



**Office of Tobacco Control  
Section 15 and Section 16 Documentation  
Under the Freedom of Information Acts**

**Reference Guide**

**May 2006**

(Version 1)

# Guide to the Functions and Records of The Office of Tobacco Control

(Freedom of Information - Section 15 & Section 16)

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## **Section 1: Access to Information**

### **1.1 Introduction**

The Freedom of Information Acts 1997 and 2003 (FOI Acts) establish three new statutory rights:

1. A legal right for each person to access information held by public bodies;
2. A legal right for each person to have official information relating to himself/herself amended where it is incomplete, incorrect or misleading; and
3. A legal right to obtain reasons for decisions affecting oneself.

The Acts assert the right of members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy of individuals.

The FOI Acts allow public access to information held by the Office of Tobacco Control (OTC), which is NOT routinely available through other sources. Access to information under the FOI Acts is subject to certain exemptions and involves specific procedures and time limits.

This reference guide is compiled in accordance with the Freedom of Information Act 1997, as amended by the Freedom of Information Act 2003. All references in this manual to the Freedom of Information (FOI) Act or Acts refer to the 1997 Act as amended by the 2003 Act. All references to the Office refer to the Office of Tobacco Control unless otherwise stated.

This guide has been prepared and published in accordance with the requirements of Sections 15 and 16 of the Acts. Its purpose is to facilitate access to official information held by the Office of Tobacco Control by outlining the Office's structure and functions, the services it provides, the classes of records held and guidelines on how to make a request for information under the Freedom of Information Acts.

### **Section 15 - Freedom of Information Acts**

Section 15 requires each public body to prepare and publish a manual setting out a general description of;

- Structure and organisation;
- Functions, powers, duties;
- Services it provides for the public and how these may be availed of;
- A general description of the rules and guidelines used in implementing its schemes and programmes (required to be published under section 16);
- Classes of records held and the arrangements for enabling the public to access such records;
- Names and designations of members of the staff of the body responsible for carrying out these arrangements (unless the publication of this information could threaten the physical safety or well being of the person); and
- Rights of review and appeal against the decisions of the body (including rights of review under these Acts).

## **Section 16 - Freedom of Information Acts**

Section 16 of the Freedom of Information Acts, requires the Office of Tobacco Control to publish a manual containing rules, procedures, practices, guidelines and interpretations used by the body and index of any precedents kept by the body which may be used in making decisions, determinations or recommendations under any enactment or scheme administered by the body, with respect to:

- Rights, privileges or benefits to which members of the public are or may be entitled;
- Obligations, penalties or other sanctions to which members of the public are or may be subject; and
- Information in relation to the manner or intended manner of administration of any scheme.

### **1.2 Routinely Available Information**

The Office of Tobacco Control makes information available to the public on its functions and activities. Information is available on the OTC website [www.otc.ie](http://www.otc.ie) such as information on legislation, research, annual reports etc.

This information will continue to be available free of charge from the Office of Tobacco Control or on-line without the need to use the FOI Acts.

The FOI Acts allow public access to information held by the Office of Tobacco Control which is not routinely available through other sources. Access to information under the Acts is subject to certain exemptions and involves specific procedures and time limits. This manual provides a guide to the structures of the Office to help you access information under the FOI Acts.

### **1.3 How to Obtain Information under the FOI Acts**

The following information/records come within the scope of the FOI Acts:

- Records containing personal data: (You have a right to see all records containing personal information relating to yourself held by OTC);
- Records containing personnel data: (Personnel records are available to staff); and
- Other records: subject to a limited number of exceptions, all other records created in the Office of Tobacco Control are available on request.

