

# CONTINUITY OF FOI SERVICES

Stakeholders are asked to please note the following regarding the potential impact of reduced staffing, closure of offices and/or consequent extended use of remote working facilities in FOI Bodies responding to the Coronavirus COVID-19 pandemic.

The FOI Act remains in force and arrangements must be put in place to ensure that requests continue to be processed to the greatest extent possible. In light of the challenges arising in many organisations in terms of resourcing and access to records because of crisis response and social distancing measures, the below updated guidance for bodies on possible steps that might assist in maintaining services insofar as possible. Bodies are also asked to consider proactively publishing information that is likely to be in high demand, or is of particular relevance to the crisis response.

It may be appropriate in some cases for bodies to constructively engage with the requester in order to make an arrangement that meets their objectives to the greatest extent possible. Requesters are urged to take a pragmatic and proportionate approach to their use of FOI in light of the current circumstances, and to work with bodies with a view where possible towards reaching a satisfactory arrangement.

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## STATUS OF THIS GUIDANCE DOCUMENT

It should be noted for the avoidance of doubt that this guidance is intended to give suggestions as to steps that bodies may take if they deem it appropriate in their particular circumstances and should not be taken as a prescriptive directive. This document does **not** constitute statutory guidance under [section 48](#) of the FOI Act and should not be construed as such.

Some of the below may be relevant to some organisations but unsuitable or inappropriate for others, or suitable for some types of requests but not others, for example, suggestions around remote working may be unfeasible in general for some organisations or inappropriate when handling sensitive personal information.

Bodies are asked to continue to provide feedback to the FOI Central Policy Unit on the situation on the ground as it applies to their organisation to inform consideration of such further or additional steps as may be required in addressing this unprecedented crisis.

This document will apply pending further communication from the Central Policy Unit and will be updated as the situation continues to evolve.

## CONTINUITY OF FOI SERVICES

**Where an organisation receives an FOI request, it must be responded to on the timeline provided for in the legislation. There is no provision under the terms of the FOI Act as it stands of extending or otherwise abridging that requirement.**

CPU's engagement with FOI Bodies to date has revealed that the impact of the crisis is unevenly distributed, with many organisations continuing to deliver full FOI services, while capacity in others has been severely affected.

If your organisation as a whole is not in a position to process FOI requests due to steps taken in response to the crisis, you should contact the FOI Central Policy Unit in the first instance on a suitable path forward, and advice may also be sought from the Office of the Information Commissioner.

**The Central Policy Unit is available as normal to deal with queries from bodies on the handling of requests having regard to organisations' particular circumstances or the nature of the requests being processed.**

**Contact the FOI Central Policy Unit by email at [cpu@per.gov.ie](mailto:cpu@per.gov.ie) if you have any queries.**

## GENERAL STEPS TO MAINTAIN FOI SERVICES

### 1. HANDLING REQUESTS

- Arrangements should be put in place to ensure that requests received during any closure are assigned and processed, and to ensure that the main organisational FOI email accounts as well as requests received by post will be monitored on an ongoing basis.
- Where possible, FOI tasks should be performed as normal through remote working or other relevant arrangements. If it is necessary to issue a formal decision, bodies should aim to do so within the statutory timeframes.
- Where it is foreseeable that measures taken in response to this unprecedented public health challenge have led to a situation where there are likely to be issues in responding to an FOI request, bodies are recommended to engage with requesters on a common-sense basis to reach a mutually satisfactory arrangement.
- Officers must be conscious of the potential inconvenience caused to the requester. They should endeavour to facilitate them, including providing such information relevant to their request as is possible under the circumstances.
- If situations arise where post is not being collected or opened, to preserve the continuity of service FOI Units are encouraged to redirect requesters where possible towards electronic channels, including by updating websites accordingly.

FOI Bodies should be mindful of the potential for a backlog to build where requests are not handled for the duration of any office closure and accordingly should aim to resolve cases within the required timeline insofar as possible, acknowledging in decisions where necessary instances where the ability to process a request has been affected by the circumstances.

