

**Minister for Public Expenditure and Reform, Brendan Howlin TD,  
Department of Public Expenditure and Reform,  
Government Buildings, Upper Merrion St.,  
Dublin 2,  
Ireland**

10th April 2014 [updated with signatures 17/4/2014]

Dear Minister,

We are writing on behalf of the Open Government Partnership (OGP) civil society forum that has been co-drafting the first Irish OGP Action Plan for the past seven weeks, and on behalf of citizens, civil society organisations and international organisations engaged in promoting transparency and accountability in Ireland. The purpose of this letter is to ask you to revisit the Freedom of Information (FOI) process with specific regard to the rules relating to the:

- charging up-front fees for FOI requests and AIE appeals,
- charging fees for internal review and appeals; and
- charging multiple fees for so-called multi-faceted requests.

The abolition of these fees would provide Ireland with the opportunity to truly adhere to the principles the OGP has developed at an international level, and to which Ireland has committed by becoming a full member in June 2014. During the government funded public consultation on Ireland's participation in the Open Government Partnership (July and September 2013), "abolishing fees for all stages of FOI and Access to Environmental Information (AIE) requests" was highlighted by civil society as an OGP priority.<sup>1</sup>

Just two months later, however, Ireland's commitment to OGP principles came into question as an amendment to charge additional fees for multi-faceted FOI requests was suggested by the government at the last minute. The proposed amendments directly negated the promised abolition of FOI fees and disregarded the unanimous vote by citizens and civil society groups to abolish FOI fees in the most recent round of the OGP public consultation process.<sup>2</sup>

This type of disregard for citizen priorities is unjustifiable. By retaining and indeed increasing up-front fees, the government is also breaking the commitment that was made in the Programme for Government

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<sup>1</sup> See Proposed Action Plan Commitment No. 4.06 on p. 31. of the 'Final Report on the OGP Ireland Consultation: <http://www.ogpireland.ie/2013/10/02/final-report-ogp-consultation/>. See also: <https://twitter.com/ogpconsultirl/status/375647146780786688>.

<sup>2</sup>

<http://www.ogphub.org/blog/plan-to-increase-fees-for-foi-applications-raises-concern-for-irelands-commitment-to-ogp/>

to “legislate to restore the Freedom of Information Act to what it was before it was undermined by the outgoing Government”.<sup>3</sup>

Failure to reconsider FOI fees as part of Ireland’s first OGP National Action Plan will significantly decrease both the credibility of Ireland’s commitment to the OGP and the credibility of its commitment to “*greater openness, transparency and accountability*” under its ‘Open Data Initiative’.<sup>4</sup>

The proposals for improvement made by the current Government are welcome but the OGP civil society forum, citizens, national and international organisations urge you to address the problems that the Ombudsman and Information Commissioner, Peter Tyndall, reminded us of in his review of the last 15 years of FOI in Ireland:

For Irish citizens it is still the status quo that “the 2003 Act seriously curtailed the 1997 Act, representing a major step back from the commitment to openness, transparency and accountability which were key factors in the 1997 legislation. ... The change with most repercussions for the average user of the FOI Act was the provision enabling the Minister for Finance to prescribe fees. [And] the impact of the “up front” fees was very significant, with a significant drop in usage as a result of the fees being introduced”.<sup>5</sup>

Not only will fees continue to impact negatively on usage of the FOI Act, the use of fees purportedly to manage demand will almost certainly reduce the amount of information that would otherwise be released under FOI. As highlighted by the Ombudsman, there is already evidence of this from the OIC reports showing the effect of the introduction of up-front fees in 2003. Additionally, introducing a fee per issue will particularly discourage technical FOI requests by FOI users such as NGOs and journalists, further reducing the number of requests and in particular requests that are used for purposes of holding the public sector to account by the press and civil society organisations.

