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The Freedom of Information and Data Protection Acts

An Overview

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Why was the Freedom of Information Act 1997 introduced?

- Develop a culture of openness, transparency and accountability
- Implemented in Government Departments
April 1998-Health Boards/Local Authorities
Oct 1998 etc.
- Third Level Institutions - 1st October 2001



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Entitlements: Students, Staff and the Public

A legal right to:

- Access official (corporate) records (section 6)
- Access and amend, delete or correct records containing your personal information (section 17)
- Be given reasons for decisions which affect you from 1st October 2001 (section 18)

Note: subject to exemptions



Implications of the Act

For public bodies:

- A legal obligation to publish information (section 15 and 16 manuals)
- A legal obligation to establish mechanisms for handling requests
- A legal obligation to assist individuals to exercise their rights



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Publications under the Act

- Section 15 manual
- Description of functions, structure, services, powers, classes of records held etc.
- Web based and hard copy
- Purpose: assist individuals in exercising their rights under the Act



Publications under the Act

- Section 16
Internal rules, procedures, guidelines etc.
used in the decision making process
- Mainly web based
- Purpose: assist individuals in exercising
their rights under the Act



Record Definition

The Act states that a “record” includes
“any memorandum, book, plan, drawing,
diagram, pictorial or graphic work or other
document, any photograph, computer record
etc.....or thing in which information is
held or stored and anything that is a part or
a copy, in any form of any of the foregoing
....etc” (section 2 of the Act page 9)

***“Any record under the control of the
university”***



What records can be requested

- Records created after Act commenced-
21st April 1998
- Student/public personal records regardless
of when created
- Staff records created after 21st April, 1995
- Earlier records if needed



Exempt/protected Records

- Personal information from third party access (s28)
 - Information obtained in confidence (s26)
 - Commercially sensitive information (s27)
 - Functions and negotiations of public bodies (s21)
 - Deliberations of public bodies (s20)
 - Research and natural resources (s30)
- “public interest test” “injury or harm test” to justify withholding*



FOI Process

- Decision maker: Initial decision within four weeks (can extend to 11 weeks)
- Internal reviewer: seek review within four weeks - decision within three weeks
- External review: seek review within six months
 - by Information Commissioner
 - binding decisions
- Appeal to High Court and Supreme Court



FOI (Amendment) Act 2003

- €15 “up front” fee for an application for access to non personal records (€75 for Internal Review, €150 for external review)
- Does not apply to applications for access to personal records
- Clarification/amendments to exemptions
- Publication of section 15 and 16
- Increased protection for Government records



Data Protection Act 1988 and the Data Protection (Amendment) Act 2003

Why was Data Protection introduced:

- To comply with EU Directives
- To regulate the collection, processing, keeping, use and disclosure of personal data
- To give individuals access to their data and allow them to amend it if incorrect



Data Protection Act 1988 and the Data Protection (Amendment) Act 2003

- What is data protection?

It is the safeguarding of the privacy rights of individuals in relation to the processing of personal data. The Data Protection Acts 1988 and 2003 confer rights on individuals as well as responsibilities on those persons processing personal data.



Data Protection Act 1988 and the Data Protection (Amendment) Act 2003

- Protects privacy rights of individuals
- Legal right of access to personal records (only) held on computer or on manual relevant filing systems
- Applies to all organisations - private and public (FOI -public sector only)



Eight Rules of Data Protection for Data Controllers (staff)

- Obtain and process information fairly
- Keep it only for one or more specified, explicit and lawful purposes
- Use it and disclose it only in ways compatible with these purposes
- Keep it safe and secure
- Keep it accurate complete and up to date



Eight Rules of Data Protection

- Ensure that it is adequate, relevant and not excessive.
- Retain it for no longer than is necessary for the purpose or purposes
- Give a copy of his/her personal data to that individual on request
- www.dataprivacy.ie



Exempt/Protected records

- Information about other people
- Information received in confidence
- Prejudicial to investigations, prosecutions
- Legally privileged information
- Prejudicial to security of State, prisons, international relations
- Health and Social work records without agreement of Health/Social work Professional



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Risks/Challenges

FOI and DP

- Client/customer care versus legal obligations
- Up to date and accurate records
- Control of records
- Release of confidential/exempt records



Risks/Challenges

FOI and DP

- Protection/security of records (especially personal data)
- Ensuring compliance with the law
- Audits by FOI and DP Commissioners
- Limited resources
- New legislation



FOI Management/Compliance

- Publications (section 15 and 16)
- Information leaflets, booklets, website (Legal obligation to promote FOI)
- FOI access procedures and routine access procedures
- Student /Staff awareness and training
- Records management
- Streamline workload



Data Protection Management/Compliance

- Data Protection Policy
- Privacy statement
- Staff guidelines
- DP access structures and procedures
- Consent of data subjects (students)
- Publication of above
- Staff training



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