



The role of access to information in Ireland's democracy

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*The role of access to
information in Ireland's
democracy*

Dr Nat O'Connor

Preface

The reform and renewal of Ireland's democratic institutions, including how public policy is formed, is essential for our future. TASC is dedicated to equality, including the political equality that lies at the heart of democracy. As such, we are producing a series of discussion papers on the topic of open policy-making, as a contribution to the national debate on democratic reform.

*TASC has a track-record of putting forward evidence-based arguments to strengthen Ireland's democracy. In 2003, TASC established an independent Democracy Commission which reported in 2005 (*Engaging Citizens: the Case for Democratic Renewal in Ireland*). In 2007, TASC published the report of a comprehensive audit of democracy in Ireland (*Power to the People? Assessing Democracy in Ireland*), using an international method that has been implemented in at least eighteen other countries around the world, including the UK. TASC has also undertaken analysis of state agencies (*Outsourcing Government*), local government (*Governing Below the Centre*) and public perspectives on democracy.*

As a continuation of this work, TASC has identified that public access to information about policy-making is essential to strengthening Ireland's democracy. Documents and records held by government and public bodies should be routinely made available, so that the public (including elected representatives, journalists and civil society organisations) can access the day-to-day 'thinking process' of the government. Open policy-making is essential so that assumptions and proposals are fully scrutinised, to ensure that public policy is efficient, effective and in the public interest.

The TASC discussion paper series on open policy-making will include, among other topics, analysis of the links between democracy and public access to information, an evaluation of Ireland's freedom of information (FOI) law, economic arguments for stronger FOI and international developments in providing more open government.

The discussion papers are designed to invite suggestions and criticisms from readers, as part of the process of TASC developing its recommendations for reform of this area, which will be published in late 2010/early 2011.

Paula Clancy
Director
TASC

The role of access to information in Ireland's democracy

Nat O'Connor¹

TASC Discussion Paper,² July 2010

Introduction

1. Ireland is one of the world's ten oldest modern democracies, yet it lags behind all of the others in terms of open and transparent government and policy-making. The aim of this discussion paper is to show the integral links between democracy and public access to information held by government and public bodies, and to make the case that a radical shift in political culture is needed in Ireland to ensure that citizens have easy access to records relevant to public policy, many of which are not made accessible.³

The Oldest Modern Democracies

2. What constitutes a 'democracy' is not something that academics fully agree on. Nevertheless, one of the more influential and widely accepted lists of democratic countries is provided by Huntington.⁴ According to this account, thirty-three countries around the world had become democratic by the early part of the twentieth century and this number increased in a series of waves of democratisation, along with periods where democracy slid back. As a result, although there are many more democratic countries today, only ten countries continued to be democratic continuously from the early twentieth century until the present day, without any intervening period of authoritarianism, and Ireland is one of the ten.⁵

¹ Thanks to the external reviewer for comments and suggestions. Thanks to Alex Klemm, Neil Warner and Daragh McCarthy for comments. Thanks also to Sinéad Pentony who commented on an earlier version of the text.

² Readers are invited to send comments, criticisms and suggestions to the author at noconnor@tascnet.ie

³ This paper sets out the broad arguments in favour of open policy-making. Subsequent papers are planned to address more specific issues.

⁴ Huntington, Samuel P (1991) *The third wave: democratisation in the late twentieth century*, pp. 14-16

⁵ The other nine are Australia, Canada, Finland, Iceland, New Zealand, Sweden, Switzerland, the United Kingdom and the United States.