There is very little evidence to justify this type of Irish exceptionalism through rules which are not found in other FOI laws and which, according to the international community, “constitute an unreasonable impediment to access to information”.<sup>6</sup> However, there has been no commitment to address this weakness in the Irish FOI system. The reasons that were recently mentioned by the Minister for

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[http://www.taoiseach.gov.ie/eng/Work\\_Of\\_The\\_Department/Programme\\_for\\_Government/Programme\\_for\\_Government\\_2011-2016.pdf](http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf)

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<http://www.per.gov.ie/minister-for-public-expenditure-and-reform-announcing-major-open-data-initiative-at-open-government-partnership-summit-in-london/>

<sup>5</sup> <http://www.oic.gov.ie/en/News/Speeches-Articles/2014-/has-the-FOI-regime-achieved-expectations.html>

<sup>6</sup> [http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\\_.pdf](http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let_.pdf)



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maintaining up-front FOI fees appear to be simple ‘What If’ scenarios which very extensive experience with FOI in other countries in Europe and around the world shows to be unfounded.<sup>7</sup>

There is strong evidence that government transparency is essential to increasing the efficiency and effectiveness of public bodies, something which is a particular concern in times of financial crisis. This impact is achieved through a mixture of transparency helping civil society groups and the public identify where internal processes could be improved and streamlined, through greater participation and collaboration in decision making which helps ensure that decisions are based on relevant considerations, and through exposing waste and corruption. It is precisely these reasons which have led to the creation of the OGP, predicated as it is on the multiple benefits of open government.

The OGP civil society forum sees the OGP Action Plan as a unique opportunity for the Irish Government to commit to removing fees at all stages of FOI and AIE requests/appeals in the legislation that is currently being debated and to use Ireland’s 1st OGP Action Plan, Ireland’s upcoming membership in the OGP and the OGP Europe Regional Meeting in May as leverage to do so. Ireland’s commitment to the Open Government Partnership creates a mandate that can be used to explain a change of course in the current debate and the OGP civil society forum recommends that this be done as a commitment in Ireland’s first OGP Action Plan.

Doing so would greatly enhance public trust in the commitment the Government has made to increasing transparency and accountability and would make for a credible commitment to the Open Government Partnership. The abolition of FOI fees would be a significant accomplishment for the fledgling partnership between the Irish government and civil society, underlining the government’s commitment to OGP and its willingness to engage with and listen to its partners in the process.

In addition, it will bring Ireland into line with international standards as outlined in the letter addressed to you by the specialist international freedom of information organisations Access Info Europe and the Centre for Law and Democracy dated 15 November 2013.<sup>8</sup> In abolishing FOI fees, Ireland would avoid being among the only countries attending and in fact hosting the European Regional OGP Conference in May which charge their citizens a fee before they may exercise a fundamental human right.

This civil society forum agrees with the arguments for dropping FOI fees outlined in the aforementioned letter and agrees that doing so would put Ireland in a better position with regard to:

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<sup>7</sup> The 2 reasons are mentioned at the end of the section entitled ‘FOI Fees’ of the Minister’s speech: <http://www.per.gov.ie/keynote-address-by-minister-brendan-howlin-t-d-department-of-public-expenditure-and-reform-freedom-of-information-in-the-context-of-the-governments-programme-for-political-reform-in-ireland/>

<sup>8</sup> [http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\\_.pdf](http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let_.pdf)

- compliance with international standards “reflected in the Council of Europe Convention on Access to Official Documents which prohibits up-front charges for requests (Article 7(1))<sup>9</sup> as well as the recommendations by the UN Human Rights Committee and the European Court of Human Rights;<sup>10</sup>
- no longer being the last country in Europe that systematically charges its people “to exercise a fundamental right”;<sup>11</sup> and
- removing itself from the small group of 16 out of 95 countries worldwide with FOI laws that charge fees for FOI requests.<sup>12</sup>

With these points in mind we trust that our Government appreciates the importance of recognizing that access to information held by public authorities is a human right which should be able to be exercised without impediments. We therefore urge you to keep the promise made by you and your Government to "restore the Freedom of Information Act" and to commit to abolish fees for all stages of FOI and AIE requests as part of the first Irish OGP Action Plan.<sup>13</sup>

## **Signatories:**

### **Groups and Organisations**

1. Access Info Europe, Helen Darbishire
2. An Taisce, the National Trust for Ireland, Andrew Jackson
3. ARTICLE 19, Global Campaign for Free Expression and Information
4. Active Citizen and Open Knowledge Foundation Ireland, Denis Parfenov
5. Active Citizen, Martin Wallace
6. Campaign for Freedom of Information, Maurice Frankel
7. CiviQ, Vanessa Liston
8. Claiming our Future, Anna Visser
9. Crosscare Migrant Project, Joe O’Brien
10. Centre for Law and Democracy, Toby Mendel
11. Friends of the Irish Environment, Tony Lowes
12. German OGP Working group ([opengovpartnership.de](http://opengovpartnership.de)), Christian Heise
13. Global Integrity, Alan Hudson

