondence should be the same as for information released through the freedom of information process	The Joint Committee notes that there is legal protection for information issued through the freedom of information process but there may not be the same legal protection if the issue is raised by means of correspondence.
Users' group	<p>Mr. Dooley, NUJ, advised members that as part of the 1997 act <i>"...two groups were established. One was a business advisory group, which would be useful in terms of dealing with issues of confidentiality. It comprised nominees of IBEC and the Department of Finance and regularly monitored the implementation of the original Act. An informal red light system was used when issues of business sensitivity arose. The group I was a member of, and might still be a member of because I have not been abolished, included representatives of citizens' information and community groups and through that body we discovered that members were using the Act in an inefficient manner. As a result of that the Regional Newspapers of Ireland and the NUJ jointly organised training and representatives of the Department of Finance information unit came along and provided the training, which was very useful. It is basically an informal advisory group. We only met for three or four years."</i></p> <p>The Joint Committee recommends that users groups be re-established.</p>
Variations and inconsistencies in responses by public bodies - the inconsistency and arbitrary nature of decisions	<p>The Joint Committee was advised by Mr. Colm Ó'Mongáin that <i>"...In dealing with different public bodies, there can be a difference. We could submit the same freedom of information request to two related public bodies, such as a Government Department and an agency under it, and we could get back two very different bodies of documents with different approaches to the redaction of figures."</i> Mr. Ken Foxe advised that: <i>"For me this is one of the major issues with the legislation that has not been dealt with, along with cost - the inconsistency and arbitrary nature of decisions. ... This extension of legislation to other bodies gives a perception the current operation of FOI within existing bodies is satisfactory and this is anything but the case. Any journalist who has ever dealt with the Department of Justice and Equality or the Health Service Executive knows this is not the case because deadlines are repeatedly missed, arbitrary decisions are made or information is released up to a year after the original request. ... A very important aspect of the legislation that already exists but that has not been highlighted is oversight of the FOI system so decisions are looked at by another body. This is a better mechanism for appealing and State bodies and organisations that repeatedly fail to deal with FOI queries satisfactorily would be investigated."</i></p>

	<p>The Joint Committee notes that there is inadequate training for officials dealing with freedom of information requests and there are very clear demonstrable inconsistencies within and across Departments in terms of interpretation of the Act. This leads to huge anomalies, which is very cynically illustrated in the inconsistency of how fees are applied. The Joint Committee recommends the following;</p> <ol style="list-style-type: none"> 1. that the legislation address inconsistencies in the application of FoI among state bodies 2. that a review group be established or a users group be charged with the role of oversight as to the application of FoI and this group be empowered to make recommendations for training of officers and interpretation of the legislation.
<p>Inclusion of the Office of the President of Ireland.</p>	<p>The original Act excluded the Office of the President of Ireland. The Joint Committee considers that is no justification as to why FoI should not be extended to the President to cover areas such as invitations received with exemptions for meetings of the Council of State which could be excluded.</p>
<p>Culture change</p> <ol style="list-style-type: none"> 1. making information available at the earliest opportunity, particularly using the departmental websites, 2. the making available of such information becomes routine, and therefore no FOI request is needed. 	<p>The Joint Committee was advised that <i>"...A big issue with the 2003 amendment to the Act is that not only was it an attempt to shut down the operation of large aspects of the freedom of information legislation, but it also led to this culture of redaction and rejection of information. I will give a couple of practical examples. On the issue of delays, for example, I made a freedom of information request to the HSE regarding the treatment of separated children seeking asylum. These were particularly vulnerable children who were in unregulated hostels, were disappearing and about the welfare of whom there were major concerns. That freedom of information request took three and a half years to be processed by the HSE. The information was only released after the Government had actually changed the practice and shut down such hostels. Consequently, one gets the sense that in many cases, the information was being delayed until they had political cover for the decision they had made."</i></p> <p>The Joint Committee was further advised that <i>"...The connection with freedom of information is that we seem to have a blanket culture of secrecy. ... One could ask how we change the mindset and culture. It is not a war of attrition between the media and the Seanad or Dáil Éireann. This is a public policy issue. The public and democracy benefit when there is an open culture. ...</i></p> <p><i>: "... It is a serious issue. A culture has set in whereby officials try to avoid taking notes where possible. Post-it notes are made but they are not officially on a document and they can be removed when the official documents are released which means we do not necessarily see the advice that is being given to a Minister by a civil servant.</i></p> <p>Further, the Joint Committee was advised that <i>"...</i></p>

