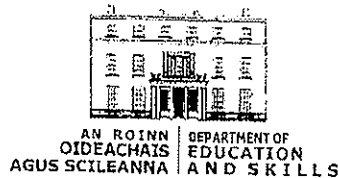


An Roinn Oideachais agus Scileanna  
Bóthar Phort Laoise  
An Tulach Mhór  
Co. Uíbh Fhailí  
R35 Y2N5



Department of Education and Skills  
Portlaoise Road  
Tullamore  
Co. Offaly  
R35 Y2N5

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 December 2016

Re: FOI request 2016/347

Dear [REDACTED]

I refer to the appeal which you made under the Freedom of Information Acts 2014 received on 5<sup>th</sup> December 2016.

I Áine Cuasck, APO, am a more senior member of the staff of this body than the person making the first decision, Ruairí Smyth, and I have decided on 21<sup>st</sup> December 2016 to affirm the original decision on your request. This decision on review is an entirely new and separate decision on your request, and is explained as such below.

Your original request sought access to the following:

*Copies of all invoices, letters, documents, emails, faxes; notes of telephone conversations, minutes of meetings, reports and contemporaneous notes concerning the purchase of land, (including enquiries to purchase land), surveys, architects reports, engineers reports, valuers reports, planning applications, construction contracts/works for new school buildings for both Gaelscoil Chill Mhantáin and the Combined St. Joseph's & St. Ernan's Rathnew School from 1<sup>st</sup> January 2008 to present.*

In arriving at this decision I have had regard to the original request the records which were located as part of that request and the appeal letter which you submitted in this regard.

I enclose for your attention a schedule of these records, this schedule summarises to you my findings and I refer you to the later part of this letter for a further explanation.

Please note that the information sought is provided in two Sections: Section 1 - Gaelscoil Chill Mhantáin and Section 2 - St. Joseph's & St. Ernan's, and is divided into documentation provided by the following areas: Schools Capital Appraisal Section - Appendix A, Site Acquisitions and Property Management Section - Appendix B, Major Projects (Construction) - Appendix C and Major Projects (Design) - Appendix D.

The purpose of this letter is to explain my 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

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.

I consider that the exemptions provided for in sections 29 (Deliberations of Public Bodies), 30 (functions and negotiations of Public Bodies), Section 31 (Legal Professional Privilege) and Section 36 (Commercially sensitive information) of the FOI Act 2014 apply in relation to a number of records referred to on the schedule. These exemptions are discussed further below.

#### **Section 15 (d): The Information is already in the public domain**

Section 15(1)(d) allows that a request which is received under FOI can be refused when the information is already in the public domain and can be accessed by the requester as a result.

#### **Section 29: Deliberations of Public Bodies**

A head may refuse to grant an FOI request if the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes) under section 29(1) (a).

Having considered section 29(1) (a) I must also consider section 29(1) (b) which provides that a head may decide to release records if, in his or her opinion, "the public interest would, on balance, be better served by granting than by refusing to grant the request". Having considered where the balance of the public interest lies in these cases, I have decided to withhold such information at this time on the basis that the release of the records would be detrimental to the Department's decision making process.

#### **Section 30: Functions and Negotiations of Public Bodies**

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 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 under section 30(1) (c).

Having considered section 30(1) (c) I must also consider section 30(2) which provides that a head may decide to release records if, in his or her opinion, "the public interest would, on balance, be better served by granting than by refusing to grant the request". Having considered where the balance of the public interest lies in these cases, I have decided to withhold such information at this time on the basis that disclose negotiating positions taken in respect of site acquisitions by this Department that could undermine its achievement of Value for Money in future negotiations.

### **Section 31: Legal Professional Privilege**

Section 31(1)(a) provides that records that would be considered exempt from production in proceedings in a court on the ground of legal professional privilege may be withheld.

### **Section 36: Commercially sensitive information**

A head shall refuse to grant an FOI request if the record 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.

Having considered section 36(1) (b) and 36(1) (c) I must also consider section 36(3) which provides that a head may decide to release records if, in his or her opinion, "the public interest would, on balance, be better served by granting than by refusing to grant the request". Having considered where the balance of the public interest lies in these cases, I have decided to withhold such information at this time.

### **Section 37: Personal information**

Section 37(1) Subject to this section, 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).

Having considered section 37(1) I must also consider section 37(5) which provides that a head may decide to release records if, in his or her opinion, " the public interest that the request should be granted outweighs the public interest that the right to privacy of the individual to whom the information relates should be upheld ". Having considered where the balance of the public interest lies in these cases, I have decided to withhold such information at this time on the basis that the information is personal data in relation third parties.

Having regard to the aforementioned I have decided to affirm the decision made by the original decision maker in relation to your request and I have enclosed again for your attention a copy of the relevant sections of the Act which this decision relies on.

You may appeal this decision by writing to the Information Commissioner at 18 Lower Leeson Street, Dublin 2. There is a fee of €50 for such appeals, other than appeals against a decision to impose a fee. If you wish to appeal, you must usually do so not later than 6 months from the date of this notification. Should you write to the Information Commissioner making an appeal, please refer to this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aine Cusack', written over a horizontal line.

Aine Cusack

Assistant Principal Officer

Site Acquisitions & Property Management Section