All applications under the FOI Acts should be addressed to:

Freedom of Information Officer  
Office of Tobacco Control  
Willow House  
Millennium Park  
Naas  
Co Kildare

Telephone      045 852700  
Fax                045 852799  
Email             [foi@otc.ie](mailto:foi@otc.ie)

## 1.4 How to Apply for Information

In order for a request for information/records to comply with the requirements of the FOI Acts and to enable the request to be dealt with as efficiently as possible:

- a) Your application should be in writing. An application form has been devised to facilitate the making of requests and is available from the FOI section of our website [www.otc.ie](http://www.otc.ie) or by contacting the Office of Tobacco Control on 045 852 700.
- b) If you are not using this form then your application should indicate that the information is sought under the Freedom of Information Act;
- c) You should indicate if information is required in a particular form, e.g. photocopy, computer disk, etc.;
- d) You should give as much detail as possible to enable OTC to identify the record(s). If you have difficulty in identifying the precise records, which you require, we will be happy to assist you in preparing your request;
- e) You may be required to prove your identity, especially when requesting personal information so you may, therefore, be asked to produce your passport, driving licence, birth certificate, etc.;
- f) You should include a daytime telephone number so that you can be contacted if it is necessary to clarify details of your request;
- g) You should pay the prescribed fee by cheque or bank draft made payable to The Office of Tobacco Control; and
- h) The Office of Tobacco Control is obliged to respond to your request within four weeks.

## 1.5 Rights of Review and Appeal

The FOI Acts set out a series of exemptions to protect sensitive information where its disclosure may damage key interests of the State or third parties. Where The Office of Tobacco Control invokes these provisions to withhold information, the decision may be appealed. Decisions in relation to deferral of access, charges, forms of access, etc. may also be the subject of appeal.

## 1.6 Internal Review

You may seek an internal review within The Office of Tobacco Control if:

- a) You are dissatisfied with the initial response i.e. refusal of information, form of access, charges etc.; or,
- b) You have not received a reply within four weeks of your initial application. This is deemed to be a refusal of your request and allows you to proceed to internal review.

Internal reviews will be carried out by an official of a higher grade to the official whose decision is being appealed.

Requests for internal review must be submitted within four weeks of the initial decision. The Office must complete the review within three weeks and you will be notified in writing of the outcome. Internal reviews must normally be completed before an appeal is made to the Information Commissioner.

Requests for internal review should be submitted in writing to:

Freedom of Information Officer  
Office of Tobacco Control  
Willow House  
Millennium Park  
Naas  
Co Kildare

Telephone 045 852700  
Fax 045 852799  
Email [foi@otc.ie](mailto:foi@otc.ie)

### 1.7 Review by the Information Commissioner

Appeals in writing may be made directly to the Information Commissioner at the following address:

Office of the Information Commissioner  
18 Lower Leeson Street  
Dublin 2

Telephone 01-6785222  
Fax 01-6610570  
Email [ombudsman@ombudsman.irlgov.ie](mailto:ombudsman@ombudsman.irlgov.ie)

### 1.8 Fees

#### 1.8.1 Fees for information requests and for reviews

Under the FOI (Amendment) Act 2003, charges now apply to certain FOI requests, applications for internal review and applications for review by the Information Commissioner. The following fees apply:

	<b>Cost</b>	<b>Reduced Cost *</b>
Information Request	€15	€10
Internal Review	€75	€25
Review by the Information Commissioner	€150	€50

*\* For medical card holders and dependants*

The position relating to the charging of fees for search and retrieval of records remains unchanged.

### *1.8.2 Search and retrieval costs*

Section 47 of the FOI Acts provides that fees shall be charged as follows:

- In respect of personal records, fees shall be charged only in respect of the cost of copying the records actually released. Where a significant number of personal records are involved, the cost of search and retrieval of such records will be charged; and
- In respect of other (non-personal) information, fees shall be charged equal to the estimated cost of search, retrieval and photocopying of the records released. No charges may apply in respect of the time spent by public bodies in considering requests.

The level of fees is currently set as follows in accordance with Statutory Instrument No. 139 of 1998 as amended by No. 522 of 1998:

- €20.95 per hour - search and retrieval;
- €0.04 per sheet for a photocopy;
- €0.51 for a 3 and half-inch computer diskette; and
- €10.16 for a CD-ROM

A deposit may be payable where the total fee is likely to exceed €50.80. In these circumstances, The Office of Tobacco Control will, if requested, assist the member of the public to amend the request so as to reduce or eliminate the amount of the deposit.

