

[REDACTED]

Re: FOI request 2017/215

[REDACTED]

I refer to your request made under the Freedom of Information Act 2014, which was received on 23rd May 2017 for records held by Department of Education and Skills.

Your request sought:

"Under the Freedom of Information Act, I wish to obtain the following information from the Department of Education (DOE).

1. The number of complaints from any teacher, parent, guardian or relative in relation to any issue at St Patrick's Comprehensive School, Shannon from January 1, 2017 to May 31, 2017.

By the time this request is acknowledged and examined this date will have been reached.

2. A copy of any complaint made about the school during this period.
3. A copy of any minutes of meetings between any teacher, parent, guardian or relative and the DOE during this period.
4. A copy of any correspondence sent to and from the DOE between any teacher, parent, guardian or relative concerning any complaint during this period.

This FOI request includes complaints sent to and from the inspector's office, the secretary general, the Minister for Education's private secretary and the department's Athlone office."

I, Paul Haynes, Decision Maker have now made a final decision to refuse your request on 12th July.

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

There is a single complaint. 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.

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

A search of records for the period 1st January 2017 to 31st May 2017 inclusive was undertaken and complaints from a single family were found.

In general terms the nature of the complaint related to the detention of a family member and student for an alleged infraction of the school rules, a complaint as to the conduct of a member of school management in handling complaint(s), and an unsubstantiated child protection concern against a named member of staff. This last matter was referred to the Child and Family Agency (Tusla) in accordance with Department protocols. The other complaint issues are ones for the local school authorities to address.

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

The specific sections of the Act relevant to the refusal to release documents are Section 32, Section 35.1 (a) & (b), Section 37.1 and Section 42(m) of FOI Act 2014. Copies of these Sections is enclosed.

Section 32 addresses the issue of law enforcement and public safety. The child protection concern raised in complaints lodged potentially have law enforcement and public safety consequences. The Department does not pass judgement on allegations made, it passes the information to the relevant statutory body, the Child and Family Agency and/or An Garda Síochána for attention. In this case Section 32.1 has application:

32. (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—

(a) prejudice or impair—

(i) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,

(ii) the enforcement of, compliance with or administration of any law,

(iii) lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property,

(iv) the fairness of criminal proceedings in a court or of civil proceedings in a court or other tribunal,

Section 35 addresses the issue of confidentiality. I am of the view that the release of documents would be prejudicial to the expectation of confidentiality held by members of the public in dealing with the Department and as stated in Section 35.1 (a) - "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" and Section 35.1 (b) "disclosure of the information concerned would constitute a breach of a duty of confidence."

Section 37 addresses the issue of personal information - "..... 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). There are a number of parties named in the documents to whom an exemption by reference to Section 37.1 applies.

Section 42 places a restriction on the Act specifically detailing material as not falling within the remit of the Act. Section 42 (m) make the following provision –

"(m) a record relating to information whose disclosure could reasonably be expected to reveal, or lead to the revelation of—

- (i) the identity of a person who has provided information in confidence in relation to the enforcement or administration of the law to an FOI body, or where such information is otherwise in its possession, or
- (ii) any other source of such information provided in confidence to an FOI body, or where such information is otherwise in its possession."

Section 42 has application to the child protection concerns referred to Tusla.

In this case and as previously advised there is the issue of personal information as covered by Section 37 of the Act. The authors of the complaints were consulted in the matter of your information request and indicated no objection to the release of information albeit suitably redacted. Notwithstanding this fact the provisions of Section 35, Section 37 and Section 42 each contra indicate the release of information.

My decision is therefore not to release the information requested by you. Notwithstanding the foregoing I attach for your information a schedule of correspondences entered into by various parties to the complaints received.

It is clearly the case that the complainant family could and still can at their discretion, and subject only to such legal constraints as may exist, issue details of their grievances to any organ of the media or relevant body.

3. Rights of appeal

In the event that you are not happy with this decision you may make an 'application for review' of this decision to the Information Commissioner no later than 2 weeks from the date of this notification. There is a fee of €50 and payment should be made by way of bank draft, money order, postal order or personal cheque: crossed and made payable to the 'Office of the Information Commissioner'. Alternatively you can make payment on-line which can be located at <https://www.oic.gov.ie/en/Apply-for-Review/Fees-Payable/>.