3. A country was defined as democratic in the study “to the extent that its most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote.”⁶

Free and Fair Elections

4. For many people, at a basic level, democracy is characterised by the act of people voting to choose representatives. Yet merely looking at elections would suggest that the only difference between democracies and authoritarian states is that citizens in a democracy vote every few years to choose between candidates, who then get on with making decisions without reference to citizens until just before the next election. Hence, there are requirements for elections to be “fair” and “honest”. At a minimum, citizens must have sufficient information about candidates for voting to be meaningful.
5. Moreover, democratic elections are generally premised on an assumption that citizens are not only voting for their preferred candidate, but that their choice indicates their preference for policy options championed by different parties or candidates. This is clearly the case in Ireland, where political parties publish manifestos and campaign on the basis of alternative policies. The importance ascribed to ordinary people's policy preferences in voting is reinforced in countries such as Ireland where citizens also vote in referendums to decide major policy issues. For example, Ireland has held referendums on divorce, abolition of the death penalty, right to life of the unborn and relations with Northern Ireland, among other topics, as well as on several European treaties.
6. Hence, while disagreeing on the extent to which widespread knowledge of public policy among citizens is feasible or desirable, most commentators would agree that when people vote in an advanced democracy it relates to the broad questions about how the country will be governed. People are not just choosing representatives on the basis of their character or party allegiance and allowing them to make all the decisions. Thus, for citizens to have even a minimum knowledge of public policy before an election or referendum requires them to have access to information about the relevant facts about policy in the past and present, and about options for the future.

⁶ Huntington, Samuel P (1991) *The third wave: democratisation in the late twentieth century*, p. 7

7. In elections, we need to know who the candidates are and we need to know something about what each of them stands for. If democratic elections are to be genuine, then citizens must have easy access to information about what elected representatives have done during their years in office. In particular, the actions and decisions of ministers in government must be made readily available, so that voters can decide whether or not the political parties in office did a good job and implemented the policies they campaigned for. More generally, citizens should have access to information about what is current national policy on any given issue, along with some explanation of the evidence and reasoning behind decisions.

Democracy beyond Elections

8. In practice, the view of democracy presented above remains seriously impoverished. Policy is not just relevant to ordinary people during election times. Voting is often the last thing we do in a democracy. It is a tool that is used once we have exhausted the options of consultation and negotiation in deciding on questions of public policy. A narrow focus on voting leaves out all that happens before a vote is held, which in turn is the real substance of life in a democratic state.
9. We would not consider Ireland to be democratic if we had no rights other than to vote every few years, even if the electoral process involved some information about policy being given to citizens. We expect to be able to talk freely about government policy at all times, and to openly declare its failings. We expect to be able to meet with like-minded people and to organise, campaign and make demands of government and our representatives. And we expect to interact directly with and influence public bodies as they go about implementing public policy. In other words, we have a series of civil and political rights, and we use them to make democracy meaningful on a day-to-day basis and to participate (albeit to a limited extent) in ongoing decision-making about public policy.
10. Civil and political rights, protected by the courts, are a component of the idea of 'limited government'. When Ireland broke away from the UK, a conscious decision was made to have a written constitution that spelled out the different powers that different bodies

would have, including the courts (judiciary), parliament (legislative) and government (executive). What this classic division of powers tends to leave out is that alongside the three formal organs of government, ordinary people (citizens) were also given 'powers' by the constitution, through a set of personal rights that are to be respected, protected and fulfilled. Limited government is essential for democracy. Ministers in government have the job of steering national policy and giving leadership on problems and issues, but they are not 'rulers' with absolute power. They simply have been delegated a certain role on behalf of their fellow citizens, and it is a basic requirement of democracy that ministers' performance in that role is open to scrutiny by those affected by their decisions. Hence, while the requirement for information and scrutiny is perhaps more obvious when we come to vote in elections, it is equally pertinent at all other times so that citizens and civil society organisations can engage with policy-makers as policy evolves and circumstances change.

11. Certain civil and political rights, such as freedom of speech or press freedoms, are often identified as the way in which information about the activities of governments and public bodies will be made available to citizens. Free speech and free press are the traditional means of ensuring that information can be freely transmitted between citizens, and journalists have an important role in providing facts and commentary. But this traditional reliance on press freedom neglects an even more fundamental right, which is the right of citizens to access information in the possession of government and public bodies easily and quickly. If citizens and journalists only have access to half-truths or a limited range of facts, then this lack of information fundamentally undermines the freedom to communicate. The Irish constitution not only provides for freedom of expression but it specifically protects the right to criticise government policy (Article 40.6 1° i). This implies in turn that citizens require easy access to sufficient information about what government policies are and how successful (or not) they have been.⁷

