



Supreme Court of Ireland

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2nd November 2022.

Patrick McGreal,
The Bungalow,
Reynella,
Bracklyn,
Co. Westmeath.

1. Internal Review

I am a more senior member of staff than the original decision maker in this case. I decided today, 2nd November 2022, to affirm the decision of the FOI Officer communicated to you on the 30th September 2022. This decision on review is an entirely new and separate decision on your request. Having examined your request for records as outlined above anew and the response to your request of the 1st September 2022 I am satisfied that the records provided to you comprise the full and complete records in the possession of Westmeath County Council relating to your request. I therefore uphold the decision of the Freedom of Information Officer communicated to you on the 30th September 2022.

In addition to the records supplied to you on the 30th September 2022 a further record has come into existence as a result of communication between the Housing Section and the Freedom of Information Officer in the form of an email relating to your FOI request. This record is contained in Schedule 1 to this letter.

I would also advise that if you are not satisfied with a decision of Westmeath County Council in relation to services provided to you by the Council you should consider contacting the Ombudsman's office to make a complaint at: 6 Earlsfort Terrace, Dublin 2, D02 W773 or at <https://www.ombudsman.ie/making-a-complaint/make-a-complaint/>

2. Rights of Appeal

You may appeal this Freedom of Information decision by writing to the Information Commissioner at 6 Earlsfort Terrace, Dublin 2, D02 W773. There is a fee of €50 for such appeals, other than appeals against a decision to impose a fee. If you wish to appeal, you must usually do so not later than 6 months from the date of this notification. Should you write to the Information Commissioner making an appeal, please refer to this letter.

If an appeal is made by you and accepted, the Information Commissioner will fully investigate and consider the matter and issue a fresh decision.

Should you wish to discuss the above, please contact me by telephone at 044 9332194 or at pat.murtagh@westmeathcoco.ie

Yours sincerely,



Pat Murtagh,
Senior Executive Officer,
Corporate Services.

Freedom of Information Act 2014

Section 22 (2)

Subject to this Act, the Commissioner may, on application to him or her in that behalf, in writing or in such other form as may be determined, by a relevant person—

- (a) review a decision to which this section applies, and
- (b) following the review, may, as he or she considers appropriate—

- (i) **Affirm** or **Vary** the decision, or
- (ii) **Annul** the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper, in accordance with this Act.



Patrick McGreal <patrickmcgreal7@gmail.com>

Acceptance Email to Applicant - Case Number: OIC-132208-D8J0H9

OIC Applications Shared Mailbox <applications@oic.ie>
To: "McGreal, Patrick" <patrickmcgreal7@gmail.com>

Tue, Nov 15, 2022 at 9:49 AM

Our Reference: OIC-132208-D8J0H9
Your Reference: FOI 45-2022

Re: Application for review under the Freedom of Information Act 2014

Dear Mr McGreal,

I refer to your application for a review of Westmeath County Council’s decision on your FOI request for access to records. We have decided to accept the application.

We will assign the review to an investigating officer, who will contact you if necessary. You may make submissions in relation to the review, which should reach us by **29 November 2022**.

To help prepare your submissions, please see our website at www.oic.ie. There are previous decisions made by the Commissioner on our website. You will also find guidance notes and a summary of our review procedures.

The Commissioner should make a decision within four months if practicable. This will depend on how complex a review is, the volume of records involved and the number of cases on hand.

Yours sincerely,

Pearse O'Connor
Office of the Information Commissioner
01 639 5725

Tabhair freagra ar an ríomhphost seo ach an rogha 'tabhair freagra do' a úsáid nó seol ríomhphost chuig applications@oic.ie, agus an Uimhir Thagartha á lua agat i líne ábhair an ríomhphoist.

Please respond to this email by using the reply to option or email applications@oic.ie with the Reference No. in the email Subject line.

Office of the Information Commissioner, 6 Earlsfort Terrace, Dublin 2, D02 W773 |
[✉ applications@oic.ie](mailto:applications@oic.ie) | [☎ \(+353-1\) 639 5689](tel:+35316395689) | www.oic.ie | Follow us on Twitter:
@OICIreland



Review of FOI 45-2022

4 messages

Caroline Byrne <cbyrne@westmeathcoco.ie>
To: Patrick McGreal <patrickmcgreal7@gmail.com>
Cc: OIC Applications Shared Mailbox <applications@oic.ie>

Thu, 15 Dec 2022 at 11:57

Dear Mr. McGreal,

Please find attached records relating to the above, which include additional records that you had previously referred to.

Regards,

Caroline Byrne

*Caroline Byrne, FOI Officer, Corporate Services Section, Westmeath County Council, Áras an Chontae, Mullingar,
Co. Westmeath N91 FH4N*

Tel: 044-9332000/044-9332083

cbyrne@westmeathcoco.ie



**Review Application to the Information Commissioner under the
Freedom of Information Act 2014 (the FOI Act)**

Case Number: OIC-132208-D8J0H9

Applicant: Mr. Patrick McGreal, The Bungalow, Reynella, Bracklyn, Westmeath, N91 PYY3

Public Body: Westmeath County Council (the Council)

Issue: Whether the Council was justified under section 15(1)(a) of the FOI Act in refusing access to records relating to the applicant held in the housing department of the Council

Review: Conducted in accordance with section 22(2) of the FOI Act by Sandra Murdiff, Investigator, who is authorised by the Information Commissioner to conduct this review

During the course of this review, the Council located and released additional records to the applicant. The applicant was of the view that further records should exist relating to his request. His comments were put to the Council, which made a number of additional submissions to this Office in response. During the course of this review, the Investigating Officer provided the applicant with details of the Council's submissions wherein it outlined its reasons for concluding the additional records relating to his request do not exist. While the applicant made no further submissions, he indicated that he wished this review to proceed to a decision.

I have now completed my review in accordance with section 22(2) of the FOI Act. In carrying out my review, I have had regard to the submissions made by the applicant and the Council. I have also had regard to the contents of the records located and provided to the applicant by the Council. I have decided to conclude this review by way of a formal, binding decision.

Decision

Having carried out a review under section 22(2) of the FOI Act, I hereby affirm the Council's decision to refuse access, under section 15(1)(a) of the Act, to additional records relating to the applicant's request on the basis that no further records exist or can be found after all reasonable steps to ascertain their whereabouts have been taken.

Right of Appeal

Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.

Sandra Murdiff
Investigator
3 March 2023

NO/FM

THE HIGH COURT

NOTICE OF MOTION

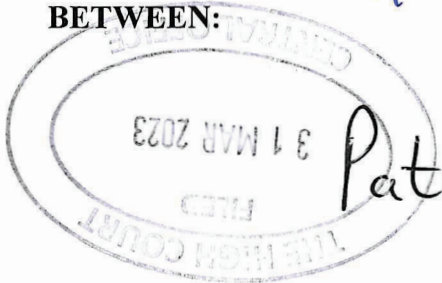
RECORD NO.

19/6/23

2023/95MCH

BETWEEN:

17/7



Patrick McGreal

PLAINTIFF/APPLICANT

and

The office of the Information Commissioner

DEFENDANT/RESPONDENT

MONDAY
~~Friday~~ 30th 24th APRIL

Take notice that on ~~30~~ day the ~~Monday~~ day of ~~March~~, 2023 at the hour of 11.00 clock in the forenoon the

will apply to the of this Honourable Court for an order
For order to appeal a decision of the office of the Information Commissioner as provided for by section 26 of the ~~Act~~

Wherein said application will be grounded upon the proceedings and pleadings had herein this Notice of Motion, the grounding affidavit of Patrick McGreal sworn on the 31st March 2023 the nature of the case and the reasons to be offered.

Dated the 31st of March 2023



Signed: Patrick McGreal

Signed

Address The Bungalow
Reginella
Bracklyn
Westmeath
N91 PYY3

To: Chief Registrar
Central Office
High Court
Four Courts
Dublin 7

To: _____
Solicitor for the

6 Earls Fort Terrace
Dublin 2
D02 W773

THE HIGH COURT

NOTICE OF MOTION
STAMP OFFICE COURT FEE INCOME

RECORD NO.

BETWEEN:

Transaction: 1267476
Fee Code : 007
Fee : E60.00
Operator : DAVID D
Dated : 31/03/2023
Payment Mtd:

Plaintiff/Applicant

and

THE OFFICE OF THE INFORMATION COMMISSIONER

Defendant/Respondent

I am making an appeal on the 31st of March 2023 under **Section 24 of the F.O.I. Act** of the decision with case number **OIC-132208-D8J0H9** made by the Office of the Information Commissioner (O.I.C.) on the 3rd of March 2022.

I am the appellant :

My name is Patrick Anthony McGreal born on the 27th of June 1980 with a current address of The Bungalow, Reynella, Bracklyn, Westmeath, N91 PYY3

The respondent is :

The Office of the Information Commissioner with an address of 6 Earlsfort Terrace, Dublin 2, D02 W773

I have laid out the facts from start to finish in my grounding affidavit **Exhibit 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 10a, F1** that the decision by Westmeath County Council (W.C.C.) is untrue & in this Notice of Motion I will explain how the councils submissions were incorrectly interpreted into the decision which voids the decision with case number **OIC-132208-D8J0H9**

This decision was made by W.C.C. **Exhibit 3 & Exhibit 6** in regard to the disclosure of all information on the 30th of September 2022 & affirmed by them on the 2nd of November 2022 respectively by way of internal review is untrue as 280 records were afterwards released to me on the 15th of December 2022 **Exhibit 8**.

The decision by the O.I.C. to affirm the original decision by W.C.C. has no standing because that decision **Exhibit 3 & Exhibit 6** respectively is untrue because more records were released afterwards on the 15th of December 2022 **Exhibit 8** & an untrue decision can not be affirmed.

Next I will break down under point of law the investigators interpretation of the council's submissions **Exhibit G1** taken from **Exhibit 10** & show how the investigator misinterprets them & that will show bias towards myself & an unfavourable disclosure of the whole truth.

Firstly in paragraph 1 of Exhibit G1

The council did release to me in **Exhibit 6 & Exhibit F1** the information surrounding the non administration of the 20% discretionary top up, this evidence contradicts what the investigator has stated regarding the council's submissions, which makes this paragraph untrue.

Secondly in paragraph 2 of Exhibit G1

The investigator is guessing what I am thinking when she states that "**The applicant appears to be of the view**". This statement I find insulting as it is not of fact & in my opinion shows bias against myself. The O.I.C. investigator has introduced fiction into this paragraph which renders it untrue. **Also** there was an internal investigation done by Westmeath County Councils Data Control Officer & it affirmed that the council rejected my request for support based on the private living arrangements of my children **Exhibit A1, A2, A3, A4, A5**. The O.I.C. investigator states that the council's position was that the decision was solely made on a percentage of income spent on rent. As you can see from the evidence, my children's private living arrangements were part of the reason the council rejected a request for a discretionary top up. This evidence again renders this paragraph untrue.

Thirdly in paragraph 4 of Exhibit G1

In terms of the response letter **Exhibit B1 & B2** that I received on the 3rd of October 2022 in which it states, that, I stated that my children don't reside with me on a full time basis, **this is untrue**, I had brought that to the attention of the O.I.C. before & the deciding investigator neglects to mention that this had been dealt with in an earlier O.I.C. updated decision **Exhibit 10a** on the 17th of February 2022 in which the council said that the record in which I said my children don't reside with me on a full-time basis does not exist **Exhibit C4** I was made aware of this on the 17th of February that this record does not exist so again this paragraph is untrue.

The investigator contradicts & misinterprets what I & the initial O.I.C. investigator & the council have said.

She also fails to state that there are 2 records that exist (**Exhibit D1 & D2**) in which 2 Council officials did state that *I had 3 children that didn't reside with me on a full-time basis*. **I have never stated that sentence ever myself** & I did not make these remarks in November 2021 as stated in her decision, as in **Exhibit C4** The council itself said that this record of me stating *I said my children don't reside with me on a full-time basis* **does not exist** so again another untruth.

As a matter of fact I stated in November 2021 that **my children reside with me on a regular basis** & this is on record when I applied to add my children onto my housing application **Exhibit E1**

They are 3 paragraphs out of 4 of the council's submissions by the O.I.C. Investigator in the decision with case number **OIC-132208-D8J0H9** I have proved to be untrue & the 3rd paragraph in **Exhibit G1** is more proof that the council's original decision is untrue as more records were released during this review.

The fundamental part of this decision being the council's submissions are proven to be untrue & because of this a new decision must be formed.

A final decision in my opinion must be impartial, factual & true.

Relief Sought

In relief I respectfully ask the High Court to annul the decision by the O.I.C. with case number **OIC-132208-D8J0H9** & to instruct the O.I.C. to commence a new investigation at its earliest convenience.

I also respectfully ask the High Court to instruct the O.I.C. to reimburse me for the expense I have incurred by way of this appeal through the Court system which to my current knowledge will be approximately €210, I will keep receipts from the Court to give to the O.I.C

Wherein said application will be grounded upon the proceedings and pleadings had herein this Notice of Motion, the grounding affidavit of Patrick Mc Greal sworn on the 31st day of March 2023, the nature of the case and the reasons to be offered.

Dated the 31st day of March 2023

Signed: 

Address: The Bungalow, Reynella, Bracklyn, County Westmeath

To: Chief Registrar
Central Office
High Court
Four Courts
Dublin 7

To: The Office of The Information Commissioner
6 Earlsfort Terrace
Dublin 2

Patrick McGreal 7@gmail.com

THE HIGH COURT

RECORD NO: 2023 / 95 MCA

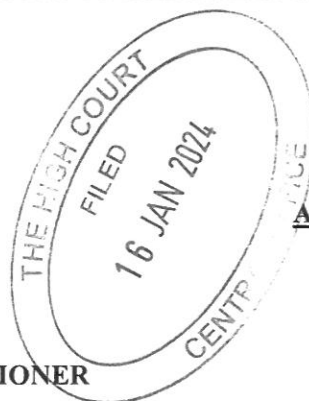
IN THE MATTER OF THE FREEDOM OF INFORMATION ACT 2014
IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 24 OF THE FREEDOM OF
INFORMATION ACT 2014 AND ORDER 130 AND ORDER 84C OF THE RULES OF THE
SUPERIOR COURTS

BETWEEN:-

PATRICK MCGREAL

AND

THE INFORMATION COMMISSIONER



Appellant

Respondent

RECEIVED

17 JAN 2024

Office of the Ombudsman

OUTLINE LEGAL SUBMISSIONS OF THE RESPONDENT

Introduction

1. These proceedings concern the appeal of Mr. McGreal (the “**Appellant**”) to the Respondent (the “**Commissioner**”) from a decision dated 3 March 2023 (the “**Decision**”), in which the Commissioner affirmed the decision of Westmeath County Council (the “**Council**”) to refuse access, under section 15(1)(a) of the Freedom of Information Act 2014 (the “**FOI Act**”), to certain records, on the basis that no further records existed or could be found after all reasonable steps to ascertain their whereabouts had been taken.
2. In these submissions I will discuss the following matters in detail.
 - I. The Standard of Review of the Decision
 - II. Specific Response to Alleged Errors in the Decision
3. The full chronology of the background to the Decision is set out in the Affidavit of Sandra Murdiffe (“**Ms. Murdiffe’s affidavit**”) which verifies the Points of Opposition of the Commissioner.

4. In brief, on 1 September 2022, the Appellant sought access to various information from the Council relating to his Housing Assistant Payment (the “HAP”). He sought a copy of his housing file, and all and any correspondence that the housing department in the Council held relating to him. He also sought a copy of all decisions regarding his housing application, a copy of the reason why his discretionary HAP cap raise of 20% was withdrawn, all documents, correspondence notes and memos regarding him and his housing application. The Appellant listed people in the Council with whom he had been in contact. He stated that he was never notified of the withdrawal of his discretionary HAP raise, nor was he given a reason to why it was withdrawn. He requested, *“all documents, correspondence, notes, memos & everything regarding myself, my housing application & everything relating to these.”*
5. On 30 September 2022, the Council issued a decision (the “**Council’s Decision**”) part granting the Appellant’s request and provided him with records containing redactions under section 37 of the FOI Act. He received a schedule for a copy of his Housing Application file, and another for a copy of his HAP file.
6. On 12 October 2022, the Appellant made an internal review request, stating he was formally appealing *“the decision not to disclose the information regarding the withdrawal of my discretionary HAP raise in March of this year.”*
7. On 2 November 2022, the Council issued an internal review decision affirming its original decision and informed the Appellant that one additional record had come into existence as a result of his FOI request. It released this record to the Appellant.
8. On 9 November 2022, the Appellant applied to the Commissioner for a review of the Council’s Decision. There followed significant correspondence between the Commissioner and the Respondent, and between the Commissioner and the Council respectively. The detail of this correspondence is set out in Mr. Rafferty’s affidavit, with supporting exhibits.
9. On 3 March 2023, the Decision under appeal, of the same date, was communicated to the Appellant. In the Decision the Commissioner found as follows:

“Having carried out a review under section 22(2) of the FOI Act, I hereby affirm the Council’s decision to refuse access, under section 15(1)(a) of the Act, to additional records relating to the applicant’s request on the basis that no further records exist or can be found after all reasonable steps to ascertain their whereabouts have been taken.”

10. As a preliminary point, the Commissioner has not had sight of the legal submissions of the Appellant prior to delivering these submissions to the Court. If it later becomes necessary to file any supplemental legal submission, the Commissioner reserves the right to do so.

I. THE STANDARD OF REVIEW OF THE DECISION

11. A statutory appeal to the High Court from the Information Commissioner carries a particular standard of review. This was set out in the Supreme Court judgment of Baker J. in *Minister for Communications Energy and Natural Resources v Information Commissioner* [2020] IESC 57, [2021] 2 ILRM 81 (“ENET”) at §114:

“In summary it may be said that an appeal from the decision of the Commissioner under the Act invokes the following propositions:

(a) no deference is due to the Commissioner insofar as an appeal raises a matter of statutory interpretation or otherwise an issue of pure law;

(b) as with any appeal on a point of law, deference would be shown to a decision of the Commissioner in the exercise of discretion, or where what is in issue is the application of his or her expertise. These types of decisions are more akin to decisions on facts;

(c) the hearing is not a de novo hearing, but an appeal on a point of law where there are many of the characteristics of judicial review, see White J. in Irish Life And Permanent Plc v. Financial Services Ombudsman [2011] IEHC 439, at p. 2;

(d) sometimes therefore the test will be akin to the one laid down in O’Keeffe v. An Bord Pleanála [1993] 1 IR 39, but not when what is in issue is a matter of law, including statutory interpretation (see, for example, the dicta of Kearns J. in Sheedy v. Information Commissioner, at para. 79: “Once there was some evidence before [the Commissioner] as to the circumstances in which these reports are compiled, as undoubtedly was the case here, the well-established principles of O’Keeffe v. An Bord Pleanála [1993] 1 I.R. 39 make it clear that his decision is not to be interfered with”).”

[Emphasis added]

12. It is clear from the foregoing that only on a question of “pure” law will no deference be afforded to the Commissioner. Furthermore, the Decision will not be set aside if there is “some evidence” supporting it.

13. Similarly, in **FP v Information Commissioner** [2019] IECA 19, Peart J. stated (§73):

“... considerable deference will be afforded to an expert decision-maker such as the Commissioner, that a wide margin of appreciation will be afforded to him, being the person who has, by the Act, been charged with the making of decisions in relation to requests under s.7 of the Act. It is not sufficient, even were it to be the case, that in the exercise of the same discretion the court hearing an appeal might itself have reached a different decision. There must be a clear error of law established.”

14. Recently, in **Jackson Way v Information Commissioner** [2022] IECA 213 Binchy J. held (§120) that the Commissioner: “enjoys an almost unique degree of expertise in the consideration of FOI requests” and that:

“ ... provided that it is clear that there was evidence before the respondent on which to ground that decision , the courts will be very slow to intervene and will certainly not do so simply to substitute their opinion on an FOI application ...”.

15. That judgment dismissed an appeal from Hyland J. ([2020] IEHC 73). At §82 Hyland J. held:

“... taking the Decision as a whole, including any material considered in arriving at the Decision, the question is whether the Commissioner applied the correct test and/or statute and applied all elements of the statute, including the reasonableness criteria. Decisions of the Commissioner should not be construed as if they were a statute. ... It is important that the application of FOI, including by the Commissioner, does not become the exclusive preserve of lawyers. That would limit its application and undermine its purpose.”

16. In **Westwood v Information Commissioner** [2015] 1 IR 489 Cross J. held (§74):

“... I accept that a mistake or error of law in the decision will not itself result in that decision being quashed. It is only whether the mistakes are or are not material that such a decision can be made ... ”

17. These principles are important to bear in mind when analysing the Appellant's arguments about the Decision.

II. SPECIFIC RESPONSE TO ALLEGED ERRORS IN THE DECISION

18. The Appellant's Notice of Motion is very difficult to decipher. Order 84C rule 2(3) of the Rules of the Superior Courts, 1986 (as amended) provides:

"Where the relevant enactment provides only for appeal to the High Court on a point of law, the notice of motion shall state concisely the point of law on which the appeal is made."

