



6 July 2017



Re: FOI request 2017/271



I refer to the request for access to information under the provisions of the Freedom of Information Act 2014 (the "FOI Act"). In your request you sought the following:

- *All correspondence sent and received between Brother Edmund Garvey, Province Leader of the Christian Brothers in Ireland in relation to ownership of, or sale of Christian Brother playing fields, from 1 January 2017 to date.*
- *All memos or briefings, or emails from the Department of Education staff sent or prepared for the Minister for Education on the on-going issue or negotiation between the Christian Brothers and ownership or transfer of playing fields from 1 January 2017 to date.*
- *A list of the 49 school playing fields (or the names of the schools associated with the fields) that 50% ownership of which was offered to the Dep of Education by the Christian Brothers, following the publication of the Ryan report in 2009 and a further call for contributions to the state redress scheme for institutional abuse, and then subsequently withdrawn.*

You confined your request to correspondence and records created in the period from 1 January 2017 to the date of receipt of your request, i.e. 8 June 2017.

I have today made a decision in relation to your request. The purpose of this letter is to explain that decision. This explanation has the following parts:

- (a) a schedule of all of the records covered by your request;
- (b) concerning records to which access is granted, an explanation and a statement of the arrangements for this access and its form;
- (c) an explanation of the relevant findings concerning the records to which access is denied, and
- (d) a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these 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, where relevant, 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.

Please note that in accordance with your request the scope has been confined to correspondence between the Christian Brothers (the "Congregation") and the Minister for Education and Skills or the Department of Education and Skills in relation to the playing fields owned by the Congregation.

2. Access Arrangements

You indicated in your request that you wished to receive any records being released to you in email format and I consider this an appropriate form of access in this case. Copies of the records being released to you are therefore being sent to you by email.

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

It is my decision to release a number of the records coming under the scope of your request and to part grant or refuse access to all remaining records as I consider that those records are exempt in whole or in part under the provisions of the FOI Act.

Two exemptions provided for in the FOI Act apply in the case of the records that are the subject of your request, they are Sections 29 and 30 of the Act.

Section 42(j) of the FOI Act provides that the Act does not apply to records given by an FOI body to a member of the Government for use by him or her for the purposes of any proceedings in either House of the Oireachtas. Access to three records is refused under this provision.

Under Section 29, a Head may refuse to grant an FOI request if the record concerned contains matters relating to the deliberative processes of an FOI body. Under Section 30 access may be refused if the record relates to the functions and negotiations of an FOI body. The provisions of sections 29 and 30 are subject to public interest tests.

The records to which sections 29 and 30 apply contain matters relating to the Department's deliberative processes insofar as they relate to issues raised by the Congregation in relation to its playing fields. This issue is the subject of ongoing deliberations by this Department.

Public interest tests

I am required to consider the public interest tests set out in sections 29 and 30. I believe that the public interest grounds in support of the release of the relevant extract from the records in question that are relevant in this case include that of requesters exercising their rights under the FOI Act to the maximum possible extent and the desirability of openness, accountability and transparency on the part of public bodies in the exercise of their functions.

I consider that the public interest considerations suggesting that the records should not be released at this point in time are the risk that the State's negotiating position in regard to the possible transfer by the Congregation of its school playing fields could potentially be jeopardised by the release of the relevant records resulting in a less advantageous outcome being achieved including a significant reduction in the value of contributions by religious

congregations towards the costs incurred by the State in responding to residential institutional child abuse.

It is my view that release of the records would, by disclosing parts of the deliberative process and other issues and positions, impact on the State's ability to secure the most advantageous outcome in its engagement with the Congregation.

List of playing fields

In your request you sought a list of the school playing fields owned by the Congregation which it had offered to transfer to a new joint trust involving the State and the Edmund Rice Schools Trust. The Congregation has not provided a specific list of those playing fields and accordingly no such record exists.

4. 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

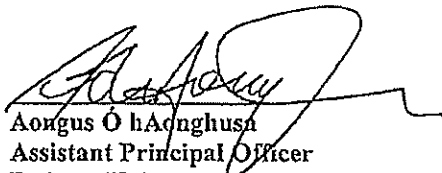
You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding, the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of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

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 01-8892014.

Yours sincerely,


Aongus Ó hAonghusa
Assistant Principal Officer
Redress Unit