	<p><i>Increasingly, there is evidence of the use of private e-mail accounts being used, which are not subject to FOI rather than official e-mail accounts. One suggestion is that there would be a legislative obligation on public officials to use official e-mail accounts or to commit everything to paper.</i></p> <p><i>In relation to the UK the Joint Committee was advised "In the United Kingdom the Information Commissioner has ruled that if a public official is using a private Hotmail or other e-mail account for official purposes that it is still subject to FOI. That is something we should examine if officials are trying to circumvent the legislation by using Hotmail or Gmail for an official purpose. The Information Commissioner could decide that the documents should be subject to FOI".</i></p> <p><i>Mr. Hammond: "The central point that I want to highlight from the research is the importance of culture, behaviour and values in making transparency work. Consideration of freedom of information in England focuses mainly on response rates and the amount of time and resources involved in responding to FOI requests, because they are free, as are data protection requests. ... Consequently, many have viewed FOI as a compliance issue in respect of timescales, without thinking about why FOI and transparency are important. I am trying to get to the bottom of the culture of transparency, encouraging the idea that we should be publishing more information because by doing so we achieve some of the objectives ... By making the information fuller we make it more useful and effective. People need to recognise the value they can bring to decision-making more generally. That cultural and attitudinal aspect of transparency is often forgotten."</i></p> <p>The Joint Committee recommends that the legislation should include the issue of officials using a non-official e-mail address to disseminate information and avoid FoI. Further, the Joint Committee recommends making information available at the earliest opportunity, particularly using the departmental websites because when the making available of such information becomes routine there will, therefore, be fewer if no FOI requests needed.</p>
<p>Definition of record and access to information on the environment</p>	<p>The Joint Committee noted that <i>"...the definition of record in the section of the proposed Bill which deals with the environment is much looser than that contained in the Freedom of Information Act."</i> The Joint Committee recommends that consistency be applied and the same level of legislative obligation be placed in the legislation for FoI and environmental information.</p>
<p>Difficulties parliamentarians have when they table parliamentary questions</p>	<p>The Chairman noted <i>"One of the difficulties we as parliamentarians have is that when we table parliamentary questions we get very much the same responses as the witnesses would get on foot of</i></p>

	<p><i>freedom of information requests. It is a source of shared frustration. In deliberating on what is the difference between a parliamentary question and a freedom of information request, I would say it is none other than that the former would be on the record of the House. ... I have heard the mental reservation response been used to such requests. Whenever I hear that type of response it reminds me of Peter Sellers in the sketch "Does your dog bite" where he said, "No, my dog does not bite". Eventually the man walked up to the counter and dog bit him and he said, "I thought you said your dog does not bite" to which he replied, "That is not my dog". The mental reservation response is different from deliberate obfuscation, deliberate hiding or deliberately removing files or destroying them knowing that a request for the information will be submitted. If such practices were to be found out, there are sanctions and penalties to be applied. ... I refer to where the questioner would know the intent of the question and even though it does not fall specifically within the remit, they would deliberately avoid giving a response to it."</i></p> <p>The Joint Committee considers that the 'mental reservation' approach/response needs to be considered within the proposed legislation.</p>
<p>The commercial nature of FOI requests</p>	<p>The Joint Committee note that the media avail of freedom of information requests because they are in a competitive economic environment. Freedom of information requests are often a vehicle by which newspapers make money. There is a commercial aspect for the media. These are privately-owned companies that compete with one another. That is not to say that there should not be more information available but is there any acknowledgement of the commercial aspect of the Freedom of Information Act and how the media engages with it</p> <p>The Joint Committee considers that following the recent phone hacking scandal in Britain, by certain newspapers seeking exclusives or scoops, there is a paradox in play because if information was more open, the sorts of exclusives newspapers get through FOI requests would diminish. The Joint Committee is concerned as to what ethics should apply to freedom of information and the need for a code of conduct and recommends that the legislation should address this.</p>
<p>Impose a responsibility on the press that when FoI information naming individuals is published, the individuals should be given the opportunity to respond?</p>	<p>The Joint Committee noted that in general some of the press provide such an opportunity for an individual to respond, but some do not. ... they, as journalists, have a responsibility to allow people such an opportunity to at least present their side of the story. In this context the Joint Committee recommends an examination as to how the legislation could make provision for a right of response.</p>
<p>Broader societal impact of freedom of information</p>	<p>Members note that Government activities are only a fraction of public life. Many organisations have a much greater impact on the public than have some public</p>

