Irish Journal of Applied Social Studies
Est 1998. Published by Social Care Ireland

Volume 2 | Issue 2 Article 3

2000-01-01

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Recommended Citation
Crowdle, Anita (2000) "The Freedom of Information Act, 1997: Some Observations," *Irish Journal of Applied Social Studies*: Vol. 2: Iss. 2, Article 3.
Available at: http://arrow.dit.ie/ijass/vol2/iss2/3

Irish Journal of Applied Social Studies, Vol 2, No. 2. 2000

The Freedom of Information Act, 1997: Some Observations

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Abstract

The Freedom of Information Act 1997 was considered to be a vital part of the daily running within the child care organisation that I was working in and came to my attention whilst working in the caring field in the academic year of 1997/98. As it was my first post within the field of social care, having graduated from college in Athlone just that year with a Diploma, I was fortunate to "grow up" with the Act. Meanwhile the organisation and its staff gained the knowledge and training to make the necessary preparations and changes for the Acts implementation.

This time proved to be exciting while at the same time daunting for me, as I was involved in a small part of a larger process of a changing policy and not knowing if the consequences will be positive of negative. Returning to college, I was surprised to discover very few of my classmates were aware of the new legislation. Hence it became the focus of a thesis that was carried out by a classmate (Fiona Byrne) and I. The main aim was to discover the effects of the Acts' implementation from the

management and staff's perspective and the changes it required. This paper is re-written on the basis of the above-mentioned thesis with the permission of the other author involved and seeks to provide a student social care worker perspective.

Introduction

The objectives of this paper are:

1. To identify the preparations, which have had to be made in residential, care as a consequence to the Acts implementation.
2. To discover the changes managers of residential centres had to undergo.
3. How the Act affected care staff in relation to the work they carry out daily in the units.
4. To discover the opinions, positive and negative of managers and care staff within the field of residential care.

The Act came about as a consequence to the public demand for increased openness within the government and its departments. This need for greater openness was underlined by the beef tribunal in the early 1990s. It became a campaign issue in the 1992 General Election and consequently more attention was directed by the media when they set up a campaign "Let in the light", which mainly concerned Government information being accessed.

In 1994, the coalition Government finally committed it to legislation. Prior to the introduction of the bill in the Seánad in December 1996, research was carried out in Canada, Australia and New Zealand on their respective F.O.I. Acts by the then Minister of State, Ms Eithne Fitzgerald. It became law in Ireland on April 21st 1997.

The majority of the Act came into being in April 21st 1998 - that is those articles and sections concerning local authorities. The exceptions were for those relating to health boards, which came into force on October 21st 1998, and for voluntary bodies, which come into force on October 21st1999.

Legal Rights

The Act imposes three new legal rights:

1. The Right Of Access To Records
   Under Section 6, a person can obtain access of records held by Government Departments of other public bodies listed in the Act. Those records that can be requested for access are:

   a. All personal records of clients, regardless of when created.
   b. All records created after the Acts commencement.
   c. All records of staff created after October 21st 1995
   d. Records that were created earlier in order to comprehend later records that are accessed.

Exemptions concerning the accessibility of records include:

a. Government Meetings.
b. Third Party Information.
c. Economic interests of the State.
d. Social work, psychological and medical records where it may damage the physical and mental well being of the requester.
e. Deliberation and functions of public bodies.

The Act does not clearly state to allow parents the right to access personal information / records relating to their children. In most cases, parents can access info of their child. The exception, however, if and where a minors best interests are to be considered, the Minister of Finance will deal with the matter via regulation.

2. The Amendment of Personal Information
   Personal information held by a public body can be amended where it is incorrect, incomplete or misleading by that public body and a record must be kept noting this.

3. The Right To Reasons For Decisions Effecting Oneself.
   The right to be given reasons for decisions taken by public bodies that effect the individual for example, a written statement outlining the reasons of refusal must be sent to the requestor of info, if access has been refused.

How A Request Can Be Made?

1. A request can be made in writing, specifying that it is being made under the F.O.I. Act.
2. It must also state what record is being requested and be clearly identifiable by the organisation.
3. The public body is obliged to assist the requester.

The Information Commissioner

A provision in the F.O.I. Act allowed for the creation of the Office of Information commissioner. The main purpose of the information commissioner is to insure that the rights of the public are maintained. The Commissioner has a number of functions:

1. To re-evaluate the performance of the Act to ensure that it maintains.
2. To promote an attitude of openness among public bodies under the Act as well as the voluntary provision of the publication of information held by them.
3. The preparation of and publication of information concerning the practical application of the Act.

The Commissioner also has a certain number of powers that include:

1. The authority to request the availability of particular information that concerns any reviews or investigations undertaken by him.

2. The authority to withdraw records from a public body and retain them for a suitable length of time.
3. The power to enter any premises belonging to a public body, at any time.
4. The power to request the attendance of witnesses.
5. Any decisions made by the Information Commissioner are binding and can only be overturned if referred to the high court on a point of law.