Democracy in Ireland

12. It is instructive to look at the evolution of democracy in Ireland. Much of the history of the Irish state focuses on the major transition from being part of the United Kingdom to

⁷ This in turn reinforces the importance of impartiality and independent oversight in the compilation of statistics across the full range of government departments and state agencies.

independence, via the 1916 rising, the partition of the island and the civil war (1922-1923), as well as the later milestones of the 1937 constitution and the Republic of Ireland Act 1948. However, in 1918, Ireland (and the UK) made another transition, to near-universal suffrage – where men over twenty-one years old and women over thirty got the vote – and the beginning of truly democratic government. The establishment of democratic rule in Ireland is often overshadowed by the violence of 1916 and the civil war, but the shift from semi-democratic rule pre-1918 to representative democracy post-1918 was a momentous change in both the UK and Ireland.

13. The journey to universal suffrage, which was not complete until women got equal voting rights in 1928, took nearly one hundred years, starting with the Reform Act 1832, followed by the Reform Act 1867 and the Representation of the People Act 1884, each of which gave the vote to a greater number of men. Between 1832 and 1884, the number of men who could vote rose from only one in seven (who were the wealthiest in society and passed other eligibility criteria) to three out of every five. Between 1884 and 1918, the remaining two out of five men without land or property, as well as all women, were still denied the vote. 1918 heralded a dramatic shift in UK and Irish politics, from a system of parliamentary representatives chosen by wealthier men, to representatives chosen by most adult citizens equally.

14. In Ireland, we do not tend to think of our country as one of the oldest modern democracies and our democratic heritage is rarely publicly celebrated. But nevertheless we are one of the innovators and founders of increased public participation in government. This is a legacy worth remembering and defending. For example, Ireland was one of the first countries where women gained equal voting rights with men (in 1928), whereas in contrast, women did not have full voting rights in France until 1944 or in Switzerland until 1971. Today, Ireland is one of 89 electoral democracies that are categorised as free according to the 2009 annual index drawn up by Freedom House.⁸ Less than half of the world's population lives in a free, democratic country.

⁸ Founded in 1941, Freedom House is an independent watchdog organisation that supports the expansion of freedom around the world.

15. Yet, democracy in Ireland today is often portrayed as weak. We have a low number of women public representatives today compared to many other countries,⁹ our parliament is widely acknowledged to be one of the most ineffectual in Europe (as illustrated below), and we have not seen any major political reform in decades. A reasonable historical reading of democracy in Ireland seems to be that we got off to a good start but then stalled. And our democracy remains stalled. While innovations have become standard practice in other countries, we have not significantly changed how our democratic institutions function. The answer to these problems does not lie outside of our borders. A democratic people must take ownership of the situation and generate internal impetus for change. We can improve our democratic system through innovation and proposing new ways of involving the public in decision-making, as well as through adopting reforms that have been shown to work elsewhere. Crucial among the required reforms is that we open up information about current policy-making to public scrutiny.

Democracy and Access to Information

16. Most academics and theorists will agree that free speech and freedom of the press are essential for democracy. If you explore these preconditions a little further, you will find that they generally rest upon the moral foundation that individuals should have freedom of thought, conscience and opinion; that is, individuals have the right to the privacy of their own thoughts and to form their own opinions, in line with their consciences. There is little doubt that these freedoms are basic human rights and they are essential to democracy. The Irish constitution protects free speech (within limits, such as public morality), free press, freedom of association and other important civil and political rights. But these rights are mostly 'negative' – they simply require that the state does not interfere with individuals and groups.

