



**Mercy Law**  
Resource Centre

**Submission to the Department of Public Expenditure and Reform  
Public Consultation on the Freedom of Information Act**

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Mercy Law Resource Centre Limited is a company limited by guarantee and not having a share capital, registered in Dublin, Ireland. Co.Reg No:471072. It is also a registered charity, Chy No:18698. Directors: Edward Gleeson, Catherine Dooley, Cara Nagle, Ciara McGrath, Deirdre Quigley, Stewart Reddin, Gerry Whyte, Liam Twohig and Eamonn Casey



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### **About MLRC**

Mercy Law Resource Centre (MLRC) is an independent law centre, registered charity and company limited by guarantee. MLRC provides free legal advice and representation for people who are homeless or at risk of becoming homeless. It also seeks to advocate for change in laws, policies and attitudes which unduly and adversely impact people who are at the margins of our society.

MLRC's vision is of a society where each individual lives in dignity and enjoys equal rights, in particular the right to a home, which is fundamental to each human being. MLRC's vision is also of a society where every individual enjoys equal access to justice and legal recourse in order to vindicate those rights.

In that context, MLRC's clients are local authority tenants, people who are homeless or at risk of becoming homeless and people in receipt of social housing support. They include people trying to move away from homelessness who may be struggling with issues often linked to homelessness including for example, addiction, leaving prison, mental illness, relationship breakdown and domestic violence.

MLRC provides five key services: free legal advice clinics; legal representation in the areas of homelessness, housing and related social welfare law; legal support and training to organisations working in the field of homelessness; policy advocacy arising from our casework; and a client befriending service.

MLRC's ethos recognises the dignity of each person. MLRC seeks to ensure that all people are treated with respect and compassion and are enabled to achieve their full potential as human beings. MLRC is committed to the principles of human rights, social justice and equality.



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### Structural Issues / Streamlining

We echo the concerns raised in the Consultation Document regarding the use of Freedom of Information (FOI) to access personal information. In MLRC we and our clients frequently rely on FOI to obtain copies of a person's housing file held by a local authority. Accessing these files is often essential for a person to understand how their case has been progressed by a local authority, and to get advice or assistance if they believe an issue has occurred.

We submit that there should be a significantly faster and more streamlined procedure for individuals to access their housing files (and other such files held on that person by a local authority / public body). Requiring FOI to be used for this purpose creates barriers to access, including that members of the public need to (i) be aware that FOI exists and can be used to access their personal files; (ii) have access to, and literacy with, IT platforms to make the request; and (iii) wait a considerable period for the request to be processed. Further, there are significant questions as to whether FOI is in fact the appropriate mechanism to access such personal files which, by their nature, would not be subject to release under an FOI request lodged by any party other than the requester.

A better system would see members of the public able to access their own housing files in real time through a secure online platform. This would place real control back in the hands of the public, while also reducing the burden on the local authority of processing FOI requests. It would also be an aspect of 'transparency by design'. While it would be anticipated that the vast majority of people would use the platform directly, to ensure maximum accessibility there should also be a facility for a local authority to assist a person with accessing their records through another medium if required due to access difficulties such as literacy issues or lack of access to IT equipment, etc.

More generally, we support the proposals that the distinctions between GDPR and FOI be made clearer. This could be done to a significant degree without need for legislative change. Currently, FOI is relied on to obtain personal information from local authorities in part



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because there are generally clear processes for making FOI requests, including dedicated FOI email addresses and staff. In contrast, the process for subject access requests under GDPR can be less clear. There can also be concerns that a GDPR request response may not include an entire file if part of the file includes documents that do not on their face include personal information.

If the GDPR processes could be improved by local authorities, and clear information made available to the public as to when GDPR and FOI can be used and what will be disclosed in each instance, this would be a significant improvement on the current state of affairs.

A further challenge presented with the current situation is that a person's housing information may be held by more than one entity, some of which are not subject to FOI (for example, Approved Housing Bodies). Given the dominance of FOI requests as discussed above, what occurs in practice is that an FOI request is made to the local authority for the housing file they hold and a GDPR request made to the other entity for the part of the file they hold. It would be significantly simpler if all bodies involved in such services were amenable to produce information in response to the same legal process. A further aspect of this is addressed below under 'Designating FOI Bodies'.