19. The Appellant's Notice of Motion is in breach of this provision and must fail *in limine*.
20. Without prejudice to this objection, five key points can be made in response to the Appeal.
21. **First**, the Appellant's appeal largely involves complaints about the Council's decision not to award him a discretionary increase in HAP, and contains allegations of wrongdoing on the part of Council employees in their treatment of him.
22. This Honourable Court cannot adjudicate upon alleged wrongdoing of the Council. This Court is confined, by section 24 of the FOI Act, to a consideration of an appeal on a point of law from the terms of the Decision. The Appellant must pursue his complaints with the Council about the HAP decision in another forum.
23. Indeed, the Decision correctly emphasises that the underlying dispute between the Appellant and the Council over his HAP is of no relevance:

"The applicant appears to be of the view that the Council made a decision on his HAP payment on a mistaken understanding of his living arrangements. While this is not relevant to this Office's review, I note that the Council's position is that a decision on a HAP payment in such a case is solely made on the basis of the percentage of the individual's income spent on rent." [Emphasis added]

24. **Second**, the Appellant's complaints are centred on the section of the Decision entitled "*The Council's Submissions*". This section contains paragraphs which merely summarise the position of Council as communicated to the Commissioner, and the Appellant's response to

that position. The Appellant complains that these paragraphs are “*untrue*”. The Appellant’s appeal is not properly constituted as an appeal on a point of law arising from the actual Decision.

25. The Decision was made solely by reference to section 15(1)(a) of the FOI Act, which provides:

“(1) A head to whom an FOI request is made may refuse to grant the request where—

(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken”

26. The Commissioner determined that the Council was justified in refusing, under section 15(1)(a) of the FOI Act, to release additional records relating to the Appellant’s request, on the grounds that no further records existed or could be found after all reasonable steps to ascertain their whereabouts had been taken. This is reflected in the “Analysis” section of the Decision:

“Having regard to the submissions provided by the Council, which outline the searches that were undertaken to locate records relating to the applicant’s request and to its explanation for concluding that no further records exist, I am satisfied that the Council has taken all reasonable steps to locate additional records in this case. While I note that the applicant does not accept the Council’s explanation, there is nothing before me to indicate that further searches are warranted in this case.

Accordingly, I find that the Council was justified in refusing access, under section 15(1)(a) of the Act, to additional records relating to the applicant’s request on the grounds that no further records exist or can be found after all reasonable steps to ascertain their whereabouts have been taken.”

27. The Appellant has not actually challenged this finding of the Commissioner, which is the only material finding affecting his legal rights. He has not, for instance, argued that the finding was irrational or unreasonable as there is clear evidence that other records exist, or no evidence that the Council searched for the records in question. Accordingly, his appeal must fail.

28. ***Third***, and relatedly, the Appellant appears to complain that the Investigator who wrote the Decision included submissions from the Council which were false. He complains about

particular paragraphs of the Decision which summarise the Council's submissions and the Appellant's submissions. In particular, he complains about the following passages:

"The Council's Submissions"

The Council's position is that no records exist in relation to a copy of the reason why the applicant's discretionary HAP cap raise of 20% was withdrawn in March 2022. It stated that the full paper housing file was re-examined during the course of this review and that all relevant staff members' email accounts were searched for records relevant to his request. The Council stated that all housing records were searched for records relating to the applicant's request, including hardcopy archived records, folders and files. The Council said that all of the individuals named in the applicant's request were consulted and their records searched. The Council said that searches were undertaken of electronic records using keywords which included the applicant's name. The Council also said that the email records of retired staff members were searched for relevant records in this case.

In response to a query concerning email correspondence with a named individual, the Council stated that all such records have been provided to the applicant during this review, including records which had not previously been released to him under FOI. The Council also stated that any records created of phone calls, meetings, or conversations concerning the applicant have been released to him under FOI.

The applicant remains of the view that a letter sent from the Council to him on 3 October 2022 indicates that additional records should exist. The letter concerned a response to a complaint made by the applicant regarding his HAP payment. The correspondence referred to information having been provided by the applicant relating to whether certain members of his family lived with him on a full time basis. The applicant appears to be of the view that the Council made a decision on his HAP payment on a mistaken understanding of his living arrangements. While this is not relevant to this Office's review, I note that the Council's position is that a decision on a HAP payment in such a case is solely made on the basis of the percentage of the individual's income spent on rent.

The Council stated that any comments made in the letter relating to the applicant's living arrangements were based on records held within his housing file. The Council said that the specific records on which it based its understanding of his family's living arrangements comprised correspondence from the applicant or third parties on his behalf to the Council on various dates between 17 and 26 November 2021 including documentation provided by

the applicant in order to process the addition of family members to his housing application. The Council's position is that all of these records have been released to the applicant in response to his request and that no additional records exist. "

29. As pleaded in the Commissioner's Points of Opposition, the positions of the respective parties were accurately summarised. This is borne out by analysis of the exhibits to Ms. Murdiffe's affidavit, which will be opened to the Court.
30. Further and without prejudice to that contention, even if the Council's submissions were inaccurately summarised or interpreted, the Appellant has failed to demonstrate that this resulted in an error material enough to invalidate the Decision (*Westwood*). None of the complaints of the Appellant goes towards the core of the Decision, which is whether the Council had demonstrated it took all reasonable steps to locate additional records in this case.
31. Still further, the underlying dispute between the Appellant and the Council is irrelevant and immaterial.
32. ***Fourth***, the Appellant appears to complain that because the Council released records to him on 15 December 2022, in the course of the review, this renders the previous Council decisions on the request "*untrue*". The Council discovered additional records within scope. It is not uncommon that during the process of engaging with the Commissioner, a public body may release further records, whether as a result of reflecting further on the FOI request, having received guidance from the Commissioner, or for some other reason. Public bodies are not legislatively precluded from this course of action, and indeed it is welcome and consistent with the entire thrust of the FOI Act, which is in favour of the right of access and increased disclosure. Sometimes reviews are successfully concluded as a result of the grant of further records, and there is no need for a formal binding Decision. However, this was not the outcome in this case. After 15 December 2022, the Appellant continued to claim that more records existed which had not been released, and the Commissioner continued to engage with the Council on this point, and to make a Decision which lawfully reflected the final position of the parties.
33. ***Fifth***, the Decision is in line with a similar decision of the Commissioner which was approved by the High Court in the recent case of *Landers v Information Commissioner* [2022] IEHC 170. In that case Mr Landers appealed to the High Court against a decision in which the Commissioner affirmed the decision of the NTMA to refuse access to the internal audit plans

for the National Pension Reserve Fund for the years ending 31st December, 2009, 2010 and 2011 on the grounds that the records sought did not exist.

34. Ferriter J approved the authorities cited in section I of these submissions on the standard of review, and observed, at §8:

“It follows that, if there is some material before the decision-maker to enable him make the decision which he has made, the decision will not be held to be irrational in the legal sense.”

35. Following on from this finding, Ferriter J isolated the following core point in the appeal, at §11:

“The question that arises on this appeal therefore is whether there was sufficient material before the Commissioner to form the view that the requirements of s. 15(1)(a) had been met on the facts of this case.” [Emphasis added]

36. The High Court was satisfied from review of the engagement between the Commissioner and the NTMA that the Commissioner’s decision was justified, as demonstrated by the following passages, at §30-31:

“30 In my view, it simply cannot be tenably said that the Commissioner's decision was irrational. There was clearly ample material before the Commissioner, in the form of the detailed responses provided by the NTMA to the Commissioner, to justify the view that the NTMA had taken all reasonable steps to locate the audit plans sought by the applicant, but that such audit plans (above and beyond the audit plan presentations already furnished to the applicant) did not exist. I can find no error of law in the decision in the circumstances.

31 The applicant appears to have convinced himself that there must be audit plan documents beyond the presentations he has received. However, my role on this application is to objectively assess whether, in accordance with the well-established legal test, it can be said that there was no material before the Commissioner which could justify the decision made by him. I am quite satisfied that there was such material available before the Commissioner which could more than justify the conclusion reached by him.”

37. Similarly, it is submitted that the Decision in this case, and the underlying correspondence in Ms. Murdiff’s affidavit discloses that there was clearly ample material before the

Commissioner to justify the view that the Council had taken all reasonable steps to locate the records sought by the Appellant. The Council provided detailed responses to the Commissioner. While the Appellant may be convinced that there are other records (although this is not pleaded in his Notice of Motion), this is immaterial.

Conclusion

38. For the foregoing reasons, and those to be offered, the Appellant's appeal should be dismissed.

CLAIRE HOGAN BL

12 January 2024

Word count: 3367



IN THE MATTER OF

THE FREEDOM OF INFORMATION ACT 2014

AN APPEAL PURSUANT TO THE FREEDOM OF INFORMATION ACT 2014, s.24

ORDER 84C OF THE RULES OF THE SUPERIOR COURTS

Record No. 2023 / 95 MCA

Patrick McGreal

Plaintiff

And

The Information Commissioner

Respondent

Legal submissions of the Plaintiff;

1. These proceedings concern an appeal against a legally binded decision by the respondent on 3rd day of March 2023 in which the Respondent knowingly affirmed an untrue decision that was made by Westmeath County Council (WCC) on the 2nd day of November 2022 concerning a request made by the plaintiff for the release of all data that the public body held, which was requested by the plaintiff on the 1st day of September 2022, pursuant to the 2014 Act.
2. This Judicial review concerns the decision-making process of the Information Commissioner & on what legal foundation a decision made by this office is grounded on.
3. The Plaintiff on this occasion has exhibited evidence that the Respondent has not followed due process & as such the decision made on the 3rd of March 2023 has no legal standing.
4. As a matter of clarity & to disperse all repetitive & continued conjecture by the Respondent, the Plaintiff is acutely aware that the remit of the Respondent concerns solely the decision-making process by WCC in the review of their decision that no records existed on the 2nd day of November 2022. The continued conjecture of the Respondent to shift focus from the decision-making process to the dispute between the Plaintiff & WCC is not in keeping with the legislation under the 2014 act. The Respondents must adhere to s.22 (2) of the 2014 Act which states "Subject to this Act, the Commissioner may, on application to him or her in that behalf, in writing or in such other form as may be determined, by a relevant person— (a) review a decision to which this section applies, and (b) following the review, may, as he or she considers appropriate— (i) affirm or vary the decision, or (ii) annul the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper, in accordance with this Act.
5. The Plaintiff initiated this appeal on 2 grounds, the 1st being that "an untrue decision can not be affirmed" & the 2nd being that the Respondent is not at liberty to have any regard towards the dispute between the Plaintiff & WCC in the conclusion & construction of their legally binded decision of the 3rd of March 2023.
6. The primary concern of the Respondent is the decision-making process of the public body.

Firstly;

- (i) The notice of motion of the Plaintiff states "The decision by the O.I.C. to affirm the original decision by W.C.C. has no standing because that decision Exhibit 3 & Exhibit 6 respectively is untrue because more records were released afterwards on the 15th of December 2022 Exhibit 8 & an untrue decision can not be affirmed."
- (ii) WCC made only 2 decisions, The first being on the 30th of September 2022 & the second by way of an application by the Plaintiff for an internal review by a more senior member of staff on the 2nd day of November 2022 which affirmed the 1st decision that no records exist.
- (iii) The decision made by WCC on the 30th of September 2022 & affirmed by WCC after an internal review on 2nd of November 2022 in which they stated in short that no more records exist is untrue as more records were released on the 15th day of December 2022.
- (iv) During the 4-month investigation by the Respondent these records were released to them & they confirmed their knowledge of the same records in their decision on the 3rd of March 2023 stating; "During the course of this review, the Council located and released additional records to the applicant."
- (v) The decision by the Respondent to affirm the decision by WCC is contrary to the Criminal Justice (Perjury and Related Offences) Act 2021, (CJPRO Act 2021) s.6(c) A person commits an offence if he or she, otherwise than on oath, gives or causes to be given, or adduces or causes to be adduced, a statement that is false in any material respect, and he or she knows to be false and the statement is made in any of the following: an abstract, account, balance sheet, book, certificate, declaration, entry,

estimate, inventory, notice, report, return, or other document which the person is authorised or required to make, attest, or verify, by or under any enactment. The decision of the 3rd of March 2022 by the Respondent is legally binded & the Respondents actions in affirming the decision by WCC that no records exist is contrary to the 2021 Act, s.7(b) "A person commits an offence if he or she, with intent to mislead any judicial or other proceeding knowingly makes use of such fabricated evidence.". The decision of the Respondent is legally binded within Irish statute & their action in knowingly affirming the false decision &/or submissions by WCC has made their decision illegal & as such invalidates the decision as it has no legal standing whatsoever.

Secondly;

- (vi) The Respondent is not at liberty to introduce any unconnected false material or information of any dispute into their decision-making process & it is by the inclusion of these false submissions from WCC into their decision of the 3rd of March 2023 that the Respondent has not adhered to s.22 (2)(a) of the 2014 Act which states; Subject to this Act, the Commissioner may, on application to him or her in that behalf, in writing or in such other form as may be determined, by a relevant person review a decision to which this section applies.
 - (vii) The Respondent has stated in their analysis "Having regard to the submissions provided by the Council, which outline the searches that were undertaken to locate records relating to the applicant's request and to its explanation for concluding that no further records exist" The false submissions from WCC has no place in the Respondent's regard for their legally binded decision.
 - (viii) These submissions by WCC have been proven to be false in the substantial papers & affidavits already filed by the Plaintiff. The submissions by WCC mention a minute detail the type of searches carried out, while they include a substantial amount of irrelevant & false information that is at the centre of the dispute between the Plaintiff & WCC. The majority of the councils' submissions have no bearing on the decision-making process concerning the original request made on the 1st of September 2022 & the subsequent investigation & decision by the Respondent. As a matter of fact, the submissions date back to November 2021 which is 10 months prior to the initial FOI request.
 - (ix) This behaviour by the Respondent in including these proven false submissions by WCC into a legally binded decision is not within the remit the Respondent. The Respondent reviews decisions by a public body, they examine the relevant information and invite submissions from the parties involved. The parties are usually the applicant and the public body. They also consult third parties - for example, if their decision might affect their interests. It is sometimes possible to settle a case, by agreement with the parties. The Respondent did not adhere to these principles & as such, this invalidates the decision as it has no legal standing whatsoever & as such, their defence must fail.
7. The defence by the Respondent is based on conjecture & as such, is untenable, they offer no evidence whatsoever to prove their claims & they offer no evidence whatsoever to negate the claims of the Plaintiff, their decision to knowingly affirm a false decision into a legally binded decision has contravened at least 5 Irish laws, s.6(b) & s.7(c) CJPRO Act 2021 by affirming the false decision by WCC & s.2(1)(b) & s.3(1) CJPRO Act 2021 & the Perjury Act, 1729 by introducing this material into Judicial proceedings & as such, their defence must fail.
 8. The Plaintiff has provided substantial evidence to prove beyond doubt that the Respondent knowingly affirmed a false decision by WCC & the Plaintiff has provided substantial evidence to prove beyond doubt that the submissions by WCC to the Respondent were false, misleading & incorrect. Also, the Respondent has stated that they had regard for the submissions by WCC in the decision of the 3rd of March 2023 & this regard of theirs has been proven unsound & as such, their defence must fail.
 9. The Respondent did not vary the decision by WCC to include the subsequent release of a further 280 records & as such, their defence must fail.
 10. The Respondent did not dismiss the irrelevant & false submissions by WCC into their determinations when constructing their legally binded decision & as such, their defence must fail.
 11. The Respondent did not conduct the investigation & the decision-making process within the Governance, Legislation, and Policy over their Office & as such, their defence must fail.
 12. The Plaintiff had given substantial submissions to the Respondent that completely contradicted the submissions by WCC prior to the decision of 3rd of March 2023 & for reasons unknown, the submissions of the Plaintiff were totally disregarded in the decision of the 3rd of March 2023. This evidence has been filed in papers & affidavit with this court during the course of this appeal.
 13. The Plaintiff has exhibited fact & the truth & has proven beyond doubt with exhibited facts from independent sources that his claims are based on Governance, Legislation, and Policy and with these pillars of Justice holding up the claims of the Plaintiff the decision by the Respondents must be annulled & the court must instruct the Respondents to initiate a new investigation & to cover all the costs associated with this appeal & to reimburse the Plaintiff for all costs incurred.



AN ARD-CHÚIRT
THE HIGH COURT

2023 No. 95 MCA

TUESDAY THE 23RD DAY OF JANUARY 2024
BEFORE MR JUSTICE OWENS

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 24 OF THE
FREEDOM OF INFORMATION ACT 2014
AND ORDER 130 AND ORDER 84C OF THE RULES OF THE SUPERIOR
COURTS

BETWEEN

PATRICK MC GREAL

APPLICANT

AND

OFFICE OF THE INFORMATION COMMISSIONER

RESPONDENT

Upon Motion of the Applicant Litigant in Person pursuant to Notice of Motion herein filed on the 31st day of March 2023 and coming on for hearing in the presence of Counsel for the Respondent and the Applicant Litigant in Person seeking the reliefs as set out in the Notice of Motion annexed as a schedule hereto

Whereby upon and on reading the said Motion the Affidavit of Patrick McGreal filed on the 31st day of March 2023 the Affidavit of Sandra Murdoff filed on the 30th day of May 2023 the Statement of Opposition (x2) filed on

the 2nd day of June 2023 and the 8th day of June 2023 and the Affidavit of Patrick McGreal sworn on the 14th day of June 2023 and the documents and exhibits referred to in said Affidavits and the Submissions of the Applicant Litigant in Person filed on the 23rd day of January 2023 and the Submissions of the Respondent filed on the 16th day of January 2023

And upon hearing from the Applicant Litigant in Person and Counsel for the Respondent

The Court was pleased to deliver an *ex tempore* judgment on this day

And in accordance with that judgment

IT IS ORDERED that the Appeal of the Applicant Litigant in Person and the reliefs as sought and set out in the Notice of Motion be and the same is hereby refused

And **IT IS ORDERED** the Applicant Litigant in Person do pay to the Respondent the costs of these proceedings to include reserve costs to be adjudicated in default of agreement between the parties

And upon the Court hearing an application by the Applicant Litigant in Person for a transcript of the Digital Audio Recording of the *ex tempore* judgment referred to herein

IT IS FURTHER ORDERED that the Applicant Litigant in Person herein be at liberty to take up the Digital Audio Recording of the aforementioned *ex tempore* judgment in these proceedings of Mr Justice Owens sitting in Court 12 of the Four Courts on the 23rd day of January 2024 (between 15:22:40 to 15:58:29) on condition that the said Applicant Litigant in Person contact the service provider directly and the Party taking up the transcript of the Digital Audio Recording

undertakes to pay any costs associated with taking up the transcript and that they provide a copy of the transcript to the other party

REGISTRAR
ALICE WALSH
Perfected: 14th February 2024

Patrick McGreal
Applicant Litigant in Person

Solicitors for the Respondent
Legal Services Unit Office of the Ombudsman

Note: Contact details for DAR transcript provider are
Epiq Europe Ltd
4 Chancery Lane,
Dublin 8
Tel: 01 571 0220
dublinoffice@epiqglobal.ie

SCHEDULE

No. 6

COURT OF APPEAL

CIVIL



NOTICE OF APPEAL (ORDINARY APPEAL)

For Office use

Court of Appeal record number of this appeal		2024 70
Subject matter for indexing		

[Title and record number as per the High Court proceedings]

PATRICK MC GREAL	v	OFFICE OF THE INFORMATION COMMISSIONER
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Date of filing	13 th day of March 2024
Name of appellant(s)	PATRICK MC GREAL
Appellant's solicitors	Applicant Litigant in Person
Name of respondent(s)	OFFICE OF THE INFORMATION COMMISSIONER
Respondent's solicitors	Legal Services Unit Office of the Ombudsman

Has any appeal (or application for leave to appeal) previously been lodged in the Court of Appeal in respect of the proceedings?			
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If yes, give [Court of Appeal] record number(s) <div style="border: 1px solid black; height: 30px; width: 100%;"></div>			
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?			
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If yes, give [Supreme Court] record number(s) <div style="border: 1px solid black; height: 30px; width: 100%;"></div>			

1. Return date for directions hearing

	Date	Time
TAKE NOTICE that this appeal is listed before the Court of Appeal for directions at the following date and time:	19/4/24	10:30

2. Decision that it is sought to appeal

Name(s) of Judge(s)	MR JUSTICE OWENS
Date of order/ Judgment	THE 23RD DAY OF JANUARY 2024

Neutral citation of the judgment appealed against if known e.g. High Court [2009] IEHC 608	
The relevant orders made in the High Court	

Is it sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) set out below the specific part or parts of the decision concerned.
(a) the entire decision