The Effect of the Freedom of Information Act on Health Boards and their Residential Units.

The Act has had a significant effect in these areas. With regards to Health Boards, a provision was made for the publication by the Health Boards of two documents prior to the Acts implementation their purpose is to assist the public in the use of their rights. The first document contained under Section 15 of the Act:

1. Outlines the structure, functions and services provided by the Health Boards and how to make use of them.
2. Gives an account of what records are held by the body and how to access them.
3. Names the Departments and what officials to contact when requesting information.

The second document, under Section 16 is to highlight the "rules, procedures, practices, guidelines and interventions used by the body". [Freedom of information Act 1997 (part (i), Section 16.1)]

In Residential Care Units, managers and care staff are to be fully adjured on the Act and how to implement it. Training relating to awareness, procedures and decision-making is important to establish amongst care staff and managers in order for implementation of the Act to be successful. Great emphasis is placed on the quality of record keeping and accessing of information, because of its importance within residential care.

The Freedom of Information Act and Record Keeping.

As already stated, record keeping is a vital part within residential care units. The reason for some are obvious and too numerous to mention here. One of the Acts highlights is that it outlines huge advances in relation to the ownership of information. Prior to the Act, disclosure of information was at the discretion of the possessor, or the public body information is now being held or is guardian by the public body, consequently, the information is owned by the individual to whom it relates. With this in mind, staff of residential units when writing records of young people, should write them as if the individual were present. Questions such as the following should be reflected and acted upon when recording information:

1. Is the written report objective and fair? In other words is the record showing bias towards the young person?
2. Is it relevant and accurate? The contents of the report should be connected with the purpose of the report and include correct information.
3. Is the young person identifiable and aware of what is in the report? The young person should be able to recognise that the report concerns him but more importantly has

knowledge of what the report will contain prior to it being recorded.

Other Factors that influence the way in which records are written include:

1. Distinguishing facts from fiction. It is preferable to include factual information where by staff and young people can recognise events or situations more readily.
2. Selective Perception and Retention. This can occur when we consciously and unconsciously filter both what we are and then what we recall into our writings. It may then include some of our values and prejudices despite best intentions not to.
3. Qualified Privilege. Since the Acts implementation, many staff have expressed concerns regarding clients taking legal Action against them for unqualified opinions that may be present in reports. As a response to this qualified privilege states that "in any Action against a public servant in relation to the contract of a record, the plaintiff must show malice on the part of the author" (Mortell, P., 1997, Pg. 8).

Research Methodology

Research for this study involved the use of questionnaires for both care staff and managers of residential care centres, which were sent by post in February 1999. Centres were randomly picked from 5 health board regions. A total of 8 questionnaires were distributed to the managers of these centres with 52 questionnaires distributed to their care staff. Questionnaires were

seen as the most beneficial method in order to obtain a qualitative return. From the 52 questionnaires distributed to the care staff, 20 questionnaires were returned. This study was carried out from Feb 99 – April 99. Due to the low response rate from managers, even after continuous reminders, in order to validate the research subsequent telephone interviews were carried out. A number of the centres to which the questionnaires were sent to initially were unable to participate in telephone interviews. Seven managers from other Research Centres here consequently interviewed by telephone using the same questionnaire format.

Findings

Findings will include the results from the questionnaires from both care staff and managers and they will in turn be discussed under each of the objectives.

Objective 1.
To identify the preparations that have had to be made in residential care as a consequence to the Acts implementation.

The requirement of preparation by managers prior to the Acts implementation was obvious from the literature review. In contrast, of the managers questioned, 50% reported that information concerning the Act was not received until late 1998. This may be interpreted that time was insufficient for managers to be effectively prepared for the changes the Act would require once implemented.

Those managers who received information prior to the Act, 22% did so before attending a seminar / training course. This suggests that a large number of managers had only received information concerning the Act for the first when attending these seminars and training courses. This implies that these managers who were inadequately informed would have difficulties relating the practical role within the care environment.

Of the 80% of managers who received training, half of them received some in the form of a practical workshop, the remaining attended seminars/conferences run by the Health Boards. Copies of the minutes of seminars from two health board regions were obtained during the initial research. These minutes only gave a main outline of the Act, without any practical implications.
This suggests that the use of practical training concerning the Act for managers was of an insufficient standard.

As part of the individual manager's preparation concerning the Acts implementation, it included the provision of various types of training for their staff. As outlined in the literature review, change included that of care staff when recording information 40% of care staff received training in a practical manner i.e. Workshop, whilst the remaining 60% of care staff had no training in this manner from the managers in question. This highlights a disturbing flaw in the training provided by managers as recorded is a vital component of the Act and care staffs everyday operations. This can be correlated back to the insufficient training that the managers themselves received.