### 2. PROACTIVE PUBLICATION

**Where appropriate, having regard to available resources, FOI Bodies should consider emphasising a proactive rather than reactive approach to their transparency obligations.**

- Organisational websites and publications already contain a broad array of information about the activities and structure of bodies. The availability of this material should be highlighted as an alternative to the request process, as in many cases material broadly meeting the requester's objectives may already be available.
- Consideration should be given to updating section 8 publication schemes to include additional classes of records that are likely to be in high demand, including those relating to emergency measures being undertaken.

- Consideration should also be given where necessary to the publication of relevant classes of information on a more regular basis than normal for the duration of the crisis.
- If, based on past experience, an organisation fully anticipates that it will receive requests for a particular record or class of record, which would likely be granted, consideration should be given to proactively publishing this information. Where records are published in this way, redactions of exempt information should be made in the normal way according to the provisions of the FOI Act.
- Bodies may also consider making information, in particular statistical data, available in an open format and linked to the national portal [gov.ie](http://gov.ie).
- It should be noted that section [15\(1\)\(f\)](#) of the FOI Act allows an FOI Request to be refused where a body intends to publish the record concerned within six weeks, while section [15\(1\)\(d\)](#) allows for refusal where the information concerned is already in the public domain.

### 3. ENGAGING WITH REQUESTERS

To date, bodies have consistently reported that requesters have shown themselves to understand the realities impacting the processing of FOI requests across the system under the current circumstances. It is important that requesters are presented with a clear picture to understand the realities facing bodies at a given moment and why it affects their request. The decision of when and whether to proceed with an FOI request is entirely for the requester themselves to make.

**In addition to the usual engagement required under section [12\(6\)](#) of the FOI Act where a request is insufficiently precise, and section [15\(4\)](#) of the FOI Act where a request is overly burdensome in the circumstances, the following steps may be considered:-**

Update websites and automated email responses to include, as appropriate:-

- An outline in general terms of the situation in the body in terms of resourcing or crisis response measures, and how this is expected to impact on the ability to access records and process FOI requests at this time. This could include, for example:-
  - Matters relating to staffing, e.g. temporary assignments to contact tracing or other vital tasks in combatting the pandemic
  - Inability to access records due to social distancing measures and remote working
  - An estimate of whether it will be possible under the current circumstances to process an FOI request on the timeframes required by the legislation
  - Links to relevant online resources containing information about the matters relevant to the organisation, as well as the [section 8](#) publication scheme

- Links to general sources of information on the response to the Covid-19 pandemic may also be included where relevant, for example:
  - Department of Health guidance and information: <https://www.gov.ie/en/campaigns/c36c85-covid-19-coronavirus/>
  - HSE Information on Covid-19, including online self-checker: <https://www2.hse.ie/coronavirus/>
  - HSE Covid-19 updates: <https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/>
  - Government of Ireland COVID-19 dashboard: <https://www.gov.ie/en/service/0039bc-view-the-covid-19-coronavirus-dashboard-showing-the-latest-stats-and/>
  - COVID-19 (Coronavirus): Information from across government: <https://www.gov.ie/en/publication/3b16b6-covid-19-coronavirus-information-from-across-government/#daily-government-briefing>
  - Applying for COVID-19 Pandemic Unemployment Payment: <https://www.gov.ie/en/service/be74d3-covid-19-pandemic-unemployment-payment/>
  - Government supports for COVID-19 impacted businesses: <https://dbei.gov.ie/en/What-We-Do/Supports-for-SMEs/COVID-19-supports/Government-supports-to-COVID-19-impacted-businesses.html>
- It may be appropriate in some circumstances to ask requesters to consider whether they wish to defer making a request, although it is important to be clear that this is their decision to make
- Where a request is received, **making contact with the requester** by phone or email as soon as possible and having a discussion with them, which might include:-
  - As above, clearly setting out the organisation's circumstances, so that the requester can understand if the body must seek to reduce the resourcing implications of all FOI requests at this time, including an estimate of whether the request can be processed in time.
  - Where it is known that records relating to the request are inaccessible, e.g. paper records where offices are closed due to social distancing measures, this should be clearly flagged. If appropriate, the requester might be satisfied to

limit their request to electronic records only and to submit a further request for the paper records at a later stage.