3. Grounds of appeal

<p>Please set out below the grounds of appeal listing (as 1, 2, 3, etc) concisely:</p> <p>(a) the specific ground(s) of appeal and the error(s) of law related to each numbered ground</p> <p>(b) the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom</p> <p>(c) the specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely</p> <p>(d) the issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal</p> <ol style="list-style-type: none"> 1. The order by Justice Ownes has no legal standing as it was made upon a contravention of the truth, it lacks legal validity due to being based on false information. 2. The order was made in support of a non-existent provision of law pursuant to the Freedom of Information Act 2014(2014 Act), It is crucial to note that court orders must be legally sound and compliant with relevant laws to maintain their validity, 3. The order was made in opposition of truthful fact, court orders must be based on accurate information and comply with relevant laws to maintain their validity. 4. The OFFICE OF THE INFORMATION COMMISSIONER (OIC) falsely argued to MR JUSTICE OWENS that he provided Westmeath County Council (WCC) with a provision of law that is provided for under the 2014 Act, when in actual fact this provision of law does not exist. Because of that argument MR JUSTICE OWENS was unaware that the Commissioner had acted outside the law when he conducted his review of a decision pursuant to section 22 of the 2014 Act and also in his consideration and construction of his legally binded decision bearing case number OIC-132208-D8J0H9 (the decision) of the 3rd of March 2023.
--

- (i) The OIC provided false information to Mr. Justice Owens regarding a provision of law under the 2014 Act that does not exist. This misinformation led Mr. Justice Owens to be unaware that the Commissioner had acted outside the law during a review of a decision pursuant to section 22 of the 2014 Act. The case number OIC-132208-D8J0H9 on March 3, 2023, was affected by this issue. In legal proceedings, it is essential for all parties to present accurate information and adhere to the law to ensure the integrity and validity of court decisions. Misrepresenting legal provisions can have serious consequences on the outcome of cases and may undermine the fairness and justice of legal processes.
5. The OIC acted outside section 22 of the 2014 Act by not taking account of the subsequent release of records and also not addressing the change in the decision made by WCC, in which it stated in short that no more records existed. Section 22 of the 2014 is the legislation that governs the actions of the OIC when he conducts a review of a decision by a public body. Acknowledgement was given that WCC did release more records by investigator Sandra Murdiff who stated "During the course of this review, the Council located and released additional records to the applicant." The council being WCC and the records Ms Murdiff is referring to were released as late as the 15 day of December 2022 and WCC in their decision had stated on the 2nd day of November 2022 in short that no more records existed. The OIC did not identify a provision under section 22 of the 2014 that negates this contradiction in the council's decision. There in no provision under the 2014 Act that can be provided to WCC to negate its own decision that runs contrary to the proven truth.
- (i) The OIC acted outside section 22 of the 2014 Act by not considering the subsequent release of records by WCC and failing to address the change in WCC's decision regarding the existence of records. Section 22 of the 2014 Act governs the OIC's actions when reviewing decisions made by public bodies. Despite WCC releasing additional records after initially stating that no more records existed, the OIC did not address this contradiction in WCC's decision or identify a provision under the 2014 Act to counteract this discrepancy. In legal contexts, it is crucial for regulatory bodies like the OIC to adhere to statutory provisions and consider all relevant information when conducting reviews or making decisions. Failing to acknowledge changes in decisions or new evidence can impact the fairness and accuracy of legal processes, potentially leading to challenges in upholding justice and transparency.
6. Subject to the 2014 Act, the Commissioner (OIC) may, on application to him in that behalf, in writing or in such other form as may be determined, by a relevant person review a decision to which this section applies, and following the review, may, as he or she considers appropriate affirm or vary the decision, or annul the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper, in accordance with this Act. The only provisions that was available to the OIC to provide to WCC was to vary its decision, so, to take account of the subsequent release of records and to address the change in the decision made by WCC or to annul the decision by WCC to take

account of the subsequent release of records and to address the change in the decision made by WCC. It was false for WCC to state that all records were released in November 2022 and it was incorrect for the OIC to affirm a knowingly false decision in March 2023.

- (i) The OIC failed to adhere to the provisions of the 2014 Act when reviewing a decision made by WCC. Section 22 of the 2014 Act allows the OIC to review decisions and either affirm, vary, or annul them based on the circumstances. In this case, it is highlighted that WCC initially stated that all records were released in November 2022, but later additional records were found and released in December 2022. The OIC's decision to affirm WCC's initial statement despite the subsequent release of records raises concerns about the accuracy and legality of the process. Legal processes must ensure that decisions are made based on accurate information and in compliance with relevant laws. Failing to consider new evidence or changes in decisions can impact the fairness and integrity of legal proceedings. It is essential for regulatory bodies like the OIC to uphold legal standards and ensure transparency in their decision-making processes.
7. I became aware that the OIC acted outside the 2014 Act when I read section 22 of the 2014 Act after the hearing, the OIC relied on this section as his defence. I brought truth with me on that day & my proved, exhibited truth was disregarded & in its place was put a provision of law that did not exist.
- (i) This discrepancy was relied on by the OIC in which he relied on a provision of law that did not exist, despite the existence of truthful evidence presented by the myself. I discovered this discrepancy after reading section 22 of the 2014 Act following the High Court hearing where the OIC used this section as a defence. This highlights a concerning issue where truthful evidence was disregarded, and a non-existent legal provision was used in its place. In legal proceedings, it is crucial for all parties to adhere to the law and consider factual evidence to ensure fair and just outcomes. Disregarding proven truth and relying on non-existent legal provisions can undermine the integrity and validity of legal processes. Upholding transparency, accuracy, and adherence to legal standards is essential in maintaining trust in the legal system.
8. The OIC successfully argued to MR JUSTICE OWENS to refuse my reliefs & the foundation of his argument was that he conducted his review within the law. Because the OIC convinced MR JUSTICE OWENS of this false belief that he acted within the law concerning his review, MR JUSTICE OWENS then based his decision to refuse me my relief on that falsehood.
- (i) The OIC successfully convinced Mr. Justice Owens to refuse certain reliefs based on the argument that the OIC conducted the review within the law. This led Mr. Justice Owens to base his decision on this belief, which was later revealed to be false. The reliance on this false premise highlights a critical issue where legal decisions were made based on incorrect information and

misinterpretation of the law. In legal proceedings, it is essential for all parties, including regulatory bodies and judges, to ensure that decisions are made based on accurate information and in compliance with relevant laws. Misrepresenting facts or relying on false beliefs can have serious implications for the fairness and integrity of legal processes. Upholding transparency, truthfulness, and adherence to legal standards is fundamental in ensuring justice is served effectively.

9. MR JUSTICE OWENS did not adhere to my FUNDAMENTAL RIGHTS and PERSONAL RIGHTS under the Constitution of Ireland, ARTICLE 40, 1, which states; *All citizens shall, as human persons, be held equal before the law.* MR JUSTICE OWENS held the OIC above myself and the law on the 23rd day of January 2024. I do not know if this act was done unknowingly, or knowingly or by being intentionally misled by the OIC. In equal amounts I do not know if the OIC unknowingly, or knowingly intended to misled MR JUSTICE OWENS into thinking that he acted within the law while conducting his review. The OIC & his investigator may have wrongly but honestly believed that they had the authority to create a provision of law up from nothing more than his own imagination.

(i) This is a complex legal issue where my belief is that my fundamental and personal rights under the Constitution of Ireland, specifically Article 40, 1, were not upheld. I assert that Mr. Justice Owens did not treat myself or the OIC equally before the law and instead favoured the OIC on January 23, 2024. There is concerns raised about whether this was done unknowingly, knowingly, or due to being misled by the OIC. Additionally, the OIC and its investigator may have mistakenly but honestly believed they had the authority to create a legal provision that did not exist. In legal matters, it is crucial for judicial decisions to uphold constitutional rights and ensure equality before the law for all individuals. Any perceived discrepancies in how legal cases are handled can raise significant concerns about fairness, transparency, and adherence to legal principles. Upholding constitutional rights and ensuring equal treatment under the law are fundamental aspects of a just legal system.

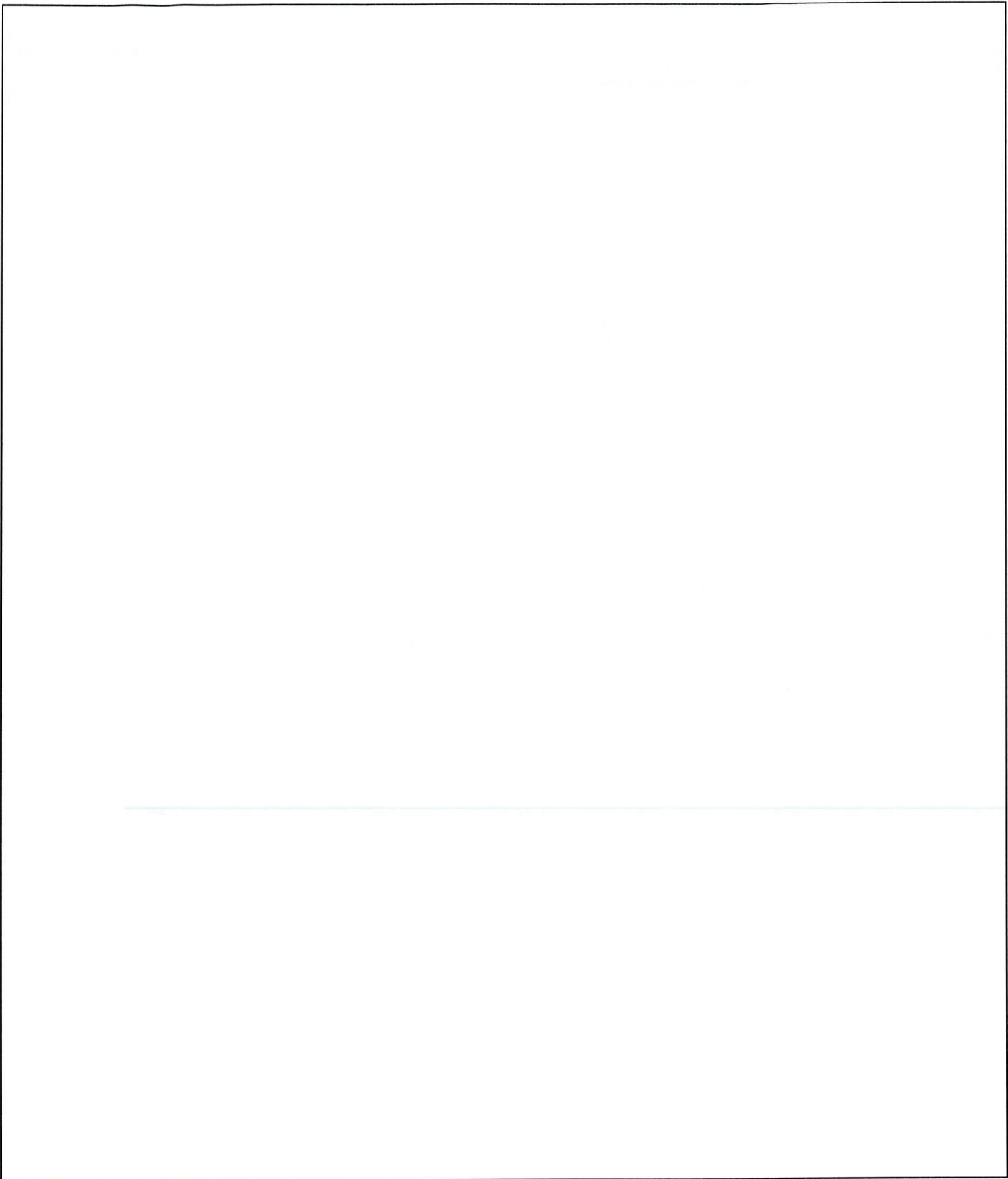
10. The decision by WCC in regard to the disclosure of all information was made on the 30th day of September 2022 & affirmed by WCC on the 2nd day of November 2022 respectively by way of internal review, is untrue as 280 records were afterwards released to me on the 15th of December 2022. The decision by the OIC to affirm the original decision by WCC has no standing because that decision is untrue because more records were released afterwards on the 15th day of December 2022.

(i) Discrepancies in the decision-making process of WCC and the OIC regarding the disclosure of information, I assert that WCC's decision to disclose all information was untrue as additional records were released after their initial decision. The OIC's decision to affirm WCC's original decision is called into question due to the subsequent release of more records, highlighting a lack of standing for the OIC's decision. In legal contexts, decisions must be based on accurate and truthful information to ensure fairness and transparency. Failing to disclose all relevant records or making decisions based on incomplete or

false information can undermine the integrity of legal processes. Upholding standards of truthfulness, transparency, and adherence to legal principles is essential in maintaining trust and justice within the legal system.

- (a) the Order by MR JUSTICE OWENS that the Appeal of the Applicant Litigant in Person and the reliefs as sought and set out in my Notice of Motion be and the same is hereby refused **has no legal standing** as it was made on false assertions by the OIC that a provision of law existed when in fact it did not.
 - (b) the Order by MR JUSTICE OWENS that the Applicant Litigant in Person do pay to the Respondent the costs of these proceedings to include reserve costs to be adjudicated in default of agreement between the parties **has no legal standing** as it was made on false assertions by the OIC that a provision of law existed when in fact it did not.
- (i) In conclusion, this series of events from the initial OIC investigation to the prolonged High Court case raises significant concerns regarding the adherence to legal standards, transparency, and fairness in the decision-making process involving the OIC and WCC. The discrepancies in the disclosure of information, the reliance on non-existent legal provisions, and the potential misinterpretation of laws have led to a situation where fundamental rights, constitutional principles, and the integrity of legal processes have been called into question. It is essential for all parties involved in legal proceedings to prioritize truthfulness, accuracy, and compliance with relevant laws to uphold justice effectively. Ensuring equal treatment before the law, transparency in decision-making, and respect for constitutional rights are fundamental pillars of a just legal system. Addressing these discrepancies and upholding legal standards is crucial in restoring trust and integrity in the legal process.
- (ii) The barrister representing the OIC persistently argued during the High Court hearing that there might be a possibility of a public body releasing additional records. This assertion was framed as a positive aspect of the investigative process and reviews by the Commissioner. From the outset, the barrister, acting on behalf of the OIC, reiterated this as a defense for subsequent record releases. I can unequivocally state that this is mere speculation. This provision is solely in accordance with section 22(9)(a) of the 2014 Act, which stipulates that "The Commissioner may refuse to accept an application under subsection (2) or may discontinue a review under this section if he or she is" applicable. This provision under s.22(9)(a) of the 2014 Act cannot be legally invoked to make a definitive decision pursuant to s.22(2) of the 2014 Act. The final decision was legally binding on March 3, 2023.
- (iii) I will bring to the court's attention that this is an audacious attempt to deceive the Honourable Judicial process. This action was orchestrated under the guidance of the Information Commissioner, who should uphold higher standards against such egregious actions. Neither his office of solicitors nor his esteemed barrister nor his senior or junior investigators intervened to prevent this. The OIC operates under Freedom of Information legislation and must be held responsible and accountable.

- (iv) The OIC, his representatives, and his barrister orchestrated an intensified assault on my Constitutional rights, displaying a complete disregard for the governing Act of the Oireachtas that regulated the scope under which this review was initially conducted and subsequently appealed. Instead of acknowledging these wrongful acts promptly, the OIC chose to contest my rightful endeavours to seek justice and rectify an erroneous decision. I lacked the expertise to articulate this during the High Court hearing, and it was only after reading Section 22 of the 2014 Act post-hearing that I realized the OIC had provided false information to Justices Owens & Owens relied on that unverified information against my presented independent evidence.
- (v) I urge this court to recognize the immense distress this situation has inflicted upon me and my entire family. As a man of modest means, I have had to scrimp and save every penny to initiate legal proceedings, print documents, and cover travel expenses to Dublin. I am a co-parent who has sacrificed nearly every spare moment researching the Irish Statute Book to identify Acts & Statutory Instruments for defending my rights.
- (vi) A friend provided me with a copy of the Constitution of Ireland, which guarantees all individuals in Ireland the right to Justice under Article 40.3 (1,2). The OIC and his associates are directly employed by our State and have done everything possible to deprive me of my Constitutional rights. Fortunately, I possess determination and knowledge to present my case in this Honourable court; however, many others may not have these resources. The actions of the OIC in this instance regarding this decision lack any legal standing whatsoever.



4. Order(s) sought

Set out the **precise** form of order(s) that will be sought from the Court of Appeal if the appeal is success

1. An Order to Quash the Order by MR JUSTICE OWENS that the Appeal of the Applicant Litigant in Person and the reliefs as sought and set out in the Notice of Motion be and the same is hereby refused
2. An Order to Quash the Order by MR JUSTICE OWENS that the Applicant Litigant in Person do pay to the Respondent the costs of these proceedings to include reserve costs to be adjudicated in default of agreement between the parties
3. An Order to grant in relief an annulment of the decision by the O.I.C. with case number OIC-132208-D8J0H9
4. An Order to instruct the OIC to commence a new investigation at its earliest convenience.
5. An Order that the OIC pay to Myself the costs of these proceedings to include reserve costs to be adjudicated in default of agreement by myself and the OIC.
6. An Order that the OIC pay to Myself the costs of the High Court proceedings to include reserve costs to be adjudicated in default of agreement by myself and the OIC.
7. An Order to instruct the OIC to review its investigation protocol to affirm that they will only provide provisions to public bodies that are lawfully provide pursuant to Irish law.

What order are you seeking if successful?

Order(s) sought	x					
Order being appealed		set aside		vary/substitute		

If a declaration of unconstitutionality is being sought, please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

If a declaration of incompatibility with the European Convention on Human Rights is being sought, please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

Are you asking the Court of Appeal to:	
depart from (or distinguish) one of its own decisions?	No
If Yes, please give details below:	
make a reference to the Court of Justice of the European Union?	No
If Yes, please give details below:	

Will you request a priority hearing?	No
If Yes, please give reasons below:	

5. Documents relied on

Please set out below a list of all of the documents on which the appellant intends to rely at the hearing of the appeal:

1. High Court Submissions from myself & the Office of the Information Commissioner
2. Section 22 of the Freedom of information Act 2014
3. Constitution of Ireland

Appellant's full name	Patrick Mc Greal

6. Appellant Details

Where there are two or more appellants by or on whose behalf this notice is being filed please provide relevant details for each of the appellants

Original status:	X	Plaintiff		Defendant
	X	Applicant		Respondent
		Petitioner		Notice Party

Solicitor	
Name of firm	N/A
Name of solicitor	N/A

responsible for this appeal			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	

If the Appellant is not legally represented, please complete the following

Current postal address	The Bungalow, Reynella, Bracklyn, Westmeath, N91PYY3
e-mail address	patrickmcgreal727@gmail.com
Telephone no.	085 205 0563

7. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	OFFICE OF THE INFORMATION COMMISSIONER
------------------------	--

Original status:		Plaintiff	x	Defendant
		Applicant	x	Respondent
		Petitioner		Notice Party

Solicitor			
Name of firm	Legal Services Unit Office of the Ombudsman		
Name of solicitor responsible for this appeal	Gary Fitzgearld		
Email	Gary.Fitzgerald@ombudsman.ie legal@ombudsman.ie		
Address	6 Earlsfort Terrace	Telephone no.	(+353 1) 639 5787
	Dublin 2		
	Dublin		
		Document Exchange no.	

Postcode	D02 W773	Ref.	

If the Respondent is not legally represented, please complete the following

Current postal address	
e-mail address	
Telephone no.	

Please submit your completed form to:

Office of the Registrar of the Court of Appeal (Civil)

The Four Courts

Inns Quay

Dublin

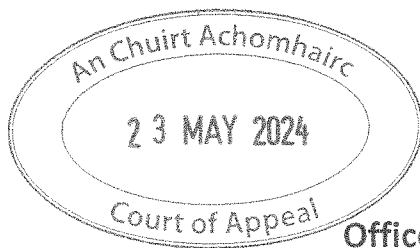
together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

Save in the case of a notice of appeal from a decision made otherwise than *inter partes*, this notice is to be served, within seven days after it has been issued, on all parties directly affected by the appeal. A respondent may consent in writing to late service of a notice of appeal.

Note: The appellant must not later than four days before the date fixed for the directions hearing, lodge with the Registrar and serve on each respondent affected by the expedited appeal an indexed and paginated directions booklet.



IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION OF IRELAND AND THE PROTECTION OF MY PERSONAL RIGHTS AND THE MISREPRESENTATION OF LEGAL PROVISIONS GIVEN BY THE OFFICE OF THE INFORMATION COMMISSIONER (OIC) AND THE EXCEEDING OF STATUTORY AUTHORITY BY THE OIC AND THE VIOLATION OF FAIR PROCEDURES AND CONSTITUTIONAL RIGHTS AND MY APPEALING THE HIGH COURT DECISION IN THE MATTER OF THE FREEDOM OF INFORMATION ACT 2014 OF AN APPEAL PURSUANT TO SECTION 24 OF THE FREEDOM OF INFORMATION ACT 2014 AND ORDER 130 AND ORDER 84C OF THE RULES OF THE SUPERIOR COURTS



Between

Patrick McGreal*Plaintiff*

and

Office of the Information Commissioner*Respondent*

1. **Dear Court of Appeal**, this submission addresses the response notice by the Office of the Information Commissioner (OIC), which contests the grounds of my appeal & I will also demonstrate how the OIC's misrepresentation of legal provisions and the subsequent affirmation of these misrepresentations by the High Court has compromised my constitutional rights and the integrity of the legal process.
 - (i) **Preliminary Objection:** They argue that the arguments in my Notice of Appeal are unclear and difficult to understand, which hampers their ability to respond adequately.
 - (ii) **Validity of High Court Decision:** They assert that the High Court decision was lawfully made after a thorough hearing and was not based on false information. They state that the High Court did not make its orders based on any non-existent provision of the Freedom of Information Act 2014.
 - (iii) **Release of Additional Records:** They argue that the High Court did not err in holding that the release of additional records by Westmeath County Council during the Commissioner's investigation did not invalidate the Commissioner's decision. They claim that the Commissioner's decision was reasonable based on the facts at the time and that any error in affirming the decision of the Council was not material.
 - (iv) **New Arguments:** They contend that any new arguments about the scope of section 22 of the FOI Act, as suggested in my Notice of Appeal, are impermissible since they were not raised in the original Notice of Motion grounding the High Court statutory appeal.
 - (v) **Allegations of Misconduct:** They reject the allegations of dishonesty and misconduct made against the Commissioner and/or his legal representatives, stating that these allegations are unfounded and unsubstantiated.
 - (vi) **Constitutional Rights:** They argue that there was no Article 40.1 issue before the High Court, and therefore, I cannot advance such a ground now.

(vii) **High Court Decision:** They claim that the High Court decision reveals no errors of law or fact and that my appeal should be dismissed. They also mention that the Commissioner was correctly awarded costs since I was entirely unsuccessful in the High Court.

(viii) ***Their final order sought is to dismiss my appeal.***

2. In response, I will to carefully address each of their objections and assertions, providing clear arguments and evidence to support my case.

Response to Preliminary Objection:

3. The clarity of the arguments presented in the Notice of Appeal is vital for ensuring a fair and effective judicial process. I acknowledge the importance of clear articulation and commit to presenting my arguments with utmost clarity in subsequent submissions.

Validity of High Court Decision:

4. While the High Court decision may have been made after a thorough hearing, it is essential to scrutinize the basis on which that decision was made. My contention revolves around the misrepresentation of legal provisions by the Commissioner, which I believe has profound implications for the integrity of the legal process. It is my assertion that the High Court decision, while not explicitly based on a non-existent provision of the FOI Act, was influenced by the Commissioner's reliance on a misrepresented provision, leading to an erroneous outcome.

Release of Additional Records:

5. The High Court's determination that the release of additional records by Westmeath County Council did not invalidate the Commissioner's decision overlooks a crucial aspect of the case. The subsequent release of records underscores the inadequacy of the Commissioner's initial decision and calls into question the thoroughness of the investigation conducted. The High Court's assertion that the I received all available information fails to acknowledge the significance of the additional records and their potential impact on the Commissioner's decision.

New Arguments:

6. While it is true that the scope of Section 22 of the FOI Act was not explicitly raised in the original Notice of Motion, my subsequent realization about its meaning was a natural progression of my case. The discovery of this discrepancy prompted a deeper examination of the legal framework underpinning the Commissioner's decision, which I believe is essential for ensuring a fair and just outcome.

Allegations of Misconduct:

7. My allegations of misconduct are not made lightly but are based on a sincere belief that the integrity of the judicial process has been compromised. The discrepancies uncovered in the Commissioner's actions warrant scrutiny, and it is my responsibility to raise these concerns in the pursuit of justice.

Constitutional Rights:

8. The assertion that there was no Article 40.1 issue before the High Court overlooks the broader implications of this case for constitutional rights. My appeal seeks to uphold the principles of equality and fairness enshrined in the Constitution of Ireland, and it is imperative that these issues are considered within the context of my case.

High Court Decision:

9. Contrary to the Respondent's assertion, the High Court decision is not beyond reproach. My appeal seeks to address the errors of law and fact that I believe have occurred, with the ultimate aim of securing a fair and just outcome. The Commissioner's success in the High Court does not preclude a thorough review of the issues raised, and it is my right to seek redress through the appellate process.
10. I respectfully submit that the grounds of opposition presented by the Respondent fail to address the substantive issues raised in my Notice of Appeal. I remain committed to upholding the principles of fairness and justice and trust that the Court of Appeal will carefully consider the arguments presented in this response.
11. In the context of misrepresentation of law and the proper adherence to statutory provisions by public bodies, several Supreme Court cases in Ireland support the principles of transparency, fairness, and adherence to statutory provisions. Here are some relevant cases that support my argument against the misrepresentation of law in the High Court by the Office of the Information Commissioner (OIC):

12. O'Keeffe v An Bord Pleanála [1993] 1 IR 39

Case Background;

13. The case of O'Keeffe v An Bord Pleanála is a seminal Irish Supreme Court case that addresses the limits of judicial review in relation to administrative decisions made by public bodies. It is particularly significant in establishing the standards that courts should apply when reviewing decisions of administrative bodies.

Facts of the Case;

14. Mrs. O'Keeffe sought judicial review of a decision made by An Bord Pleanála, Ireland's national planning appeals board, which had granted planning permission for a development near her property. O'Keeffe challenged the decision on the grounds that it was unreasonable and made in breach of natural justice.

Legal Issues;

15. The main legal issue was whether the decision of An Bord Pleanála was so unreasonable that it should be overturned by the court. This raised questions about the scope of judicial review and the standards that should be applied when reviewing administrative decisions.

The Decision

16. The Supreme Court, in a decision delivered by Chief Justice Finlay, established important principles regarding judicial review of administrative actions:

Standard of Review – Unreasonableness;

17. The Court held that an administrative decision can only be overturned if it is "fundamentally at variance with reason and common sense" or if it "plainly and unambiguously flies in the face of fundamental reason and common sense." This standard, often referred to as "Wednesbury unreasonableness" (from the English case Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948]), sets a high threshold for judicial intervention in administrative decisions.

Presumption of Validity;

18. The decision of an administrative body, such as An Bord Pleanála, is presumed to be valid and made in accordance with law unless there is clear evidence to the contrary. Courts should not substitute their own judgment for that of the administrative body unless the decision is shown to be irrational or made in bad faith.

Evidence and Reasoning;

19. The Court emphasized the importance of ensuring that there is a rational basis for the decisions made by administrative bodies. The decision must be supported by evidence, and the administrative body must show that it has considered all relevant factors and disregarded irrelevant ones.

Application in my Case;

20. In my case against the Office of the Information Commissioner (OIC), the principles established in *O'Keeffe v An Bord Pleanála* can be applied as follows:

Acting Within Statutory Limits;

21. Just as An Bord Pleanála must act within the legal bounds of planning law, the OIC must operate strictly within the statutory provisions of the Freedom of Information Act 2014. If the OIC provided Westmeath County Council with a provision outside the scope of the law, it acted beyond its legal authority.

Rational Basis for Decisions;

22. The OIC must have a rational basis for its decisions, supported by evidence. If the OIC misrepresented the legal provisions under which it conducted its review, this could be seen as acting without a rational basis, thus meeting the threshold for judicial review as established in *O'Keeffe*.

Reasonableness and Fairness;

23. The principle of reasonableness requires that the OIC's actions must be fundamentally fair and just. Misrepresentation of legal provisions and failure to disclose critical information to the court could be argued as actions that are fundamentally at variance with reason and common sense, akin to the unreasonableness standard set out in *O'Keeffe*.

Presumption of Validity Challenged;

24. While the OIC's decisions are presumed valid, this presumption can be overturned if clear evidence shows that the decisions were based on incorrect legal grounds. My argument that the OIC relied on a non-existent provision to affirm WCC's decision challenges this presumption.
25. *O'Keeffe v An Bord Pleanála* reinforces the necessity for public bodies to act within their statutory limits and ensure their decisions are reasonable, supported by evidence, and made in good faith. Misrepresentations or actions outside the scope of legal authority, as alleged in my case against the OIC, could thus be grounds for judicial review and potential annulment of the OIC's decisions. This case establishes the high threshold for judicial review of administrative decisions. Similarly, the OIC's decision in my case, which was based on misrepresented provisions, fails to meet the rational basis required for such decisions.

26. East Donegal Cooperative v Attorney General [1970] IR 317

****Case Background****

27. East Donegal Cooperative v Attorney General is a foundational case in Irish administrative law, establishing important principles about the limits of discretionary power and the necessity for public authorities to act within the bounds of the law. The case arose in the context of agricultural regulation.

Facts of the Case;

28. The East Donegal Cooperative sought to challenge certain provisions of the Agricultural Act 1931, which gave wide discretionary powers to the Minister for Agriculture. The Cooperative argued that these provisions were unconstitutional because they allowed the Minister to exercise power without sufficient legal constraints or guidelines, potentially leading to arbitrary and unfair decisions.

Legal Issues;

29. The main legal issues in this case were;

- (i) whether the provisions of the Agricultural Act 1931 that granted broad discretionary powers to the Minister for Agriculture were constitutional.
- (ii) Whether such discretionary powers allowed the Minister to act arbitrarily, without adequate checks and balances.

The Decision;

30. The Supreme Court, in a landmark decision, delivered key principles regarding the exercise of discretionary powers by public authorities:

- (i) Limits on Discretionary Powers:
 - (a) The Court held that while the legislature can delegate powers to ministers and public authorities, such delegation must be accompanied by clear guidelines and limitations to prevent arbitrary use of power. Discretion must be exercised within the framework of the law and in accordance with the principles of natural justice.

Principle of Proportionality;

31. The Court introduced the principle of proportionality, stating that any measure taken by a public authority must be proportionate to the aim sought to be achieved. This means that the exercise of discretionary power must be appropriate, necessary, and not excessively burdensome in relation to the objective.

Duty to Act Fairly;

32. The Court emphasized that all public authorities have a duty to act fairly. This includes following due process, considering all relevant factors, disregarding irrelevant factors, and providing reasons for their decisions. Arbitrary or capricious actions would be a violation of this duty.

Constitutional Safeguards:

33. The decision reinforced that all administrative actions are subject to constitutional safeguards. Public authorities must respect the rights guaranteed by the Constitution, and any exercise of power that infringes on these rights can be challenged as unconstitutional.

Application in my Case;

34. In my case against the Office of the Information Commissioner (OIC), the principles established in *East Donegal Cooperative v Attorney General* can be applied as follows:

Limits on Discretionary Powers;

35. The OIC must exercise its powers within the strict boundaries set by the Freedom of Information Act 2014. If the OIC provided Westmeath County Council (WCC) with a legal basis that does not exist within the Act, it acted beyond its legal authority, violating the principle that discretionary powers must have clear legal limits.

Principle of Proportionality;

36. The OIC's actions must be proportionate to the objectives of the FOI Act. Misrepresenting the legal provisions and exceeding the scope of its review could be seen as disproportionate and unjustified actions that do not align with the aims of ensuring transparency and accountability.

Duty to Act Fairly;

37. The OIC has a duty to act fairly by accurately applying the legal provisions of the FOI Act. Providing incorrect legal grounds to WCC and failing to disclose critical information to the court would constitute a failure to act fairly, as required by the principles of natural justice.

Constitutional Safeguards;

38. The actions of the OIC must respect my constitutional rights, including the right to fair procedures and due process. By misrepresenting the law and acting outside its statutory powers, the OIC potentially infringed on these rights, making its actions subject to constitutional challenge.
39. *East Donegal Cooperative v Attorney General* reinforces the requirement for public authorities to act within the confines of their legal authority, adhere to the principles of proportionality and fairness, and respect constitutional safeguards. The OIC's misrepresentation of legal provisions and actions beyond its statutory limits, as argued in my case, can be challenged on these grounds. The principles established in this case provide a strong foundation for arguing that the OIC's actions were unlawful and violated my rights to a fair and just legal process.

40. State (Lynch) v Cooney [1982] IR 337

Case Background;

41. *State (Lynch) v Cooney* is a significant case in Irish law, particularly regarding the principles of natural justice and fair procedures in administrative actions. The case involved the banning of a political broadcast, raising important issues about the exercise of discretionary power by public officials and the necessity of adhering to procedural fairness.

Facts of the Case;

42. In 1982, during the lead-up to a general election, the Minister for Posts and Telegraphs, Gerard Cooney, used his statutory powers to prohibit a broadcast by Sinn Féin on RTÉ (the national broadcaster). The prohibition was based on the belief that the broadcast could incite violence or undermine public order, given the political climate and Sinn Féin's association with the Provisional IRA.

43. Patrick Lynch, a member of Sinn Féin, challenged this decision on the grounds that it was made without affording Sinn Féin the opportunity to be heard, thus violating principles of natural justice and fair procedures.

Legal Issues

44. The main legal issues in this case were:

- (i) Whether the Minister for Posts and Telegraphs acted within his statutory powers in banning the broadcast.
- (ii) Whether the decision to ban the broadcast violated principles of natural justice by not providing Sinn Féin an opportunity to be heard.

The Decision

45. The Supreme Court of Ireland upheld the Minister's decision, but the case set important precedents regarding the exercise of administrative discretion and the necessity of fair procedures:

Scope of Statutory Powers;

46. The Court held that the Minister had the statutory authority to ban the broadcast under the relevant legislation. The decision fell within the discretionary powers granted to the Minister to ensure public order and safety.

Principles of Natural Justice:

47. While the Court acknowledged the importance of natural justice, it also recognized that there could be exceptions, especially in matters involving national security and public order. In this instance, the Court found that the urgency and potential threat justified the Minister's decision without prior notice or hearing.

Balancing Act;

48. The Court emphasized the need to balance individual rights with the broader public interest. Although the principles of natural justice are fundamental, they can be curtailed in circumstances where public safety and order are at stake.

Application in my Case;

49. In my case against the Office of the Information Commissioner (OIC), the principles from *State (Lynch) v Cooney* can be relevant in several ways:

Scope of Statutory Powers;

50. Just as the Minister's actions had to fall within the statutory powers provided by law, the OIC must also act strictly within the bounds of the Freedom of Information Act 2014. If the OIC provided a legal basis outside what is statutorily allowed, it exceeded its authority.

Principles of Natural Justice;

51. Unlike the urgent national security concerns in *Lynch*, my case likely does not involve such exigent circumstances that would justify bypassing natural justice. Therefore, the OIC should have adhered strictly to principles of natural justice and fair procedures. Misrepresenting legal provisions and not providing proper notice or fair hearing are violations of these principles.

Balancing Individual Rights and Public Interest;

52. The OIC's actions must balance the rights of individuals seeking information and the public interest in transparency and accountability. The OIC acted outside its statutory powers & misrepresented the law, it failed to maintain this balance, undermining both my individual rights and public trust.
53. State (Lynch) v Cooney underscores the importance of statutory authority and the principles of natural justice, while also acknowledging that in exceptional circumstances, procedural fairness can be curtailed for broader public interests. In my case, the OIC's actions should be scrutinized to ensure they stayed within statutory limits and adhered to natural justice. The absence of exigent circumstances like those in Lynch strengthens the argument that the OIC should have strictly adhered to fair procedures, making any misrepresentation of law or overreach in authority particularly significant and challengeable.
54. The Supreme Court cases collectively support my argument that the OIC acted outside its statutory authority, misrepresented legal provisions, and failed to adhere to fair procedures, thus violating my constitutional rights. These precedents underscore the necessity for administrative bodies to follow due process, ensure proportionality, and provide transparent, reasonable, and legally sound decisions. Rectifying these errors and upholding the principles of justice and constitutional rights is essential for restoring trust in the legal system and ensuring that my rights are protected under the law.

That concludes my reply to the respondents' grounds to opposition in their respondents notice, I shall now detail the misrepresentation of Law by the OIC that occurred during the High Court hearing.

55. In the matter concerning the review conducted by the Office of the Information Commissioner (OIC) and the subsequent legal proceedings presided over by Mr. Justice Owens, a critical issue has arisen regarding the OIC's representation of the legal provisions under the Freedom of Information Act 2014, specifically Section 22(9)(a). This section outlines the circumstances under which the Commissioner may refuse to accept an application for review or discontinue a review already in progress. The provisions listed under Section 22(9)(a) include considerations such as the application being frivolous or vexatious, lacking relevance to specified decisions, or forming part of a pattern of manifestly unreasonable requests, among others.
56. The crux of the issue lies in the OIC's argument that it provided Westmeath County Council (WCC) with a provision of law under the 2014 Act, which, upon closer examination, does not exist in the manner represented. The OIC's reliance on Section 22(9)(a) as a defence in the proceedings led to a significant misunderstanding or misrepresentation of the law, which subsequently influenced the decision made by Mr. Justice Owens to refuse the reliefs sought by myself.
57. It is imperative to clarify that Section 22(9)(a) of the 2014 Act delineates specific conditions under which the Commissioner may refuse to accept an application for review or discontinue an ongoing review. However, this provision cannot be invoked arbitrarily or without adhering to the criteria explicitly stated within the Act. The misrepresentation of this provision by the OIC suggests an incorrect application of the law, which has profound implications for the integrity of the legal process and the rights of individuals seeking justice under the Act.
58. Furthermore, the OIC's actions, as described, appear to have exceeded the scope of discretion allowed under Section 22(9)(a), particularly in affirming the decision made by WCC without adequately addressing the subsequent release of records and the change in WCC's decision regarding the existence of additional records. This oversight or misapplication of the law raises concerns about the fairness and accuracy of the review process conducted by the OIC and the subsequent legal proceedings.

59. In light of these considerations, it is essential to scrutinize the legal basis upon which the OIC's arguments were founded and the potential impact of any misrepresentation of the law on the outcome of the case. Upholding the principles of transparency, accuracy, and adherence to statutory provisions is paramount in ensuring that the legal process remains just, equitable, and reflective of the legislative intent of the Freedom of Information Act 2014. This argument aims to highlight the concerns regarding the OIC's representation of legal provisions under the 2014 Act and the implications of such misrepresentation on the legal proceedings and the applicant's pursuit of justice.
60. Given the complexities and the detailed allegations presented, a straightforward conclusion would emphasize the core issues and the desired outcome based on the principles of justice, transparency, and adherence to the law:
- (i) The series of events and actions taken by the Office of the Information Commissioner (OIC), as outlined, raise profound concerns regarding the integrity of the legal process.
 - (ii) The misrepresentation of legal provisions.
 - (iii) The infringement of constitutional rights under Article 40 of the Constitution of Ireland.
 - (iv) The assertion that the OIC relied on a non-existent provision of law under the Freedom of Information Act 2014 to justify its decisions.
 - (v) The subsequent affirmation of these decisions by Mr. Justice Owens, underscores a significant deviation from the principles of accuracy, transparency, and fairness that are foundational to the administration of justice.
61. The discrepancies between the OIC's actions and the statutory provisions of the 2014 Act, particularly concerning the handling of the Freedom of Information requests and the subsequent release of records by Westmeath County Council, highlight a failure to adhere to the legislative framework designed to ensure transparency and accountability in public administration. This failure not only undermines the fairness of the review process conducted by the OIC but also challenges the legitimacy of the legal decisions based on these flawed premises.
62. The reliance on incorrect or misrepresented legal grounds for decision-making has led to a situation where my fundamental rights, as guaranteed by the Constitution of Ireland, have been compromised. The actions of the OIC, as described, represent a disregard for the legal standards and constitutional protections that govern the conduct of public bodies and the judicial process in Ireland.
63. It is imperative that this court recognizes the gravity of the misrepresentations made and the impact they have had on the fairness of the legal process and on my constitutional rights.
64. Rectifying these errors, upholding the principles of justice, and ensuring adherence to the correct legal standards are essential steps in restoring trust in the legal system and in the administration of public bodies under the Freedom of Information Act 2014. Accountability for these actions and a commitment to transparency and legal integrity are crucial in preventing such discrepancies in the future and in safeguarding the rights of all individuals under the law.
65. I am a co-parent who has faced significant legal and administrative challenges in seeking justice and accountability from public bodies, particularly the Office of the Information Commissioner (OIC) and Westmeath County Council (WCC). At the core of my submission is the allegation of misrepresentation of the law by the OIC, which has had a profound effect on my rights and the pursuit of justice.