	<p>bodies, whether it be the food sector, banking, financial and, especially, the private media, whether print or electronic. Major private companies have a greater impact on daily life than have some Departments. The Church, sporting and cultural organisations also have a major impact. Citizens' right to information on how major organisations in the country affect their lives is as important. All such organisations are excluded merely because the taxpayer does not fund them. Should the public be entitled to information about how a public organisation runs their business, or how a mobile phone company decides not to provide a signal in a particular area? Such issues are as important, if not more so, to citizens' daily lives than whether the Department of Agriculture, Food and the Marine issued a veterinary inspection to a particular food processor.</p> <p>Earlier in relation to non-public bodies falling under the remit of the legislation - for example, NGOs that receive the majority or a portion of their funding from the State's coffers the Joint Committee considers that this issue is one that should be addressed by two separate pieces of legislation as noted in 1.B. above where the Joint Committee recommends that the Minister should move to separate legislation for access to both public and official information held by public bodies and separate legislation for 'personal information' held by both public and private bodies. This, in the view of the Joint Committee, obviates then the need to prescribe what constitutes 'public funding' and moves the emphasis to where it should be; that a member of the public has the right to access 'personal information' held by a body whether public or private, part or fully funded by the state.</p> <p>While the proposal of the Joint Committee relates specifically to a person accessing personal information held by a body whether public or private, part or fully funded by the state, the issue here relates to the broader societal impact of freedom of information and that major private companies have a greater impact on daily life than has government or Departments. The issue here is whether there should be an entitlement to information about how a public organisation runs its business and the Joint Committee considers this should be addressed by the legislation.</p>
<p>Providing records in machine-readable formats.</p>	<p>The Joint Committee notes that a new movement called Open Data has arisen in the past few years. The idea is that while proactive publication is good, when such information is proactively published by a government, it should be in machine-readable formats, that is, when data are published, they should be in open formats as opposed to proprietary formats."</p> <p>In the UK, Mr. Hammond advised the Members <i>"I want to make a couple of points about issues that have come up in England with regard to criticisms of open</i></p>

	<p><i>data and the FOI regime. The first involves context. Often there are criticisms of FOI and measures to increase transparency more generally because it is felt that information is released without context and therefore people cannot effectively understand what data means. In certain circumstances, that is quite correct. The issue is understanding that context is not just about requiring public servants to provide reams of explanatory data around official information, which of course is an additional resource requirement for them, it is about understanding that the public at large and official institutions can and should link data together to provide that context. An increasing trend around the open data movement in the UK is the idea that data from a range of institutions can and should be linked together to provide an accurate and comprehensive picture of how service is delivered in an area. Context can be dealt with in a way that is resource-neutral for public servants."</i></p> <p>The Joint Committee recommends that the legislation should address the provision of information in machine readable formats</p>
<p>Adequate training for FOI officers in all Departments and agencies covered by the Act.</p>	<p>Members were cited incidents where it was evident that there was a lack of consistency in how the provisions of FoI were being implemented in different Department/State bodies. However, members were also advised about exemptions applied incorrectly and how one FOI officer might make a decision that certain records are exempted for personal information reasons, but an FoI officer in another Department receiving the same request could make a decision that the information is not personal and can be released.</p> <p>Further, the Chairman observed "... <i>When a ruling Ms O'Reilly has made on an appeal is implemented in a particular instance, is it then implemented across other Departments? Are those other Departments informed of particular rulings that are made or do they relate just to the individual Department involved?</i>". In response Mr. Rafferty from the Office of the Information Commissioner advised members that "... <i>All decisions go to the central policy unit in the Department of Public Expenditure and Reform. If the latter is in a position to issue guidance in respect of a decision to the wider public services, it will do so.</i>"</p> <p>The Joint Committee has a concern as to how this matter is monitored and how other Departments are picking up on it. While the information may be available, how are other Departments aware of its existence.</p> <p>In the view of the Joint Committee the issue is whether there is adequate training for FOI officers in all Departments and agencies covered by the Act and the Joint Committee recommends that the legislation should include a requirement to have ongoing training</p>