- Bodies should attempt to understand what the requester aims to achieve with the request and whether this objective can be met by mechanisms other than an FOI request, e.g. by referring to the organisational website, publication scheme, or responses to previous FOI requests per the disclosure log
- It may also be possible to assist the requester in focusing their request towards their core objective. It should be made clear that there is nothing to prevent them from coming back at a later point and requesting further records.
- If there is no particular urgency involved, the requester may be satisfied to withdraw their request for the moment and resubmit at a later time.
- Where a requester is satisfied to withdraw their request, consideration should be given, if possible, to releasing outside FOI such records relevant to their request as are readily accessible and can be processed. Redactions should be made if necessary in accordance with the provisions of the FOI Act, although this approach may not be suitable for certain types of request, e.g. personal information.
- **Where it becomes clear in the course of an FOI process that the decision unavoidably cannot issue in time, it is advisable that the requester should be contacted in order to keep them informed and seek their views on how they wish to proceed in terms of narrowing, deferring or going ahead with the request at their discretion. If the requester is satisfied to receive a decision on their request outside the statutory timeframes, bodies should proceed on that basis.**

#### 4. RESTRICTED ACCESS TO PHYSICAL RECORDS

**The legislation requires that bodies take all “reasonable” steps to locate records. Where the decision-maker is satisfied that it is not reasonable to require searches of physical records to be carried out, section [15\(1\)\(a\)](#) may apply to the request insofar as it relates to such records.**

As noted in the preceding section, it is recommended in the first instance where it seems likely that records may exist that are inaccessible at this time, e.g. physical records held onsite at a time when social distancing measures require staff to work from home, this should be clearly flagged to the requester. It may be suggested that they narrow their request, e.g. to electronic records only, or resubmit later.

If the requester wishes to proceed, then their request should be processed insofar as possible, e.g. by scheduling and deciding upon relevant electronic records only.

## 5. STAFFING ISSUES AND DISRUPTION TO PARTICULAR BUSINESS UNITS

Crisis response and social distancing measures have significantly impacted staffing and capacity across some FOI Bodies.

**Section [15\(1\)\(c\)](#) may be relevant where either a particular unit has been significantly impacted or where processing the request would impose an unreasonable workload on the organisation or a particular business unit regarding current resourcing and working arrangements.**

Where a decision-maker is satisfied that this is the case, section [15\(4\)](#) requires that the body must first “assist or offer to assist” the requester in making a more focused request.

The engagement process recommended above will usually fit these criteria. However, where a decision-maker considers that a request may be refused under section [15\(1\)\(c\)](#) if it is not resubmitted in a more focussed form, this fact should be notified to the requester.

As normal, where a requester either does not revert to the decision-maker having been offered assistance in resubmitting their request, unwilling to do so, or discussions have not reached a conclusion, bodies should aim to formally issue a decision refusing the request in advance of the due date.

Section [15\(1\)\(c\)](#) must be applied on a case by case basis, and cannot be relied on as a blanket ground for the refusal of FOI requests. Before refusing a request under this section, bodies must be in a position to demonstrate that the request would create a “substantial and unreasonable interference” with the work of the organisation or a particular business unit in the circumstances, and also reasonable efforts have been made to “assist or offer to assist” the requester in making a more focused request that can reasonably be processed. Further details may be found in the [OIC’s Guidance Note on Section 15\(1\)\(c\)](#).

**It is recommended that bodies that are unable to process a large proportion of FOI requests should contact for FOI Central Policy Unit in the first instance on a suitable path forward, advice may also be sought from the Office of the Information Commissioner.**

## 6. USE OF NON-OFFICIAL SYSTEMS

The Covid-19 crisis has required that public bodies and their staff take an innovative and flexible approach to maintaining business continuity. In some cases, this may have necessitated the use of non-official systems for communications, such as Gmail or Whatsapp.