66. My legal journey began with an attempt to add my children to my housing application with WCC, which was met with alleged discrimination and subsequent administrative actions that contravened various statutes, including the Equal Status Act 2000 and the Criminal Justice (Theft and Fraud Offences) Act 2001. These actions included the false inflation of income and the rejection of Housing Assistance Payment (HAP) support based on family status, which were compounded by data breaches and the disclosure of personal information.
67. My request for my housing file under the Freedom of Information Act 2014 led to an internal review by WCC and an investigation by the OIC. Despite additional records being released, the OIC affirmed WCC's decision that no more records existed. This decision was appealed to the High Court, which refused relief based on the OIC's argument that it is common for public bodies to find and release more records during a review. I contend that this argument is based on a misrepresentation of the law, specifically Section 22(9)(a) of the 2014 Act, which does not provide for such a provision.
68. **Misrepresentation of Law:** The OIC is accused of falsely representing the provisions of the 2014 Act, leading to a High Court decision that denied my relief. This misrepresentation is a serious breach of legal integrity and has undermined my right to a fair review process.
69. I am presenting this submission to highlight and seek redress for the misrepresentation of law by the Office of the Information Commissioner (OIC) regarding the Freedom of Information Act 2014 (2014 Act), specifically in relation to Section 22. This misrepresentation has significantly impacted the integrity of the legal process and my pursuit of justice.
70. In my efforts to obtain records from Westmeath County Council (WCC) under the 2014 Act, I encountered a decision by the OIC that was based on a purported provision of law that does not exist within the Act. This decision was subsequently upheld by the High Court, significantly affecting my legal rights and the outcome of my case.
71. **False Provision of Law:** The OIC argued before Mr. Justice Owens that it provided WCC with a legal provision under the 2014 Act, which, upon careful examination, does not exist. This argument led to a misunderstanding and misapplication of the law in my case.
72. **Impact of Misrepresentation:** The reliance on a non-existent legal provision has not only undermined the fairness of the review process conducted by the OIC but also affected the judicial decision-making process. Such misrepresentation challenges the foundation upon which legal decisions should be made—accuracy, transparency, and adherence to statutory law.
73. **Legal and Procedural Implications:** The OIC's actions, predicated on this misrepresentation, have resulted in the affirmation of an incorrect decision by WCC, disregarding the subsequent release of records that contradicted the initial decision. This situation highlights a failure to adhere to the principles outlined in Section 22 of the 2014 Act, which governs the OIC's review process.
74. Given the significant implications of the OIC's misrepresentation of law, I respectfully request the Court of Appeal to & Grant me my reliefs;
- (i) **Acknowledge the Misrepresentation:** Recognize that the OIC's reliance on a non-existent provision of the 2014 Act constitutes a misrepresentation of law, affecting the integrity of its review process and the subsequent judicial decision.
 - (ii) **Annul the Affected Decisions:** Annul the OIC's decision and the High Court's ruling that were based on this misrepresentation, thereby restoring the legal process's integrity.

- (iii) **An Order** to Quash the Order by MR JUSTICE OWENS that the Appeal of the Applicant Litigant in Person and the reliefs as sought and set out in the Notice of Motion be and the same is hereby refused
- (iv) **An Order** to Quash the Order by MR JUSTICE OWENS that the Applicant Litigant in Person do pay to the Respondent the costs of these proceedings to include reserve costs to be adjudicated in default of agreement between the parties
- (v) **An Order** to grant in relief an annulment of the decision by the O.I.C. with case number OIC-132208-D8JOH9
- (vi) **An Order** to instruct the OIC to commence a new investigation at its earliest convenience.
- (vii) **An Order** that the OIC pay to Myself the costs of these proceedings to include reserve costs to be adjudicated in default of agreement by myself and the OIC.
- (viii) **An Order** that the OIC pay to Myself the costs of the High Court proceedings to include reserve costs to be adjudicated in default of agreement by myself and the OIC.
- (ix) **An Order** to instruct the OIC to review its investigation protocol to affirm that they will only provide provisions to public bodies that are lawfully provide pursuant to Irish law.
- (x) **Ensure Adherence to Statutory Law:** Emphasize the importance of accurate representation of statutory provisions in all legal proceedings, particularly those involving the interpretation and application of the Freedom of Information Act 2014.

75. The misrepresentation of law by the OIC has had profound implications for my case and the broader legal process. It is imperative that the Court of Appeal addresses this issue to uphold the principles of justice, transparency, and statutory adherence. I trust that the Court will consider this submission with the seriousness it warrants and provide the necessary redress to correct the errors that have occurred. This submission aims to concisely articulate the issue of misrepresentation of law by the OIC, its impact on my case, and the specific redress I am seeking from the Court of Appeal.

76. As a co-parent involved in a dispute with Westmeath County Council (WCC), I have faced significant challenges that have led to a series of legal confrontations. My initial attempt to add my children to my housing application was met with resistance from WCC, which I perceived as discriminatory and a contravention of the Equal Status Act 2000. This was followed by further complications, including a staff officer at WCC falsely inflating my income, actions I believe were intended to deprive me of support and which contravened the Criminal Justice (Theft and Fraud Offences) Act 2001.

77. In pursuit of transparency and accountability, I requested my housing file under the Freedom of Information Act 2014. An incomplete response led to an internal review and an application to the OIC. Despite additional records being released during the OIC's review, the OIC affirmed WCC's decision that no more records existed. I appealed this decision to the High Court, which refused relief based on the OIC's argument that it is common for public bodies to find and release more records during a review. I contend that this argument is based on a misrepresentation of the law, specifically Section 22(9)(a) of the 2014 Act, which does not provide for such a provision.

78. The core of my case against the OIC centres on this misrepresentation of law. The OIC's reliance on a non-existent legal provision has not only undermined the fairness of the review process but also affected the judicial decision-making process. Such misrepresentation challenges the foundation upon which legal decisions should be made—accuracy, transparency, and adherence to statutory law.

79. Sandra Murdif stated in her decision *"Having carried out a review under section 22(2) of the FOI Act, I hereby affirm the Council's decision to refuse access, under section 15(1)(a) of the Act, to additional*

records relating to the applicant's request on the basis that no further records exist or can be found after all reasonable steps to ascertain their whereabouts have been taken"

80. This sentiment was profusely echoed by Claire Hogan BL under direction by the OIC in which she stated in her submissions on page 8, paragraph 33 stating "the appellant appears to complain that because the council released records to him on the 15th of December 2022 in the course of this review, this renders the previous Council decisions on the request "untrue". The council discovered additional records within scope. It is not uncommon that during the process of engaging with the commissioner a public body may release further records, whether as a result of the reflecting further on the FOI request, having received guidance from the commissioner or for some other reason other. Public bodies are not legislatively precluded from this course of action and indeed it is welcome and consistent with the entire Trust of the FOI act, which is in favour of the right of access and increased disclosure. Sometimes reviews are successfully concluded as a result of the grant of further records, and there is no need for a formal binding decision. However, this was not the outcome in this case. After the 15th of December 2022, the appellant continued to claim that more records existed which should not be released and the commissioner continued to engage with the council on this point, and to make the decision which lovely reflected the final position of the parties.
81. Claire Hogan BL failed to disclose to Mr Justice Ownes that the OIC has went out side the scope of the review in which Sandra Murdiffe has stated that she "*carried out a review under section 22(2) of the FOI Act*" What in fact happened was that the OIC had provided WCC with a provision provided for under s.22(9)(a) of the 2014 Act & by providing WCC with this provision the OIC did not stay "within scope"
82. It is irrelevant whether this was done with malice intent or whether this was done unknowingly, all that matters is that the OIC has provided WCC with a provision that was not within the scope of the review bearing case number OIC-132208-D8J0H9 this was not brought to Mr Justice Ownes attention during the High Court case. However, I read s.22 of the FOI Act when I went home that evening & spotted the discrepancy straight away. I had not read that section before as my pure focus was on exhibiting the simple truth that a false decision cannot be affirmed as I stated in my notice of motion "The decision by the O.I.C. to affirm the original decision by W.C.C. has no standing because that decision **Exhibit 3 & Exhibit 6** respectively is untrue because more records were released afterwards on the 15th of December 2022 **Exhibit 8** & an untrue decision can not be affirmed."
83. Mr Justice Ownes was told incorrect information by Claire Hogan BL, who was under direction by the OIC & Mr Justice Ownes believed this unauthenticated conjecture instead of the exhibited factual independent proof I had focused on for so long. Unfortunately, on the 23rd of January 2024 Justice was not only blind in Court 12 of the Four Courts, it was also deaf. But thankfully God blessed me with a mouth to speak the truth & a voice to make it heard.
84. In the matter before Mr. Justice Owens, a critical oversight occurred that fundamentally impacted the integrity of the judicial process and the outcome of my case. This oversight pertains to the misrepresentation of the scope of the review conducted by the Office of the Information Commissioner (OIC), as represented by Claire Hogan BL, under the direction of the OIC.

Key Points of Concern:

85. **Scope of the Review:** Sandra Murdiffe, on behalf of the OIC, stated that a review was carried out under section 22(2) of the Freedom of Information Act 2014 (FOI Act). However, the OIC provided Westmeath County Council (WCC) with a provision under section 22(9)(a) of the 2014 Act, which was outside the

scope of the review bearing case number OIC-132208-D8J0H9. This critical detail was not disclosed to Mr. Justice Owens during the High Court case.

86. **Impact of Misrepresentation:** The provision provided to WCC by the OIC, which was not within the scope of the review, fundamentally alters the nature of the OIC's actions and their adherence to the FOI Act. This discrepancy was not brought to the attention of Mr. Justice Owens, leading to a decision that did not fully consider the procedural and legal inaccuracies presented during the review process.
87. **Discovery of Discrepancy:** It was only after the High Court hearing, upon my personal review of section 22 of the FOI Act, that I identified the discrepancy. My focus during the case was on demonstrating that a decision proven to be false—such as the initial decision by WCC that no more records existed—cannot be affirmed. This principle was central to my notice of motion, yet the nuanced legal argument regarding the scope of the OIC's review was overlooked.

Consequences of Oversight:

88. The reliance on unauthenticated conjecture by Claire Hogan BL, under the direction of the OIC, led to a situation where Mr. Justice Owens made a decision without the benefit of all relevant and factual information. This oversight compromised not only my case but also the principles of justice, transparency, and fairness that underpin our legal system.
89. Given the significant implications of this oversight for the integrity of the judicial process and the outcome of my case, I respectfully request that this matter be thoroughly reviewed. It is imperative that the Court of Appeal considers the misrepresentation of the scope of the review by the OIC and the subsequent impact on the High Court's decision.
90. The principles of justice demand that decisions be made based on accurate, complete, and truthful information. In this instance, the failure to disclose the full scope of the OIC's review and the provision applied to WCC has led to a miscarriage of justice. I seek redress that acknowledges this oversight and rectifies the errors that have occurred, ensuring that the principles of fairness and legal integrity are upheld.
91. The OIC's reliance on a non-existent provision of the FOI Act misled the High Court, leading to a decision that disregarded the actual statutory framework. This misrepresentation fundamentally undermines the fairness of the review process and my rights under the Act

****To the Honourable Court of Appeal: ****

92. As I stand before this court, I represent not only my struggle but also the silent voices of many who seek justice within a system that promises fairness, equality, and protection under the law. My journey through the legal landscape, challenging the actions of Westmeath County Council (WCC) and the Office of the Information Commissioner (OIC), has been a testament to the resilience required to navigate the complexities of our justice system.

The Core of My Legal Battle;

93. At the heart of my legal battle lies a fundamental quest for transparency and accountability, underscored by the misrepresentation of law by the OIC. These challenges have not only tested my resolve but have also highlighted significant concerns regarding the adherence to constitutional rights and the principle of fairness that underpins our justice system.

Misrepresentation of Law and Its Implications;

94. The misrepresentation of the Freedom of Information Act 2014 by the OIC, particularly in the context of my case, raises profound questions about the integrity of legal processes and the trust we place in public bodies to act within the scope of their legal mandates. This misrepresentation, coupled with the refusal of WCC to acknowledge the full extent of records pertaining to my housing application, strikes at the very heart of transparency and accountability.

95. Ms Hogan also brought in 6 irrelevant case laws into evidence concerning decisions made by the OIC that were appealed to the superior courts.

- (i) I will state for the record that the scope of decision **OIC-132208-D8J0H9** stated by the OIC was carried out under s.22(2) & s.15(1)(a) of the 2014 Act. The OIC *out of scope* provided WCC with a provision under s.22(9)(a)(v) of 2014 Act which states; The Commissioner may refuse to accept an application under subsection (2) or may discontinue a review under this section if he or she is or becomes of the opinion that—(v) **there is no longer any issue requiring adjudication, as access to the records in question has been granted by the FOI body in the course of the review.** The OIC did not refuse the application nor did he discontinue the review. In fact, he adjudicated & proceeded to form a legally binding decision pursuant to s.22(2) of the 2014 Act. All the authorities that Ms Hogan has cited concerning decisions appealed to the Superior Courts are completely different to the decision **OIC-132208-D8J0H9** that was conducted as follows;

96. The respondent has cited several case laws to support their defence. However, these cases are irrelevant concerning the provision provided under s.22(9) of the Freedom of Information Act 2014 (the "FOI Act") to Westmeath County Council (WCC), which was outside the scope of a review and legally binding decision pursuant to s.22(2) of the FOI Act. Below is a detailed analysis of why each cited case law is not pertinent to the issues at hand.

97. Landers v Information Commissioner [2022] IEHC 170

Relevance Analysis:

- (i) This case concerned the justification for refusing access to internal audit plans under the FOI Act.
- (ii) The primary issue was whether the National Treasury Management Agency (NTMA) had taken all reasonable steps to locate records.
- (iii) **Irrelevance:** The case does not address the misapplication of s.22(9)(a) in the context of ongoing review procedures or subsequent release of records. It does not pertain to the provision of a legal basis outside the statutory review process governed by s.22(2).

98. Jackson Way v Information Commissioner [2021] IECA 123

Relevance Analysis:

- (i) This case involved the Commissioner's discretion in withholding records on grounds of public interest.
- (ii) It dealt with the procedural fairness and the reasonableness of the Commissioner's decision.

- (iii) **Irrelevance:** The focus here is on public interest and procedural fairness, not on the scope of s.22(9)(a) versus s.22(2). The case does not provide guidance on the issue of providing out-of-scope provisions to public bodies.

99. Minister of Communications v Information Commissioner [2022] 2 ILRM 81

Relevance Analysis:

- (i) This case reviewed the Commissioner's decision in the context of statutory interpretation and the discretion exercised under the FOI Act.
- (ii) It involved matters of national interest and the extent of information disclosure permissible under the Act.
- (iii) **Irrelevance:** The case is centred on statutory interpretation and national interest, unrelated to the misrepresentation of legal provisions under s.22(9)(a) and their inappropriate application during an ongoing review.

100. Jackson Way v Information Commissioner [2020] IEHC 73

Relevance Analysis:

- (i) The case dealt with the refusal to grant access to records on grounds that they did not exist or could not be found.
- (ii) It focused on the adequacy of the search conducted by the public body and the reasonableness of the Commissioner's affirmation.
- (iii) **Irrelevance:** Similar to the 2021 case, this decision does not tackle the specific issue of providing out-of-scope legal provisions to public bodies during a review process under s.22(2).

101. F.P. v Information Commissioner [2019] IECA 19

Relevance Analysis:

- (i) This appeal addressed the Commissioner's decision to refuse access based on privacy exemptions and the balancing of public interest.
- (ii) The central theme was the application of privacy exemptions and not the procedural aspects of review under s.22(2).
- (iii) **Irrelevance:** The case does not discuss the misapplication of legal provisions or the procedural correctness under s.22(9)(a) and s.22(2) of the FOI Act.

102. Westwood v Information Commissioner [2015] 1 IR 489

Relevance Analysis:

- (i) This case examined whether the Commissioner had appropriately exercised discretion in refusing access to certain records.
- (ii) The issues revolved around the adequacy of searches and the reasonableness of the Commissioner's decisions.

- (iii) **Irrelevance:** It is unrelated to the central issue of the incorrect application of s.22(9)(a) during a review process governed by s.22(2). It does not provide any precedent for the misrepresentation of legal provisions to public bodies.

103. The cited case laws by the respondent are not relevant to the specific procedural and legal issues concerning the misapplication of s.22(9)(a) during a review process that should have been strictly governed by s.22(2) of the FOI Act. These cases primarily address issues of discretion, public interest, privacy exemptions, and the adequacy of record searches, none of which directly pertain to the critical misrepresentation and out-of-scope legal provision provided to WCC by the OIC. This misrepresentation significantly impacted the fairness and legality of the review process and the subsequent High Court decision.
104. My decision entered the High Court stating in my notice of motion “The decision by the O.I.C. to affirm the original decision by W.C.C. has no standing because that decision **Exhibit 3 & Exhibit 6** respectively is untrue because more records were released afterwards on the 15th of December 2022 **Exhibit 8** & an untrue decision can not be affirmed”
105. The OIC did not disclose to Ownes J that he acted outside the scope of its review that is governed under s.22(2) of the 2014 Act.
106. The OIC did not make Ownes J aware that it provided a provision to WCC that lay outside its review.
107. Sandra Murdoff stated that WCC released records during the review & yet she still falsely stated that she “*carried out a review under section 22(2) of the FOI Act*”
108. **Constitutional Rights and Fairness;** The Constitution of Ireland guarantees all citizens the right to justice, equality before the law, and the protection of personal rights. These guarantees form the bedrock of our democratic society and the justice system that serves it. However, my experience has illuminated the challenges faced by individuals, particularly those of modest means, in asserting these rights against public bodies and navigating a legal system that can seem daunting and inaccessible.
109. **The Role of the Justice System;** The justice system is the guardian of our constitutional rights, serving as the arbiter of fairness and the protector of the vulnerable. It is incumbent upon this system to ensure that no individual is left without recourse when their rights are infringed upon, and that public bodies are held to account for their actions. The system must be accessible, transparent, and responsive to the needs of those it serves, embodying the principles of fairness and justice in every action.
110. In light of the challenges, I have faced and the discrepancies highlighted in my case, I respectfully request that this court consider the implications of the OIC's misrepresentation of law and the actions of WCC on my constitutional rights. I seek redress that acknowledges the injustices encountered and rectifies the errors that have occurred, ensuring that the principles of fairness, transparency, and accountability are upheld. As I conclude this submission, I do so with a hopeful heart and a steadfast belief in the principles of justice that guide this court. I trust that my case will not only bring resolution to my legal challenges but will also serve as a beacon for others navigating similar struggles, reinforcing the commitment of our justice system to uphold the constitutional rights and fairness for all citizens.
111. The matter at hand involves the review conducted by the Office of the Information Commissioner (OIC) under the Freedom of Information Act 2014 (FOI Act) and subsequent legal proceedings presided over

by Mr. Justice Owens. The core issue revolves around the OIC's representation of legal provisions under Section 22(9)(a) of the 2014 Act. This section outlines the circumstances under which the Commissioner may refuse to accept an application for review or discontinue a review already in progress. The misrepresentation of this provision by the OIC suggests an incorrect application of the law, which has profound implications for the integrity of the legal process and the rights of myself seeking justice under the Act.

112. The OIC's actions have exceeded the scope of discretion allowed under Section 22(9)(a), particularly in affirming the decision under s.22(2) of the 2014 Act, made by WCC without adequately addressing the subsequent release of records and the change in WCC's decision regarding the existence of additional records. This oversight or misapplication of the law raises concerns about the fairness and accuracy of the review process conducted by the OIC and the subsequent legal proceedings.
113. The discrepancies between the OIC's actions and the statutory provisions of the 2014 Act, particularly concerning the handling of the Freedom of Information requests and the subsequent release of records by WCC, highlight a failure to adhere to the legislative framework designed to ensure transparency and accountability in public administration. This failure not only undermines the fairness of the review process conducted by the OIC but also challenges the legitimacy of the legal decisions based on these flawed premises.
114. The reliance on incorrect or misrepresented legal grounds for decision-making has led to a situation where my fundamental rights, as guaranteed by the Constitution of Ireland, have been compromised. The actions of the OIC represent a disregard for the legal standards and constitutional protections that govern the conduct of public bodies and the judicial process in Ireland.
115. I respectfully request the Court of Appeal to acknowledge the misrepresentation, annul the affected decisions, and grant my reliefs. This includes an order to quash the OIC's decision, commence a new investigation, and review its investigation protocol to ensure adherence to statutory provisions. I also seek redress that acknowledges the injustices encountered and rectifies the errors that have occurred, ensuring that the principles of fairness, transparency, and accountability are upheld & the costs for the High Court proceeding as well as the Court of Appeal proceedings.
116. My journey through the legal landscape has been a testament to the resilience required to navigate the complexities of the justice system. The core of the legal battle lies in the misrepresentation of law by the OIC, which raises profound questions about the integrity of legal processes and the trust we place in public bodies to act within the scope of their legal mandates. This misrepresentation, coupled with the refusal of WCC to acknowledge the full extent of records pertaining to my housing application, strikes at the very heart of transparency and accountability.
117. My legal journey began with an attempt to add children to a housing application with WCC, which was met with discrimination and subsequent administrative actions that contravened various statutes, including the Equal Status Act 2000 and the Criminal Justice (Theft and Fraud Offences) Act 2001. These actions included the false inflation of income and the rejection of Housing Assistance Payment (HAP) support based on family status, which were compounded by data breaches and the disclosure of personal information.
118. My request for my housing file under the Freedom of Information Act 2014 led to an internal review by WCC and an investigation by the OIC. Despite additional records being released, the OIC affirmed WCC's decision that no more records existed. This decision was appealed to the High Court, which refused relief

based on the OIC's argument that it is common for public bodies to find and release more records during a review. I contend that this argument is based on a misrepresentation of the law, specifically Section 22(9)(a) of the 2014 Act, which does not provide for such a provision when a legally binding decision is formed according to s.22(2) of the 2014 Act.