17. Nonetheless, Ireland's protection of freedom of speech and media freedom is relatively good in international comparison. A comparative analysis of the independence and pluralism of the media in the OECD is illustrated in Table 1, as reported by the Sustainable Governance Indicators (SGI) Network. The SGI Network provides analytical

⁹ Ireland is ranked 22 out of 27 EU members, with only one in six female members of parliament compared to an EU average of one in four. Similarly, Ireland is ranked 19 out of 27 for having only one woman minister for every five male ministers in government. In contrast, best practice is shown by Sweden, where nearly half of its parliamentarians are women, and Finland, where the majority of ministers in its government are women.

measurements of all OECD countries in terms of parliamentary powers, civil and political rights, democratic reforms, etc. Ireland is seen by the SGI Network to protect the independence of the media and to compensate for bias in the private media through the public media. The ten oldest modern democracies are highlighted in bold. On the whole, they tend towards stronger protection of media freedoms.

Table 1: Media Independence and Pluralism

| | To what extent are media organizations independent from government? | | Does the structure of media ownership ensure a pluralism of opinion? |
|---|---|---|---|
| Public and private media are independent. Independence is institutionally protected. | Belgium, Canada , Czech Republic, Finland , Germany, Ireland , Luxembourg, Netherlands, New Zealand , Norway, Portugal, Sweden , Switzerland , UK , USA | Diversified ownership and an impartial public media ensure diverse opinion. | Denmark, Finland , Germany, Norway, Portugal, Switzerland , USA |
| Government respects media independence, but regulation provides little protection. | Australia , Austria, Denmark, France, Greece, Iceland , Italy, Japan, Mexico, Slovakia, South Korea, Spain | Private media is diverse, but sometimes biased. Public media compensates. | Australia , Belgium, Canada , Czech Republic, France, Hungary, Ireland , Japan, Luxembourg, Netherlands, New Zealand , Poland, Slovakia, Spain, Sweden , UK |
| Government indirectly influences media through staffing, financial or other means. | Hungary, Poland, Turkey | Print or electronic media is oligopolistic. Diversity of opinion is not well protected. | Austria, Greece, Iceland , Italy, Mexico, South Korea, Turkey |

Source: Sustainable Governance Indicators 2009; www.sgi-network.org
 Countries in **bold** are the ten oldest modern democracies.

18. The relative quality of media reporting is shown in Table 2. Ireland is among the best performing countries for the frequency of substantive information on government decisions, along with another four of the ten oldest modern democracies.

Table 2: Media Reporting of Government Decisions

| | Do the main TV and radio stations provide substantive information on government decisions? |
|--|---|
| Broadcasters produce daily, high-quality analysis of government decisions. | Austria, Canada , Germany, Ireland , Netherlands, Norway, Sweden, Switzerland, UK |
| Programming is mixed, with 5-7 hours of in-depth government coverage per week. | Australia , Belgium, Czech Republic, Denmark, Finland , France, Hungary, Iceland , Japan, Luxembourg, Mexico, Poland, Portugal, Slovakia, South Korea, Spain, Turkey, USA |
| Programming is often superficial. In-depth coverage totals just 3-5 hours per week. | Greece, Italy, New Zealand |

Source: Sustainable Governance Indicators 2009; www.sgi-network.org
 Countries in **bold** are the ten oldest modern democracies.

19. However, the right of the public to access information about the actions and decisions made by both public representatives and public servants goes beyond the 'negative' provisions in the constitution. Public access to official information puts an additional, 'positive' duty on public bodies to organise their data and reports, and to make them easily available in various ways. Public information requires government departments and public bodies to gather and organise information about their activities, to make regular reports and to have an administrative capacity to respond in a timely manner to requests for information.

20. Various pieces of legislation have improved public access to information in Ireland in recent years. The Data Protection Act 1988 gave individuals more control over their personal data held by public bodies. The Freedom of Information Act 1997 also made it clear that individuals can access personal information held by public bodies and correct any errors. In addition, the legislation allowed for non-personal information requests to be made, which had the potential to give people access to information about policy-making. The Access to Information on the Environment Regulations in Ireland derive

from a 2003 European Directive and grant access to information relevant to the environment that is held by any public body.¹⁰ While less well-known than Freedom of Information, these regulations are important, as they affect all public bodies, whereas many public bodies (such as the Central Bank, Gardaí, NTMA, NAMA and others) do not come under the Freedom of Information Act.