	<p>for all FoI officers. This should include recent rulings and decisions of appeals to the Information Commissioner and the training should be regular and not less than yearly for all bodies cover by the Act.</p>
<p>Level of consistency there is within the various public bodies with regard to dealing with these requests?</p>	<p>The Joint Committee makes the observation, in regard to FoI decision makers in state and public bodies, that there must be hundreds of people making decisions. It is the position of the Joint Committee that consistency in how these decision-makers operate, if not ensured, will bring the legislation into disrepute and this is most particularly so in relation to the issue of '<i>commercial sensitivity</i>'.</p> <p>The Joint Committee was advised by the Information Commissioner that "<i>... we know there is great disparity between public bodies and how they deal with requests for records in which commercial sensitivity is an issue. Officials do not have great confidence in dealing with the issue and they often tend to take the word of the body that something is commercially sensitive and do not explore it further. Therefore, when it is appealed to us, we explore it. In issues of discretion, the discretion tends to be used in favour of the public body. ... The training of officials was excellent at the beginning of the FOI process. The central policy unit had very good regimes in place and senior high-level staff were placed in those particular positions. When FOI ceased to be the flavour of the month, shall we say, there was a little less enthusiasm for it and standards slipped to some degree. ... I refer in particular to training in those areas where there is discretion, such as with regard to the harm tests. It is necessary that they do not blindly and without doing an examination take the word of a public body that a particular harm will emerge. ... Training is needed. There are differing ways of working in different public bodies. There are differences in how exemptions are applied. Commercial sensitivity is one such reason. There are also differences in how search and retrieval fees are applied.</i>"</p> <p>The Joint Committee recommends that the legislation must address the matter of consistency in how decision makers operate.</p>
<p>Definition of "public authority"</p>	<p>The Joint Committee was advised by Mr. Sheridan "<i>... It is not envisaged that a waste management company in Dublin, which is technically a private limited for-profit company, will be covered by the new freedom of information legislation. Under the access to information on the environment system, which is related to this legislation, such a company can be deemed to be carrying out a public service - waste management - on behalf of a public authority and to have a contracted relationship with that authority. One could argue that such a company is technically a public authority because it does an act for which a public authority is responsible. I would certainly go that far. I would broaden the definition of a "public authority" to</i></p>

	<p><i>make it much more general. I would make it clear that a company which is doing things of this nature should be subject to some kind of scrutiny by the public, in terms of how information can be accessed from that company."</i></p> <p>The Joint Committee note that the country's waste management strategy is based on the idea that the role of the Government and the local authority system should be to develop policy in this area before contracting out the implementation of that policy. The Joint Committee recommends that the legislation should use the UK model as the approach taken by the UK authorities, as evidenced in certain decisions, is that private limited companies which are involved in waste management or in regulation are subject to access to information rules even though they are essentially for-profit companies and the legislation should reflect this wider definition of 'public authority'".</p>
<p>How we can future-proof the freedom of information legislation as the media develops</p>	<p>The Joint Committee note that proactive publication and good record management are good for everybody, not least from a public relations perspective. The Government should publish all of its spending data on a quarterly basis and if such information was published routinely, the need for much freedom of information requests will diminish.</p> <p>On the question of the future of the legislation, The Joint Committee proposal at 1.B. above recommended that the Minister should move to separate legislation for access to both public and official information held by public bodies and separate legislation for 'personal information' held by both public and private bodies and mirroring the UK arrangements use Data protection for 'personal information' and Freedom of Information for access to both public and official information held by public bodies. If the Minister is to future-proof the legislation the Joint Committee recommends that the best way to achieve this is to have two separate pieces of legislation.</p>
<p>Concern regarding the Reception Integration Agency and how it functions</p>	<p>The Joint Committee wishes to record its appreciation to Anti-Deportation Ireland (ADI) for raising a major lacuna in the legislation in relation to the Reception Integration Agency and how it functions. The Joint Committee was very concerned to hear from Ms. Bakaabatsile: "... we need transparency on whether Ireland complies with it in full or in part. Another issue of concern is the number who have died while in direct provision accommodation. We need to know how many have died, the causes of death, the centres at which they died and about the care they received while there."</p> <p>The Joint Committee was distressed to be told that "... What is the point of people being granted refugee status when they are being buried in Ireland and what should happen to children in places such as Africa whose parents are buried here?</p>

