



Our Reference Number: FOIR671

Date: 24 October 2017

Mr. Ken Foxe,
ken@righttoknow.ie

Uisce Éireann
Bosca OP 6000
Baile Átha Cliath 1
Éire

Irish Water
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Dear Mr. Foxe,

I refer to the request which you made under the Freedom of Information (FOI) Act 2014 for records held by Irish Water.

The records you requested are:

- *All records relating to the calculation of retirement benefits in terms of lump sums, pension payments and other such payments for John Tierney.*

I made a final decision to grant your request on 24 October 2017. If you have any queries regarding this correspondence you can contact me by telephone (01) 8925029 or by email foi@water.ie

The decision-maker processing this FOI request has asked me to provide some background information in respect of Mr John Tierney's retirement benefits. Mr Tierney's benefits derive from his employment contract with Ervia signed on 13 March 2013 when Ervia was known as Bord Gais Eireann.

Mr Tierney was leaving his position as Dublin City Manager following a lengthy career in the local authority sector and it was agreed with him at the time that his local authority superannuation benefits would be preserved, so that he would be no worse off in that respect if he had stayed in that sector until retirement.

Accordingly, the relevant section of his contract provided for Mr Tierney's membership in a defined benefit scheme, on the standard basis that the scheme would provide a pension of 1/80th of basic salary for every year of combined local authority and Ervia service and a lump sum of 3/80ths for each year of such service.

Therefore, Mr Tierney's retirement benefits were calculated on the standard basis used for senior public servants, involving an annual pension and lump sum based on his length of service and final salary and, because his local authority contract had so provided, with no reduction made in respect of his retiring before the age of 60. Please note that Irish Water is limiting access to the quantum of the benefits payable to Mr. Tierney because they represent personal information and are thus exempt under **Section 37 (1) of the FOI Act (personal information)**, which states that a request for a record shall be refused if *access to the record concerned would involve the disclosure of personal information*.

As you may have seen, the cost to Ervia of providing these pension benefits to Mr Tierney, in line with his contractual entitlements, has been recorded in the financial statements of Irish Water, published on 11 September 2017, at notes E1 and E3. The sum of €473,000 recorded there represents this cost, as a contribution to the scheme. The calculations by which this sum was reached, redacted to remove personal information in respect of Mr Tierney, are included in the attached record prepared by Ervia's pension consultants, Aon Hewitt (Record # 1). That record notes the fact that a contribution to Mr Tierney's pension will be made by Dublin City Council pursuant to the provisions of the Local Government Superannuation Scheme, but not until Mr Tierney reaches the age of 60. That position is confirmed by the attached letter from Dublin City Council's Human Resources Department attached as (Record # 2).

The Irish Water financial statements refer also to a "Termination benefits – severance" sum of €100,000 payable to Mr Tierney. This reflects another entitlement of his local authority service, preserved in Mr Tierney's employment with Ervia, entitling him to a severance gratuity of 50% of final salary.

Public interest test

In accordance with **Section 37(5) of the FOI Act**, there is a public interest test to be taken into consideration when determining whether to refuse a request on the grounds of **Section 37(1)**. I have, therefore considered whether any public interest in the release of the withheld information would outweigh any public interest in withholding such information.

I have found that the following factors favour the withholding of certain records and certain parts of other records:

- I am of the view that there is a strong public interest in protecting information of a personal nature. In my view the right to privacy of all Irish Water staff members and former staff members in respect of their personal information far outweighs any public interest in favour of releasing personal information that relates to any individual staff member or former staff member.
- taking into account the principles set out in section 11(3) of the FOI Act, the nature of the redactions and edits that have been made to certain of the released records do not prejudice the use of the released records in connection with (i) the need to achieve greater openness in the activities of Irish Water and to promote greater transparency, (ii) the need to strengthen the accountability and improve the quality of decision making in Irish Water, and (iii) the need to inform scrutiny, discussion, comment and review by the public of Irish Water.

I have also found that the following factors favour the release of the records:

- the right of the public to access information under the FOI Act and to ensure that activities and operations are open and transparent; and
- the ability of the public to hold Irish Water to account.

It is my view that the public interest is best served in this instance by limiting access to the records requested through the limited redactions which I have made.

In coming to this conclusion, I had regard, among other things, on the guidance provided by the recent decision of the High Court in *FP v Information Commissioner* [2016] IEHC 771. The decision in this case emphasises that, although there is a general public interest in openness and accountability in relation to information held by FOI bodies, this is outweighed by the public interest in protecting and upholding the privacy of persons whose confidential and personal information would, pursuant to a release of records under the FOI Act, be disclosed to the world at large against their will.

RIGHT OF APPEAL

You may appeal this decision. In the event that you decide to make such an appeal, you can do so by writing to the Freedom of Information Unit, Irish Water, Colvill House, 24-26 Talbot St., Dublin 1 enclosing the appropriate fee of €30. Payment should be made by way of bank draft, money order, postal order or cheque made payable to Irish Water (FOI). You should make your appeal within 4 weeks from the date of this notification however the making of a late appeal may be permitted in exceptional circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of Irish Water.