21. Yet, alongside these improvements, there have been reversals. The Freedom of Information Amendment Act 2003 introduced fees for non-personal requests and also reduced the scope for the release of information relevant to policy, as it made certain categories of information automatically exempt, which had been previously available (such as advice given to ministers). There is a real risk that the additional exemptions under Freedom of Information could be abused to refuse legitimate requests for access to documents. In addition, cabinet confidentiality was enshrined in the constitution for the first time in 1997, which has reinforced a culture of secrecy about cabinet deliberations.
22. In addition, despite the introduction of the Freedom of Information Act, the Official Secrets Act 1963 remains in place and gives ministers sweeping powers to declare any information 'secret'. The Official Secrets Act is not only important due to its direct deterrent effect (an offence under the Act can be punished by a fine or up to six months imprisonment) but also due to the strong hegemony it created within the Irish public service in general, and the civil service in particular, in terms of blind obedience to the government of the day and absolute secrecy regardless of the harm to the public.¹¹
23. The overall level of public access to government information in Ireland is illustrated in Table 3. This refers to less controversial documents, such as official reports and other finished documents and data (whether formally published or not). The Freedom of Information Act is likely to be the main factor that places Ireland in the middle rank for public access to official information. Most OECD countries operate on the basis of allowing citizens to directly access most documents, although half of the oldest democracies provide a higher level of public access than Ireland.

¹⁰ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

¹¹ A forthcoming discussion paper will address issues of legitimate secrecy in national security, policing, etc.

Table 3. Access to Official Government Information by Citizens

| | To what extent can citizens obtain official government information? |
|--|---|
| Access to information is regulated and easy, with few restrictions and effective oversight. | Denmark, Finland , Netherlands, Norway, New Zealand , Sweden , Switzerland , USA |
| Bureaucracy sometimes complicates access. Appeal process works well. | Australia , Austria, Belgium, Canada , Czech Republic, France, Germany, Greece, Hungary, Iceland , Ireland , Italy, Japan, Luxembourg, Mexico, Poland, Portugal, Slovakia, South Korea, UK |
| Bureaucracy and restrictions complicate access. Appeals are largely ineffective. | Spain |

Source: Sustainable Governance Indicators 2009; www.sgi-network.org
 Countries in **bold** are the ten oldest modern democracies.

24. Thus far, Ireland's record of public access to information does reasonably well when compared to other OECD countries. Although it should be noted that in many cases, the lack of clear lists of publicly available documents in Ireland has the effect of keeping many documents secret that are of public interest and would be sought under freedom of information, if journalists and others knew they existed. In addition, even public documents are not always made accessible. For example, documents released as part of parliamentary questions are not put in a central location (e.g. website) where they could be easily accessed.

25. Where Ireland performs particularly badly is in relation to the democratic right of access to the 'thinking processes' in relation to current policy-making. This is shown in Table 4.

Table 4: Access to Government Documents by Parliamentary Committees

| | Are parliamentary committees able to ask for government documents? |
|--|--|
| Committees may ask for most or all documents. Requests are granted quickly and fully. | Australia, Belgium, Canada, Czech Republic, Denmark, Finland, Germany, Hungary, Japan, Netherlands, New Zealand, Norway, Poland, Sweden, Switzerland, UK, USA |
| Rights are limited. Some important documents are late, incomplete or are not delivered. | Austria, France, Greece, Iceland , Italy, Luxembourg, Mexico, Portugal, Slovakia, South Korea, Spain, Turkey |
| Rights are very limited. Most important documents are late, incomplete, or unavailable. | Ireland |

Source: Sustainable Governance Indicators 2009; www.sgi-network.org
 Countries in **bold** are the ten oldest modern democracies.

