



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Freedom of Information

Publication Scheme

Freedom of Information Unit

Office of the Director of Corporate Enforcement

April 2016

Introduction

This Publication Scheme - a guide to the functions, records, rules and practices of the Office of the Director of Corporate Enforcement - is compiled in accordance with Section 8(2) of the Freedom of Information Act 2014.

The Act asserts 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. It also includes certain exemptions affecting the information held by some bodies, including the Office of the Director of Corporate Enforcement. The relevant provision is set out in Schedule 1 Part 1, and provides that section 6 (which specifies the bodies coming under the Act) does not include a reference to the Director of Corporate Enforcement, or an officer of the Director, in relation to a record held or created under the Companies Acts (save as regards a record concerning the general administration of the Office of the Director). This means that case records fall outside of the Act. In addition, the Director, his officers and advisers operate under a legal obligation under the Companies Act 2014 to keep secret any confidential information obtained by them in the performance of the Director's functions, unless disclosure is required, in the Director's opinion, for the performance of one or more of his functions or the functions of other regulatory authorities. The legal obligation of confidentiality is necessary to safeguard the Director's ability to gather sufficient evidence to evaluate possible breaches of company law and to determine what response, if any, he might make in compliance with his statutory duties.

This legal obligation also means that companies and company officers can be assured that the Director, his officers and his advisers will behave responsibly with respect to confidential information which is obtained in the exercise of the Director's functions. If, following evaluation, the information is considered not to involve a breach of company law or a possible breach of other legislation, then no disclosure will arise. If breaches of law are indicated, the Director may decide, in accordance with his statutory duties, to bring matters to the attention of the Courts or other competent authorities for appropriate action.

The ODCE undertakes to treat as confidential any information provided to it in confidence by individuals or others, subject to the ODCE's obligations under law, including the FOI Act. If, for any reason, you wish that information provided to the ODCE should not be disclosed because of its sensitive nature, then you should, when supplying the information, make clear this wish and specify the reasons for the information's sensitivity. The ODCE will consult with you before making a decision on any FOI request received involving sensitive information that you may have supplied concerning the general administration of the Office.

However, other records can be released under the Act on request. Information concerning the **general administration** of the Office of the Director of Corporate Enforcement (ODCE) may be disclosed in response to a request under the terms of the Freedom of Information (FOI) Act 2014 where the public interest value of releasing such information is deemed to outweigh the right to privacy.

To maximise transparency and minimise the effort for citizens in accessing the available information, the Office has a policy of publishing as much information as possible on its website at www.odce.ie. The following pages set out the information the Office can, in law, make available, and how to access that information.

Information about the Office of the Director of Corporate Enforcement

Who we are and what we do

- **Establishment of organisation**

The Office of the Director of Corporate Enforcement was established in November 2001 under the Company Law Enforcement Act 2001 (No. 28 of 2001) and continues in being under Part 15 Chapter 3 of the Companies Act 2014.

- **Roles, responsibilities and functions**

The Director of Corporate Enforcement, Mr Ian Drennan, is charged with the following general mandate:

- to encourage compliance with company law and
- to take appropriate investigative or enforcement action where suspected breaches of the Companies Acts take place.

The various Units within the Office support these aims and the various functions are available on the ODCE website under the Functions tab. In general only the records of the Corporate Services Unit fall under the FOI Act as they relate to the general administration of the Office. The other, operational and specialist, Units, hold records that do not fall under the Act.

The records falling under the Act include records relating to:

- procurements and contracts
- accommodation
- ICT
- HRM (including training and development of staff)
- FOI Applications
- Data Protection issues
- liaison with the Department of Jobs, Enterprise and Innovation.

