**Minister for Public Expenditure and Reform, Brendan Howlin TD,**

**Department of Public Expenditure and Reform,**

**Government Buildings, Upper Merrion St.,**

**Dublin 2,**

**Ireland**

4 April 2014

Dear Minister,

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

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

The abolition of these fees would provide Ireland with the opportunity to truly adhere to the principles the OGP has developed at an international level, and to which Ireland is committing by becoming a full member in June 2014. During the government funded public consultation on Ireland’s participation in the Open Government Partnership (July and September 2013), “abolishing fees for all stages of FOI and Access to Environmental Information (AIE) requests” was highlighted by civil society as an OGP priority[[1]](#footnote-1)’[[2]](#footnote-2).

Just two months later, however, Ireland’s commitment to the OGP came into question as an amendment to charge additional fees for multi-faceted FOI requests was suggested at the last minute. The proposed amendments directly negated the promised abolition of FOI fees and disregarded the unanimous vote by citizens and civil society groups to abolish FOI fees in the most recent round of the OGP public consultation process.[[3]](#footnote-3)

This type of disregard for citizen priorities is unjustifiable. By retaining and indeed increasing up front fees, the government is also breaking the commitment that was made in the Programme for Government to “legislate to restore the Freedom of Information Act to what it was before it was undermined by the outgoing Government”.[[4]](#footnote-4)

Failure to reconsider FOI fees as part of Ireland’s first OGP National Action Plan will significantly decrease both the credibility of Ireland’s commitment to the OGP and the credibility of its commitment to “*greater openness, transparency and accountability*” under its ‘Open Data Initiative”.[[5]](#footnote-5)

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

For Irish citizens it is still the status quo that “the 2003 Act seriously curtailed the 1997 Act, representing a major step back from the commitment to openness, transparency and accountability which were key factors in the 1997 legislation. … The change with most repercussions for the average user of the FOI Act was the provision enabling the Minister for Finance to prescribe fees. [And] the impact of the “up front” fees was very significant, with a significant drop in usage as a result of the fees being introduced”.[[6]](#footnote-6)

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

We contend that there seems to be very little evidence to justify this type of Irish exceptionalism through rules which are not found in other FOI laws and which, according to the international community, “constitute[s] an unreasonable impediment to access to information”.[[7]](#footnote-7) Yet, there has been no commitment to address this deficiency of the Irish FOI system. Indeed, the reasons that were recently mentioned by the Minister for maintaining upfront FOI fees appear to be simple ‘What If’ scenarios that would lend themselves to be the basis for an investigation into the benefits of FOI instead.[[8]](#footnote-8)

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

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

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

In addition it will bring Ireland in line with international standards as outlined in the letter addressed to you by the specialist international freedom of information organisations Access Info Europe and the Centre for Law and Democracy dated November 15, 2013.[[9]](#footnote-9) In abolishing FOI fees, Ireland would avoid being among the only countries attending and in fact hosting the European Regional OGP Conference in May, that charge their citizens a fee for wishing to enjoy a fundamental human right.

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

* compliance with international standards “reflected in the Council of Europe Convention on Access to Official Documents which prohibits up-front charges for requests (Article 7(1))[[10]](#footnote-10) as well as the recommendations by the UN Human Rights Committee and the European Court of Human Rights;[[11]](#footnote-11)
* no longer being the last country in Europe that systematically charges its people “to exercise a fundamental right”;[[12]](#footnote-12) and
* removing itself from the small group of 16 out of 95 countries worldwide with FOI laws that charge fees for FOI requests.[[13]](#footnote-13)

With these points in mind we trust that our Government appreciates the importance of recognizing that access to information held by public authorities is a human right which should be able to be exercised without impediments. We therefore urge you to keep the promise made by you and your Government to "restore the Freedom of Information Act" and to commit to abolish fees for all stages of FOI and AIE requests as part of the first Irish OGP Action Plan.[[14]](#footnote-14)

**Signatories:**

Flora Fleischer - Open Knowledge Foundation Ireland ([http://okfirl.org/](http://irl.okfn.org/))