119. The misrepresentation of law by the OIC has profound implications for the integrity of the legal process and the rights of individuals seeking justice under the Act. The OIC's actions, as described, have exceeded the scope of discretion allowed under Section 22(9)(a), particularly in affirming the decision under s.22(2) of the said Act, made by WCC without adequately addressing the subsequent release of records and the change in WCC's decision regarding the existence of additional records. This oversight or misapplication of the law raises concerns about the fairness and accuracy of the review process conducted by the OIC and the subsequent legal proceedings.
120. The OIC's actions represent a disregard for the constitutional protections that ensure fair and transparent administrative processes. My rights under Article 40 have been compromised due to the misrepresentation of legal provisions by the OIC.
121. The series of events and actions taken by the Office of the Information Commissioner (OIC), as outlined, raise profound concerns regarding the integrity of the legal process, the misrepresentation of legal provisions, and the infringement of constitutional rights under Article 40 of the Constitution of Ireland. The assertion that the OIC relied on a non-existent provision of law under the Freedom of Information Act 2014 to justify its decisions, and the subsequent affirmation of these decisions by Mr. Justice Owens, underscores a significant deviation from the principles of accuracy, transparency, and fairness that are foundational to the administration of justice. The discrepancies between the OIC's actions and the statutory provisions of the 2014 Act, particularly concerning the handling of the Freedom of Information requests and the subsequent release of records by Westmeath County Council, highlight a failure to adhere to the legislative framework designed to ensure transparency and accountability in public administration. This failure not only undermines the fairness of the review process conducted by the OIC but also challenges the legitimacy of the legal decisions based on these flawed premises. The reliance on incorrect or misrepresented legal grounds for decision-making has led to a situation where my fundamental rights, as guaranteed by under Article 40 the Constitution of Ireland, have been compromised. The actions of the OIC represent a disregard for the legal standards and constitutional protections that govern the conduct of public bodies and the judicial process in Ireland. Therefore, it is imperative that this court recognizes the gravity of the misrepresentations made and the impact they have had on the fairness of the legal process and on my constitutional rights. Rectifying these errors, upholding the principles of justice, and ensuring adherence to the correct legal standards are essential steps in restoring trust in the legal system and in the administration of public bodies under the Freedom of Information Act 2014. Accountability for these actions and a commitment to transparency and legal integrity are crucial in preventing such discrepancies in the future and in safeguarding the rights of all individuals under the law.
122. Mr. Justice Owens decision on January 23, 2024 is defective as it revolve around the unlegislated actions by the Office of the Information Commissioner (OIC) in its review of a Freedom of Information request. The review, initially stated to be conducted under Section 22(2) of the 2014 Act, but was marred by the OIC's provision of a legal basis that did not exist in the manner it was represented. This misrepresentation fundamentally affected the legal process and the subsequent decisions, leading to significant questions regarding the integrity and fairness of the proceedings.

123. The crux of the case lies in the fact that the OIC, in affirming Westmeath County Council's (WCC) decision, relied on a provision under Section 22(9) of the 2014 Act. This section outlines specific circumstances under which the Commissioner may refuse or discontinue a review, but the conditions must be strictly adhered to. The OIC's actions, however, went beyond the statutory limits set by this provision, thereby acting outside the legal framework established by the Act.
124. The review process should have remained within the scope defined by Section 22(2) of the Act. However, the OIC provided WCC with a provision that is only applicable under Section 22(9)(a), a provision not within the scope of the review. This discrepancy was not disclosed to Mr. Justice Owens during the High Court proceedings, leading to a decision that did not fully consider the procedural and legal inaccuracies presented during the review.
125. The misrepresentation by the OIC, particularly in affirming WCC's decision without adequately addressing the subsequent release of records and the change in WCC's decision regarding the existence of additional records, raises serious concerns about the fairness and accuracy of the review process. This oversight or misapplication of the law challenges the legitimacy of the legal decisions based on these flawed premises and undermines the principles of transparency and accountability that are fundamental to public administration.
126. The reliance on incorrect or misrepresented legal grounds for decision-making has led to a situation where my constitutional rights, as guaranteed by the Constitution of Ireland, have been compromised. The actions of the OIC represent a disregard for the legal standards and constitutional protections that govern the conduct of public bodies and the judicial process in Ireland.
127. Given these significant issues, it is essential that this court acknowledges the misrepresentation made by the OIC, annuls the affected decisions, and grants the reliefs sought. These include quashing the decision by Mr. Justice Owens to refuse my reliefs, instructing the OIC to commence a new investigation, and reviewing the OIC's investigation protocol to ensure adherence to statutory provisions.
128. In conclusion, the actions of the OIC have raised profound concerns regarding the integrity of the legal process and the misrepresentation of legal provisions under the Freedom of Information Act 2014. The subsequent affirmation of these decisions by Mr. Justice Owens underscores a significant deviation from the principles of accuracy, transparency, and fairness that are foundational to the administration of justice. It is imperative that these errors are rectified, and the principles of justice and adherence to the correct legal standards are upheld to restore trust in the legal system and in the administration of public bodies under the 2014 Act. Accountability and a commitment to transparency and legal integrity are crucial in preventing such discrepancies in the future and safeguarding the rights of all individuals under the law.
129. I have not seen any legal submissions from the respondent other than his initial respondents notice which I addressed earlier & I reserve the right to submit any responses to any further submissions by the respondent.
130. For the foregoing reasons, and those to be offered, the Respondents defence should be dismissed.

Signed



Plaintiff

Filed on this 23rd day of May 2024.

Word Count:9792



COURT OF APPEAL
CIVIL

RECORD NO: 2024 / 70

BETWEEN:-

PATRICK MCGREAL

Appellant

AND

THE INFORMATION COMMISSIONER

Respondent

OUTLINE LEGAL SUBMISSIONS OF THE RESPONDENT

Introduction

1. These proceedings concern the appeal of Mr McGreal (the “**Appellant**”) to the Respondent (the “**Commissioner**”) from the decision of the High Court of 23 January 2024, which dismissed his appeal against a decision dated 3 March 2023 of the Commissioner (the “**Commissioner’s Decision**”).
2. The Commissioner’s Decision affirmed the decision of Westmeath County Council (the “**Council**”) to refuse access, under section 15(1)(a) of the Freedom of Information Act 2014 (the “**FOI Act**”), to certain records, on the basis that no further records existed or could be found after all reasonable steps to ascertain their whereabouts had been taken.
3. Section 15(1)(a) of the FOI Act provides:

“(1) A head to whom an FOI request is made may refuse to grant the request where—

(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken”

4. The Appellant’s case before this Court has changed fundamentally from the case argued before the High Court. In this appeal, the Appellant focuses on the interpretation and application of section 22(9)(a) of the FOI Act. He is not entitled to change his case as it progresses. Even if some leeway is provided to him, and it is respectfully submitted that case law suggests it ought not be, the arguments he makes about section 22(9)(a) of the FOI Act, insofar as they can be understood, are misconceived.
5. The Respondent will address the following matters in the balance of these submissions:

A. Chronology of Events Leading to this Appeal

B. New Issues on Appeal – Section 22 of the FOI Act and Constitutional Rights

- (1) Impermissible Change of Case
- (2) The Irrelevance of Section 22(9)(a) of the FOI Act

C. Remaining Issues in the Appeal

- (1) The Impact of the Release of Extra Records by the Council
- (2) The Appellant’s Failure to Challenge the Core Operative Part of the Commissioner’s Decision
- (3) No Impermissible Regard to the Underlying Dispute with the Council

6. By way of preliminary observation, the Appellant has made serious allegations against the Commissioner, and his legal representatives. The allegations, evident throughout his Notice of Appeal and legal submissions, relate to alleged misrepresentations and

lack of transparency and candour before the High Court. As an example, §10(b)(iii) of the Notice of Appeal describes an “*audacious attempt to deceive the judicial process*”. The Commissioner rejects these allegations, and feels compelled to observe that in fact, it is the Appellant’s conduct in this litigation which has fallen short of any acceptable standard of behaviour.

7. In this regard, due to ongoing harassment of the Commissioner, his staff and legal representatives, the Commissioner obtained an Order from Hyland J, on 28 September 2023, that the Appellant immediately cease communication and contact with staff or officers of the Information Commissioner, and counsel for the Information Commissioner, in relation to the appeal, and pending its determination.
8. The Appellant renewed personal and aggressive communication with the Commissioner, his staff and legal representatives following the determination of his unsuccessful High Court action. His actions were brought to the attention of this Court on 19 April 2024. Costello J requested that the Appellant provide an undertaking to abide by the Order made by Hyland J, pending determination of this appeal. He provided that undertaking.
9. The behaviour of the Appellant is not strictly relevant to the issues which fall to be determined by this Honourable Court. However, the Commissioner submits that the personalised accusations made by the Appellant in this appeal are properly viewed as part of a pattern of conduct, which is unacceptable and objectionable. Furthermore, it is submitted that the Appellant’s conduct has a bearing upon any latitude which might otherwise be provided to him by the Court in light of his status as a litigant in person.

A. Chronology of Events Leading to this Appeal

10. The full chronology of the background to the Commissioner’s Decision is set out in the Affidavit of Sandra Murdiff (“**Ms Murdiff’s affidavit**”) which verified the Points of Opposition of the Commissioner before the High Court. However, a summary is provided here for clarity.

1 September 2022: the Appellant sought access to various information from the Council relating to his Housing Assistant Payment (the “HAP”). He sought a copy of his housing file, and all and any correspondence that the housing department in the Council held relating to him. He also sought a copy of all decisions regarding his housing application, a copy of the reason why his discretionary HAP cap raise of 20% was withdrawn, all documents, correspondence notes and memos regarding him and his housing application. The Appellant listed people in the Council with whom he had been in contact. He stated that he was never notified of the withdrawal of his discretionary HAP raise, nor was he given a reason to why it was withdrawn. He requested, “*all documents, correspondence, notes, memos & everything regarding myself, my housing application & everything relating to these.*”

30 September 2022: the Council issued a decision (the “**Council’s Decision**”) part granting the Appellant’s request and provided him with records containing redactions under section 37 of the FOI Act. He received a schedule for a copy of his Housing Application file, and another for a copy of his HAP file.

12 October 2022: the Appellant made an internal review request, stating he was formally appealing “*the decision not to disclose the information regarding the withdrawal of my discretionary HAP raise in March of this year.*”

2 November 2022: the Council issued an internal review decision affirming its original decision (the “**Council’s Internal Review Decision**”) and informed the Appellant that one additional record had come into existence as a result of his FOI request. It released this record to the Appellant.

9 November 2022: the Appellant applied to the Commissioner for a review of the Council’s Internal Review Decision. The Commissioner accepted the review, and began an investigation. There followed significant correspondence between the Commissioner and the Respondent, and between the Commissioner and the Council respectively. The detail of this correspondence is set out in Ms Murdiffe’s affidavit, with supporting exhibits. The Commissioner made extensive efforts to address all of the concerns of the Appellant about the responses received from the Council which explained their searches for further records.

15 December 2022: some additional records were released by the Council to the Appellant

3 March 2023: the Commissioner's Decision, of the same date, was communicated to the Appellant. In the "Analysis" section of the Decision the Commissioner set out:

"Having regard to the submissions provided by the Council, which outline the searches that were undertaken to locate records relating to the applicant's request and to its explanation for concluding that no further records exist, I am satisfied that the Council has taken all reasonable steps to locate additional records in this case. While I note that the applicant does not accept the Council's explanation, there is nothing before me to indicate that further searches are warranted in this case.

Accordingly, I find that the Council was justified in refusing access, under section 15(1)(a) of the Act, to additional records relating to the applicant's request on the grounds that no further records exist or can be found after all reasonable steps to ascertain their whereabouts have been taken."

B. New Issues on Appeal – Section 22 of the FOI Act and Constitutional Rights

11. In the High Court, the Appellant's Notice of Motion centred on (1) complaints about the Council's decision not to award him a discretionary increase in HAP, and (2) a complaint that because the Council released records to him on 15 December 2022, in the course of the review, this rendered the previous Council decisions on the request "untrue".
12. The hearing of the matter in the High Court on 23 January 2024 focused on issue (2), as is reflected in the transcript of the *ex tempore* decision of Owens J.

13. The appeal before this Court involves a fundamental change of course. The Appellant's appeal now hinges on section 22(9)(a) of the FOI Act. He makes an argument which the Commissioner has great difficulty in following. Subject to that caveat, the Appellant appears to allege that the Commissioner misrepresented the law in the course of the High Court hearing. He repeatedly refers to a misrepresentation throughout the legal submissions.¹ He appears to allege that the Commissioner relied on a provision of law which does not exist, and that this led to unfairness.

14. For instance, in §56 of the legal submissions, the Appellant states:

*"The crux of the issue lies in the OIC's argument that it provided Westmeath County Council with the provision of law under the 2014 act, which, upon closer examination, does not exist in the manner represented. The OIC's reliance on section 22(9)(a) is a defence in these proceedings led to a significant misunderstanding or misrepresentation of the law which subsequently influenced the decision made by Mr. Justice Owens to refuse the relief sought by myself."*²

15. Furthermore, at §78, he states:

"The core of my case against the OIC centres on this misrepresentation of law. The OIC's reliance on a non-existent legal provision has not only undermined the fairness of the review process but also affected the judicial decision-making process. Such misrepresentation challenges the foundation upon which legal decisions should be made – accuracy, transparency, and adherence to statutory law."

16. And at §123 he states:

"The crux of the case lies in the fact that the OIC, in affirming Westmeath County Council's (WCC) decision, relied on a provision under Section 22(9) of the 2014 Act. This section outlines specific circumstances under which the Commissioner may refuse or discontinue a review, but the conditions must be strictly adhered to."

¹ At paragraphs 11, 22, 23, 51, 52, 53, 54, 56, 57, 59, 62, 63, 65, 67, 68, 69, 72, 73, 74, 75, 77, 78, 84, 86, 89, 91, 93, 94, 102, 103, 110, 111, 114, 115, 116, 118, 119, 120, 121, 122, 125, 126, 127, and 128.

² Emphasis added here and throughout with underline

The OIC's actions, however, went beyond the statutory limits set by this provision, thereby acting outside the legal framework established by the Act."

17. In response, the Commissioner submits:

- (1) First, that the Appellant cannot fundamentally alter the scope of his case, and invite this Court to decide new issues.
- (2) Second, the section 22(9)(a) FOI Act arguments, insofar as they can be understood, are irrelevant and misconceived.

(1) Impermissible Change of Case

18. The Appellant does not shy away from the fact he is making new arguments. In §5 of his legal submissions he states:

"While it is true that the scope of section 22 of the FOI Act was not explicitly raised in the original Notice of Motion, my subsequent realization about its meaning was a natural progression of my case. The discovery of this discrepancy prompted a deeper examination of the legal framework underpinning the commissioner's decision, which I believe is essential for ensuring a fair and just outcome."

19. At §82 of his legal submissions he states that after the High Court decision, *"I read s.22 of the FOI Act when I went home that evening & spotted the discrepancy straight away. I had not read that section before as my pure focus was on exhibiting the simple truth that a false decision cannot be affirmed as I stated in my notice of motion."*

20. The Commissioner also notes that the Appellant invites this Court to determine the issue of an alleged breach of his constitutional rights, particularly Article 40.1, in circumstances where this issue was not decided by the High Court.

21. The general prohibition on deciding new issues on appeal was set out in the following terms by Finlay CJ in *K.D. v M.C.* [1985] IR 697, at 701:

"It is a fundamental principle, arising from the exclusively appellate jurisdiction of this Court in cases such as this that, save in the most exceptional circumstances,

the Court should not hear and determine an issue which has not been tried and decided in the High Court. To that fundamental rule or principle there may be exceptions, but they must be clearly required in the interests of justice.”

22. The issue which the Appellant seeks to have decided is not one which falls at the potentially permissible end of the spectrum described by O'Donnell J (as he then was) in *Lough Swilly Shellfish Growers Co-Op Society Ltd v Bradley* [2013] 1 IR 227. It is not an argument which is closely related to other arguments already made in the High Court, or a refinement of them. It is an entirely new argument, and as explained in greater detail below, section 22(9)(a) of the FOI Act did not feature at all in the High Court decision of Owens J, or in the Commissioner's Decision.

23. The Commissioner relies on *Arnold v Judge McCarthy* [2017] IECA 303, where the Court considered the Appellants' right to amend their pleadings in order to raise the issue of the constitutionality of the Education (Welfare) Act 2000. Hogan J noted that there are many litigants in person, but observed at §41:

“While some indulgence must be afforded to such persons, the orderly administration of justice would breakdown if such a far-reaching departure from ordinary norms of civil procedure were to be permitted simply because the applicants were litigants in person who maintained that they were unaware of these rules and requirements.”

24. In summary, the appeal of the Appellant is now based almost exclusively on section 22(9)(a) of the FOI Act, and he invites this Court to decide an entirely new issue. On this basis alone, the Commissioner respectfully submits that the appeal should fail *in limine*. However, without prejudice to this contention, the Commissioner will address the substance of the section 22(9)(a) FOI Act argument, insofar as that can be discerned.

(2) The Irrelevance of Section 22(9)(a) of the FOI Act

25. Section 22(9)(a) of the FOI Act provides as follows:

(9) (a) The Commissioner may refuse to accept an application under subsection (2) or may discontinue a review under this section if he or she is or becomes of the opinion that—

(i) the application aforesaid or the application to which the review relates (the “application”) is frivolous or vexatious,

(ii) the application does not relate to a decision specified in subsection (1),

(iii) the matter to which the application relates is, has been or will be, the subject of another review under this section,

(iv) the applicant has failed to provide the Commissioner with sufficient information or particulars, or otherwise has failed to co-operate with the Commissioner in the conduct of a review,

(v) there is no longer any issue requiring adjudication, as access to the records in question has been granted by the FOI body in the course of the review,

(vi) the application forms part of a pattern of manifestly unreasonable requests from the same requester or from different requesters who, in the opinion of the Commissioner, appear to have made the requests acting in concert, or

(vii) accepting the application would, by reason of the number or nature of the records concerned or the nature of the information concerned, require the examination of such number of records or an examination of such kind of the records concerned as to cause a substantial and unreasonable interference with or disruption of work of his or her Office.

26. This section is about the Commissioner’s powers to refuse to accept a review, or to discontinue a review.

27. The Appellant is entirely mistaken in his arguments which are based on this provision, for the following reasons.
28. First, in the High Court, Owens J did not make any finding based on section 22(9)(a) of the FOI Act (as borne out by a review of the Transcript). Therefore, there is nothing to appeal from in respect of the interpretation of section 22(9)(a) of the FOI Act.
29. Second, it is wholly unsurprising that Owens J. did not make a finding based on section 22(9)(a) of the FOI Act, as that section of the legislation did not feature in the Commissioner's Decision, which the High Court was analysing. In turn, it is entirely logical that it did not feature, as it is a provision concerning grounds on which the Commissioner might refuse to accept a review, or discontinue it. In this case, the Commissioner accepted the review, embarked upon an investigation, and issued a binding decision at the conclusion of the investigation.
30. Third, the Commissioner did not rely on section 22(9)(a) of the FOI Act "*as a defence*", as is evident from its Points of Opposition, and its legal submissions in the High Court. Again, it is not a provision which is relevant to the Decision at all.
31. Fourth, the Commissioner did not "*provide the Council*" with section 22(9)(a) of the FOI Act, and all arguments in this vein are misconceived (§81 and 85 of the Appellant's legal submissions).
32. Fifth, while any misrepresentation of the law by the Commissioner or his counsel is refuted, it is impossible to decipher what the alleged import of the alleged misrepresentation is. General and vague arguments about an impact on the fairness of the process are made, but there is no clear argument to be discerned.
33. Sixth, the Appellant briefly refers to section 22(9)(a)(v) of the FOI Act at §95 of his legal submissions. If it is the Appellant's argument that the Commissioner should have *discontinued* the review as additional records were granted, then this is incorrect, for the following reasons:
- (i) The Commissioner is not obliged to discontinue a review if additional records are released, the wording of the section is "*may*" and not "*shall*";

- (ii) In an appropriate case, where records are released, the Commissioner might discontinue the review where a requester is happy with this outcome. In this case, in the course of the investigation, the Appellant did not accept the Council's position on any issue. In a letter dated 17 February 2023,³ the Commissioner invited the Appellant to withdraw the application for review, explaining that the Council's position appeared to be sound. The Appellant did not engage with this letter. In the circumstances, the Commissioner decided to conclude the review by way of a formal binding decision.⁴ It would have been entirely inappropriate to discontinue the review.
- (iii) The Commissioner relies on section 45(6) of the FOI Act which provides that the procedure for conducting a review under section 22 shall be such as the Commissioner considers appropriate in all the circumstances of the case and, without prejudice to the foregoing, shall be as informal as is consistent with the due performance of the functions of the Commissioner. Reviews conducted by the Commissioner are *de novo* (see *The Minister for Education and Science v Information Commissioner* [2001] IEHC 116), and the Commissioner plays an inquisitorial role, as described by the Supreme Court in *Minister for Communications Energy and Natural Resources v Information Commissioner* [2020] IESC 57, [2021] 2 ILRM 81 ("*ENET*") at §162 and 163.
- (iv) The Commissioner also relies on section 22(7) of the FOI Act, which concerns settlement of a review, and is an express acknowledgement of the fact that parties to a review may, during the course of the review, revise positions initially taken on a request, which must include the release of additional records. It follows that the Commissioner must be entitled to have regard to those revised positions when concluding a review under section 22(2) and reflect those revised positions in any final determination.