- Bodies are reminded that business-related correspondence held on such systems is in principle subject to FOI, see [CPU Guidance Note 24](#) for further details.
- Staff members are advised to consult their organisational policies around records management in order to ascertain their obligations when using non-official systems.
- Civil Servants should note the contents of [Circular 09/2019](#), which in general terms requires that copies of any business-related records generated on non-official accounts should be provided to the body concerned as soon as possible and deleted from the private account. This could be achieved, for example, by copying your work email account on any business correspondence sent from a personal email address.

## 7. POSTAL REQUESTS AND OFFICE CLOSURES

- It is recommended that efforts are made to direct requesters towards electronic channels to preserve continuity of services, including updating websites and other relevant sources accordingly.
- It is also recommended that procedures be put in place to ensure that postal requests are received and processed in all circumstances.
- Social distancing measures may require that staff in an organisation will not be attending business premises. Therefore there may be periods in some organisations during which post is not collected or opened. In such cases, it is recommended that once postal requests are opened for processing, all affected requesters are contacted as soon as possible and updated on the circumstances, in line with the general guidance above.

## 8. MAKING FOI DECISIONS WHILE REMOTE WORKING

### A) REDACTIONS

[Section 18](#) of the 2014 Act provides that records may be released in redacted form where it is “practicable to do so”. Therefore, if the facilities are not available to make redactions to records, it may be necessary to refuse access in full.

**The following should be considered:**

- When dealing with electronic records, it may be possible to perform redactions using suitable tools. Care should be taken when using such methods to ensure that any redactions cannot be undone. Particular care should be taken to avoid using simple “highlighter” type tools, which may not remove the underlying text even though it appears to be blacked out.
- [Section 17](#) also provides that it is possible to grant access to a transcript of a record rather than a redacted copy where it would be “significantly more efficient” to do so. This means that it is possible to copy parts of records into a new document for release while leaving out exempt information. This approach is recommended in particular where a record contains information that is central to the requester’s interests, and releasing this information to them might head off further reviews.
- Where the requester has been provided with a transcript of a record because facilities to redact records are not available through remote working, the transcript should be clearly identified, e.g. by using the heading “Transcript of Record [insert number of record as per schedule], exempt information has been excluded from this document”. This approach should be clearly reflected in the decision letter. Sample language might read:-

“Your request sought copies of records. Due to the disruption caused by the Covid-19 pandemic, the decision on your request has been made through remote working facilities. Under the circumstances, it is not practicable to provide a redacted copy of record(s) [insert numbers of records as per schedule]. Therefore, in order to provide you with access to records to the greatest extent possible, pursuant to [section 17](#) of the FOI Act I have instead transcribed the releasable parts of these records into new documents. The basis for finding that the remainder of these records are exempt is set out below and in the schedule.”

- There may be cases where facilities are not available to redact a record, but it is also impractical to provide a transcribed copy. In these cases the record must be refused, however it may be appropriate to invite the requester to resubmit their request for such records at a later stage so that the redacted copy can be released to them.

**B) ISSUING RECORDS**

**[Section 17](#) of the FOI Act provides that where access is sought in a specified form, e.g. electronically, it should be provided in this same form unless it would be “significantly more efficient” to provide records in a different form.**

**The following should be considered:**

- It may be possible to issue records electronically in many circumstances where FOI decision-making is being undertaken while working remotely.
- In general, records must issue with an FOI decision. However, in some cases it may be necessary to send a decision separately from the records, for example a decision may issue electronically from a decision-maker who is working remotely, with arrangements made to have physical records posted promptly after that.
- Great care should continue to be taken to ensure that records issuing electronically are sent to the correct address. In all cases, but particularly where sensitive personal information is involved, it may be necessary to take appropriate steps to verify an email address before sending it.