

Freedom of Information

CODE OF PRACTICE

North South Implementation Bodies and Tourism Ireland Ltd

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PART 1

1. Preamble

1.1 The North/South Ministerial Council has approved this Code of Practice pursuant to Part 7 paragraph 7 of Annex 2 of the Agreement of 8th March 1999 between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the North/South Implementation Bodies (“the Agreement”) whereby the responsible Ministers in Ireland and Northern Ireland were required to draw up a Code of Practice on access to information for the North/South Implementation Bodies for approval by the Council.

1.2 In preparing this Code of Practice, the responsible Ministers in Ireland and Northern Ireland have had regard to the Freedom of Information Acts 1997 and 2003 in Ireland and to the Freedom of Information Act 2000 in the United Kingdom and other standards and best practice in the area of access to information.

1.3 This Code is non-statutory and does not override or prejudice provisions contained in statutory rights of access to information or records in Irish, UK, EU or international law nor does it override statutory prohibitions on disclosure in particular the Data Protection Act 1998 and the Environmental Information Regulations 2004 in the UK and legislation governing Access to Information on the Environment and the Data Protection Acts 1988 and 2003 in Ireland.

1.4 This Code shall apply to each of the North/South Implementation Bodies established under the Agreement and Tourism Ireland Limited. Each such Body should take measures to implement and to promote public awareness of this Code.

1.5 This Code shall take effect from 1 February 2006 and shall be reviewed by the responsible Ministers not later than 2 years after this date.

2. Objectives

2.1 The primary objective of this Code is to facilitate access by members of the public to information held by the North/South Implementation Bodies and Tourism Ireland Limited.

Achievement of this objective will lead to:

- greater openness and accountability and increased public confidence in the workings of the North/South Bodies; and
- improvement in the quality of decision making by the North/South Bodies

3. Principles

3.1 In seeking to achieve its objectives this Code applies a presumption of openness.

3.2 Decisions on access to information should strike a proper balance between granting access and preserving confidentiality where disclosure would be against the public interest. The scales should be weighted in favour of openness.

3.3 This Code should not interfere with or cut across statutory rights or obligations.

4. Interpretation

In this Code:

"applicant" means a person who makes a request to a Body under section 12 or, as the case may be, a person who makes a review application under section 16

"Code" means this Code of Practice

"Council" means the North/South Ministerial Council

"exempt information" has the meaning assigned to it in the Annex

"information" means any record created from 2 December 1999 whatever its medium including a document, book, plan, map, drawing, diagram, pictorial or graphic work, a photograph, film or recording or other form in which information is stored.

"personal information" means information about an identifiable individual that would, in the ordinary course of events be known only to the individual or members of the family, or friends, of the individual

"public authority" means a public Body within the meaning of the Irish Freedom of Information Acts 1997 and 2003 or a public authority within the meaning of the UK Freedom of Information Act 2000.

"Body" means a Body listed in section 5.

"responsible Ministers" means the Ministers in Ireland and Northern Ireland with responsibility for freedom of information.

"working days" means any day other than a Saturday, a Sunday, or a public/bank holiday observed by the Body in receipt of the request for information.

Save where the context otherwise requires, a reference to a section is a reference to a section of this Code.

5. Scope

5.1 This Code is applicable to the following Bodies:

Food Safety Promotion Board

Foyle, Carlingford and Irish Lights Commission

Waterways Ireland

The North/South Language Body/An Foras Teanga/ Tha Boord o Leid

Special EU Programmes Body

Trade and Business Development Body

Tourism Ireland Limited

6. Publications

6.1 A Body to whom this Code applies should publish information relating to the functions of the Body, its structures, organisation and services together with a general description of the classes of information held by the Body and the procedures and organisational arrangements in place to facilitate members of the public in using this Code. The Body should regularly review the information it publishes under this section at least every twelve months.

6.2 Within six months of the coming into effect of this Code, each Body should confirm in writing to the Council that it has published information under this section.

7. Access to Information

7.1 Subject to the provisions of this Code and any other statutory provisions, a person should on request, be provided with access to information held by a Body.