- **Governance/Management arrangements**

The governance of the Office is pursued in accordance with its establishing legislation and the relevant guidance issued by Department of Finance and Department of Public Expenditure and Reform, including:

- Report of the Working Group on the Accountability of Secretaries General and Accounting Officers (Mullarkey Report), Department of Finance, 2002
- Public Financial Procedures, Department of Finance, 2008
- The Role and Responsibilities of Accounting Officers, A Memorandum for Accounting Officers, Department of Public Expenditure and Reform, 2011

and any other relevant circulars or instruction issued by the Department of Finance or the Department of Public Expenditure and Reform from time to time.

As with all public bodies, the Office is bound by legislation, regulations and EU Directives. The budget of the Office is granted via the Department of Jobs, Enterprise and Innovation who oversee the procedures of the Office in dealing with expenditure. Liaison with the Department and regular audits, either by the Department's Internal Audit Unit or by the Comptroller and Auditor General ensure that governance arrangements are observed.

- **Annual Report**

The Annual Report of the Office must be presented to the Minister for Jobs, Enterprise and Innovation by 31 March each year and following its being laid before the Oireachtas it is published. The Report is made available on the ODCE Website by 31 May of each year under Publications/Corporate & Statutory.

The Report sets out the achievements of the Office, the challenges it may have faced in a given year, the inputs and outputs of its work, the staffing levels and arrangements within the Office, and also sets out certain obligatory reports such as compliance with the Prompt Payment of Accounts Act, progress in working towards the State's target of reducing carbon emissions, the workings of the FOI Act, Data Protection Act and Protected Disclosures Act.

- **Organisation and Pay/Grading Structures**

The ODCE comprises a multi-disciplinary team. The staff includes accountants, administrators, lawyers and members of the Garda Síochána. These Gardaí, who are seconded to the Office from the Garda Bureau of Fraud Investigation, possess all of their normal powers to gather evidence and take statements.

The ODCE is organised into five operational Units (Enforcement Unit, Advocacy Unit, Insolvency Unit, Special Projects Unit and Corporate Services Unit), and three specialist Units (Solicitors Unit, Accountants Unit and Garda Unit). While each has distinct functional responsibilities, there is a

substantial degree of co-operation and interaction between the Units.

An organogram of the Office is published in the Annual Report. Pay scales for public servants are available publicly in Circular 8/2013 available at the Department of Public Expenditure and Reform website (www.per.gov.ie). The full-time equivalent numbers of staff falling into each pay-scale are available in the Annual Report of the Office.

The members of An Garda Síochána on secondment to the Office are paid from the Department of Justice Vote.

- **Location and contact details**

The Office can be contacted by:

POST	EMAIL	PHONE
16 Parnell Square,	info@odce.ie (general queries)	01 8585800
Dublin 1,	odcefoi@odce.ie (foi requests)	LoCall LoCall ¹ 1890 315 015.
D01 W5C2		

- **Details of Service Level Agreements/Memoranda of Understanding, if any**

Each year a Memorandum of Understanding, setting out the standards and services expected of each other, is agreed between the Director and the Department.

- **Customer Charter**

Following consultation within the Office and across the Public generally, ODCE has developed a revised Customer Charter, together with procedures for receiving feedback and complaints relating to Customer Service.

The relevant documents and information are available at the ODCE website under Functions/Customer Services.

¹ Please note that the rates charged for the use of 1890 (LoCall) numbers may vary among different service providers

Services Provided to the Public

The services we offer

The mission of the Office of the Director of Corporate Enforcement is to improve the compliance environment for corporate activity in the Irish economy by encouraging adherence to the requirements of the Companies Act and bringing to account those who disregard the law. Its remit is limited to the Company Law area and in this regard it should be noted that the ODCE primarily serves the public interest, rather than acting to remedy individual grievances in the company law area.

The Advocacy Unit is charged with fulfilling the Director's mandate to encourage compliance with company law. This involves preparing and publishing guidance and information documents, liaising with professional bodies, considering international developments, developing policy proposals and representing the Office at conferences and seminars etc. The Unit will provide, where resources allow, personnel to present information to interested groups at no charge. The publications developed as guidance for stakeholders are available at no charge from the Unit or on the ODCE website under Publications and also under the Company Law & You section. The Unit can be contacted by any of the methods outlined above.