<sup>9</sup> [http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\\_.pdf](http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let_.pdf)

<sup>10</sup> 2011 General Comment on Article 19, para. 19

<sup>11</sup> [http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\\_.pdf](http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let_.pdf)

<sup>12</sup> namely Canada, China, India, Israel, Japan Nepal, Pakistan, Tajikistan, Uganda, Uzbekistan, Zimbabwe, Saint Vincent and the Grenadines, South Africa and Taiwan.

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[http://www.taoiseach.gov.ie/eng/Work\\_Of\\_The\\_Department/Programme\\_for\\_Government/Programme\\_for\\_Government\\_2011-2016.pdf](http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf)

14. Green Party / Comhaontas Glas, Eamon Ryan
15. IrelandOffline ([www.irelandoffline.org](http://www.irelandoffline.org)), Eamonn Wallace - Chairman
16. IRLOGI, Richard Cantwell - Vice President
17. Obong Denis Udo-Inyang Foundation, Nigeria, Emem Udo-Inyang
18. Open Knowledge Foundation, Rufus Pollock
19. Open Knowledge Foundation Belgium, Pieter-Jan Pauwels
20. Open Knowledge Foundation Deutschland e.V., Christian Heise
21. Open Knowledge Foundation Ireland, Flora Fleischer
22. Open Knowledge Foundation Ireland, Salua Nassabay
23. [OpenTheGovernment.org](http://OpenTheGovernment.org), Patrice McDermott
24. Oxfam Ireland, Jim Clarken
25. Request Initiative, Lucas Amin
26. Second Republic, Jonathan Victory
27. Second Republic, Oliver Moran
28. TASC, Nat O'Connor
29. TASC and Transparency International Ireland, Nuala Haughey
30. The Climate Gathering, Ryan Meade
31. The Environmental Pillar
32. Transparency International Ireland, John Devitt

### **In personal capacity**

1. Peter Bofin
2. Rodney Breen
3. David Brennan, CEO Dublin City Business Association
4. Sharon Briggs PBP
5. Sergy Cernega.CEO-NGO Justice for All
6. Anne Colgan
7. Bernadette Connolly, Cork Environmental Forum
8. Dave Corley - Openstreetmap Ireland Member
9. Gerard Cunningham, freelance journalist, chairman Dublin Freelance NUJ branch
10. Shawn Day - Lecturer
11. Clare Daly - TD
12. D Dennison, Salmon & Sea Trout Recreational Anglers of Ireland, WLR
13. Michael Ewing, The Environmental Pillar
14. Kevin Flanagan
15. Trish Forde-Brennan,Community Activist and Environmentalist Limerick
16. Ken Foxxe, Journalist
17. Constantin Gurdgiev - Economist
18. John Handelaar -- [KildareStreet.com](http://KildareStreet.com) and [FixMyStreet.ie](http://FixMyStreet.ie)
19. Mick Herrity- The Woodland League
20. Dwight E. Hines, IndyMedia
21. Cory-Ann Joseph
22. Stephen Kavanagh - Unemployed



23. Ingo Keck - Physicist
24. Fred Logue
25. Angela Long - Lecturer and Researcher
26. Lyn Mather - The Woodland League
27. Stephen Murphy, Retired Member of the Permanent Defence Force
28. Daragh O'Brien, Data Governance Consultant
29. Mindy O'Brien, Voice of Irish Concern for the Environment (VOICE)
30. Donal O'Brolchain
31. Diarmuid O'Flynn, Ballyhea Says No
32. Richard O'Halloran - Self Employed
33. Tomás Ó Maonaile
34. Thomas Pringle TD
35. Pauline Sargent - Community Activist Drimnagh ([www.drimnaghisgood.com](http://www.drimnaghisgood.com))
36. Gavin Sheridan - Journalist
37. Tommy Simpson
38. Edward Stevenson
39. Andrew St Ledger -The Woodland League
40. Aine Ryall, Cork
41. Conor Ryan, Journalist
42. Liz Wallace