7.2 Section 7.1 does not apply where:

- (a) the information requested is exempt information by virtue of any paragraph in Part 1 of the Annex; or
- (b) the information requested is exempt information by virtue of any paragraph in Part 2 of the Annex and in all circumstances of the case, the public interest in withholding the information outweighs the public interest in disclosing the information.

7.3 In applying the public interest test under 7.2(b) a Body should have regard to the presumption that openness is, in itself, to be regarded as something which is in the public interest.

8. Provision of reasonable assistance

Each Body should provide advice and assistance, so far as it would be reasonable to expect a Body to do so, to applicants and prospective applicants to facilitate such persons in accessing information under this Code.

9. Information originating from public authorities or the Council

9.1 Where the information requested is information received from or originating in a public authority in the UK or Ireland, or the Council, the Body should consult with the public authority concerned or the Council before determining whether or not the information should be disclosed.

9.2 In particular, consultation should take place where:

- (a) the views of the public authority or the Council may assist the Body to determine whether an exemption under the Annex applies to the information requested; or
- (b) the views of the public authority or the Council may assist the Body to determine where the public interest lies.

9.3 Subject to paragraph 6.3 of Part I of the Annex it is for the Body, not the public authority or the Council to determine whether or not information should be disclosed under the Code. A refusal to consent to disclosure by a public authority does not, in itself, require that information should be withheld.

9.4 Where a request for information is refused by virtue of the information being exempt information under paragraph 6.3 of Part 1 of the Annex, a Body should refer the applicant to the public authority from which the information was received or originated from so that the applicant can seek a determination under the applicable freedom of information legislation.

9.5 The Body should notify the public authority or the Council in writing of its decision whether or not to disclose the information.

10. Third party consultation

10.1 Where an application received is in respect of information covered by paragraphs 9 or 10 of Part 2 of the Annex, the Body should consult with the person concerned before determining whether or not the information should be disclosed.

10.2 In all cases, the Body should consider whether the public interest would, on balance, be better served by disclosing the information than by withholding the information.

10.3 In all cases it is for the Body, not the person (or representatives of the person) to determine whether or not information should be disclosed under this Code. A refusal to consent to disclosure by a person does not, in itself, require that information should be withheld.

10.4 If a decision is made to release information covered by paragraphs 9 and 10 of part 2 of the Annex the person should be notified in writing of the decision and be afforded an opportunity to apply for internal review of that decision in accordance with the procedure set out in section 16 of this Code as appropriate.

10.5 Notice of a decision issued under section 10.4 should specify:

(a) that an application for internal review of the decision should be submitted by the person within 15 working days; and

(b) that effect will not be given to the decision concerned until either the expiration of that period, or if an application for internal review is made by the person within that period, until the internal review has been decided.

11. Form of access

11.1 Access to information may be provided by a Body:

- (a) in electronic form or in the form of a photocopy or other reproduction of the information;
- (b) by means of a reasonable opportunity to inspect or, as the case may be, to hear or view the information where practicable;
- (c) in the case of information in shorthand or other encoded form, in readable and in written form; or
- (d) where reasonably practicable the Body may deliver a summary or digest of the information.

according to the wishes of the applicant.

11.2 Access may be provided in such other form as may be determined by the Body where it would be more appropriate or significantly more efficient to provide access in that form, where the provision of access in the form requested by the applicant would interfere with a statutory right or obligation or would be physically detrimental to the information or would involve an infringement of copyright.

11.3 Where a Body determines that only part of the information is exempt information, access should be provided to such other parts of the information as are not exempt.

12. Requests for information

12.1. A request for information held by a Body should be made in writing or in electronic form to the Body that holds the information. A request should contain the name of the applicant, an address for correspondence and sufficient particulars to enable the information sought to be identified by the taking of reasonable steps.

12.2 A request for information may be refused if:

- (i) the request is frivolous, vexatious or manifestly unreasonable; or
- (ii) the request would cause an excessive and unreasonable administrative burden to the Body concerned.

A request should not be refused pursuant to subsection (ii) unless an attempt has been made to assist the applicant to amend the request so that it no longer falls within that section.