	<p>The Joint Committee recommends in the strongest possible fashion that the legislation address the following matters</p> <ol style="list-style-type: none"> 1. the Reception Integration Agency and how it functions. 2. that there is currently no information available on asylum seekers who die in direct provision facilities. 3. that the freedom of information legislation applies to Garda National Immigration Bureau and the Irish National and Immigration Service. 4. that all aspects of the direct provision system are covered by the provisions of FOI legislation including the suppliers of goods and services to the direct provision system. 5. that ORAC and the Refugee Act are no longer exempted from the freedom of information provisions,
<p>Ombudsman and Information Commissioner views: Section 32 of the Freedom of Information Act</p>	<p>The Joint Committee noted the views of the Information Commissioner who advised that "... <i>Members will note that I focused on three specific areas in my written response, namely, the review of non-disclosure provisions in other legislation, the exemption relating to security, defence and international relations and the partial application of the Act to the Garda Síochána and other bodies. Section 32 of the Freedom of Information Act provides for the mandatory refusal of access to certain records whose disclosure is prohibited, or whose non-disclosure is authorised, by other enactments. Section 32 is a very important provision because it subordinates the access provisions of the Act to all non-disclosure provisions in statutes except for those which are cited in the third Schedule to the Freedom of Information Act. The Act provides for the review by this committee every five years of the operation of any enactments that authorise or require the non-disclosure of records to determine whether they should be amended or repealed or be added to the third Schedule. While I can fully appreciate that the committee has a very heavy work schedule, it remains the case that the most recent such review was conducted in 2005 and a further review is now several years overdue. The reports of individual Ministers which have been made available to my office show that, since the Freedom of Information Act became law in April 1997, many new non-disclosure provisions have been introduced in individual enactments. The non-applicability of the Freedom of Information Act is appearing as a standard component of many new Acts and the number of non-disclosure provisions being introduced in individual enactments is increasing. Departments are reporting approximately 230 enactments containing non-disclosure provisions, of which 50% became law since 1 January 1998. This means that as many non-disclosure provisions have been introduced since 1997 as were introduced in the preceding 75 years. The current</i></p>

proposals to amend the freedom of information legislation present an opportune time for the committee to conduct a review of the operation of section 32 and incorporate in the Bill any changes proposed arising from that review."

The Joint Committee will by July 2013 seek to complete the required review of the Section 32 provisions and will, following that process, be in a better position to comment on the Section 32 provisions.

However, the Joint Committee, following its meeting on 5 June 2013 with the Information Commissioner to discuss the Commissioner's report: *"Third Report of the Information Commissioner to the Joint Committee on Finance, Public Expenditure and Reform for the purpose of Review of Non-Disclosure Provisions in accordance with The Freedom of Information Act, 1997 [section 32]" - May 2013*, does wish to draw attention to the provisions as currently construed whereby other primary legislation enacted since the passing of the Freedom of Information can contain provisions that exclude the application of the Freedom of Information legislation. In the opening remarks the Information Commissioner advised the Joint Committee that *"many new non-disclosure provisions had been introduced since the FOI Act became law in 1997. Indeed, Departments are reporting approximately 230 enactments containing non-disclosure provisions, of which approximately 50% have become law since 1 January 1998. I noted in my report that this means as many non-disclosure provisions have been introduced since 1997 as were introduced in the preceding 75 years."*

The Joint Committee make the observation that behaviour is always due to a reason and a 'question is begged' (rhetorical or otherwise) as to why, since the enactment of the Freedom of Information legislation 15 years ago, as many non-disclosure provisions were inserted in other primary legislation that excluded the application of the Freedom of Information legislation as were enacted in the previous 75 years.

In the opinion of the Joint Committee the general safeguards proposed in the Draft Heads of the General Scheme offer a sufficiency of protection that should negate the need for any other future legislation to have exclusion or non-disclosure provisions.

The Joint Committee recommends that the Minister should address this by the insertion of a provision that requires any future primary legislation that is proposing the non-application of a provision or provisions of the Freedom of Information, to have the Minister lay before the Houses of the Oireachtas a report detailing the reasons why, in the Minister's

	<p>opinion, the provisions of the Freedom of Information legislation are not sufficient to afford the protections required and why the legislative provisions proposed by the Minister can only be achieved by the additional protection of an exclusion from the provisions of Freedom of Information legislation.</p> <p>Further, the Joint Committee notes that, generally, in approximately 50 % of cases where a Department recommends that a non-disclosure provision, not already included in the Third Schedule, should remain outside the Schedule the Information Commissioner disagreed with this recommendation. The Joint Committee recommends that the Minister should undertake a full review in each instance where in the Information Commissioner's report the Information Commission disagreed with the Department and that the Minister in each case should affirm or not that that the non-disclosure provision be added to the Third Schedule.</p>
<p>Section 2 of the Act provides for the mandatory refusal of access to certain records whose disclosure is prohibited or whose non-disclosure is authorised by other enactments.</p>	<p>The Joint Committee notes that Section 2 of the Act provides for the mandatory refusal of access to certain records whose disclosure is prohibited or whose non-disclosure is authorised by other enactments. The Information Commissioner, in response to how many are included were advised that it was "<i>Hundreds, approximately 230. Departments report that approximately 230 enactments contain non-disclosure provisions. Some 50% of these became law since 1997. We discussed this back in 2005. What happened is that new bodies were created, changed or morphed into other bodies and these provisions were a means of excluding these bodies from being subject to FOI requests. In other words, when a new body was created a particular function that was subject to FOI provisions was transferred. This was used as a means of keeping the Act very restrictive. What I propose is that all of these be looked at again or abolished and that they all be subject to the normal Freedom of Information provisions.</i>"</p> <p>The Joint Committee recommends that a full audit of these be undertaken and the legislation be reviewed to reduce and cease what the Joint Committee regards as an un-parliamentary practice whereby new bodies were created, changed or morphed into other bodies and the Section 2 provisions were a means of excluding these bodies from being subject to FOI requests.</p>
<p>The Ombudsman's office is under pressure and some of the appeals take quite a while.</p>	<p>The Joint Committee note the response of the Information Commissioner to an article in <i>The Sunday Times</i> on 20 January which stated the Ombudsman's office is under pressure and that some of the appeals were there quite a while. Ms Emily O'Reilly advised members that "<i>The Act provides for an optimum deadline of four months, as far as practicable. Therefore, the article shows correctly - we supplied the information - that we are only reaching that in</i></p>