### Transparency by design / Proactive publication

See above for our proposals in relation to 'transparency by design' in respect of access to personal information held by a local authority.

In respect of non-personal information, in the experience of MLRC there are still significant strides to be made in truly incorporating the principles of transparency by design and proactive publication into the operations of public bodies. A common issue we encounter is that internal procedures and documents used by local authorities to consider their decisions, including government department circulars, guidance notes and process documents, are not routinely made available to the public. Instead it is necessary to request such documents, with FOI requests being necessary if the material is not initially forthcoming. As well as causing delay, it is sometimes not even clear that a particular circular or process exists to



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know to ask for it. A member of the public or their advisors should not be forced to 'guess' what is guiding a decision that impacts them. This issue is flagged in the Consultation Document.

We recommend that there should be stricter requirements on public bodies to publish all non-sensitive information like this in an accessible way. These requirements should be general and non-exhaustive in nature, although it would be helpful for certain categories of records to be explicitly prescribed for proactive publication. For example, departmental circulars issued to local authorities (while there is a website purporting to publish circulars, it is incomplete and has been under development for an extended period). Where such documents may be circulated to many public bodies there should be a clear designation of which body is responsible.

There should be incentives for wide publication and penalties for failing to do so. One matter that could help incentivise better practices would be to carry out research into the extent to which FOI requests fall when more information is proactively published, and any associated costs savings for the public body. Incentives could also include public acknowledgement of bodies that achieve high standards in this area.

### Informal release

Informal release principles can form part of our recommendations above. The proposals made above regarding incentivisation in particular are also relevant.

Making FOI a more collaborative process would have real benefits. For example, as noted in the Consultation Document, there is often an inequality of information between the requester and the public body – ie, the requester may not know exactly how to request what they want without having seen it. It would be helpful if the FOI Acts allowed for a more informational process where a public body could engage with the requester to understand what they want and thereby provide a more helpful response, as well as potentially avoid wasted work in making burdensome disclosures that are not in fact helpful to the requester.



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In order to achieve this, significant training and information sessions would be required to 'shift the dial' toward a more open, less risk-averse culture in public bodies. The incentives proposed above, in particular regarding research into the benefits of openness, could also support this.

### Improving the request process

We have two observations in relation to specific proposals in the Consultation Document under this heading.

In relation to the proposal regarding promoting further engagement between requesters and public bodies, see our comments above in relation to the merits of promoting a greater culture of cooperation and openness. In addition to training and awareness raising, providing a mechanism for public bodies to engage in a dialogue with requesters may also be of benefit.

In relation to the proposal to extend the request period in certain cases, with the particular example given being where a person wants access to their 'full file', such a mechanism could be useful in very limited circumstances but would need to be tightly controlled. It is a matter of concern that, in our experience, public bodies tend to use the 'maximum' time available for requests, even those that are simple and involve few documents. We would have significant concern that if an extended period was viewed as being allowed for certain categories of records such as personal files it would quickly become the norm to use that full period, further delaying a persons access to their essential information. We suggest that a priority should be investment in improving document management processes in public bodies such that gathering large batches of documents that have a clear connection, such as a 'full file' for release is less burdensome.

### Designating FOI bodies

We reiterate the points noted above about the discrepancies that can arise where a public function is being provided partly in conjunction with private entities. In MLRC's work, this most often arises where social housing is provided through Approved Housing Bodies, or



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where homeless accommodation is provided through section 10 funded entities. As noted above, it should be possible for a person to access their 'full' housing / homeless file without the requirement to make separate FOI and GDPR requests.

While there are a number of possible ways to achieve this, our preferred approach would be for the funding body (eg, local authority) to be responsible for collation and production of all records. This approach has a number of benefits, including reducing duplication of effort for the bodies responding to the requests; not placing the FOI burden on what are often non-profit/charitable organisations with limited resources; and ensuring a streamlined approach for members of the public.

### Volume of records / Incremental Reforms / Fees and Charges / Role of the Information Commissioner / Abuse of FOI

We have no specific recommendations on these items.