### *1.8.3 Waiver of search and retrieval costs*

Fees may be waived in the following circumstances:

- Where the administrative and related costs involved in collecting a fee are likely to exceed the fee itself (i.e. up to €6.35 no fee should be charged);
- Where the information would be of particular assistance to the understanding of an issue of national importance; or,
- In the case of personal information, where such charges would not be reasonable having regard to the means of the requester.

## **Section 2: Organisation and Structure of The Office of Tobacco Control**

### **(Section 15 Guidance)**

#### **2.1 The Public Health (Tobacco) Acts 2002 and 2004**

The Public Health (Tobacco) Act, 2002 and the Public Health (Tobacco) (Amendment) Act, 2004 update and strengthen Irish tobacco control legislation. The Public Health (Tobacco) Act 2002 establishes the Office of Tobacco Control as an independent statutory body and details its functions. Both Acts contain detailed provisions that: prohibit advertising and sponsorship with limited exemptions; restrict the marketing and sale of tobacco; provide for product specification and testing; provide for mandatory health warnings and restrict labelling of tobacco products; provide for prohibitions on the smoking of tobacco products in the workplace. Part 2 of the Act, which establishes the Office has been commenced. A number of sections within Part 3, including those which relate to the smoke free at work provisions, have also been commenced.

The Office of Tobacco Control was established as a Statutory Body with effect from 31<sup>st</sup> May 2002.

#### **2.2 Mission**

The OTC is committed to supporting the Government's policy of promoting a tobacco free society by performing its functions under the Public Health (Tobacco) Acts, 2002 and 2004 in a professional and independent manner.

#### **2.3 Description and Functions of the Organisation**

In March 2000, the Minister for Health and Children published a report called "Towards a Tobacco Free Society". This report recommended the establishment of the Office of Tobacco Control to oversee the implementation of the policies on tobacco control contained therein.

*The Functions of the Office of Tobacco Control are outlined in Part 2 of the Public Health (Tobacco) Act and include:*

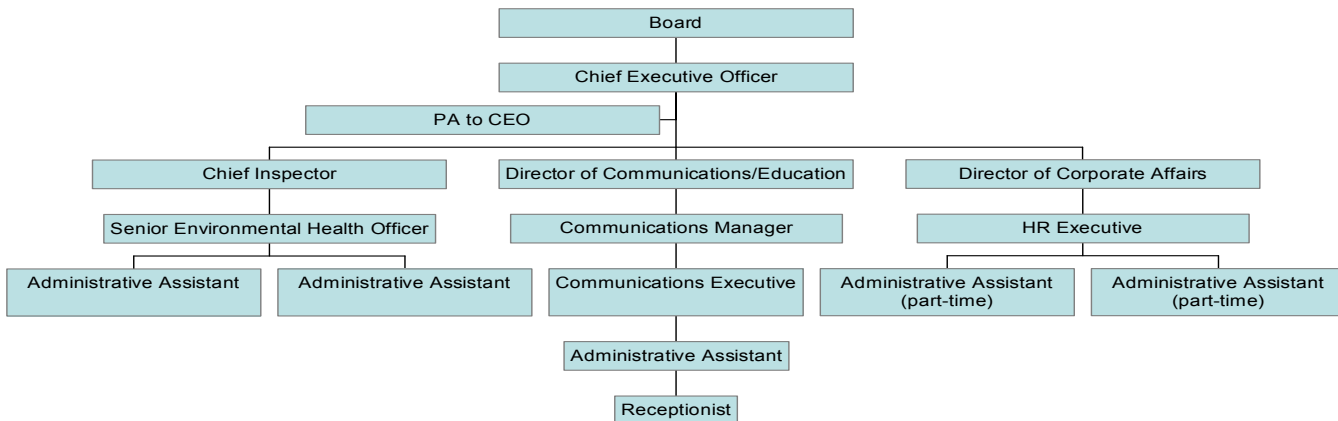
1. To advise the Minister in relation to the formulation, and assist him or her in the implementation, of policies and objectives of the Government concerning the control and regulation of the manufacturing, sale, marketing and smoking of tobacco products.
2. To consult with such national or international bodies or agencies having a knowledge or expertise in this field of smoking prevention for the purpose of identifying measures designed to eliminate, reduce the incidence of, or discourage smoking.
3. To make such recommendations to the Minister as it deems appropriate in relation to measures that the Office considers should be taken in order to reduce or eliminate smoking or its effects in the State.

