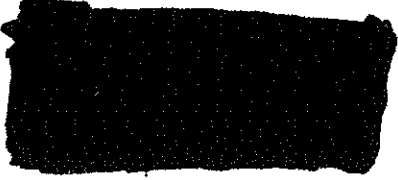


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N37 X659



Pension Unit  
Department of Education and Skills  
Cornamaddy  
Athlone  
Co. Westmeath  
N37 X659

19 May 2016



Re: FOI request FOI/2016/159

Dear [Redacted]

I refer to the request which you made under the Freedom of Information Act 2014 for records held by this body:

*Copy of the winning tender, under the FOI Act 2014, for the following procurement: Request for Tenders for the Provision of Scanning and Data Capture Services Department of Education and Skills. It was issued on the 3<sup>rd</sup> September, 2015.*

I, Tony Lally, Higher Executive Officer, have now made a final decision to refuse your request on 19 May 2016.

The purpose of this letter is to explain that decision. This explanation has the following parts:

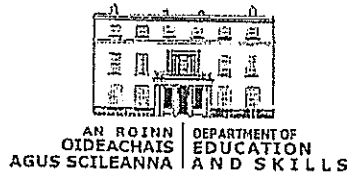
1. a schedule of all of the records covered by your request;
2. an explanation of the relevant findings concerning the records to which access is denied, and
3. a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

#### 1. Schedule of records

A schedule is enclosed with this letter, it shows the documents that this body considers relevant to your request. It describes each document and refers to the sections of the FOI Act which apply to prevent release. The schedule also refers you to sections of the detailed explanation given under heading 2 below, which are relevant to the document in question. It also gives you a summary and overview of the decision as a whole.

The record identified and scheduled is as follows:



- The tender received from the company which was subsequently awarded the contract for the Provision of Scanning and Data Capture Services.

## 2. Findings, particulars and reasons for decisions to deny access

The sections of the Act which can apply to deny access to documents are known as its exemption provisions.

I have decided to refuse access to the record identified and numbered 1 on the attached schedule under the following exemption provision: Section 36(1)(b) of the Freedom of Information Act 2014.

Section 36(1)(b) of the Act provides that a head shall refuse to grant an FOI request if the record concerned contains *"financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation."*

It is my view that to release any part of the winning tender would result in the disclosure of information on the successful company which would reasonably be considered commercially sensitive; including, but not limited to: qualifications, experience and contact details of their employees; details of previous projects undertaken; the technical and project management methodologies they apply; their pricing structures; and their financial status.

Release of this information, in the context of a tender application that was ultimately successful, could in my opinion allow other rival companies identify where the successful company might hold a competitive advantage; and give those companies an advantage of their own in future competitions of a similar nature. It could reasonably be expected therefore that to release the tender application would prejudice the competitive position of the successful tenderer, and potentially result in a financial loss to that company.

Under section 36(3) of the Act, consideration must be given to whether the public interest would, on balance, be better served by granting, rather than by refusing to grant, the FOI request concerned. While the Department has a duty to be accountable for public expenditure, especially in cases where a competitive process has been applied, it is not my view that releasing the requested record would be in the public interest. The basis for this is that a practice of releasing tender applications containing sensitive commercial information could have the effect of dissuading companies from participating in future competitions. This would lead to less competitive tender processes, with the potential for increased costs and reduced value for the

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government departments who run those processes; and a negative effect on overall public expenditure.

### **3. Right of appeal**

You may appeal this decision. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Department of Education and Skills, Marlborough Street, Dublin 1. Your correspondence should include a fee of €30 (€10 for medical card holders) for processing the appeal. Payment should be made by way of personal cheque or postal money order made payable to the accountant in the Department of Education and Skills. Please note the Department of Education and Skills no longer accept cheque payments from business users. For further information regarding payment methods for business users, please email [foi@education.gov.ie](mailto:foi@education.gov.ie)

You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this body.

Should you have any questions or concerns regarding the above, please contact me by telephone at (090)6483641.

Yours sincerely,

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Tony Lally  
Higher Executive Officer  
Pension Unit  
Department of Education and Skills