Martin Wallace - Active Citizen (<http://activecitizen.cc/>)

Denis Parfenov - Active Citizen / Open Knowledge Foundation Ireland

Fred Logue - Information Lawyer

Ingo Keck - Physicist

Gavin Sheridan - Journalist

Dave Corley - Openstreetmap

Shawn Day - Lecturer

Ryan Meade - The Climate Gathering

ARTICLE 19, Global Campaign for Free Expression and Information

Donal O’Brolchain

Angela Long - Lecturer and Researcher

Eamonn Wallace - Chairman, IrelandOffline ([www.irelandoffline.org](http://www.irelandoffline.org))

Pauline Sargent - Community Activist Drimnagh ([www.drimnaghisgood.com](http://www.drimnaghisgood.com))

Richard O’Halloran - Self Employed

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Richard Cantwell - Vice President, IRLOGI ([www.irlogi.ie](http://www.irlogi.ie))

Constantin Gurdgiev - Economist

Alan Hudson - Global Integrity

Salua Nassabay - Open Knowledge Foundation Ireland

Jonathan Victory - Second Republic

Vanessa Liston - CiviQ

Rufus Pollock - Open Knowledge Foundation

Oliver Moran - Second Republic

John Handelaar -- [KildareStreet.com](http://www.kildarestreet.com/) and [FixMyStreet.ie](http://fixmystreet.ie/)

Patrice McDermott -- [OpenTheGovernment.org](http://www.openthegovernment.org/)

Andrew Jackson - An Taisce, the National Trust for Ireland

1. Proposed Action Plan Commitment No. 4.06 on p. 31. of the ‘Final Report on the OGP Ireland Consultation: <http://www.ogpireland.ie/2013/10/02/final-report-ogp-consultation/> [↑](#footnote-ref-1)
2. <https://twitter.com/ogpconsultirl/status/375647146780786688> [↑](#footnote-ref-2)
3. http://www.ogphub.org/blog/plan-to-increase-fees-for-foi-applications-raises-concern-for-irelands-commitment-to-ogp/ [↑](#footnote-ref-3)
4. http://www.taoiseach.gov.ie/eng/Work\_Of\_The\_Department/Programme\_for\_Government/Programme\_for\_Government\_2011-2016.pdf [↑](#footnote-ref-4)
5. http://www.per.gov.ie/minister-for-public-expenditure-and-reform-announcing-major-open-data-initiative-at-open-government-partnership-summit-in-london/ [↑](#footnote-ref-5)
6. http://www.oic.gov.ie/en/News/Speeches-Articles/2014-/has-the-FOI-regime-achieved-expectations.html [↑](#footnote-ref-6)
7. http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\_.pdf [↑](#footnote-ref-7)
8. The 2 reasons are mentioned at the end of the section entitled ‘FOI Fees’ of the Minister’s speech: http://www.per.gov.ie/keynote-address-by-minister-brendan-howlin-t-d-department-of-public-expenditure-and-reformfreedom-of-information-in-the-context-of-the-governments-programme-for-political-reform-in-ireland/ [↑](#footnote-ref-8)
9. http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\_.pdf [↑](#footnote-ref-9)
10. http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\_.pdf [↑](#footnote-ref-10)
11. 2011 General Comment on Article 19, para. 19 [↑](#footnote-ref-11)
12. http://www.law-democracy.org/live/wp-content/uploads/2013/11/13.11.15.Ireland-RTI-amendments.let\_.pdf [↑](#footnote-ref-12)
13. namely Canada, China, India, Israel, Japan Nepal, Pakistan, Tajikistan, Uganda, Uzbekistan, Zimbabwe, Saint Vincent and the Grenadines, South Africa and Taiwan. [↑](#footnote-ref-13)
14. http://www.taoiseach.gov.ie/eng/Work\_Of\_The\_Department/Programme\_for\_Government/Programme\_for\_Government\_2011-2016.pdf [↑](#footnote-ref-14)