4. To undertake, sponsor or commission, or provide financial or other assistance for, research aimed at identifying measures that when adopted are likely to reduce the incidence of smoking or its effects.
5. To prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored or commissioned, or for which financial or other assistance was given, under paragraph above.
6. To furnish advice to the Minister, whenever he or she so requests, on matters relating to the control and regulation of the manufacture, importation, sale or supply of tobacco products and on measures to reduce, eliminate or discourage smoking.
7. To provide, and where appropriate exchange with the Garda Siochana and the Revenue Commissioners, information relating to the control and regulation of the manufacture, sale, supply and importation and distribution of tobacco products.
8. To coordinate a national inspection programme under the Public Health (Tobacco) Acts 2002 and 2004 in cooperation with the Environmental Health Service of the Health Service Executive.
9. To furnish advice to the Minister, whenever he or she so requests on matters relating to:
  - Strategies employed by the manufacturers, importers, distributors or retailers of tobacco products in the marketing sale or promotion of such products;
  - Technology used in the manufacture, production or marketing of tobacco products; and
  - Any innovations on the part of manufacturers, importers, distributors or retailers of tobacco products relating to the manufacture, production or marketing of those products
10. To co-ordinate and implement a programme for the inspection of all premises in which tobacco products are manufactured, stored, subjected to any process or sold by retail, and all premises to which the public have access, either as of right or with the permission of the occupier or person in charge of the premises concerned, for the purposes of ensuring that there is compliance with the provisions of the Act.
11. To collect or disseminate such information as may reasonably be necessary for the effective performance of its functions.
12. To furnish, whenever the Office considers it appropriate or is so requested by the Minister, advice or information to a Minister of the Government (including the Minister) in relation to any matter connected with its functions.

#### **2.4 Structure and Staff of the Office of Tobacco Control**

The following organisation chart shows the structure of the Office at May 2006.

## Organisational Chart



### 2.4.1 The Board of the Office of Tobacco Control

Policy in relation to the functions of the Office of Tobacco Control is decided by the Chairman and an eleven member Board. The Board make decisions which are acted upon by the Management Team.

The Statutory Board of the Office of Tobacco Control was appointed by the Minister for Health and Children in September 2002 under the terms of the Public Health (Tobacco) Act, 2002.

Paragraph 12 of Part 2 of the Act states the following:

- “(1) The Office shall consist of the following members, that is to say a chairperson and 11 ordinary members.*
- (2) The members of the Office shall be appointed by the Minister.*
- (3) The chairperson of the Office shall hold office for a period of 5 years from the date of his or her appointment”.*

### 2.4.2 The Management Team

The Management Team consists of a CEO and three area Directors.

The Chief Executive:

- The CEO is appointed by the Board with the consent of the Minister.
- The CEO is responsible for the management and control of the administration of the OTC and may perform such other functions as the Board may determine.

The OTC has 3 administrative divisions reporting to the CEO.

The divisions are :

- 1) Corporate Affairs / Research;
- 2) Inspectorate; and
- 3) Communications / Education.

Chief Executive Officer is: Ms Marie Killeen (Acting)

The following positions are also in this area:

- PA to CEO

#### Principal functions of the Office of the CEO

The Chief Executive is responsible for the overall strategic management of the Office and reports to the Board. The administrative divisions report directly to the Chief Executive.

#### Delivery of Service

The Chief Executive's office does not deliver a service directly to the public.

#### Classes of Records Held

- Legal - national and international
- Administration and Management
- Research – national and international
- Non-governmental organisations/external bodies

#### *2.4.3 Corporate Affairs / Research Division*

##### Role of the Division

The role of Corporate Affairs Division is to provide support to the other divisions within the Office and the staff therein. This division manages human resources, accommodation, information technology, finance and sets internal policies and procedures for the Office. This division also incorporates the FOI Unit of the Office and the Secretariat to the Board.