The Enforcement Unit accepts complaints from any interested parties regarding breaches of Company Law. Please note that only criminal breaches of Company Law, as distinct from breaches of other codes of law by companies or their officers, can be dealt with by the Office. A Complaints Form is available on request or from the ODCE website under Functions/Enforcement, for use in such matters. The Unit will assess the complaint and decide whether a criminal breach of Company Law exists. If it is found that there is such a breach, and subject to the Office's Enforcement Principles, the Unit will progress the investigation of the matter. It may decide to seek remediation of the issue or in more serious cases to prosecute. Where a case proceeds to Court, it will be prosecuted in the District Court by the Office or alternatively on indictment by the Director of Public Prosecutions.

The Insolvency Unit primarily supervises liquidators of insolvent companies in fulfilling their statutory duties under the Companies Act. This will involve examining the reports made by liquidators under Section 682 of the Companies Act 2014 and granting, or refusing, relief from their statutory duty to take a High Court case against the directors of insolvent companies seeking

sanctions where dishonest or reckless behaviour may have led to the demise of the company. It may result in the director(s) being offered the option of a voluntary Restriction Undertaking or Disqualification Undertaking.

The Solicitors Unit, Special Projects Unit, Accountants Unit and Garda Unit primarily provide a service to the Office itself in assisting it to fulfil its statutory remit.

The Corporate Services Unit has a Customer Service role but its primary customers are internal to the Office and the Department of Jobs, Enterprise and Innovation. The Customer Services regime as operated in the Office is as set out in the Customer Services documents outlined above, and available on the ODCE website under Functions/Customer Services and Publications/Corporate & Statutory/Other Corporate Publications. This Unit also has responsibility for the compliance of the Office with statutory obligations such as the Freedom of Information Act, the Prompt Payments of Accounts Act, the Official Languages Act, etc.

Decision Making Process for Major Policy Proposals

Decision making process for major policy proposals

ODCE, where appropriate, publishes consultation documents on its website regarding the implementation of legislation in the Company Law area. Stakeholders are invited to make submissions and eventually the formulated guidance is published. All such consultations documents are available on the website under Publications/Consultation Documents and the resulting guidance is published under Publications/Company Law Guidance.

Financial Information

What we spend

The ODCE receives funding to carry out its functions from the Department of Jobs, Enterprise and Innovation. This funding which covers all the costs in running the ODCE is identified as a separate subhead in the Department's Vote.

- **Financial statements**

Details of each year's budget allocation and expenditure are published in the ODCE's Annual Report, with a breakdown under the various headings. ODCE does not have a Capital Expenditure allocation. The Annual Report is available on the ODCE website under Publications/Corporate and Statutory/Annual Reports and Reviews.

- **Payments or Purchase Orders for goods and services**

In addition to publishing the financial statement each year in the Annual Report, the Office complies also with the requirement to publish all payments over the amount of €20,000. These payments are published on the ODCE website under About the ODCE/Finance and Procurement/Payments over €20,000. The website is updated quarterly with these details.

There are numerous smaller payments made each year by the Office in the course of its administration. The following section on Procurement provides further details on expenditure by the Office.

Procurement

How we spend

ODCE incurs expenditure in several different ways. Where central contracts are in place (e.g. procurement by the Office of Government Procurement, the OPW, or the Department of Jobs, Enterprise and Innovation), these contracts are taken up by the Office.

Outside of those central contracts, the Office also procures goods and services on its own behalf.

- **Procurement policies**

The Office has a policy of obtaining the best value for money in all of its procurements. Large contracts are entered into following public procurement procedures, and such Requests for Tender are published on the e-Tenders website (www.etenders.gov.ie). The contracts awarded following such exercises are notified on the e-Tenders website too.

Smaller expenditure on goods or services is undertaken in accordance with the guidelines for Public Expenditure, by way of obtaining quotations for the goods or services in question.