90% of care staff reported that they received information concerning the Act 60% of these received some mode of training i.e. lectures, handouts, workshops, seminars and induction

courses, thus indicating that training was carried out either in a theoretical or practical manner. This highlights that there was no governing procedure or guidelines when training was implemented for staff. Subsequently, inconsistencies concerning the standard and type of training may arise.

Objective 2.
To discover the changes managers of residential centres had to undergo.

90% of managers reported changes were made regarding record management. Changes can be subdivided into two main areas: "style" and "care shown"

Since the Acts implementation, 30% of managers have received requests from former clients. This suggests that the Act is already fulfilling its aim. In respect to this, managers must ensure that their own and staff's record management is constantly re-evaluated to allow clients from the past, present and future to access their records.

70% of managers noted if an agency pursued a policy of openness and continuous evaluation, the consequences of the Act will be reduced. This implies that it is the managers of services who may not have had such an openness policy that are under most pressure to conform to the guidelines outlined in the Act. This is one of the main aims of the Act.

Objective 3.
How the Act affected residential care staff in the work they carry out daily within the units.

40% of care staff reported that they received no practical training regarding report writing. This is a frightening statistic in light of the emphasis placed on recording by the Act. Thus implying the necessary amendments have not been carried out.

66% of those who received training found it helped them in relation to recording of information. 50% found it became more factual and less opinionated. Reports are being written in a clearer and concise style, suggesting staff is less subjective and more objective as a result of the Act coming into affect.

Objective 4.

To discover the opinions, positive and negative, of managers and care staff within the field of residential care.

There will always be resistance to change, as those affected will be unsure about it's consequences. In relation to the introduction of the F.O.I. Act, those affected are the following: Managers, care staff, and clients. The biggest change brought by the Act concerns record management. The changes aim to increase the rights of the client, improve openness, allow clients access to their personal files and indirectly to cover staff members better in case of allegations Therefore it is important to access the fears, feelings, and aspirations of those directly affected by the Act.

90% of managers and 80% of care staff feel the Act is beneficial for the client. The majority of both believe it is easier for a client to access their personal information. There is a difference of opinion between managers and care staff as to the most important effect of the Act. Managers place more emphasis on

clarity of information while care staff focus on the greater accessibility of information.

It is important to state again the point made by both managers and staff continuously concerning their belief that if centres employed a practice of reviewing and evaluating, little change would have been required once the Act was implemented.
This raises a couple of important questions. Are the respondents admitting to an oversight regarding their practice or once the Act was implemented, did these issues only become obvious then?

As mentioned earlier, accountability of staff is one of the reasons why information is recorded. This is seen from the literature review but in the primary research, confusion is obvious as to if care staff believe this. 55% of care staff stated that the recording of information is a provision of accountability in the event of a query or complaint. None disagree with this but 20% are unsure and 25% are unable to comment. There are 2 main reasons as to why care staff are unsure: very few guidelines are provided by the Act regarding this issue and regardless or recorded information, allegations will also have repercussions for staff.

The literature review does indirectly deal with this issue but clear guidelines and procedures are not stipulated within the Act. Staff is consequently not fully informed in this area, indicating a lack of awareness on the staffs part and further training is required.

60% of managers state that the new guidelines do provide a better system of accountability in the above area. Likewise, 20% are unaware of the situation for the reason of inadequate provisions. However, a definite 20% report that it does not provide better coverage. Again this reiterates the importance that

further training is necessary for care staff and managers as is the availability of widespread information concerning the Act.

Primary researches gave managers and staff the opportunity to comment further on the Act. The most distinguishable comment made time and time again by care staff was that concerning the inadequacies regarding training and information of the Act and its effects on recording and record management. The evidence does suggest clearly that training in a practical manner and information concerning the Act and its implications have been rather inadequate.

The second issue raised was that of the danger that vital information may be left out of reports for the reason that it may upset the client. I.e. Sensitive information managers and staff shared this concern.

The accessing of information would be withheld if the decision-maker felt that it would effect the mental, physical and emotional well being of the client. However, this is only applicable to files in social work, psychology and medical areas and as files written in residential centres by staff do not directly fall into this area. Confusion occurs for staff as to what is sensitive information and what information should be recorded or not. Hence, the Act appears to relate directly to this issue and consequently, training for managers and staff was insufficient.

Conclusion, Recommendations, Limitations

The freedom of Information Act, 1997 is seen by the majority of social care workers in this study as a positive response in light of an era of secrecy surrounding Government organisations. Clients and staff within residential care should consequently experience many positive repercussions. However, the majority of managers in this study received little or no information concerning the Act before the conference/workshop. For those who could not attend, only the main outlines of the Act were received, no advice on its practical applications was given.

As 50% of managers did not receive information or training until the Acts implementation, inadequate preparation time was available for them or, indeed, their care staff. Finally, this study suggests that health beards should review the amount and quality of training the staff and their managers receive i.e. defining stricter guidelines regarding training on an extensive and practical basis.

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