The role of the Research Division is to commission research in an Irish context to assist in the understanding and information provision on issues relating to smoking and smoking prevalence.

Director of Corporate Affairs is: Ms Caitriona McEvoy

The following positions are also in this area:

- Human Resource Executive
- Administrative Assistant X 2 (both work-sharing)

### Principal functions of Corporate Affairs

- Human resources;
- Finance;
- Information & communication technology;
- Other administrative services including office accommodation, health and safety, overseeing corporate governance, procurement, etc.;
- Secretary to the Board and some committees; and
- Freedom of Information Unit.

### Delivery of Service

Corporate Affairs is responsible for the delivery of services relating to the Freedom of Information Acts, 1997 and 2003.

### Classes of Records Held

- Internal administrative files;
- Finance, suppliers and accounting records;
- Personnel records;
- HR policy and reference files;
- Recruitment/selection files;
- IT related files;
- Accommodation files; and
- Board papers.

### Principal Functions of Research

In line with the statutory functions:

- To undertake, sponsor or commission, or provide financial or other assistance for, research aimed at identifying measures when adopted are likely to reduce the incidence of smoking or its effects
- Prepare and publish, in such a manner as it thinks fit, reports on any research undertaken, sponsored or commissioned, or for which financial or other assistance was given.

### Classes of Records Held

- Research Institute for a Tobacco Free Society;
- National and international research organisations; and
- Administration on research files.

#### 2.4.4 Inspectorate Division

##### Role of the Division

The Inspectorate has a range of monitoring and inspection functions. Specifically, these include:

- The development and monitoring of the national inspection programme of the Health Service Executive for the national smoke-free workplaces legislation;
- The development and monitoring of the national legal requirements on the tobacco and linked industries;
- Monitoring the smoke-free lo-call compliance line;
- Acting as an authorised officer and initiating legal action as necessary;
- Evaluating existing and proposed statutory provisions on tobacco control and making proposals where necessary; and
- Monitoring international developments in law-making and litigation in the area of tobacco control.

Chief Inspector is: Ms Mairéad Blackall

The following positions are also in this area:

- Senior Environmental Health Officer
- Administrative Assistant X 2

##### Delivery of Service

Co-ordination of the National Inspection Programme which is delivered through the inspection programme of the appropriate Health Service Executive enforcement agency. Chairing and servicing of a number of working committees to assist in the implementation of the national inspection programme.

In addition to the above activity, the Inspectorate responds to a wide range of information queries from the general public, trade unions, employers and public bodies on the requirements of the smoke-free workplace legislation.

Guidance documents are produced by the Inspectorate for and in consultation with key stakeholders.

The Inspectorate monitors a smoke-free compliance line which handles information calls and queries in addition to complaints about non-compliance with the law. All complaints received are passed to the appropriate enforcement agency and are prioritised in their inspection programmes.

##### Classes of Records

- The National Inspection Programme;
- Lo-call compliance line;
- Guidance documents;
- Information requests/queries;
- Events;
- External agencies;
- Administration files (Inspectorate);

- HSE regions;
- Research; and
- Litigation/legal.

#### *2.4.5 Communications & Education Division:*

##### Role of the Division

Enhanced communications and education is essential to raising public awareness in relation to tobacco control and empowering the community to move towards a tobacco free society. The role of the communications function is to inform public opinion and build support for evidence-based interventions which are effective in reducing tobacco consumption. Environmental controls and comprehensive regulation of tobacco products are only effective if those affected by them are fully aware of their obligations and when society as a whole supports them and demands compliance with them.

Director of Communications and Education : currently vacant

The following positions are also in this area:

- Communications Manager
- Communications Executive
- Communications Assistant
- Receptionist

##### Delivery of Service

The Communications and Education Division communicates with a broad range of audiences including the general public, health professionals, media, other statutory and non-statutory organisations, non-governmental organisations, Department of Health and Children, Government etc. Proactive communications include events and campaigns, while the Division is also responsible for managing press and information queries to the Office.