	<p><i>approximately 25% of cases.”... Therefore, last week we wrote to the Department of Public Expenditure and Reform requesting additional staff to cope with FOI requests, particularly in view of the fact that new bodies are coming in.”</i></p> <p>The Joint Committee note that the obvious comment to make on that is that if the office is having difficulty meeting its legal requirements because of the lack of staffing and financial resources. Therefore, extending FOI to a lot of other bodies is a pointless exercise unless the resources are supplied to enable the existing legislation, not to mind the new legislation, can work.</p>
FOI archive?	The Joint Committee recommends that the legislation should set the legislative basis for the establishment of an FoI archive. In regard to the Dáil, the Joint Committee notes that every parliamentary question becomes a matter of ‘pubic record’ as soon as it is published and all FoI requests, other than personal requests for personal information, should also be published and available.
A review process as legislation is passed, does Ms O’Reilly have a view on how the legislation could be reviewed in the future.	The Joint Committee recommends that a review process should be included in the legislation so as to avoid the ‘big bang’ approach of new legislation every five or ten years.”
In terms of head 26, in 2007 Ms O’Reilly identified that there was an anomaly whereby confidential information sent in a letter to a public body from a third party can qualify for exemption if it meets the criteria in head 26 while the same information received via telephone call or noted by a member of staff of a public body cannot attract such protection.	<p>The Joint Committee, in terms of head 26, note that the information Commissioner identified that there was a potential anomaly whereby confidential information sent in a letter to a public body from a third party can qualify for exemption if it meets the criteria in head 26 while the same information received via telephone call or noted by a member of staff of a public body cannot attract such protection. The Information Commissioner recommends that such information should attract the same protection and a distinction should be drawn between information received from a third party in such circumstances and information created or generated by a member of staff of a public body. It is worth considering the matter particularly in the light of the Supreme Court decision on the Rotunda case.</p> <p>The Joint Committee recommends clarification as regards the effectiveness of the suggested head</p>
Incentives to meet deadlines in relation to freedom of information requests?	The Joint Committee examined the issue of incentivising and a faster turnaround for freedom of information requests. The Joint Committee notes that there are a couple of practical ways this could be done. For example, on the issue of delays, if a freedom of information request is not processed within the legislative time limit, perhaps the information then should be made available automatically to the requestor. This would provide a real incentive to the decision-makers to process it. In addition, as the National Newspapers of Ireland, NNI, submission noted, making available a lot of this information as a

	<p>matter of course would preclude the need for freedom of information requests in the first place. It would be going to the spirit of more open governance that routine basic information should be provided as a matter of course.</p> <p>The Joint Committee note that on the issue of fees and incentivising the correct decision-making in this regard, appeal fees should be refunded if it is found that the material sought was found to have been in the public interest because, at present, there is no incentive for a decision-maker to get the decision right. A decision maker can keep redacting and refusing information it but no matter how many times this is done, there is no incentive on the decision-maker to get that right.</p> <p>The Joint Committee recommends that as the legislation provides for fees to be paid by a requestor then reverse fees should be paid by the Department/State body to a requestor where the information was not supplied in a timely fashion and within the time frames set out in the legislation. This should also apply to delays of greater than 4 months in processing appeals by the Information Commissioner. The Joint Committee notes that such a recommendation should also be accompanied by requirement to have a note attached to the Appropriation Account and that this note details why a requestor had to be paid a fee as the payment of such fee, in the opinion of the Joint Committee, is nugatory.</p>
<p>The Office of the Information Commissioner, OIC, has very few oversight powers.</p>	<p>The Joint Committee notes that the Information Commissioner has three hats; standards in public office: Ombudsman and Information Commissioner and that since 2009 the staff in the office has decreased from 102 to 86. The proposed FoI legislation will increase the work load at the office as new bodies, for the first time, come within the scope of FoI. The Committee has a concern that a possible effect of not ensuring a sufficiency of resources to deal with FoI will bring the legislation into disrepute and accordingly recommends that the Minister ensures sufficient resources are made available.</p>
<p>Access to court documents</p>	<p>The Joint Committee notes that the courts are a considerable part of the system of Government and access to court documents is an issue which is not included within the scope of the Freedom of Information legislation. However, under the Constitution legal actions are carried out in public, but there appears to be no specific consideration of access to affidavits or written submissions. Any access to affidavits or written submissions is, at best, down to the lawyer or Court Clerk. In the USA one can log on to PACE and see what NAMA has filed against Sean Dunne yet one cannot see what NAMA is saying in detail in the Irish courts. Freedom of information has a knock-on effect on other policy areas, not least access to court documents and while the Joint Committee is</p>

