An Coimisinéir Faisnéise
Information Commissioner

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

Our Reference: OIC-165347-B8P8C9

23 June 2026

Ken Foxe, Right to Know

I refer to your application for a review of the refusal of the Investor Compensation Company DAC (ICCL) to make a decision on your FOI request of 6 November 2025. I also refer to the letter to you dated 29 May 2026 from the Investigating Officer assigned to this matter.

As you are aware, the ICCL contends that it is not a public body for the purposes of the FOI Act. For the reasons I have set out below, I am satisfied that it is not a public body for the purposes of the FOI Act and that it was justified in refusing to process your FOI request.

Section 6(1) – public bodies
Section 6(1) of the FOI Act sets out eight categories which describe what the Act considers to be a public body. These are:

(a) a Department of State;
(b) an entity established by or under any enactment (other than the Companies Acts);
(c) any other entity established (other than under the Companies Acts) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Companies Acts) by a Minister of the Government under any scheme;
(d) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government;
(e) a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (d) relates;
(f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates;
(g) a higher education institution in receipt of public funding;
(h) notwithstanding the repeal of the Act of 1997 by section 5, and subject to this Act, any entity that was a public body (including bodies or elements of bodies prescribed as such) within the meaning of the Act of 1997 on the enactment of this Act.

If an organisation falls under one or more of the above descriptions, then it is considered to be a public body for the purposes of the FOI Act.

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ICCL Submissions
This Office asked the ICCL a series of questions as to whether it matches the descriptions of a public body as outlined by section 6 of the FOI Act.

By way of background, in its submissions, the ICCL said that Directive 97/9/EC of the European Parliament and of the Council mandated the introduction of an investor compensation scheme for private clients of failed investment firms. The directive was transposed into Irish law by the Investor Compensation Act 1998 and given effect by the formation of the Investor Compensation Company DAC (the "ICCL") under the Companies Act.

The ICCL (CRO number 293240) said it is not, nor ever has been, a public body as defined in Section 6(1) of the FOI Act. It stated that it is a company established under the Companies Act and limited by guarantee having a share capital. The ICCL stated that it has three ordinary shares of a nominal value of €1.25 each. The three shareholders, each holding one share, are the Central Bank (a statutory corporation), and two private companies - the Irish Stock Exchange plc and the Irish Association of Investment Managers.

The ICCL said that, since its incorporation, it has established and maintained funds out of which compensation payments are made to private retail investors of failed authorised investment firms in accordance with the provisions of the Investor Compensation Act 1998. It stated that the funds are comprised primarily of annual levies paid by the contributory investment firms. The funds are retained in reserves, after the discharge of operating expenses, to meet potential future compensation claims. The ICCL said it does not exercise statutory decision-making powers, nor does it perform any regulatory or public administrative functions; it said that it is fundamentally the operator of a scheme funded by the financial services industry.

The ICCL stated that it cannot, and does not, receive public or State funding and as such, it cannot be determined to be funded by the State. It said that all costs, including the operating costs of running the ICCL, are defrayed solely from its own resources with the source of funds derived from the collection, and the subsequent investment, of those annual levies from investment firms who are members of the Investor Compensation Scheme.

The ICCL said it is subject to the full rigours of the Companies Acts including all attendant financial, audit and reporting requirements. In addition, it said it publishes an annual report which details in so far as possible its operational and other matters.

The ICCL stated that the Investor Compensation Act 1998 provides that the Central Bank is the supervisory authority for investor compensation in the State, which involves consultation with the ICCL across a range of policy areas. However, the ICCL said it is legally and operationally independent of the Central Bank, with its own Board of Directors and Executive. The ICCL said it does not provide any services to the Central Bank or any public body. The ICCL said that it does avail of some services from the Central Bank, as permitted by the Investor Compensation Act 1998, such as office space which it said are paid for from the ICCL's resources.

The ICCL stated that it is not subject to FOI obligations and does not provide records to the Central Bank, nor any other public body, in relation to FOI requests. It stated that the activities of the ICCL are separate to those of the Central Bank with no role in government or public affairs as they may apply to the Central Bank. On this basis, the ICCL said it would be unable to provide any information to the Central Bank or any public body for the purposes of an FOI request.

