

# Freedom of Information

Volume 15, Issue 1

September / October 2018

## Headlines

- Health Board attributes missing FOI deadlines to GDPR, p.18
- EU court delivers transparency blow on MEP expenses, p.19
- Dáil bid to make Office of the President subject to FOI requests, p.20

## Contents

Expert comment	2
FOI and diaries	4
Housing Associations and FOI	8
Recent decisions of the Commissioner and Tribunal	12
FOI news	17

## Housing association is a public authority, rules ICO

The Information Commissioner has ruled that a housing association can be a public authority for the purposes of the Environmental Information Regulations 2004 ('EIRs').

Housing authorities are not habitually considered to be public authorities for the purposes of the information law regimes — they aren't designated as such in Schedule One to the Freedom of Information Act 2000 ('FOIA'), and have not normally been considered to fall into the definition of 'public authority' in

Regulation 2(1) of the EIRs.

The decision against Poplar Housing & Regeneration Community was reached on the basis of the Commissioner's application of a legal test laid out by the Grand Chamber of the Court of Justice of the EU in *Fish Legal v Information Commissioner & Others*. That case clarified how certain bodies are subject to the environmental information regime, despite not being FOIA-designated bodies.

The test the Commissioner applied was whether

Poplar HARCA is carrying out functions of public administration in relation to the environment and, if so, whether it has special powers which enable it to do so. The 'special powers' element prompted the most discussion in the decision notice.

Poplar HARCA argued that its powers did not amount to special powers, but the Commissioner wasn't persuaded by that argument. She also said that "whilst the judgment...is a finely balanced one, the Commissioner notes that the

[\(Continued on page 17\)](#)

## Scottish government criticised over proposed reforms

The Scottish government's proposed reforms to handling FOI requests, as detailed in its recently issued 'FOI request handling: draft action plan', lack clarity, according to Scotland's Information Commissioner.

The proposed reforms are the response to a report issued earlier this year by SIC Daren Fitzhenry into the government's handling of FOI requests in relation to groups including journalists. Mr Fitzhenry made specific recommendations

in his report, which the Scottish government accepted in full (the draft action plan addresses each recommendation in turn).

One central focus of the SIC's recommendations was on the request clearance process. The Commissioner highlighted a lack of clarity about roles and responsibilities, potential for confusion in procedures and guidance about what is meant by 'clearance' and concerns about the time that it

takes. The government responded at that time that "there is no doubt the process itself can be time-consuming and our guidance on roles needs to be clearer."

The SIC said he was "content" with the "majority" of the proposed actions, but noted that "cases identified as sensitive or exceptionally complex will be referred to special advisers and Ministers for 'comment'

[\(Continued on page 17\)](#)