	cognisant that there are issues of privilege and confidentiality these should be 'balanced' with the public interest and the legislation must address the issue of access to court documents.
The media must live up to their responsibility in manner in which information is reported when it is made available.	The Joint Committee note that with greater freedom, however, comes greater responsibility and this places, on the media, a responsibility in regard to the manner information is reported when it is made available. Banner headlines must reflect the content of the story underneath. The Joint Committee further notes that there is a Press Council with its own codes and standards of conduct, however, the Joint Committee recommends that the legislation should include provision, possibly within a user group, for structured training for the media in relation to making FoI request and how the information received should be responsibly presented to the public - we live in a fast moving world of instant information. Openness and accuracy are fundamental.
The Freedom of Information Act applying in the UK was passed in 2000 and commenced in 2005. And the UK Government is considering making changes to that regime – what can Ireland learn from this?	<p>The Joint Committee note that the Freedom of Information Act applying in the UK was passed in 2000 but only commenced in 2005. The UK Government is now considering making changes to that regime. As part of that process the House of Commons justice committee carried out a post-legislative scrutiny of the Freedom of Information Act and the main areas of change reflect the keenness of the UK Government to move to increased openness through the proactive publication of more official data setting freedom of information within a broader regime of openness and government transparency. Freedom of information is a reactive means of achieving that by providing information to members of the public when they ask for it. The Government is trying to promote a more proactive approach whereby public institutions publish information as a matter of course. New technology forms a principal means of making this work. Open data and transparency do not necessarily lead to accountability.</p> <p>The Joint Committee recommends that the legislation should establish aims and objectives for transparency.</p>
<p>4 principal objectives of FoI</p> <p>1. Mitigate risk by opening up policy making.</p> <p>2. Facilitating choice.</p> <p>3. Control of expenditure.</p>	<p>The Joint Committee considers that by opening up the policy-making process the assumptions of decision-makers about the impact and development of policy can be constructively challenged and potential risks can be reflected more accurately.</p> <p>The Joint Committee considers that data should be used to make it easier for the public to exercise choice in public services. The use of official information is important in ensuring that citizens can exercise choice in an informed way and recommends that the legislation should reflect this principal.</p> <p>The Joint Committee considers that publishing information adds value by coupling the publication of information with mechanisms for accountability,</p>

<p>4. Promoting democracy through easy access to data and information and encouraging participation.</p>	<p>thereby minimising corruption. Measuring value may have an impact on decisions. Publication of financial and expenditure data can be used to establish whether a policy is generally achieving the ends it aims to achieve and recommends that the legislation should reflect this principal.</p> <p>The Joint Committee considers that the public has a right to information about services provided on its behalf and about decisions made for it and by its elected representatives and recommends that the legislation should reflect this principal.</p>
<p>Regulatory bodies - each Department is required to produce a statement setting out where accountability sits within that Department, with the different regulatory bodies and quangos or quasi-autonomous non-governmental organisations and executive agencies that sit under the Department.</p>	<p>The Joint Committee notes that in the UK Departments produce what are called accountability system statements. The senior civil servant in each Department is required to produce a statement setting out where accountability sits within that Department, with the different regulatory bodies and quangos or quasi-autonomous non-governmental organisations and executive agencies that sit under the Department. It is identifying where accountability and responsibilities lie while ensuring there is a system of exerting control over those bodies. The Joint Committee recommends that the legislation should require all state bodies covered by FoI to prepare and lay before the Oireachtas accountability system statements as part of the required Strategy Statements.</p>
<p>How can FoI be improved even further</p>	<p>The Joint Committee recommends that the legislation should require all public bodies to produce lists setting out what documents and other items they publish as a matter of course. The Joint Committee considers that the principal improvement this offers is that it could be used on an annual basis to divert emerging run of the mill requests to automatic publication so as to reduce the burden on public bodies. The Joint Committee noted the example in the UK whereby there is a requirement imposed on local authorities in England to publish all expenditure information on any budget lines above £500.</p>