Kind regards,

Noel Shannon

Freedom of Information Officer

ervia

Colvill House, 24-26 Talbot St, Dublin 1, Ireland

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UTILITIES | INFRASTRUCTURE | SERVICES

Record # ①

Aon Hewitt

Irish Water

Date: 22 June 2016

Copy to: ERVIA PENSIONS

Prepared for: ERVIA HR Ervia

Prepared by: AON HEWITT REP.

Cost of providing contractual pension benefits to Mr John Tierney

Introduction

I understand that Mr Tierney has a contractual entitlement to receive his accrued retirement benefits (retirement gratuity and member pension) from 29 April 2016 upon the termination of his contract.

Background

Mr Tierney has been a member of the Ervia Superannuation Scheme for years. On joining the Scheme (which participates in the Public Sector Transfer Network) he transferred his prior pensionable service (years¹) under the Local Government Superannuation arrangements into the Ervia Scheme under the 16(c) transfer mechanism.

The result of the transfer is that his combined service is reckonable for retirement benefits by reference to his final salary. Under 16(c) his prior employer (Dublin City Council) will make a contribution to his retirement gratuity and periodic pension payments at/from age 60 by reference to service of years and uprated salary applicable to his last role in DCC.

The costs of:

- (i) Recognising the increase in past service liability associated with the difference in salary between Irish Water and DCC, and
- (ii) The value of 3 year's² benefit accrual, net of member contributions, whilst a member of the Ervia Scheme

have been picked up as part of the regular funding of the Scheme and are not considered further in this note.

Contractual entitlement & additional costs

The Ervia Scheme currently allows for retirement benefits to be paid prior to age 60 on an actuarially reduced basis; however Mr Tierney's contract of employment provides for his retirement benefits to be paid on the cessation of his contract without applying an actuarial reduction.

To facilitate what is contractually provided to Mr Tierney, the Trust Deed and Rules of the Scheme will be amended to expressly provide for early retirement on an unreduced basis specific to him (this will require Ministerial, Board and Trustee approval).

¹ John Tierney worked in the local authority system from to , his last position being Manager of Dublin City Council (DCC), and accrued pensionable service of years

² He joined Irish Water on 29th April 2013 and retired on 26th April 2016, having accrued pensionable service of 3 years, bringing his total pensionable service to years.

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DCC have advised that the rules in operation within the Local Government Superannuation Scheme do not permit payment of preserved benefits from that scheme until age 60 at the earliest. Therefore Mr Tierney's preserved benefits with DCC will not be payable until age 60.

This results in a gap in benefits that the Ervia Scheme will need to make up i.e. the Scheme will need to pay full unreduced benefits at age 57. The DCC portion of the benefit will become payable at 60.

The cost of providing the contractual entitlement has been actuarially assessed at €473,000, broken down as follows:

				€
Cost of providing unreduced benefits i.e. waiving of actuarial reduction factor upon early retirement on both the Ervia portion of the benefits and the DCC portion of the benefits				444,000
Benefit	Difference between reduced and unreduced	Cost	Note	
Gratuity	€ [redacted]	€ [redacted]	€ [redacted] (paid upfront at age 57)	
Member Pension	€ [redacted]	€ [redacted]	Each additional €1 of pension from age 57 costs €30.20 ³ (€ [redacted] * € [redacted])	
Interest cost to reflect fact that DCC payments to Ervia will not commence until member attains age 60				29,000
Total				473,000

Assumptions

The cost has had regard to the assumptions underlying the most recent formal actuarial valuation, updated to reflect current market conditions, as well as the impact on the funding standard position.

Signed

AON HEWITT REP
[redacted], FSAI, [redacted]

³ Includes an allowance for a 50% spouse's pension and for the pension to increase in payment in line with inflation



Record # (2)

Cornhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Roinn Acmhainní Daonna,
Bloc 4, Urlár 4, Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Human Resources Department,
Block 4, Floor 4, Civic Offices, Wood Quay, Dublin 8
T. 01 F. 01
e-mail: hr@dublincity.ie

2nd May 2013

Mr. John Tierney,

Dear John,

I refer to your letter dated 29th April 2013 regarding your pension entitlements. I wish to advise that under the Local Government (Superannuation) (Consolidation) Scheme 1998, Bord Gais Eireann is on the List of Approved Bodies, where the preferred system of contributions is stated as the "Refunds System". This system applies in the absence of a "Knock for Knock" arrangement. Under this "Refund System" an authority must make a contribution to a person's final authority on the basis of the service etc., which he/ she had with them.

If you retire from Bord Gais on reaching minimum retirement age 60 or anytime thereafter, the procedure would be as follows:

- Bord Gais will calculate pension entitlements based on all of your service.
- On receiving confirmation from Bord Gais of your retirement date, Dublin City Council will at that time calculate the lump sum and pension you would have received from Dublin City Council based on service accumulated to date of resignation and salary rate applicable to the relevant Dublin City Council grade on date of resignation.
- A cheque for the lump sum due will be issued by Dublin City Council to Bord Gais. The pension contribution due will be paid by Dublin City Council every 6 months in arrears to Bord Gais on receipt of a written request from Bord Gais addressed to Superannuation Section, Human Resources Department, Dublin City Council, Civic Offices.

I can confirm that this arrangement will be put in place on receipt of the necessary notification from Bord Gais at the time of your retirement.

I trust this clarifies the position for you.

Yours sincerely,

DCC HR REP