

Central Policy Unit

Guidance Note 2

This CPU Notice replaces CPU Notice No 2 in relation to Release of Information outside of the FOI Act that issued in February 2015.

**Notes:**

* Section references in this notice relate to Sections of the Freedom of Information Act 2014.
* Dialogue with FOI requesters is strongly recommended as a means of avoiding unnecessary FOI requests and in terms of bringing clarity to the nature of the information being sought. Dialogue can also serve to avoid individuals being put to unnecessary expense.

**1.0 Release of Information outside of the FOI Act**

1.1 [Section 11](http://www.irishstatutebook.ie/eli/2014/act/30/section/11/enacted/en/html) of the Act specifically acknowledges that FOI is not the only means of accessing information and that nothing in the Act is intended to interfere with alternative administrative arrangements for access:

11(8) *“Nothing in this Act shall be construed as prohibiting or restricting an FOI body from publishing or giving access to a record (including an exempt record) otherwise than under this Act where such publication or giving of access is not prohibited by law”*.

1.2 The processing of FOI requests can impose a substantial administrative burden on FOI Bodies. The FOI Central Policy Unit (CPU) supports a proactive approach by FOI bodies to the disclosure of information in an open and accessible manner on a routine basis outside of FOI, having regard to the principles of openness, transparency and accountability as set out in [Sections 8(5)](http://www.irishstatutebook.ie/eli/2014/act/30/section/8/enacted/en/html) and [11(3)](http://www.irishstatutebook.ie/eli/2014/act/30/section/11/enacted/en/html) of the Act.

**2.0 Release of information outside of the FOI Act on request**

The FOI Act should not be considered as the sole avenue by which information is made available to members of the public by FOI bodies.

* 1. Release of information outside of the FOI Act can work to the benefit of both the FOI body and the requesters. Such release enhances the confidence of members of the public in the FOI body and also allows the FOI body to handle information requests informally without adhering to the statutory processing requirements of the Act.

**Steps to be taken by an FOI Body:**

* 1. Where an FOI Body identifies that a request may be handled outside of the FOI process, the FOI body must firstly ensure that any records identified may be released (i.e. the FOI body must be satisfied that the records could be released if FOI had been applied and no exemptions apply).

* 1. FOI Body should then engage with the requester and get agreement from him/her that the request can be handled outside of the FOI process.
  2. The FOI Body should ask the requester to withdraw the request in writing (email) or the FOI Body should write (email) to the requester stating that the FOI Body is proceeding on the basis that the FOI request has been withdrawn and that the request is being handled as an access request.
  3. In cases where some information is being withheld, the FOI body must advise the requester of this fact and of their rights under the FOI Act to apply for these records and have the rights of the legislation applied to their request.

**3.0 Publications of methods of access and the associated costs if any**

Members of the public should be able to see and compare the methods of access which are available to them. They should be aware of the costs (if any) associated with access to records.

The methods of access should be comparable and each FOI body should ensure that there is consistency and fairness in the mechanism of release.

1. **Publication scheme**

4.1 [Section 8](http://www.irishstatutebook.ie/eli/2014/act/30/section/8/enacted/en/html) of the Act requires FOI bodies to prepare and publish a scheme concerning the publication of information by the body in conformity with a [model publication scheme](http://foi.gov.ie/guidance/model-publication-scheme/) issued by the Minister for Public Expenditure and Reform in October 2015. This scheme allows for the publication or giving of records outside of FOI provided that such publication or giving of access is not prohibited by law. The scheme commits FOI bodies to make information available as part of their normal business activities in accordance with the scheme.

4.2 Publication of documents which are not exempt under the Scheme is in line with the intention of the Directive on the Re-use of Public Sector Information, and the obligation under that Directive to publish information and ensure that it is accessible and re-usable for commercial and non-commercial purposes.

4.3 FOI bodies are encouraged to periodically review their FOI Disclosure Logs and analyse what information can routinely be made available outside of the FOI Process. e.g. Minutes of Management Meetings / Board Meetings.