

31st March 2016



Re: FOI request 2016/61

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

Records of all communications between the Department of Education & Skills and any or all of the following:

NDFA, IDA, Galway County Council

In relation to the submission of a planning application for a new school for Presentation College, Athenry at Ballygarraun, Athenry, Co Galway.

I, Stephanie Goode, Higher Executive Officer, have now made a final decision to part grant your request on 31st March 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.

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.

Documents numbered 1, 2, 7, 8, 12 are part granted (as scheduled) and documents numbered 11, 13 and 16 are refused (as scheduled) under Section 36(1)(c) and Section 36(1)(b) of the Freedom Information Act 2014.

Section 36 - Commercially sensitive information

Section 36(1)(b) and (c) of the Freedom of Information Act 2014 states;

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

(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

Document numbered 13 is also refused (as scheduled) under Section 30(1)(c) and Section 35(1)(a) of the Freedom of Information Act 2014. In addition, document numbered 15 is also refused (as scheduled) under Section 30(1)(c).

In making my decision to part grant or refuse access under this section I have considered whether access to this information should be granted taking account of public interest factors in favour of release. I have concluded that the public interest would not, on balance, be better served by granting this information.

In arriving at this decision, I have taken into account public interest considerations for release including the right of access under the FOI Acts generally, the need for there to be accountability of administrators and scrutiny of decision making processes. The public interest factors against release which I have considered are the need for the person or company concerned not be unduly impeded in the effective pursuit of its business and being able to maintain the confidentiality of their deliberative process in some circumstances, particularly where those deliberative processes relate to ongoing negotiations. I have concluded that the factors against release outweigh those for release in respect of these records.

Section 30 – Functions and negotiations of FOI bodies

Section 30(1)(c) of the Freedom of Information Act 2014 states;

30. (1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to—

(c) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or an FOI body.

In making my decision to part grant or refuse access under this section I have considered whether access to this information should be granted taking account of public interest factors in favour of release. I have concluded that the public interest would not, on balance, be better served by granting this information.

In arriving at this decision, I have taken into account public interest considerations for release including the right of access under the FOI Acts generally, the need for there to be accountability of administrators and scrutiny of decision making processes. The public interest factor against release which I have considered is the potential to compromise the ability of management to effectively carry out its core functions. I have concluded that the factors against release outweigh those for release in respect of these records.

Section 35 – Information obtained in confidence

Section 35(1)(a) of the Freedom of Information Act 2014 states;

35. (1) Subject to this section, a head shall refuse to grant an FOI request if—

(a) the record concerned contains information given to an FOI body, in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body,

In making my decision to part grant or refuse access under this section I have considered whether access to this information should be granted taking account of public interest factors in favour of release. I have concluded that the public interest would not, on balance, be better served by granting this information.

In arriving at this decision, I have taken into account public interest considerations for release including the right of access under the FOI Acts generally, the need for there to be accountability of administrators and scrutiny of decision making processes. The public interest factors against release which I have considered are that the record concerned contains information given to the Department in confidence and on the understanding that it would be treated as confidential and the likely effects of disclosure and I have concluded that the factors against release outweigh those for release in respect of these records.

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

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 on 057 932 4415.

Yours sincerely,

Stephanie Goode
Higher Executive Officer