

Day 3 – Wednesday, 28 November 2007
Parallel Sessions – Session 1B 11.00am-12.30pm

Speaker: Emily O'Reilly

Position: Information Commissioner

Organisation: Office of the Information Commissioner, Ireland

Presentation Title: 'Own Motion' Investigations into Systemic FOI Problems

The issue raised in this session is whether, and if so in what manner, an Information Commissioner should seek to influence proposed changes to FOI law; a related matter is whether an Information Commissioner should take the initiative in seeking change to FOI law in circumstances where the government is inactive on the issue. The Irish Information Commissioner's Office has very particular experience in this area arising from a substantial amendment of the Irish FOI Act in early 2003.

FOI in Ireland has been in operation since April 1998. In February 2003 the Irish government announced its intention to amend the FOI Act; it published a Bill on 28 February 2003 and had it enacted by Parliament, and commenced, within the following six weeks. The FOI Amendment Act introduced a number of significant restrictions into FOI law as well as requiring the payment of up-front fees for requests, internal reviews and appeals to the Information Commissioner. These changes to the FOI law have had quite a "dampening" effect on use of the Act and on the public's perception of the scope of the FOI scheme.

These changes to Irish FOI law gave rise to a great deal of controversy both politically and within the media. The changes reflected the outcome of a review of the existing FOI law, conducted in secret by a group of Departmental Secretaries General. There was no consultation with the Information Commissioner or with other interested parties. Despite the controversy, the government succeeded in having the Bill enacted with only minimal concessions to opposing views.

Following publication of the Bill, the Information Commissioner contributed to the debate by way of a detailed report to Parliament on the implications of the proposed changes. The then Commissioner was careful not to appear to be partisan on the policy position reflected in the Bill; rather, his report was presented to the members of Parliament as a commentary on the practical implications should the Bill, as published, be enacted. The Commissioner also appeared before a Parliamentary Committee to elaborate on his report. However, the Commissioner refrained from any other public comment on the Bill's proposals. Whether the Commissioner could, or should, have engaged more directly on the issue is something worth further consideration.

Since 2003, the debate on the FOI changes has continued with the main Opposition parties in particular drawing attention to the consequences of the changes. The present Information Commissioner has contributed to this on-going debate both through her Reports to Parliament, her appearances before Committees of Parliament and on other occasions.