


Kildare County Council

Building Control

Protocol on Public Access to Building Control Records (not including Fire Certificates)



Document Control

Status	Prepared by	Approved by	Date
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1. Introduction

Article 21 (1) of the Building Control Regulations, 1997 requires building control authorities to maintain and upkeep a register of particulars in relation to:

- Commencement Notices or 7 Day Notices
- Fire Safety Certificate applications and decisions
- Disability Access Certificate applications and decisions
- Dispensation/Relaxation applications and decisions
- Certificates of Compliance on Completion

The Building Control Management System (BCMS) is the national statutory register which allows property owners, builders, developers, architects and engineers to submit notifications, applications and compliance certificates online. Kildare County Council maintain the BCMS register for the County.

Circular Letter BC 1/2005 (Appendix A) sets out **national** policy on public access to Building Control documentation.

This protocol outlines Kildare County Council’s procedures for complying with the Building Control Regulations and BC 1/2005, to ensure appropriate public access to Building Control documentation.

This protocol does not cover public access to Fire Safety Certificates and associated files. Further information on this type of request can be found on Kildare Fire Services website at <https://kildarecoco.ie/AllServices/FireService/>.

2. Information Publicly Available

The following information is freely available to members of the public. In the first instance, the Building Control Team will direct queries to these sources:

Information	Source
Details of 7 Day Notices, Commencement Notices and Certificates of Compliance on Completion entered on the statutory register from 2014	Building Control Management System (BCMS) https://nbco.localgov.ie/
Copies of Commencement Notices prior to 2014	Kildare County Council’s Online Planning Enquiries https://kildarecoco.ie/AllServices/OnlineServices/OnlineplanningEnquiries/

3. Freedom of Information Act

Article 21 (3) of the Building Control Regulations, 1997 provides that records relating to particulars included on the statutory register may be accessed in accordance with the Freedom of Information Act 2014.

Records will be released subject to the following key exemptions contained in the Freedom of Information Act:

- Section 32 - Law Enforcement and Public Safety
- Section 36 - Commercially Sensitive Information
- Section 37 – Personal Information

4. Access Requests

If the required record or document cannot be sourced publicly, an Access Request must be made through Kildare County Council's Building Control's on-line portal at [Viewing Building Control Records - Kildare County Council \(kildarecoco.ie\)](http://Viewing Building Control Records - Kildare County Council (kildarecoco.ie)). Two types of records can be requested:

a. Record Type A - Unrestricted

Copies of the following entries on the statutory register will be provided to any member of the public, upon receipt of the appropriate fee:

- Disability Access Certificate decisions
- Dispensation/Relaxation decisions
- Commencement Notices
- 7 Day Notices

b. Record Type B – Restricted

In accordance with advice received from the National Building Control Office (NBCO) (Appendix B), access to all other appropriate Building Control documentation is restricted to the building owner/occupier or any person who subsequently acquires an interest in the building. In order for Kildare County Council to establish this interest, the requester will be required to submit a letter of consent from the building owner/occupier as part of the Access Request, where necessary.

5. Review of Files

Files in relation to Record Type B requests are subject to review by a Building Control Officer and will be dealt with on a case-by-case basis.

A maximum of six files will be reviewed as part of one request. In excess of six files may be reviewed at the discretion of the Building Control Department. The associated fee for review is set out below.

6. Release of Records

Following review, records approved for release will be scanned or photocopied. The requester will be contacted and advised of the total costs of review and scanning. Records will only be released following payment. If payment is not received within two weeks, the Access Request will be considered closed and the file(s) returned to archive.

When payment has been received, records will be forwarded to the requester by email. Large files will be scanned and forwarded to the requester through Sharefile.

If the request relates to numerous records held in hard copy format and requiring a large amount of scanning or photocopying, the requester will be invited into Aras Chill Dara in Naas to view the records in person. Photographing records is strictly prohibited during the viewing. Copies of records will be provided on request, upon payment of the appropriate fee.

7. Fees

In accordance with the Fifth Schedule of the Building Control Regulations, Kildare County Council charge €12.50 for copies of entries in the register.

A scale of charges apply to all other requests, set out as follows:

File Retrieval and Review	€50 for first file €5 for the 2 nd – 6 th file €50 for 7th file €5 for each subsequent file	
Scanning and Printing (per sheet)	A0 A1 A2 A3 A4	€5.00 €5.00 €5.00 €0.50 €0.15

8. Copyright

In accordance with the Copyright and Related Rights Acts 2000, records are provided for inspection purposes only and no other use can be made of the material without the consent of the copyright owner. The requester will be required to make a declaration to this effect as part of the Request for Access. All records released will also be stamped to this effect.

9. Maps

OSI maps held on file will only be released if stamped as originals or show a copyright licence number.

Summary of Provisions

Record Type	Record Requested:	Access Restricted to:	Required:	Applicable Fees:	Note
A	Copy of: <ul style="list-style-type: none"> • Disability Access Certificate Decision • Dispensation/Relaxation Decision 	No restriction	Submission through Building Control Portal	€12.50 each	
B	Access to records relating to a Disability Access Certificate	Building owner/occupier or any person who subsequently acquires an interest in the building	Submission through Building Control Portal and Signed consent letter from owner/occupier (if needed)	See schedule of fees above.	File reviewed by the Building Control Officer in line with Sections 32, 36 and 37 of the FOI Act 1994
A	Copy of <ul style="list-style-type: none"> • Commencement Notice lodged from 2014 • 7 Day Notice 	No restriction	Submission through Building Control Portal	€12.50 each	
B	Copy of Certificate of Compliance on Completion (CCC)	Building owner/occupier or any person who subsequently acquires an interest in the building	Submission through Building Control Portal and Signed consent letter from owner/occupier (if needed)	€12.50 each	

Appendix A

Circular Letter: BC1/2005
28th February 2005

Re: Public Access to Building Control Documentation

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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.

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Michael McCarthy
Principal Officer
Building Standards/
Environmental Assessment

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

Appendix B

Under "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 and property" or "the security of a building or other structure ..." (Section 23).

Appropriate building control documentation should be available for inspection and copying (***at a charge to cover the cost***), relevant to works or a building included on the **statutory register** will be accessible to any person who **subsequently acquires an interest in the building concerned**. (The person(s) should submit to the local authorities the interests in the works or building and provide evidence of such interests. During normal office hours.

(1) the local building control authority stamp each document (including maps, drawings, and plans) to be made 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* incorporating wording along the lines that:

"The material is required for the sole purpose of inspecting the material at another time and place".

Ref: Circular

BC 1 2005-Public Access to Building Control Documentation

BC 12 2004 Public Access to Building Control Documentation FOI

BC 1 2005-Policy Document Tipperary

It is for the requestor to establish the interest acquired, and this is usually a matter of ownership or prospective ownership.

Yours sincerely,

Keith Graham

BCMS Support Team