



13 January 2017 = By email

Re: FOI request FOI/2016/477

Dear [REDACTED]

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

"I wish to make a request of the Department under the Freedom of Information Act 2014. My request relates to the work of the European Structural Funds financial control unit.

I seek:

A copy of all audits carried out by the financial control unit with respect to the funding provided to third level colleges - which can be taken to the recognised providers of higher education listed on this section of the Department's website:

<http://www.education.ie/en/Learners/Information/Providers-of-Higher-Education/List.html>.

- My request should cover all audits completed since January 1, 2012.*
- I also seek the log file of any objections to audit or issues raised by third parties with respect to potential issues at audit as they relate to actual or potential audits of the providers of higher education."*

Please note that the third bullet point of your request which reads *"Finally, I seek the details of all ESF funding recouped from the providers of higher education since 2012 where it was deemed to have been ineligible spending"* will be responded to separately by Mr Tom Whelan of ESF Policy and Operations.

Your request was received in this Department on 16 December 2016 and acknowledged by the FOI Unit on 21 December 2016. This acknowledgement informed you that I was elected as the decision-maker for the ESF (European Social Fund) Financial Control Unit.

I, John Collins, have now made a final decision to part grant your request on 13 January 2017.

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.

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

2.1 FOI Request - First Paragraph and Bullet Point 1 – *“A copy of all audits carried out by the financial control unit with respect to the funding provided to third level colleges - which can be taken to the recognised providers of higher education listed on this section of the Department's website: <http://www.education.ie/en/Learners/Information/Providers-of-Higher-Education/List.html>.*

- *My request should cover all audits completed since January 1, 2012.”*

Two such audits were carried out by the ESF Financial Control Unit; FCU Report 66 and FCU Report 67.

2.1.1 FCU Report 66

Outside Scope - Information is redacted in the copy of the report provided because it is outside the scope of your request as it relates to organisations that are not included within those organisations specified by you i.e *“third level colleges - which can be taken to the recognised providers of higher education listed on this section of the Department's website: <http://www.education.ie/en/Learners/Information/Providers-of-Higher-Education/List.html>.”*

I have redacted information because it was outside the scope of your FOI request as follows:

- Information on the contents page of FCU Report 66
- Information on pages 3 and 5
- Pages 6 to 12 inclusive
- Pages 17 to 19 inclusive.

Part Grant - Section 2 of the FOI Act 2014 defines what is considered personal information and includes ‘information relating to the employment or employment history of the individual’

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

Under the provisions of Section 37 (1) of the FOI Act 2014, personal information is exempt from disclosure to third parties which states as follows: *“A head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual)”*. This exemption is subject to a number of exceptions which include where the public interest in disclosure outweighs the individual’s right to privacy. My decision to redact personal data on pages 13 and 14 of FCU Report 66 is on the basis that the information is personal to the individuals concerned as it relates to their student reference numbers.

Under the provisions of Section 36 (1) of the FOI Act 2014, commercially sensitive information is exempt from disclosure to third parties.

Section 36 (1):

" Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—

(a) trade secrets of a person other than the requester concerned,

(b) 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, or

(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates."

I have redacted the name of a company on pages 13 and 16 of Report 66 under the provisions of section 36(1)(b) of the FOI Act 2014 as disclosure could reasonably be expected to result in financial loss or could potentially prejudice the competitive position of the person concerned. Whilst there is a public interest in openness, transparency and accountability of public bodies, there is a legitimate public interest in persons being able to conduct commercial transactions with public bodies without fear of suffering commercially as a result.

I consider a soft copy to be an appropriate form of access in this case. Accordingly a redacted soft copy of the Report 66 is attached.

2.1.2 FCU Report 67

Part Grant - Section 2 of the FOI Act 2014 defines what is considered personal information and includes 'information relating to the employment or employment history of the individual'

The sections of the Act which can apply to deny access to documents are known as its exemption provisions. Under the provisions of Section 37 (1) of the FOI Act 2014, personal information is exempt from disclosure to third parties which states as follows:

"A head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual)"

This exemption is subject to a number of exceptions which include where the public interest in disclosure outweighs the individual's right to privacy. My decision to redact personal data is on the basis that the information is personal to the individuals concerned as it relates to their employee/payroll reference number. I have therefore redacted personal data on pages 16, 18, 19, 20, 21, 29 and 30 of FCU Report 67.

I consider a soft copy to be an appropriate form of access in this case. Accordingly a redacted soft copy of the FCU Report 67 is attached.

2.2 FOI Request Bullet Point 2 – “I also seek the log file of any objections to audit or issues raised by third parties with respect to potential issues at audit as they relate to actual or potential audits of the providers of higher education.”

Refuse - Section 15(1)(a) of the FOI Act provides that a request for access to a record may be refused if the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken.

15. (1) A head to whom an FOI request is made may refuse to grant the request where—
(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,

I can confirm that there are no records held by the ESF Financial Control Unit relating to the above request.

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 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

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.

4. Publication

All non-personal FOI requests will be recorded on an FOI disclosure log which will be published on the Department of Education and Skills website in due course.

Should you wish to discuss the above, please contact me by telephone at 8896620.

Yours sincerely



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ESF Financial Control Unit
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