34. In conclusion, section 22(9)(a) of the FOI Act is completely irrelevant to the High Court decision under appeal, the Commissioner's Decision, and the Commissioner's defence of these proceedings.

³ At page 125 of the Booklet of Exhibits to Ms Murdiffe's affidavit.

⁴ See the final line in the "Background" section of the decision: "*I have decided to conclude this review by way of a formal, binding decision.*"

C. Remaining Issues in the Appeal

(1) The Impact of the Release of Extra Records by the Council

35. In the course of the Commissioner's investigation, the Council discovered additional records within scope, and released these to the Appellant in December 2022. The Appellant complained that in light of the release of these records by the Council, the Commissioner should not have affirmed the Council's Internal Review Decision.

36. In his High Court decision, Owens J. considered this argument. He noted the Commissioner's "*fairly wide discretion*" (Transcript, page 7, line 3) on a review, as set out by section 22(2)(b):

(b) following the review, may, as he or she considers appropriate—

(i) affirm or vary the decision, or

(ii) annul the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper,

in accordance with this Act.

37. Owens J. held (see pages 7-9 of the Transcript) that:

- (i) The Commissioner's Decision was correct in affirming the Council's Internal Review Decision;
- (ii) The Commissioner was of the view that the Council was justified in taking the stance that there was no further material;
- (iii) If he were to vary the Commissioner's Decision or set it aside on this basis, this would have no impact on the Appellant, and the Appellant had received all of the material he was entitled to receive;

- (iv) The investigation was an exercise in ensuring that the Council searched its records and provided all records in scope to the Appellant, and the Commissioner made a reasoned decision based on this exercise;
- (v) There was nothing irrational about the Commissioner's Decision, and it was not demonstrated that additional information existed or could exist.

38. The Appellant does not engage with these findings in his legal submissions. As noted above, he focuses almost exclusively on section 22(9)(a) of the FOI Act. However, the Commissioner highlights the following simple points. First, the findings of Owens J. reveal no error of fact or of law and should be upheld. Second, if the Commissioner made any mistake in affirming, rather than varying or annulling the Council's Internal Review Decision, which is denied, it was not a material one. The formula of words used by the Commissioner had no impact on his reasoning regarding the Council's furnishing of records, and therefore no impact on the Appellant's rights. In simple terms, the Commissioner was of the view that the Council had demonstrated that no further records existed, or could be found after all reasonable steps to ascertain their whereabouts had been taken. This was the operative and material part of the Commissioner's Decision. The Appellant has not actually challenged this finding, a matter which is discussed in the following section.

(2) The Appellant's Failure to Challenge the Core Operative Part of the Commissioner's Decision

39. Before the High Court, the Commissioner made the point, and reiterates it now, that the Appellant has not challenged the only finding of the Commissioner which materially affects his rights – that the Commissioner was satisfied that the Council was justified in refusing access, under section 15(1)(a) of the FOI Act, to additional records relating to the Appellant's request on the grounds that no further records existed or could be found after all reasonable steps to ascertain their whereabouts had been taken.

40. He has not, for instance, argued that the finding was irrational or unreasonable as there was clear evidence that other records existed, or a lack of evidence that the Council searched properly for the records in question.

41. The case law which the Appellant cites in his legal submissions is of no relevance to this appeal. Notwithstanding that the Appellant has not mounted any recognisable conventional challenge to the Commissioner's Decision, the Commissioner takes this opportunity, in order to assist the Court, to cite case law which is relevant.

42. A statutory appeal to the High Court from the Information Commissioner carries a particular standard of review. This was set out in the Supreme Court judgment of Baker J. in *ENET*, at §114:

"In summary it may be said that an appeal from the decision of the Commissioner under the Act invokes the following propositions:

(a) no deference is due to the Commissioner insofar as an appeal raises a matter of statutory interpretation or otherwise an issue of pure law;

(b) as with any appeal on a point of law, deference would be shown to a decision of the Commissioner in the exercise of discretion, or where what is in issue is the application of his or her expertise. These types of decisions are more akin to decisions on facts;

(c) the hearing is not a de novo hearing, but an appeal on a point of law where there are many of the characteristics of judicial review, see White J. in Irish Life And Permanent Plc v. Financial Services Ombudsman [2011] IEHC 439, at p. 2;

(d) sometimes therefore the test will be akin to the one laid down in O'Keeffe v. An Bord Pleanála [1993] 1 IR 39, but not when what is in issue is a matter of law, including statutory interpretation (see, for example, the dicta of Kearns J. in Sheedy v. Information

Commissioner, at para. 79: "Once there was some evidence before [the Commissioner] as to the circumstances in which these reports are compiled, as undoubtedly was the case here, the well-established principles of O'Keeffe v. An Bord Pleanála [1993] 1 I.R. 39 make it clear that his decision is not to be interfered with")."

43. It is clear from the foregoing that only on a question of “pure” law will no deference be afforded to the Commissioner. Furthermore, the Decision will not be set aside if there is “some evidence” supporting it.

44. In *Westwood v Information Commissioner* [2015] 1 IR 489 Cross J. noted that only material mistakes can result in a quash. He held (§74):

“... I accept that a mistake or error of law in the decision will not itself result in that decision being quashed. It is only whether the mistakes are or are not material that such a decision can be made ...”

45. Finally, the Commissioner’s Decision is in line with a similar decision of the Commissioner which was approved by the High Court in the recent case of *Landers v Information Commissioner* [2022] IEHC 170. In that case Mr Landers appealed to the High Court against a decision in which the Commissioner affirmed the decision of the NTMA to refuse access to the internal audit plans for the National Pension Reserve Fund for the years ending 31st December, 2009, 2010 and 2011, on the grounds that the records sought did not exist.

46. Ferriter J observed, at §8:

“...if there is some material before the decision-maker to enable him make the decision which he has made, the decision will not be held to be irrational in the legal sense.”

47. Following on from this finding, Ferriter J isolated the following core point in the appeal, at §11:

“The question that arises on this appeal therefore is whether there was sufficient material before the Commissioner to form the view that the requirements of s. 15(1)(a) had been met on the facts of this case.”

48. The High Court was satisfied from review of the engagement between the Commissioner and the NTMA that the Commissioner's decision was justified, as demonstrated by the following passages, at §30-31:

"30 In my view, it simply cannot be tenably said that the Commissioner's decision was irrational. There was clearly ample material before the Commissioner, in the form of the detailed responses provided by the NTMA to the Commissioner, to justify the view that the NTMA had taken all reasonable steps to locate the audit plans sought by the applicant, but that such audit plans (above and beyond the audit plan presentations already furnished to the applicant) did not exist. I can find no error of law in the decision in the circumstances.

31 The applicant appears to have convinced himself that there must be audit plan documents beyond the presentations he has received. However, my role on this application is to objectively assess whether, in accordance with the well-established legal test, it can be said that there was no material before the Commissioner which could justify the decision made by him. I am quite satisfied that there was such material available before the Commissioner which could more than justify the conclusion reached by him."

49. Similarly, it is submitted that the Commissioner's Decision in this case, and the underlying correspondence in Ms Murdiff's affidavit, discloses that there was clearly ample material before the Commissioner to justify the view that the Council had taken all reasonable steps to locate the records sought by the Appellant. The Council provided detailed responses to the Commissioner. While the Appellant may be convinced that there are other records (although this was not pleaded in his Notice of Motion before the High Court, nor is it pleaded in this appeal), this is immaterial.

(3) No Impermissible Regard to the Underlying Dispute with the Council

50. The High Court held that the Commissioner's Decision did not stray "*into the impermissible*" (Transcript, page 11, line 2) and have regard to the underlying dispute he had with the Council.

51. For completeness, and although this does not appear to be challenged, that finding reveals no error of fact or of law and should be upheld.
52. The Commissioner's Decision records that the Commissioner recognised the lack of relevance of the underlying dispute to the decision he had to make:

"The applicant appears to be of the view that the Council made a decision on his HAP payment on a mistaken understanding of his living arrangements. While this is not relevant to this Office's review, I note that the Council's position is that a decision on a HAP payment in such a case is solely made on the basis of the percentage of the individual's income spent on rent."

Conclusion

53. The Appellant's appeal now centres on section 22(9)(a) of the FOI Act and has changed course from the case made before the High Court. This Court should not decide this entirely new issue on appeal.
54. Moreover, section 22(9)(a) of the FOI Act is wholly irrelevant. It concerns the Commissioner's powers to refuse to accept a review, or to discontinue a review. Section 22(9)(a) of the FOI Act was not mentioned in the Commissioner's Decision, nor in the High Court decision under appeal.
55. The High Court made no error in finding that:
- (1) The Commissioner was correct in affirming the Council's Internal Review Decision, despite the fact that further records were released during the course of the investigation.
 - (2) The Commissioner did not impermissibly have regard to the underlying dispute of the Appellant with the Council.
56. The Appellant has not challenged, whether in the High Court or these proceedings, the core operative part of the Commissioner's Decision; that the Commissioner was

satisfied that the Council was justified in refusing access, under section 15(1)(a) of the FOI Act, to additional records relating to the Appellant's request on the grounds that no further records existed or could be found after all reasonable steps to ascertain their whereabouts had been taken.

57. For the foregoing reasons, and those to be offered, the Appellant's appeal should be dismissed.

CLAIRE HOGAN BL

20 June 2024

Word count: 5,200 words



THE COURT OF APPEAL
UNAPPROVED

Neutral Citation [2024] IECA 208
Record Number: 2024/70
High Court Record Number: 2023/95 MCA

Noonan J.
Faherty J.
Meenan J.

IN THE MATTER OF THE FREEDOM OF INFORMATION ACT 2014
IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 24 OF
THAT ACT AND ORDER 130 AND ORDER 84C OF THE RULES OF THE
SUPERIOR COURTS

BETWEEN/

PATRICK MCGREAL

APPELLANT

-AND-

THE INFORMATION COMMISSIONER

RESPONDENT

JUDGMENT of Mr. Justice Noonan delivered on the 31st day of July, 2024

1. This appeal is brought by the appellant, Mr. McGreal, against the respondent (“the Commissioner”) pursuant to the provisions of the Freedom of Information Act, 2014 as

amended. It arises from a number of interactions Mr. McGreal had with Westmeath County Council (“WCC”), the local authority for the area in which he resides. Mr. McGreal has been in receipt of housing assistance payments (“HAP”) under a scheme that provides social housing support for qualifying persons in its functional area.

2. In 2022, Mr. McGreal sought an increase to his HAP which was refused by WCC. This in turn was the subject of an appeal by Mr. McGreal who remains in dispute with WCC on this issue, on the basis that it wrongly assessed the information provided by him regarding his personal and family circumstances. In order to pursue the matter further, on the 1st September, 2022 Mr. McGreal made a FOI request pursuant to the 2014 Act for a copy of his housing file and any correspondence with WCC’s Housing Department as well as a copy of all decisions regarding his housing application and the reasons for the withdrawal of his HAP raise. He requested all documents, correspondence, notes, memos and everything regarding himself, his housing application and everything relating to these.

3. WCC responded on the 30th September, 2022 and furnished him with a copy of his housing application file and his HAP file. He was informed of his right to appeal this decision to an Appeals Officer in WCC.

4. Mr. McGreal did appeal by letter of the 12th October, 2022, primarily on the basis that the information regarding the withdrawal of his HAP raise was not furnished. Nor was he furnished with any reason for its non-disclosure. On the 2nd November, 2022, the Appeals Officer communicated his decision to Mr. McGreal upholding the earlier decision of the 30th September, 2022. Since the earlier decision had been taken, a further record had come into existence and this was furnished to the appellant. He was informed of his right to appeal to the Commissioner.

5. Mr. McGreal duly appealed on the 9th November, 2022 but before the Commissioner delivered a decision, on the 15th December, 2022 WCC released 280 additional records to the appellant.

6. On the 17th February, 2023, the Commissioner's Office wrote to the appellant having reviewed the matter and received submissions from both parties. The Commissioner referred to the provisions of s. 15(1)(a) of the 2014 Act which provides as follows:

"15.(1) A head to whom an FOI request is made may refuse to grant the request where –

(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken..."

7. On the 17th February, 2023, the Office of the Commissioner wrote to the appellant with an indicative conclusion following the investigation and review at the appellant's request. The officer concerned at the conclusion of the letter says:

"Regarding the section 15(1)(a) aspect of this case, I am satisfied that the Council has confirmed that further records relevant to your request do not exist or cannot be found after all reasonable steps to ascertain their whereabouts have been taken."

The letter goes on to detail the various measures undertaken by the Council with a view to finding all relevant records in relation to the appellant's request.

8. With regard to the next steps in the Commissioner's review, the letter indicated that if Mr. McGreal did not agree with the proposed conclusion, he should provide his reasons. At that stage, the officer concerned was of the view that in the light of the information provided by WCC, if the matter were to proceed to a formally binding decision, her recommendation

to the senior investigator would be to affirm WCC's original decision. Mr. McGreal was advised that he may wish to consider withdrawing his application for a review but he was entitled to proceed if he so wished. It would appear that Mr. McGreal did not withdraw the application and accordingly a binding decision was issued by the investigating officer on behalf of the Commissioner on the 3rd March, 2023 upholding WCC's decision for the reasons already indicated. The decision indicated that Mr. McGreal had a right to appeal to the High Court on a point of law pursuant to s. 24 of the 2014 Act.

9. In his notice of motion bringing the appeal before the High Court, the appellant suggests that because WCC released additional records to him on the 15th December, 2022, its original decision of the 30th September, 2022 furnishing him with records pursuant to his request was "*untrue*" as was the subsequent affirmation of that decision on the 2nd November, 2022. He also appears to make some complaints about the merits of WCC's decision to withdraw the discretionary HAP additional payment.

Judgment of the High Court

10. Having heard the matter, the trial judge delivered an *ex tempore* judgment on the 23rd January, 2024. In it, he outlines the purposes and effect of the FOI legislation, noting that the process bears some similarities to discovery in litigation. He notes that in both, the obligation to disclose documents is a continuing obligation "*which means that if people find additional materials that they may have mislaid or not realised the importance of, they must then make that disclosure at the time they find those materials.*"

11. The judge proceeded to set out the facts as broadly as I have outlined them. He noted that Mr. McGreal appealed the original decision on the basis that there must be further information and on foot of that, the Commissioner conducted an investigation. Arising from that investigation, further enquiries were made by WCC which turned up a further quantity

of documents that were then disclosed to Mr. McGreal. The judge points to the fact that those additional documents are referred to in the final decision of the Commissioner which makes it clear that the decision maker knew that a mistake had been made by WCC. He noted that the Commissioner's investigator concluded that WCC had addressed the matters in issue having regard to s. 15(1)(a). The investigator was satisfied from the enquiries she made, and was entitled to be so satisfied, that WCC had confirmed that further records relating to the appellant's request either did not exist or could not be found.

12. The judge noted the extensive steps taken in the course of the investigation by WCC to unearth any further documents, which steps are referred to in the decision of the Commissioner.

13. The judge observed that the Commissioner affirmed the decision not on the basis of the material that was before the original decision maker because clearly, the original decision was incorrect in light of the further information that was subsequently made available to Mr. McGreal. The decision, as the judge points out, was, insofar as WCC were concerned at the time it was made originally, correct, as was the decision of the Commissioner at the time it was made, by reference to all the records that had by then been disclosed. However, in the view of the judge, the disclosure of the subsequent records did not have the effect of invalidating the original decision, taken on the basis of such records as were then available.

14. The judge observed that if he were to vary or set aside the decision, it wouldn't affect the rights or wrongs of the matter because Mr. McGreal now had all the material that he was entitled to receive at the beginning. It remained the case that at some future time further material might be discovered but that would not have the effect of invalidating the appellate decision maker's decision either. His view was that an appeal to the High Court was not appropriate in the circumstances that arose. The judge noted that the original rights or

wrongs of the dispute that Mr. McGreal had with WCC were not relevant to the issues that arise in this case which concerns only FOI. The fact that those matters are referred to in the relevant decisions did not in the judge's view invalidate them either. Accordingly he dismissed the appeal.

The appeal to this Court

15. In his notice of appeal, Mr. McGreal sets out a large number of grounds which, on their face, appear to bear no relationship to the issues that were agitated in the High Court. Instead, Mr. McGreal suggests that the order of the High Court was made on the basis of a non-existent provision of the Freedom of Information Act, 2014. It has to be said that it is very difficult to understand what point is being made in the notice of appeal in this regard. There are various serious allegations made against the Commissioner and his legal team that they deliberately misled the High Court and WCC on the basis of a provision of law that does not exist. What this so-called provision of law is remains unexplained by the appellant. The basis for this appeal is perhaps best understood by reference to Ground 10(b)(iv) of the appellant's notice of appeal in which he says:

"... I lacked the expertise to articulate this during the High Court hearing, and it was only after reading section 22 of the 2014 Act post hearing that I realised the OIC had provided false information to Justice Owens and Owens relied on that unverified information against my presented independent evidence."

16. Section 22 is a lengthy section comprising 16 subsections and is entitled "*review by Commissioner of decisions*". The appellant does not identify at any stage what part of s. 22 it is alleged the Commissioner acted outside or in what manner. The notice of appeal makes a number of scurrilous allegations including that the Commissioner and his legal team engaged in "*an audacious attempt to deceive the honourable judicial process.*"

17. Despite the length of the appellant's notice of appeal and its reference to s. 22, it is nigh on impossible to discern what point is actually being made, save to the extent that it is clear that whatever that point is, it was not made in the High Court. Indeed, the original basis upon which the decision was challenged, namely that it was "*untrue*", now appears to no longer feature.

18. The appellant's written submissions, again despite their length, do not really put matters significantly further, nor are they of much assistance to this Court in endeavouring to discover the point being made. They do at least identify a subsection of s. 22 that is supposedly relevant which is subsection (9)(a). This section broadly provides that the Commissioner may refuse to accept an application for a review if of the opinion that any of the grounds enumerated in the subsection arise, such as for example that the application is frivolous or vexatious or does not relate to a decision covered by the 2014 Act and so forth. However, since the subsection is concerned only with the powers of the Commissioner to either refuse an application for a review or discontinue one in certain circumstances, it is again impossible to see how it has any bearing on this case in circumstances where neither of those things occurred. In his submissions, the appellant repeatedly refers to the Commissioner as having falsely represented the provisions of the 2014 Act to the High Court, leading it into error, without ever once identifying how that is said to have occurred. For example, in this regard Mr. McGreal says at para. 71 of his written submission:

"False provision of law: the OIC argued before Mr. Justice Owens that it provided WCC with the legal provision under the 2014 Act, which, upon careful examination, does not exist. This argument led to a misunderstanding and misapplication of the law in my case."

Here again, this is an absolutely impenetrable submission that does not assist this Court in any way.

19. As far as it can be understood, there appears to be a suggestion by the appellant that the Commissioner acted outside the scope of his jurisdiction under the Act but again, regrettably, why that should be so is not explained.

20. The oral hearing of the appeal brought some welcome clarity to the appellant's case. He submitted that the power of the Commissioner to conduct a review was circumscribed by the terms of s. 22(2) of the 2014 Act which provides:

“Subject to this Act, the Commissioner may, on application to him or her in that behalf, in writing or in such other form as may be determined, by a relevant person-

(a) review a decision to which this section applies, and

(b) following the review, may, as he or she considers appropriate-

(i) affirm or vary the decision, or

(ii) annul the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper,

in accordance with this Act.”

21. The essence of the appellant's oral argument was that the section confines the power of the Commissioner to doing one of three things, namely, to affirm, vary or annul the decision the subject of the review. However, in purporting to affirm the decision, the Commissioner “stepped outside the box”, as the appellant described it, by appearing to affirm a decision which has been shown to have been incorrect by virtue of the subsequent release

of additional records, and therefore not capable of being affirmed. In other words, the appellant argues that in affirming the original decision, the Commissioner acted *ultra vires*.

Discussion and Decision

22. I think the first point to be made is that in this appeal, the appellant does not in substance engage in any way with the judgment of the High Court. Instead, he purports to agitate an issue, which as I have said is one that was initially difficult to comprehend, that was never raised in the High Court. The law in this regard is clear going back as far as the judgment of the Supreme Court in *KD v MC* [1985] IR 697 where Finlay CJ said (at 701):

“It is a fundamental principle, arising from the exclusively appellate jurisdiction of this Court in cases such as this that, save in the most exceptional circumstances, the Court should not hear and determine an issue which has not been tried and decided in the High Court. To that fundamental rule or principle there may be exceptions, but they must be clearly required in the interests of justice.”

23. These principles have been refined in subsequent cases, most notably *Lough Swilly Shellfish Growers Co-operative Society Limited v Bradley* [2013] 1 IR 227 where O’Donnell J., as he then was, set out the broad parameters for the consideration of new arguments on appeal not advanced in the High Court. He described a “*spectrum*” within which such new grounds might arise ranging at one end from grounds that are closely connected with arguments previously made and called for no new evidence to entirely new grounds requiring further evidence or which contradict grounds previously advanced. Here, the argument advanced by the appellant amounts to an entirely new case which he seeks to substitute for that made in the High Court. That is impermissible, not least because it requires this Court to embark on a determination of an issue *de novo* never considered by the High Court.