13. Notice of decisions

13.1 Subject to section 13.2 a decision on a request for information should be issued in writing to the applicant promptly and not later than 20 working days from the date of receipt of the request.

13.2 In the case of a request for a significant volume of information and/or a request where consultation with a third party is required under this Code a decision on a request for information should be issued in writing to the applicant not later than 35 working days from the date the request was received.

13.3 An acknowledgement of a request under Section 12 should issue promptly and not later than 5 working days of receipt of the request. An acknowledgement should state that an application is being dealt with in accordance with this Code and advise the applicant of the provisions of the Code.

13.4 Where a Body extends the period of time for a decision under this section from 20 to 35 working days, a notice informing the applicant of such extension should be issued promptly and not later than 20 working days after the date of receipt of the request.

13.5 Subject to section 13.6, notice of a decision on a request should contain a schedule of records relevant to the request and in the case of a request that is refused either in whole or in part, a description of the reasons for withholding the information and particulars relating to the applicant's right of review of the decision.

13.6 A Body is not obliged to disclose the existence or non-existence of information where either:

- (a)the information requested is exempt information by virtue of any paragraph in Part 1 of the Annex; or
- (b)the information requested is exempt information by virtue of any paragraph in Part 2 of the Annex and in all the circumstances of the case, the public interest in not disclosing the existence or non-existence of the

information, outweighs the public interest in disclosing the existence or non-existence of the information.

13.7 Where the information requested does not exist or cannot be found after all reasonable steps to ascertain its whereabouts, the notice of decision should confirm this fact. A Body should compile and maintain a record of the steps taken to ascertain the whereabouts of the information.

13.8 Notwithstanding section 10 where a decision on a request for information materially affects a person the Body should notify that person of the decision.

14. Statement of Reasons

14.1 Subject to the provisions of this Code, a person should, on application to a Body, be provided with a statement of the reasons for an act of a Body affecting that person.

14.2 For the purposes of this section “act” means a decision (other than a decision under this Code) in which the applicant has a material interest and where the consequence or effect of the act is to withhold from or confer on the person a benefit without also conferring it on or withholding it from persons in general or a class of person which is of significant size.

14.3 Nothing in this section should require the giving to a person of exempt information, or the disclosure of the existence or non-existence of information otherwise than as provided for in this Code.

15. Fees

15.1 The cost of reproducing and despatching information released under this Code may be charged to the applicant. Such a fee should not be charged where access is provided by means of inspection, in respect of copies of less than 20 A4 pages, or where access is provided to information in electronic form. Where a fee is to be charged, the Body should write to the applicant, within the period for complying with section 13, stating the fee amount.

15.2 A fee structure, drawn up by the responsible Ministers and approved by the Council, may allow such other fees as may be determined to be charged under this Code.

15.3 Where a fee is charged, the period of time under section 13 to comply with a request should stand suspended until such time as the fee is paid by the applicant.

16. Internal review of decisions

16.1 An applicant may within 20 working days of receiving a decision under section 13 apply to a relevant Body for a review of a decision being:

- (a) a decision to refuse a request for information either in whole or in part (including a failure to respond to a request for information within the time period specified in section 13); or
- (b) a decision to provide access to information in a particular form or manner; or
- (c) a decision to refuse an application under section 14 or a decision in relation to the contents of a statement under that section; or
- (d) a decision to charge a fee under section 15.

16.2 A review under this section should be undertaken by a member of staff of more senior rank than the person who made the original decision on the request.

16.3 Where an application under this section is received in respect of a decision to refuse information covered by paragraphs 9 or 10 of part 2 of the Annex the Body should notify the person of the application.

16.4 Following a review under this section, a Body may affirm or vary the original decision taken by the Body.

16.5 A decision on an application under this section should be notified to the applicant and any person covered by section 16.3 not later than 15 working days from receipt of the application concerned.

17. Reports to the Council

A Body should submit a report on its operation of this Code to the Council at such time and in such form as the Council may from time to time require.