List of Members of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform

Chairman:	Ciarán Lynch (LAB)*****
Deputies:	Richard Boyd-Barrett (IND)
	Michael Creed (FG)
	Pearse Doherty (SF)
	Stephen Donnelly (IND)
	Timmy Dooley (FF)*
	Seán Fleming (FF)
	Simon Harris (FG) *****
	Joe Higgins (IND)
	Heather Humphreys (FG)
	Kevin Humphreys (LAB)
	Peter Mathews (FG)
	Mary Lou McDonald (SF)
	Michael McGrath (FF)
	Dara Murphy (FG)*****
	Kieran O'Donnell (FG)
	Aodhán Ó'Riordáin (LAB)*****
	Arthur Spring (LAB)
	Brian Stanley (SF)*****
	Billy Timmins (FG)
	Liam Twomey (FG) (Vice-Chair)
Senators:	Sean D. Barrett (IND)
	Thomas Byrne (FF)
	Paul Coghlan (FG)*****
	Michael D'Arcy (FG)
	Aideen Hayden (LAB)
	Tom Sheahan (FG)

Notes:

1. Deputies appointed to the Committee by order of the Dáil on 9 June 2011
2. Senators appointed to the Committee by order of the Seanad on 16 June 2011
3. *Deputy Timmy Dooley appointed on 21 June 2011 in place of Deputy Seán O' Feargháil
4. Deputy Alex White elected as Chairman on 23 June 2011
5. Deputy Liam Twomey elected as Vice Chairperson on 23 June 2011
6. **Deputy Michael McNamara appointed on 8 December 2011 in place of Deputy Thomas P. Broughan
7. ***Deputy Pádraig Mac Lochlainn appointed on 14 December 2011 in place of Deputy Jonathan O'Brien
8. ****Senator Denis O'Donovan appointed on 10 May 2012 in place of Senator Katherine Zappone
9. *****Senator Paul Coghlan appointed on 14 June 2012 in place of Senator Denis O'Donovan
10. *****Deputy Dara Murphy appointed on 19 July 2012 in place of Deputy Olivia Mitchell
11. *****Deputy Brian Stanley appointed on 25 September 2012 in place of Deputy Pádraig Mac Lochlainn
12. *****Deputy Alex White promoted Minister of State 2 October 2012, Deputy Ciarán Lynch replaced Deputy White by order of the Dáil on 10 October 2012 and was elected Chairman 10 October 2012
13. *****Deputy Simon Harris appointed on 28 November 2012 in place of Deputy Jim Daly
14. *****Deputy Aodhán Ó'Riordáin appointed on 28 November 2012 in place of Deputy Michael McNamara

Orders of Reference of the Joint Committee on Finance, Public Expenditure and Reform

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) other matters
 as shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas,

- of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
- (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.

- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

APPENDIX III

List of Witnesses - Public Consultation on the Draft Heads of the General Scheme of the Freedom of Information Bill 2012.

Mr. Brendan Howlin, T.D., Minister for Public Expenditure and Reform

Ms. Emily O'Reilly, Information Commissioner

Mr. Stephen Rafferty, Information Commission

National Union of Journalists:

Mr. Séamus Dooley, Irish Secretary, NUJ

Mr. Gerry Curran, Cathaoirleach, Irish Executive Council, NUJ

Mr. Michael Brennan, Dublin Branch, NUJ /Irish Independent

Ms. Emma O'Kelly, Chair, Dublin Broadcasting Branch, NUJ

Mr. Ken Foxe, Dublin branch /Irish Mail on Sunday

Mr. Colm O Mongain, NUJ / Vice Chair, RTÉ Trade Union Group.

Mr. Gavin Sheridan, Thestory.ie

Anti-Deportation Ireland (ADI)

Mr. Luke Bukha,

Ms. Josephine Bakaabatsile

Ms. Patricia Murambinda

Mr. Joe Moore

National Newspapers of Ireland [NNI]

Mr. Frank Cullen, Director, NNI

Ms. Dearbhail McDonald, Irish Independent

Mr. Carl O'Brien, The Irish Times

Mr. Mark Tighe, The Sunday Times

Mr. Ed Hammond, Centre for Public Scrutiny (Britain) [via video link]