The ICCL concluded its submissions by saying that it does not fit within the bodies described in section 6(1)(a)-(h) of the FOI Act. It said that, as the ICCL's records have private investor protection implications and are personally and commercially sensitive, the ICCL does not believe that the public interest would be served by designating the ICCL as a public or prescribed body for the purposes of the FOI Act.

Your submissions

On 29 May 2026 you were provided with an update from this Office with a summary of the ICCL's submissions and were given the opportunity to make submissions of your own in response. No submissions have so far been received. However, I note that in previous correspondence dated 11 February 2026 with this Office, you indicated that the key issue you wish this Office to determine is whether the ICCL meets the threshold for a public body as set out in section 6. You have also queried whether the matter should be referred to the Minister for Public Expenditure, Infrastructure, Public Service Reform & Digitisation under the dispute resolution mechanism set out in section 6(7).

Analysis & findings

I have carefully considered your arguments and those of ICCL.

Section 6(1)(b) of the FOI Act states that an entity established by or under any enactment (*other than the Companies Acts*) (my emphasis) shall be a public body for the purposes of the Act. Section 6(1)(c) states that any other entity established (*other than under the Companies Acts*) (my emphasis) or appointed by the Government or a Minister of the Government, including an entity established (*other than under the Companies Acts*) (my emphasis) by a Minister of the Government under any scheme is a public body for the purposes of the Act.

The ICCL has explained that the EU directive which mandated the introduction of an investor compensation scheme was given effect by the formation of the Investor Compensation Company DAC (the ICCL) under the Companies Act. It is clear that the ICCL was established under the Companies Act, and so, in light of section 6(1)(b) and (c), is not a public body for the purposes of the FOI Act.

Additionally, section 6(1)(d) states that a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government, is a public body for the purposes of the Act. While the ICCL has shares, these are not held by or on behalf of a Minister. I find that this means that section 6(1)(d) does not apply to the ICCL.

I have also considered whether the ICCL is controlled by the Central Bank such that it would bring it within the ambit of section 6(1)(f) of the Act.

Previous considerations of section 6(1)(f) in this Office have made reference to three Judgments of the High Court that addressed the concept of "control", namely Westwood Club v Information Commissioner [2013 N. 176 MCA] ("the Westwood case"); Minister for Enterprise, Trade and Employment v Information Commissioner [2006] IEHC39 ("the Freyne case"); and Student Transport Scheme Ltd v Minister for Education and Skills [2012] IEHC 425 ("the School Transport Scheme case"). In the Westwood case, the High Court set out various non-exhaustive matters to consider when examining whether one entity controls another, such as which party has day to day operation of the relevant functions; whether there is a principal/agent relationship; which party has real strategic control; and the extent of the financial nexus between the parties.

Based on the information provided to this Office, it is not apparent that the Central Bank is involved, at a hands-on level, in the day-to-day operation of ICCL's core business. Likewise, it is not apparent to me, based on the information before me, that a relationship of principal and agent exists here between the ICCL and the Central Bank, nor does the relationship imply that the latter exercises control over the activities of the former. In addition, ICCL receives no financial support from the Central Bank (or any other public body), its sources of income instead being annual levies paid by the contributory investment firms.

Accordingly, I conclude that section 6(1)(f) does not apply in this case.

It is also my view that none of the other subsections of section 6(1) apply to the ICCL.

I also note that you suggested that the provisions of section 6(7) be invoked to seek a binding determination on the matter from the Minister. This provision applies where a dispute arises between this Office and the entity concerned. In the current circumstances, where both this Office and the ICCL are of the view that the latter is not a public body for the purposes of the FOI Act, there is no dispute between the parties and as such the provisions of section 6(7) do not apply.

In conclusion, I find that the ICCL is not a public body for the purposes of the FOI Act as it does not come within any of the paragraphs (a) to (h) of section 6(1).

Yours sincerely,

Mary Connery
Investigator
23 June 2026