



STATUTORY INSTRUMENTS.

S.I. No. 558 of 2016



FREEDOM OF INFORMATION ACT 2014 (SECTIONS 9(6), 10(6) AND
37(8)) REGULATIONS 2016

FREEDOM OF INFORMATION ACT 2014 (SECTIONS 9(6), 10(6) AND 37(8)) REGULATIONS 2016

I, PASCHAL DONOHOE, Minister for Public Expenditure and Reform, in exercise of the powers conferred on me by sections 3, 9(6), 10(6) and 37(8) of the Freedom of Information Act 2014 (No. 30 of 2014), hereby make the following regulations:

Citation

1. These Regulations may be cited as the Freedom of Information Act 2014 (Sections 9(6), 10(6) and 37(8)) Regulations 2016.

Interpretation

2. In these Regulations, a reference to a section is a reference to that section of the Freedom of Information Act 2014 (No. 30 of 2014).

Revocation

3. (1) Each of the following—

(a) the Freedom of Information Act 1997 (Section 17(6)) Regulations 2009 (S.I. No. 385 of 2009), referred to in these Regulations as the “First 2009 Regulations”, and

(b) the Freedom of Information Act 1997 (Section 18(5A)) Regulations 2009 (S.I. No. 386 of 2009), referred to in these Regulations as the “Second 2009 Regulations”,

is revoked.

(2) Any action commenced under the First 2009 Regulations or the Second 2009 Regulations shall continue to be performed and shall be completed after the commencement of these Regulations as if the First 2009 Regulations or, as the case may be, the Second 2009 Regulations, had not been revoked.

Amendment of records relating to personal information permitted in 2 defined cases

4. Notwithstanding subsection (1) of section 9, an application under that section may be made to amend a record that includes personal information which is incomplete, incorrect or misleading and shall, subject to the other provisions of the Freedom of Information Act 2014, be granted if the case either is one—

(a) to which Regulation 6 applies and, in addition, the condition specified in Regulation 7 is satisfied, or

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 15th November, 2016.

(b) to which Regulation 8 applies.

Right of person to information regarding acts of FOI bodies affecting the person in two defined cases

5. Notwithstanding subsection (1) of section 10, an application under that section may be made where the applicant is a parent or guardian of a person referred to in that subsection and shall, subject to the other provisions of the Freedom of Information Act 2014, be granted if the case either is one—

(a) to which Regulation 6 applies and, in addition, the condition specified in Regulation 7 is satisfied, or

(b) to which Regulation 8 applies.

First defined case

6. (1) In this Regulation a reference to the individual is a reference to, as the case may be—

(a) the individual to whom the information in the record concerned referred to in section 9(1) relates; or

(b) the person affected by an act of an FOI body, and having a material interest in a matter affected by that act or to which it relates, as referred to in section 10(1).

(2) This Regulation applies to a case in which the applicant is a parent or guardian of the individual and that individual belongs to one of the following classes of individual:

(a) individuals who, on the date of the application, have not attained full age, or

(b) individuals who have attained full age, being individuals who—

(i) at the time of the application have, or are subject to, a psychiatric condition, mental incapacity or severe physical disability, the incidence and nature of which are certified by a registered medical practitioner, and

(ii) by reason of that condition, incapacity or disability, are incapable of exercising their rights under the Freedom of Information Act 2014.

Supplemental provision with respect to operation of first defined case

7. The condition referred to in Regulation 4(a) or 5(a), as the case may be, is that the individual specified in Regulation 6 is an individual as respects whom the granting of the application would, in the opinion of the head having regard to all the circumstances, be in the individual's best interests.

Second defined case

8. This Regulation applies to a case in which the individual (as that expression is to be construed in accordance with Regulation 6(1)) is dead and either—

- (a) the applicant concerned belongs to one of the following classes:
 - (i) a personal representative of the individual acting in due course of administration of the individual's estate or any person acting with the consent of a personal representative so acting, or
 - (ii) a person on whom a function is conferred by law in relation to the individual or his or her estate acting in the course of the performance of the function, or
- (b) the applicant is the spouse or the next of kin of the individual and, in the opinion of the head having regard to all the circumstances, the public interest, including the public interest in the confidentiality of personal information, would on balance be better served by granting than by refusing to grant the application.

Supplemental provisions with respect to operation of second defined case

9. For the purposes of Regulation 8:

“next of kin” means:

- (a) issue,
- (b) parent,
- (c) brother or sister,
- (d) niece or nephew, or
- (e) any other person standing nearest in blood relationship to the deceased individual in accordance with section 71(2) of the Succession Act 1965 (No. 27 of 1965),

and Regulation 10 supplements this definition;

“personal representative” means a personal representative within the meaning of the Succession Act 1965;

“spouse” includes, in addition to a lawful spouse:

- (a) a party to a marriage that has been dissolved, being a dissolution that is recognised as valid in the State, and a person who is living apart from his or her spouse pursuant to a deed of separation;
- (b) a man or woman who was not married to, but cohabited as a spouse with, the deceased individual; and

- (c) a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24 of 2010).

Supplemental provision with respect to “next of kin” in Regulation 9

10. For the purposes of the definition of “next of kin” in Regulation 9:
- (a) in a case in which, but for this Regulation, 2 or more paragraphs of that definition would be applicable, the paragraph of them that (alphabetically) is the first in order shall alone be regarded as being applicable; and
 - (b) as regards the paragraph of that definition that is applicable in the particular case, if 2 or more persons fall within that paragraph, each of them shall be regarded as next of kin of the particular individual.

Amendment of Freedom of Information Act 2014 (Section 37(8)) Regulations 2016

11. The Freedom of Information Act 2014 (Section 37(8)) Regulations 2016 (S.I. No. 218 of 2016) are amended by substituting for Regulation 9 the following:

“9. For the purposes of the definition of “next of kin” in Regulation 8:

- (a) in a case in which, but for this Regulation, 2 or more paragraphs of that definition would be applicable, the paragraph of them that (alphabetically) is the first in order shall alone be regarded as being applicable; and
- (b) as regards the paragraph of that definition that is applicable in the particular case, if 2 or more persons fall within that paragraph, each of them shall be regarded as next of kin of the particular individual.”.



GIVEN under my Official Seal,
10 November 2016.

PASCHAL DONOHOE,
Minister for Public Expenditure and Reform.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations prescribe the classes of individuals who may apply under Section 9(6), 10(6) or 37(8) of the Freedom of information Act 2014 (No. 30 of 2014) respectively for:

- (1) Amendment of records containing incorrect, incomplete, or misleading information, Section 9(6) refers;
- (2) Reasons for decisions and acts of a Public Body in which they have a material interest in a matter affected by the act or decision or to which it relates. Section 10(6) refers;
- (3) Access to parents and guardians and the classes of requester to whom the records of deceased persons will be made available;

having regard to relevant circumstances and to guidelines published by the Minister of Public Expenditure and Reform

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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