24. The appellant says that this arises because he realised the relevance of the point after the conclusion of the hearing in the High Court. He prays in aid the fact that he is a litigant in person. However, as has been repeatedly said in many judgments, the rules are the same for all parties, whether represented or not, and parties cannot put themselves in a better position by electing not to be represented. I am satisfied therefore that on this ground alone, the appeal must fail.

25. Even were that not so, this appeal is misconceived. The appellant's reliance on s. 22(9)(a) of the 2014 Act is entirely misplaced. It clearly has no application to the circumstances arising in this matter. It is concerned solely with the Commissioner's discretion to either refuse or accept an application to conduct a review, or to discontinue a review already underway, in the circumstances detailed in the subsection. Since in the present case, the Commissioner conducted the review to conclusion, neither of these scenarios arise and the section is accordingly entirely irrelevant. The High Court obviously made no determination in relation to s. 22(9)(a) in circumstances where it was neither raised, nor was it relevant.

26. Insofar as the appellant suggests that the disclosure of the new material after the commencement of the Commissioner's review meant that he should have abandoned it and started again, that too is misconceived. As the High Court pointed out, it is a common occurrence in the context, for example, of discovery applications that documents are found or come to light after an affidavit of discovery has been sworn in which a deponent will say that there are no further documents other than those listed in the affidavit. The fact that documents are subsequently discovered does not render this a "*lie*" as the appellant seems to think as the discovery process is one that entails a continuing obligation to discover

documents after the original discovery has been made, and the same is equally true of FOI requests.

27. Mr. McGreal appears to think that because documents were subsequently released by WCC, this automatically invalidated all previous decisions and the review of the Commissioner's decision. That is, again, a misconception. Indeed, the Act itself expressly contemplates that precisely such a scenario will arise because it provides, at s. 22(9)(a)(iv) that the Commissioner may discontinue a review where there is no longer any issue requiring adjudication, as access to the records in question has been granted by the FOI body in the course of the review.

28. In other words, the review may become moot in circumstances where the basis for it was the failure to provide access to the records which are in fact subsequently disclosed. Here again, however, the Commissioner has a discretion to discontinue the review and if the applicant for the review is not satisfied with the disclosed records, the Commissioner may decline to discontinue and proceed to a binding decision. In fact, in the present case, the Commissioner invited the appellant to withdraw the application in the correspondence of the 17th February, 2023 on the basis that he agreed with the position of WCC but Mr. McGreal did not respond to that invitation.

29. However, as the trial judge found, the decision of the Commissioner was clearly based on the disclosure of all records up to the date of the binding decision, and not just those disclosed at the time of the original decision. The authorities make clear that the function of the Commissioner in conducting a review is to do so *de novo* and, as I have explained, it is a common feature of the investigations carried out by the Commissioner, which may often involve more detailed interrogation of the public body's records, that additional material will be found. This is part and parcel of the process. The logic of the appellant's argument

however is that if additional material is found, that invalidates the Commissioner's review and the process must start off all over again with the public body making a new decision which can then be the subject of further review and so on, potentially *ad infinitum*. That argument is entirely inconsistent with the scheme of the 2014 Act and is untenable.

30. While one might have some sympathy with the contention that the Commissioner cannot as a matter of logic purport to affirm a decision which is shown to have been incorrect, the Commissioner undoubtedly has a jurisdiction under s. 22(2) to make the decision he actually made in this case. So, the Commissioner might, in theory at least, have varied the original decision to take account of the subsequently found records, or could possibly have annulled it and made a new decision incorporating the new records, with the same effect. However, it is at least arguable that the Commissioner was entitled to affirm the original decision on the basis that the public body concerned had taken all reasonable steps to ascertain the whereabouts of the records, as s. 15(1)(a) provides, as of the time that the original decision was made. The fact that more records subsequently came to light does not necessarily establish that reasonable steps were not taken in the first place. As the trial judge pointed out, if even now further records emerge, that does not have the effect of retrospectively invalidating all previous decisions. It might provide a basis for arguing that reasonable steps were not taken initially, but that does not automatically follow.

31. It is important to bear in mind the standard of review in appeals from decisions of the Commissioner to the High Court on a point of law. This issue was considered by the Supreme Court in the *Enet* case (*Minister for Communications, Energy and Natural Resources v the Information Commissioner* [2020] IESC 57) in which Baker J., giving the judgment of the Court, followed the observations of the Court in *Sheedy v The Information Commissioner* [2005] IESC 35 at para. 79:

“Once there was some evidence before [the Commissioner] as to the circumstances in which these reports are compiled, as undoubtedly was the case here, the well-established principles of O’Keeffe v An Bord Pleanála [1993] 1 I.R. 39 make it clear that his decision is not to be interfered with”.

32. A not dissimilar situation to the present case arose more recently in *Landers v The Information Commissioner* [2022] IEHC 170 where the applicant appealed to the High Court against a decision of the Commissioner which affirmed a decision of the National Treasury management Agency to refuse access to certain records on the basis that they did not exist. The applicant was clearly of the view that they did. Ferriter J. in the course of his judgment identified the central issue arising (at para. 11):

“The question that arises on this appeal therefore is whether there was sufficient material before the Commissioner to form the view that the requirements of s. 15(1)(a) had been met on the facts of the case.”

33. He went on to hold, in line with the earlier authorities such as *Enet*, that once there was some evidence before the Commissioner as to whether the records existed, his decision could not be challenged on the basis of irrationality. The High Court held that the Commissioner was justified in coming to the conclusion, for which there was evidence, that WCC had no further records to disclose and accordingly there was no irrationality in the decision of the Commissioner. The appellant here has demonstrated no infirmity in that conclusion.

34. Accordingly, I would dismiss this appeal.

35. As the Commissioner has been entirely successful, my provisional view is that he is entitled to the costs of this appeal. If the appellant wishes to contend otherwise, he will have

liberty to deliver a written submission not exceeding 1,000 words within 14 days of the date of this judgment and the Commissioner will have a similar period to respond likewise. In default of such a submission being received, an order in the proposed terms will be made.

36. As this judgment is delivered remotely, Faherty and Meenan JJ. have authorised me to record their agreement with it.



In the appeal to the Supreme Court of Ireland by Mr. Patrick McGreal, a greengrocer from Reynella, Westmeath, pursuant to Article 40 of the Constitution of Ireland, concerning a violation of the separation of powers as outlined in Article 6 of the Constitution of Ireland.

1st day of August, 2024

Information Commissioner
Office of the Information Commissioner
6 Earlsfort Terrace
Dublin 2
D02 W773

Dear Information Commissioner,

Subject: Notice of Intent to Apply to the Supreme Court on Constitutional Grounds

I am writing to formally notify you of my intention to file an application to the Supreme Court of Ireland. This application concerns significant constitutional issues arising from recent judicial decisions and actions undertaken by your office.

B. Violation of the Separation of Powers

Article 6 of the Constitution of Ireland mandates the separation of powers among the legislative, executive, and judicial branches of the State. Each branch must operate within the confines of its constitutionally designated authority, ensuring no branch oversteps its bounds.

The Court of Appeal's decision effectively grants your office a de facto extension of powers beyond those prescribed by section 22(2) of the Freedom of Information (FOI) Act. By endorsing your actions, the judiciary has encroached upon the legislative domain, undermining the statutory limits established by the Oireachtas. This judicial endorsement represents a significant breach of the separation of powers doctrine, as it allows an executive officer to act outside the statutory framework enacted by the legislature, thereby altering the balance of power among the branches of government.

C. Infringement of Fundamental Personal Rights

Article 40 of the Constitution of Ireland guarantees the protection of personal rights. The actions of your office, supported by the Court of Appeal, have violated my rights under this Article by failing to adhere to the legal standards and procedures set forth in the FOI Act.

The failure to confine your actions within the statutory boundaries of section 22(2) has resulted in a denial of due process and legal certainty, both of which are core components of my constitutional rights. This infringement is compounded by the lack of transparency and adherence to lawful procedures throughout the review process.

Relief Sought

I respectfully request the Supreme Court to:

- (a) Acknowledge that the Information Commissioner acted ultra vires by stepping outside the statutory provisions of section 22(2) of the FOI Act during the review process.
- (b) Recognize that the Court of Appeal's decision violates the separation of powers doctrine as enshrined in Article 6 of the Constitution of Ireland.
- (c) Declare that my fundamental personal rights under Article 40 of the Constitution of Ireland have been infringed by the actions of the Information Commissioner and the subsequent judicial endorsement by the Court of Appeal.
- (d) Quash the decisions of the Court of Appeal and the High Court, thereby annulling the Information Commissioner's decision.
- (e) Order a new investigation by the Information Commissioner that strictly adheres to the statutory provisions of section 22(2) of the FOI Act.
- (f) Award costs to me for these proceedings, including the High Court, Court of Appeal, and Supreme Court proceedings.

Conclusion

This appeal seeks to rectify the misapplication of statutory provisions by your office and the subsequent judicial endorsement that violates the separation of powers and my constitutional rights. Upholding the principles of justice, transparency, and adherence to statutory law is essential to maintaining public trust in the legal system and ensuring that the rights of individuals are protected under the law.

I trust that the Supreme Court will consider these submissions with the seriousness they warrant and provide the necessary redress to correct the errors that have occurred.

Sincerely,

A handwritten signature in dark ink, appearing to be 'P. H. H. H.', written in a cursive style.



SUPREME COURT

Record No:

Application for Leave to Appeal

Part I

The information contained in this part will be published. It is the applicant's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. **Date of Filing:** 20th of August, 2024
2. **Title of the Proceedings:**

Patrick McGreal

-v-

The Information Commissioner

3. **Name of Applicant:** Patrick McGreal
What was the applicant's role in the original case: [Applicant]

4. **Decision of Court of Appeal (where applicable):**

Record No: 2024 / 70

Date of Order: 31st of July, 2024

Perfection Date: 31th July, 2024

Date of Judgment: 31th July, 2024

Names of Judges: Noonan J. Faherty J. Meenan J.

5. **Decision of the High Court:**

Record No: 2023 No. 95 MCA

Date of Order: 23rd day of January 2024

Perfection Date: 14th of February, 2024

Date of Judgment: 23rd day of January 2024

Names of Judge(s): Ownes J.

Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order? **No**

6. **Extension of Time:** No

If an application is being made to extend time for the bringing of this application, please set out concisely the grounds upon which it is contended time should be extended.

7. Matter of general public importance:

If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. **Separation of Powers and Judicial Overreach:** The core issue in this appeal concerns the judiciary endorsing the actions of the Information Commissioner that exceed the statutory limits set by the Freedom of Information Act 2014 (FOI Act), which has violated the separation of powers doctrine as enshrined in Article 6 of the Constitution of Ireland. This question addresses the fundamental constitutional principle that mandates distinct and independent functions for the legislative, executive, and judicial branches of government. The outcome of this appeal will clarify the boundaries of judicial intervention in the statutory powers of executive officers, which is crucial for maintaining the integrity of the separation of powers.
2. **Statutory Interpretation and Ultra Vires Actions:** The appeal raises a significant issue regarding the proper interpretation and application of sections 22(2) and 22(9)(a) of the FOI Act. Specifically, it highlights the Information Commissioner acting ultra vires by stepping outside the statutory confines of section 22(2) and improperly invoking section 22(9)(a) during the review process. This matter is of general public importance as it affects the transparency and accountability of public administration and ensures that public bodies operate within their legal mandates.
3. **Protection of Constitutional Rights:** The case also involves my fundamental and personal rights protected under Article 40 of the Constitution of Ireland. It addresses the actions of the Information Commissioner, and the subsequent judicial endorsement by the Court of Appeal, which have infringed upon my rights to due process and legal certainty. The Supreme Court's decision will provide crucial guidance on the extent to which administrative decisions and judicial reviews must adhere to constitutional protections, thereby safeguarding mine and other citizens' rights.
4. **Public Confidence in the Legal System:** By addressing the judicial endorsement of ultra vires actions by an executive officer, this appeal has significant implications for public confidence in the legal system. Ensuring that all branches of government, including the judiciary, operate within their constitutional and statutory limits is essential for maintaining public trust in the rule of law. The Supreme Court's ruling on this matter will reinforce the principles of justice, transparency, and accountability that underpin public confidence in governance.
5. **Precedent for Future Cases:** The issues raised in this appeal are likely to recur in future cases involving the interpretation of statutory powers and the separation of powers. The Supreme Court's decision will establish an important precedent, guiding lower courts and public bodies in their interpretation and application of statutory provisions. This precedent will help ensure consistent and lawful administration across various areas of public governance.
6. **Clarity in Freedom of Information Law:** This appeal also seeks to clarify the scope and application of the FOI Act, particularly the roles and limitations of the Information Commissioner during the review process. Such clarity is essential for both public bodies and individuals seeking information under the FOI Act, ensuring that the process remains fair, transparent, and within the bounds of the law.

Word Count: 475 words

8. Interests of Justice:

If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. **Ensuring Accountability of Public Bodies:** This appeal seeks to hold the Information Commissioner accountable for actions that exceeded the statutory limits defined by the Freedom of Information Act 2014 (FOI Act). The interests of justice demand that public officials and bodies adhere strictly to the law to maintain public trust and the integrity of public administration.
2. **Protection of Constitutional Rights:** The appeal addresses an infringement of my constitutional rights under Article 40 of the Constitution of Ireland, specifically the rights to due process and legal certainty. It is in the interests of justice to rectify such infringements and ensure that citizens' constitutional rights are upheld by both public bodies and the judiciary.
3. **Rectification of Judicial Overreach:** By endorsing actions of the Information Commissioner that go beyond statutory provisions, the judiciary has overstepped its role, violating the separation of powers doctrine. The Supreme Court's intervention is necessary to correct this overreach and reinforce the constitutional boundaries between the branches of government.
4. **Prevention of Future Misapplications:** A ruling from the Supreme Court will provide clear guidance on the correct interpretation and application of sections 22(2) and 22(9)(a) of the FOI Act. This guidance is essential to prevent future misapplications of the law by the Information Commissioner and other public bodies, thereby ensuring fair and lawful administrative processes.
5. **Public Confidence in the Legal System:** Upholding the rule of law and ensuring that judicial decisions do not condone ultra vires actions by executive officers are crucial for maintaining public confidence in the legal system. The interests of justice require that the Supreme Court address and rectify any legal and procedural errors to reinforce the principles of justice, transparency, and accountability.
6. **Ensuring Fairness in Judicial Review:** The appeal raises significant questions about the fairness of the judicial review process. It is in the interests of justice to ensure that such reviews are conducted within the proper legal framework and that all parties are held to the same standards of legal compliance and integrity.

Word Count: 295 words

9. Exceptional Circumstances: Article 34.5.4:

Where it is sought to apply for leave to appeal direct from a decision of the High Court, please set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 300 words and the word count should appear at the end of the text.

10. Grounds of Appeal

Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.

11. Priority Hearing: Yes

If the applicant seeks a priority hearing, please set out concisely the grounds upon which such priority is sought.

This section should contain no more than 100 words and the word count should appear at the end of the text.

Priority hearing is sought on the grounds that the case involves significant constitutional issues, including the separation of powers and the protection of fundamental personal rights under Article 40 of the Constitution of Ireland. Additionally, the resolution of these issues is crucial for ensuring the proper interpretation and application of the Freedom of Information Act 2014, which has broad implications for public administration and governance. Timely adjudication is essential to prevent ongoing harm and ensure public confidence in the legal system.

Word Count: 88 words

12. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer.

Part II

The information contained in this part will not be published.

13. Applicant's Representatives:

Patrick McGreal, Reynella, Westmeath, N91 PYY3. **Tel;** 085 2050563 **Email;** patrickmcgreal727@gmail.com

13. Respondent's Representatives:

The Information Commissioner, 6 Earlsfort Terrace Dublin 2 D02 W773

Tel; (01) 639 5689 Email; legal@ombudsman.ie

15. Legal Aid: n/a

Signed:

Applicant

Date:

To be served on:

The Information Commissioner

Legal Services Unit Office of the Ombudsman,

6 Earlsfort Terrace Dublin 2 D02 W773

(Solicitors for) Respondent(s)

Please file your completed form in:

The Office of the Registrar of the Supreme Court

The Four Courts

Inns Quay

Dublin 7

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

Notice of Appeal

1. Title of the Proceedings:

Patrick McGreal

-v-

The Information Commissioner

2. Grounds of Appeal:

Please set out in numbered paragraphs the Grounds of Appeal relied upon if leave to appeal were to be granted.

1. Ultra Vires Action by the Information Commissioner:

- The Information Commissioner acted outside the statutory authority granted by section 22(2) of the Freedom of Information Act 2014 (FOI Act) by facilitating the release of records during the review process. This action should have triggered the application of section 22(9)(a), which governs the refusal or discontinuation of a review when additional records are released.

2. Misinterpretation and Misapplication of Statutory Provisions:

- The Court of Appeal erred in its interpretation and application of sections 22(2) and 22(9)(a) of the FOI Act. The court's endorsement of the Commissioner's actions effectively expanded the statutory powers beyond those intended by the Oireachtas, contrary to the principles of statutory interpretation and legislative intent.

3. Violation of the Separation of Powers Doctrine:

- By endorsing the Information Commissioner's ultra vires actions, the Court of Appeal violated Article 6 of the Constitution of Ireland, which mandates the separation of powers among the legislative, executive, and judicial branches of government. The judiciary's overreach into the legislative domain undermines the constitutional balance and integrity of governance.

4. Infringement of Constitutional Rights:

- The actions of the Information Commissioner, as endorsed by the Court of Appeal, violated my fundamental personal rights under Article 40 of the Constitution of Ireland. Specifically, my rights to due process and legal certainty were compromised by the failure to adhere to the statutory provisions and the proper legal procedures.

5. Failure to Address Judicial Overreach:

- The Court of Appeal failed to recognize and rectify the judicial overreach that occurred when the High Court and the Commissioner exceeded their lawful authority. This failure perpetuates a significant legal error and undermines the rule of law and judicial accountability.

6. Precedent for Future Cases:

- The appeal raises critical issues of statutory interpretation and the limits of administrative discretion that are likely to recur in future cases. A Supreme Court ruling is necessary to establish clear legal precedents that will guide lower courts and public bodies in their interpretation and application of the FOI Act, ensuring consistent and lawful administration.

7. Public Confidence in the Legal System:

- Upholding the principles of justice, transparency, and accountability is essential for maintaining public confidence in the legal system. The Supreme Court's intervention is required to address the errors in the lower courts' decisions and reinforce the rule of law.

8. Ensuring Fairness and Legal Integrity:

- The Supreme Court must ensure that the judicial review process is conducted within the proper legal framework and that all parties are held to the same standards of legal compliance and integrity. This appeal seeks to rectify the procedural and legal errors that have occurred and restore fairness and legal integrity to the review process under the FOI Act.

3. Order(s) sought

Please set out in numbered paragraphs the order(s) sought if the Appeal were to be successful.

1. **Quash the Decision of the Court of Appeal:**
 - An order quashing the decision of the Court of Appeal dated 31 July 2024, which upheld the High Court's decision of 23 January 2024, regarding the actions of the Information Commissioner.
2. **Quash the Decision of the High Court:**
 - An order quashing the decision of the High Court dated 23 January 2024, which dismissed my appeal against the decision of the Information Commissioner dated 3 March 2023.
3. **Annul the Decision of the Information Commissioner:**
 - An order annulling the decision of the Information Commissioner dated 3 March 2023, which affirmed the decision of Westmeath County Council to refuse access to certain records under section 15(1)(a) of the FOI Act.
4. **New Investigation by the Information Commissioner:**
 - An order directing the Information Commissioner to commence a new investigation into my Freedom of Information request, strictly adhering to the statutory provisions of section 22(2) of the FOI Act.
5. **Adherence to Statutory Limits:**
 - An order requiring the Information Commissioner to act within the statutory limits of the FOI Act, specifically sections 22(2) and 22(9)(a), and to refrain from actions that exceed the authority granted by these provisions.
6. **Declaration of Unlawfulness:**
 - A declaration that the actions of the Information Commissioner, in facilitating the release of records during the review process outside the statutory provisions, were ultra vires and unlawful.
7. **Declaration of Constitutional Infringement:**
 - A declaration that the Court of Appeal's decision violated the separation of powers doctrine under Article 6 of the Constitution of Ireland and infringed my personal rights under Article 40.
8. **Costs of Proceedings:**
 - An order that the Information Commissioner pay the costs of these proceedings, including the costs incurred in the High Court, Court of Appeal, and Supreme Court, to myself.
9. **Directions for Future Compliance:**
 - An order directing the Information Commissioner to review and amend its investigation protocols to ensure compliance with statutory provisions and prevent similar issues in future cases.
10. **Any Other Relief Deemed Appropriate:**
 - Any other order or relief that the Supreme Court deems just and appropriate in the circumstances of this case.