In all cases where the Office procures goods or services, the most economically advantageous option is chosen. This means that, while cost is an important factor, in some cases other criteria may be more heavily weighted according to the requirements of the Office. In this way, real value for money is assured.

- **Tender competitions on the eTenders website**

Details of current tender competitions and contracts awarded are published on the e-Tenders website and also on the ODCE Website under About the ODCE/Finance and Procurement.

- **Public contracts awarded including contract type, contractor, value, award date, duration and brief description (tabular format) over €10k for ICT and over €25k for other contracts**

Where publication of contract details will not compromise the Office's work with regard to investigations, prosecutions etc., the details of public contracts entered into by the Office are published on the ODCE Website under About the ODCE/Finance and Procurement. Such details are published quarterly.

FOI Disclosure Log and Other Information to be Published Routinely

Other information

- **FOI Disclosure Log**

Details of disclosures under FOI (other than personal details) will be published on the ODCE website under Functions/Customer Services/Freedom of Information. The information will be listed under the title “FOI Disclosure Log”. Where records are not released, the request will be noted but no records will be published.

- **Reports**

The Annual Report of the Office is published on the ODCE website, under Publications/Corporate and Statutory/Annual Reports and Reviews. Further information may also be found under the Publications heading as well as under the Company Law and You heading.

The Annual Report of the ODCE contains information on the work of the Office, including the outcomes of our casework and the Court decisions relating to the Office’s work. It also includes the details of directors restricted or disqualified as a result of ODCE cases, as well as Court decisions not to restrict or disqualify directors. The staffing levels of the Office are set out as is the financial outturn each year. Certain information that the Office is required to publish is also contained in the Annual Report, such as our performance under the Prompt Payments Act, Freedom of Information Act, Data Protection Act, Protected Disclosures Act and Official Languages Act. Information on energy consumption is also published in the Report.

The Office also publishes, on a quarterly basis, all payments made that exceed €20,000. This information is found on the ODCE website under About the ODCE/Finance and Procurement.

- **Frequently requested information**

The information most frequently requested of ODCE relates to case records, which do not fall under the Act. Requesters should satisfy themselves as to the validity of their request before making a formal request under the Freedom of Information Act 2014.

How to make a Freedom of Information Request

Before making a request, remember that only records relating to the general administration of the Office fall under the Act. To make a request for information under the Freedom of Information Act, your request must be made in writing or by email to the addresses given on page 6 and must:

- (a) state that the request is made under the Freedom of Information Act,
- (b) contain sufficient particulars in relation to the information concerned to enable the record to be identified by the taking of reasonable steps, and
- (c) if access is required in a particular form or manner, specify the format or manner of access required.

While not necessary, providing a phone number where you may be contacted during office hours will facilitate any clarifications required in fulfilling your request. All reasonable assistance will be afforded to you in assisting you with your request.

Within two weeks your request will be acknowledged - if the records requested are not held by ODCE you will be informed as to the relevant body or bodies and your request will be transferred to that body or bodies. Within four weeks a decision on your request will be made and you will be informed of the decision. If an extension of this time is required you will be informed. If a decision has not been made, and if no extension of time has been notified to you, then the request is deemed to have been refused and you may seek a review of such refusal.

No charge is made for making your request, but you may be charged for the search for and retrieval and copying of the record concerned, where such search and retrieval, and the making of a schedule of such records, is time-consuming. No fee applies where the record concerned contains personal data about you.

- There is a minimum threshold of €101 below which no search, retrieval and copying fees can be charged. Once the charge reaches €101, full fees apply;
- There is a cap of €500 on the amount of search, retrieval and copying fees that can be charged;
- There is a further upper limit on estimated search, retrieval and copying fees at €700, above which an FOI body can refuse to process a request, unless the requester is prepared to refine the request to bring the search, retrieval and copying fees below the limit;
- The fee for internal review is €30 (€10 for medical card holders and their dependants); and
- The fee for appeals to the Information Commissioner is €50 (€15 for medical card holders and their dependants).