Annex

Information of the following types is exempt information within the meaning of this Code:

Part 1

1. Defence, security and international relations

- Information whose disclosure could harm security or defence or the conduct of international relations or affairs
- information whose disclosure could harm relations between the governments of the United Kingdom and Ireland
- Information whose disclosure is prohibited by an international organisation.

2. Legal proceedings

Information whose disclosure could prejudice the administration of justice (including fair trial), legal proceedings or the proceedings of any court or tribunal, public inquiry or other formal investigation (whether actual or likely) or whose disclosure is, has been, or is likely to be addressed in the context of such proceedings.

Information relating to legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.

3. Legal professional privilege

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

4. Personal information relating to a living individual

Personal information save where the information concerned consists solely of personal information related to the applicant.

5. Information accessible to the applicant by other means

Information may be reasonably accessible to the applicant even though it is accessible only on payment, and information is taken to be reasonably accessible to the applicant if it is information which the relevant Body (or any other person) is obliged under any

enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on receipt of payment.

6. Statutory and other restrictions

6.1 Information whose disclosure is prohibited by the Data Protection Acts (Ireland and UK) or under any other statute, order, regulation, European Community law or international agreement, including information held by any other public authority whose disclosure is prohibited by law.

6.2 Information which is received from, or originates from, a public authority and with respect to which a decision has been taken by the appropriate public authority that the information or part of the information is an exempt record under the Irish Freedom of Information Acts 1997 and 2003, or is exempt information under the UK Freedom of Information Act 2000.

6.3 Information which is received from, or originates from, a public authority and which, in the view of that public authority, may be an exempt record under the Irish Freedom of Information Act 1997 as amended or may be exempt information under the UK Freedom of Information Act 2000.

7. Communications with Her Majesty the Queen or with the President of Ireland

Communications with the President of Ireland, or with Her Majesty the Queen, with other members of the Royal Family or with the Royal Household and including the conferring of any honour or dignity.

Part 2

1. Internal discussion and advice

Information relating to a deliberative process and whose disclosure would inhibit the free and frank expression of views, including:

- proceedings of working groups or committees;
- internal opinion, advice, recommendation, consultation and deliberation;

- projections and assumptions relating to internal policy analysis, analysis of alternative policy options and information relating to rejected policy options;
- communications between a relevant Body and the governments of the United Kingdom and Ireland, other relevant Bodies, public authorities and regulatory Bodies.

2. Law enforcement

Information whose disclosure could prejudice the enforcement or proper administration of the law, including the prevention, investigation or detection of crime, or the apprehension or prosecution of offenders.

3. Personal information - deceased persons

Personal information relating to a deceased person.

4. Public safety

Information whose disclosure could harm public safety or public order, or would prejudice the security of any building or penal institution.

Information whose disclosure could endanger the life or safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.

5. Economic affairs

Information whose disclosure could affect adversely the financial and economic interests of Ireland or the United Kingdom or the interests of any economic sector of Ireland or the United Kingdom, or lead to an unwarranted gain or advantage to a person or class of persons.

6. Effective management of public services

Information whose disclosure could prejudice the proper and efficient conduct or operations of a Body or a public authority, including information whose disclosure could prejudice:

- the activities or functions (including functions relating to management, including personnel management) of a Body or public authority;
- negotiations;
- the competitive position of a Body or a public authority.

7. Publication and pre-maturity in relation to publication

Information which is or will soon be published, or whose disclosure, where the material relates to a planned or potential announcement or publication, could cause harm (for example, of a physical or financial nature).

8. Research, statistics and analysis

Information relating to incomplete analysis, research or statistics, where disclosure could cause serious disadvantage or deprive the holder of priority of publication or commercial value.

9. Commercially sensitive information

Information including commercial confidences, trade secrets or intellectual property whose disclosure would harm the competitive position of a person.

10. Information held/obtained in confidence

Information obtained from a person who gave the information under an understanding that its confidentiality would be protected.

Any other information given and received in confidence where the release of the information concerned would prejudice the supply of future similar information and where the future supply of such information is of importance to a Body.

11. The Environment

Information whose disclosure would increase the likelihood of damage to the environment, or rare or endangered species and their habitats.