26. Access to government documents is where Ireland is increasingly out of step with other democracies. Irish ministers and government departments are surrounded by excessive secrecy. To be quite clear, what Table 4 shows is that in more than half of the countries of the OECD, parliamentary committees gain quick and full access to the working papers of their governments; that is to say, the technical briefings and other background papers and advice that ministers and cabinet have received. These parliaments (and, thus, the public in those countries) are allowed to have access to the ‘thinking process’ that results in decisions. In the rest of the OECD, parliaments have less power. Some documents are not made available to committees, or they are late or incomplete. However, Ireland is in a category of its own as the worst case in the OECD. In most cases, important documents are “late, incomplete, or unavailable”. This puts the Oireachtas closer to the experience of parliaments in authoritarian countries rather than modern democracies. And as a result, the public is not given access to this information.

27. The oldest modern democracies are generally at the forefront of OECD countries in freely providing official information and government documents to their parliaments and citizens. Out of the ten states that continued to have democratic government

continuously since the early twentieth century, all of them have taken steps towards increasing public access to official information about public policy and its rationale. Table 4 shows that all of the oldest democracies, except Iceland and Ireland, are in the top rank, providing quick and full access to documents about policy-making. Although Ireland's freedom of information legislation provides for an average level of public access to some official information, out of all the oldest democracies, Ireland has most zealously maintained state secrecy around documents that explain current policy-making.

28. Another factor limiting access to the evidence and argument that lies behind policy-making is that the Oireachtas's ability to summon ministers, and have them answer questions, is also limited. Table 5 shows that Ireland and the UK are the only older democracies where ministers are not always obliged to answer questions. This blocks another way in which the public could gain insight into the explanations and justifications for government policy.

Table 5: Questioning of Ministers by Parliamentary Committees

| Are parliamentary committees able to summon ministers for hearings? | |
|--|--|
| Committees may summon ministers, who are obliged to answer questions. | Australia, Belgium, Canada, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, South Korea, Spain, Sweden, Switzerland, USA |
| Ministers occasionally refuse to respond to invitations or to answer questions. | Austria, France, Ireland , Mexico, Turkey, UK |

Source: Sustainable Governance Indicators 2009; www.sgi-network.org
 Countries in **bold** are the ten oldest modern democracies.

29. Similarly, Ireland is one of only two OECD countries where the ability of parliamentary committees to summon experts is limited. In terms of the number of expert staff

working for parliament, Ireland is ranked 26 out of 30. This further weakens the Oireachtas's ability to scrutinise policy in any depth.

Open Policy-Making

30. In contrast, other countries have adopted a much more open culture in relation to public access to the day-to-day documents and working papers of government. For example in Sweden, "The principle of public access to official documents also means that government officials and other central and local government employees are free to divulge information, that is to say they are entitled to say what they know concerning a matter to the media and other outsiders."¹²
31. A recent example of giving up secrecy (and the power it confers) was on US President Barack Obama's first day in office. He removed certain secrecy powers of the presidency that had been built up by his predecessors, thus taking real steps towards guaranteeing that his administration would make the US government more open to public scrutiny.
32. Freedom of information legislation is often much stronger in other countries, and is explicitly designed to encompass the policy-making process as well as public administration. Even in the UK, which shares much of Ireland's tradition of civil service secrecy, cabinet papers are under its Freedom of Information regime. In other countries, such as some Australian states, cabinet minutes, agenda and discussion papers are freely available online. There is a wealth of experience worldwide, especially among the ten older democracies, which demonstrates that open policy-making is not only possible, but it is efficient, effective and strongly desirable.¹³

The Challenge for Ireland

33. Public access to information is a vital part of democratic rule. Democracy simply does not make any sense if ordinary people do not have reliable, easy access to information about how the country is being run and what reasons are given for the decisions made by successive governments.

¹² sweden.gov.se

¹³ A forthcoming discussion paper will outline best practice around the world in relation to open government and open public administration.