##### Classes of Records Held

- Section administrative files;
- Publications – on line and in print;
- Website;
- Public Information Campaigns;
- Events;
- Press Releases;
- Presentations;
- Information resources;
- Media coverage; and
- Information and press queries.

##### **Further information**

For further information consult the Office website at [www.otc.ie](http://www.otc.ie).

## **Section 3: Rules, Procedures, Practices, Guidelines Used**

### **(Section 16 Guidance)**

#### **The Freedom of Information Acts**

The Freedom of Information (FOI) Acts, 1997 and 2003 provide three main statutory rights:

- A legal right for each person to access information held by public bodies;
- A legal right for each person to have official information relating to him/herself amended where it is incomplete, incorrect or misleading; and
- A legal right to obtain reasons for decisions affecting oneself.

The Acts assert the right of members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy of individuals.

The following records come within the scope of the Act:

- All records relating to personal information held by the Office, irrespective of when created;
- All other records created from the FOI commencement date of 21<sup>st</sup> April 1998; and
- Any other records necessary to the understanding of a current record.

#### **The Requirements of Section 16**

Section 16 of the Freedom of Information Acts, requires The Office of Tobacco Control to publish a manual containing rules, procedures, practices, guidelines and interpretations used by the body and index of any precedents kept by the body which may be used in making decisions, determinations or recommendations under any enactment or scheme administered by the body, with respect to:

- Rights, privileges or benefits to which members of the public are or may be entitled;
- Obligations, penalties or other sanctions to which members of the public are or may be subject; and
- Information in relation to the manner or intended manner of administration of any scheme.

This reference book details any rules, practices etc. of the Office of Tobacco Control in relation to any enactment or schemes to which Section 16 of the Act applies.

A guide to the Office of Tobacco Control functions and information held by this Office is available earlier in this document (under Section 15 guidance).

### **Formation of the Office of Tobacco Control**

The Office of Tobacco Control is a statutory body set up under the Public Health (Tobacco) Act, 2002 and 2004. The functions of the Office may be found at page 7 under the Section 15 guidance material.

### **Legislation governing the Office of Tobacco Control**

- The Public Health (Tobacco) Acts, 2002 and 2004 – available on our website;
- Freedom of Information Acts 1997 and 2003 – available at Government publications office;
- Prompt Payments of Accounts Act 1997 – available at Government publications office; and
- Official Languages Act 2003 – available at Government publications office.

### **Other pieces of National Legislation in relation to Tobacco**

All of these pieces of legislation can be downloaded from our website ([www.otc.ie](http://www.otc.ie))

- Tobacco (Health Promotion and Protection) Act, 1998;
- Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978; and
- European Communities Act, 1972.

### **Rules/procedures/guidelines used by the Office**

- Guidelines from the Revenue Commissioners in relation to Professional Services Withholding Tax – available from the Revenue Commissioners;
- Department of Finance guidelines on public procurement – available from the Department of Finance; and
- Personnel policies are in line with those operating within the Civil Service /Health Service – available from the Department of Finance and from the HSE.

### **Reports/information issued by the Office of Tobacco Control**

All of the following reports/information leaflets are available on our website ([www.otc.ie](http://www.otc.ie))

- 2005 Annual Report;
- 2004 Annual Report;
- Smoke-Free Workplaces in Ireland: A One-Year Review;

- Compliance Progress Reports;
- Health Effects of Environmental Tobacco Smoke in the Workplace;
- Second-hand Smoke: The Facts;
- Smoke-Free Policies – Market Research and Literature Review on Economic Effects on the Hospitality Sector;
- Towards a Tobacco Free Society;
- Promoting a Tobacco Free Society; and
- Irish Women and Tobacco.

### **Guidance documents issued by the Office of Tobacco Control**

These documents were produced in March 2004 at the time of the introduction of the Smoke Free Workplace Legislation and they are intended to inform employers, managers, and the Irish licensed trade of their obligations in respect of the relevant sections of the Public Health (Tobacco) Acts, 2002 and 2004.

The following guidance documents are available on our website ([www.otc.ie](http://www.otc.ie)):

- Guidance for Employers and Managers; and
- Guidance for the Irish licensed trade.

There are also signs and posters available on our website.