**CPU Notice 7**

**Records of FOI bodies not currently subject to FOI**

1. It may arise that records of public bodies which are exempt or partially exempt from FOI may come within the scope of a request by virtue of being held by a body which is within scope of the Act. It should be noted that, in appropriate circumstances, such records may directly secure exemption under sections 31, 32, 33, 35, 36, 37, 40 and 41 of the FOI Act.

2. Where an FOI body is considering the release of such records coming within sections 35, 36 and 37 the consultation procedures set out at section 38 of the Act must be observed.

3. It is to be noted that the protections of sections 29, 30 and 39 of the FOI Act may not always apply to records of FOI bodies currently outside FOI. For this reason it may be appropriate when receiving records from such bodies, the disclosure of which would be likely to cause adverse effect of a nature specified in those sections, to do so on the basis of confidentiality. However such confidentiality should be specific, restrictive and preferably timebound. It should serve no more than to provide to such records the limited protections afforded by the Oireachtas under sections 29, 30 or 40 of the FOI Act.

4.The record keeping of an FOI body is key to the process in these records, it should be clear why the records are held by the body. The circumstances of the giving of the information are key when dealing with confidentiality.

5.FOI bodies should be very clear with those it interacts with that the body is subject to FOI and anyone giving information to the body should be clear that the records will be subject to the provisions of FOI.

6.The appropriate application of section 35 generally will be the subject of a separate notice.

FOI CPU Notice

January 2015