34. Who owns the documents held by public bodies? We do. Anything that the state or a public body 'owns' is really owned by the people and managed on their behalf by that public body. Hence we – the people – own the buildings and other property used by government departments, local authorities and all other public bodies. This is a basic condition of democracy.
35. Article 6 of the constitution states clearly that "All powers of government... derive... from the people". Of course, public ownership does not mean that anyone can just do what he or she wants with public buildings or public land. Article 6 also says that "These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution". In simpler English, that means that decisions about public property can be made by the Oireachtas, local authorities and judges, because they are named in the constitution and (in the case of the president, Dáil and local councillors) directly elected by the people. At the same time, ordinary citizens and taxpayers can rightly expect that they can access most public land and public buildings, that they can see how they are managed and that they will receive explanations for decisions made about public property.
36. The documents, records and files held by public bodies are no different. They are also public property. They belong to the people, their creation and storage are paid for by tax revenue and we are entitled to know what information is held and – as a general principle – to access that information. The principle of public access to official documents has major implications for government and public services in ensuring that democracy in Ireland is alive and well. The public ownership of information and the entitlement to access it runs counter to the Official Secrets Act 1963, which is based on the premise that ministers alone can decide what records are to be kept secret, regardless of the public interest in their content. It seems clear that the Official Secrets Act must be abolished, along with the culture of secrecy that it represents, if Ireland is to move to a new era of open policy-making.
37. Crucially, the constitution recognises that individual citizens have personal rights. People are not passive 'subjects' of government, but have the right to be active participants. Public information is an important part of the checks and balances in a democratic state. When public representatives, civil society organisations and ordinary individuals can

access official records, they are in a position to see for themselves what is being done with public money and what evidence there is for efficiency and effectiveness. In a real sense, access to information is power and open government requires that the central government gives up the power to conceal facts, repress reports and generally hide its failings behind a wall of secrecy.

38. It is sometimes argued that ordinary citizens are not competent to deal with information about public policy and the sometimes complex reasons for government decisions. This argument is false. Naturally, not everyone will be competent in every aspect of public policy, or interested. But there will be people, sometimes many, who are well informed (or motivated to become informed) around nearly every area of public policy. When a family's first child reaches school age, they become interested in how primary schools work, how they are accessed and what is taught. When people become ill or are looking after a sick relative, they are motivated to know how the health services operate and why certain decisions were made about care. And as people grow older, they become interested in pensions and other services that will ensure their security and wellbeing in old age. Most people have an interest in the reality of public policy as it affects their daily lives or personal interests, in different ways throughout their lives. In addition, Irish civil society has many organisations concerned with diverse aspects of public policy.
39. Moreover, public servants and elected representatives are first and foremost citizens. It is condescending to suggest that they, and only they, are competent to examine the detail of public policy. There are many skilled specialists working in Ireland outside of the public sector who are willing and able to get involved through public consultation on policy issues. The high annual cost of consultants is clear acknowledgement that government departments do not have all the expertise they need. Developing public policy should be a more open, national exercise with all members of the public given the right to participate in depth, not just in consultation exercises that are at the discretion of ministers.
40. The main barrier to opening up official records (especially government's working papers) is the continuing culture of secrecy. It appears that successive Irish governments, and senior civil servants, have been slow to change how they perceive citizens, and to

recognise people's fundamental democratic right of access to official information about public policy.

41. It is worth remembering that Ireland has a long history as a democratic state and that we can be at the forefront of strengthening the way in which we organise our government and public services. Making government more open is part of the way forward for Ireland. Open policy-making will help us to overcome our current difficulties, prevent the mistakes of the past from happening again, and strengthen our economy and democracy for the future.
42. Open government may present a challenge to our politicians and public servants, but it is not a threat. It is also not an optional extra. Secret government, hidden information and blanket confidentiality are all inextricably linked to bad decisions and bad government – many policy decisions that were made in Ireland have had long-term costs that could have been avoided if more people knew about them sooner. There is no reason why we cannot have much more open policy-making in Ireland.

References

Freedom House (2009) Freedom in the World 2009.

<<http://www.freedomhouse.org/template.cfm?page=25&year=2009>>

Huntington, Samuel P (1991) *The third wave: democratisation in the late twentieth century*.
University of Oklahoma Press.

Sustainable Governance Indicators (SGI) Network

Table 1:

<http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S2_1>

and <http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S2_2>

Table 2:

<http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M15_1a>

Table 3:

<http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S2_3>

Table 4:

<http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M14_8>

Table 5:

<http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M14_9>