

Circular Letter: BC1/2005
28th February 2005

Re: Public Access to Building Control Documentation

A chara

Circular BC 12/2004

1. I am directed by the Minister for the Environment, Heritage and Local Government to refer to Circular Letter BC 12/2004 dated 21 October 2004 on the above subject.
2. The Department has received a number of enquiries from local building control authorities seeking clarification in regard to access to *copyright and building security implications* of access to, and copying of, documentation on building control files in local building control authorities.
3. Accordingly, the Department is issuing this revised and expanded Circular Letter in lieu of Circular Letter BC 12/2004, which is hereby withdrawn.

Building Control Regulations 1997 (SI No 496 of 1997)

4. Under Article 21(1) of S.I. No. 496 of 1997, building control authorities are required to maintain and update a Register which includes particulars for particular buildings relating to -
 - Commencement Notices
 - Fire Safety Certificate Applications
 - Dispensations/Relaxations
 - Outcome of Appeals to District Court (Enforcement Notices); and
 - Outcome of Appeals to An Bord Pleanála (Fire Safety Certificates)
5. Under Article 21 (2), the Register must be kept at the offices of the building control authority and must be available for inspection during office hours.

Freedom of Information Act (FOI) 1997

6. The Freedom of Information Act 1997 – which applies to local authorities since 21 October 1998 – reinforces the right of access to public records, subject to *qualified exemptions* e.g. in the case of records which contain “commercially sensitive information” (Section 27) or information which “could be expected to prejudice or impair ... lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons or property” or “the security of a building or other structure...” (Section 23).
7. Section 13 of the FOI Act provides for partial access to records in specified circumstances.
8. It is for each Local Authority to decide what records are exempt from the FOI Act, having regard to overriding “*public interest*” *qualification* applicable to certain exemptions i.e. where the “public interest would, on balance, be better served by the granting than by refusing the request concerned”.

Copying

9. Appropriate building control documentation should be available for inspection and copying (at a charge to cover the cost), by or on behalf of interested parties, during normal office hours.

Copyright and Related Rights Act 2000

10. Sections 74 to 77 and Sections 237 to 241 of the 2000 Act deal with copyright in the context of Public Administration.

11. Section 74 (2) provides that *where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the copyright in the material is not infringed by the copying or making available to the public of that material for the purpose of making that material available for inspection at another time and place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the material open to public inspection or as the case may be the person maintaining the register.*

12. Section 74 (3) provides that where material is made available to the public under this section, the person granting the access to the material shall ensure that it *bears a mark* clearly indicating that it provided for the purposes of inspection and that no other use of the material may be made without the licence of the copyright holder.

13. Section 74 (4) states that material may not be provided under this section unless the person granting access to the material has obtained from the person requesting the material a *declaration*, in such form as may be prescribed, indicating that the material is required for the sole purpose of enabling the material to be inspected at another time and place or otherwise facilitate the right of public inspection.

14. Having regard to the provisions of the Copyright and Related Rights Act 2000, it is recommended that-
- 1) the local building control authority *stamp* each document (including maps, drawings, and plans) to be made available incorporating wording along the lines that:
“This document is for inspection purposes only and no other use can be made of the material without the consent of the copyright owner”; and
 - 2) The person wishing to copy such documentation must sign a Declaration that the material is required for the sole purpose of inspecting the material at another time and place.

15. Accordingly, it is recommended that each building control authority should have available –

- (1) a stamp, and
- (2) Declaration form

As recommended in the preceding paragraph.

16. Section 240 of the 2000 Act mirrors the provisions of section 74 of the same Act as regards material open to public inspection or on a statutory register.

Maps

17. Ordnance Survey Ireland (OSI) has advised this Department that local building control authorities can give to members of the public copies of maps received with Fire Safety Certificate applications ***provided the OSI maps are stamped originals or are copies showing a copyright licence number.***

General

18. Section 45(c) of the 2000 Act provides that a person infringes the copyright in a work where he or she, without the licence of the copyright owner, in the course of a business, trade or profession, has

in his or her possession, custody or control, or makes available to the public, a copy of the work which is, and which he or she *knows or has reason to believe is, an infringing copy of the work.*

19. Accordingly, it appears that if a building control authority accepts into public records, or makes available to the public, copies of infringing copyright material, where they know or have reason to believe that it is infringing copyright material, then they may be in breach of the 2000 Act.

Mise le meas

Michael McCarthy
Principal Officer
Building Standards/
Environmental Assessment

- To each Building Control Authority
- To each Building Control Officer
- To each Chief Fire Officer