In the event that you need to make such an 'application for review' you can do so by writing to:
The Office of the Information Commissioner,
18 Lower Leeson Street,
Dublin, 2.
DO2 HE97

Should you write to the Information Commissioner making an appeal, please either refer to this letter or enclose a copy.

Alternatively you may appeal using the Office of the Information Commissioner on-line application form which can be located at:

<https://www.oic.gov.ie/en/apply-for-review/apply-for-review-online/>

If an appeal is made by you and accepted, the Information Commissioner will fully investigate and consider the matter and issue a fresh decision.

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 at 090-6484264 and paul_haynes@education.gov.ie.

Yours sincerely,

Paul Haynes
Decision Maker

Law
enforcement
and public
safety

32. (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—
- (a) prejudice or impair—
 - (i) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,
 - (ii) the enforcement of, compliance with or administration of any law,
 - (iii) lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property,
 - (iv) the fairness of criminal proceedings in a court or of civil proceedings in a court or other tribunal,
 - (v) the security of a penal institution,
 - (vi) the security of a children detention school within the meaning of section 3 of the Children Act 2001 ,
 - (vii) the security of a remand centre designated under section 88 of the Children Act 2001 ,
 - (viii) the security of the Central Mental Hospital,
 - (ix) the security of a building or other structure or a vehicle, ship, boat or aircraft, or
 - (x) the security of any system of communications, whether internal or external, of the Garda Síochána, the Defence Forces, the Revenue Commissioners or a penal institution.
 - (b) endanger the life or safety of any person, or
 - (c) facilitate the commission of an offence.
- (2) Where an FOI request relates to a record to which *subsection (1)* applies, or would, if the record existed, apply, and the head concerned is satisfied that the disclosure of the existence or non-existence of the record would have an effect specified in *paragraph (a), (b) or (c)* of that subsection, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.
- (3) *Subsection (1)* does not apply to a record—

(a) if it—

(i) discloses that an investigation for the purpose of the enforcement of any law, or anything done in the course of such an investigation or for the purposes of the prevention or detection of offences or the apprehension or prosecution of offenders, is not authorised by law or contravenes any law, or

(ii) contains information concerning—

(I) the performance of the functions of an FOI body whose functions include functions relating to the enforcement of law or the ensuring of the safety of the public (including the effectiveness and efficiency of such performance), or

(II) the merits or otherwise or the success or otherwise of any programme, scheme or policy of an FOI body for preventing, detecting or investigating contraventions of the law or the effectiveness or efficiency of the implementation of any such programme, scheme or policy by an FOI body.

and

(b) in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request concerned.

(4) For the purposes of *subsection (1)* “penal institution” means any or all of the following:

(a) a place to which the Prisons Acts 1826 to 2007 apply;

(b) a military prison or detention barrack within the meaning, in each case, of the Defence Act 1954 ;

(c) Saint Patrick’s Institution.

Information
obtained in
confidence

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, or
 - (b) disclosure of the information concerned would constitute a breach of a duty of confidence provided for by a provision of an agreement or enactment (other than a provision specified in column (3) in *Part 1* or *2* of *Schedule 3* of an enactment specified in that Schedule) or otherwise by law.
- (2) *Subsection (1)* shall not apply to a record which is prepared by a head or any other person (being a director, or member of the staff of, an FOI body or a service provider) in the course of the performance of his or her functions unless disclosure of the information concerned would constitute a breach of a duty of confidence that is provided for by an agreement or statute or otherwise by law and is owed to a person other than an FOI body or head or a director, or member of the staff of, an FOI body or of such a service provider.
- (3) Subject to *section 38*, *subsection (1)(a)* shall not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the FOI request concerned.
- (4) Where—
- (a) an FOI request relates to a record to which *subsection (1)* applies but to which *subsection (2)* and *(3)* do not apply or would not, if the record existed, apply, and
 - (b) in the opinion of the head concerned, the disclosure of the existence or non-existence of the record would have an effect specified in *subsection (1)*,
- he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.
- (5) Subject to *section 2*, in this section “record” includes information conveyed in confidence in person, by telephone, electronically or in writing (including a written note taken of a phone message by a person authorised to receive such message).

**Personal
information**

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).

(2) *Subsection (1)* does not apply if—

- (a) subject to *subsection (3)*, the information concerned relates to the requester concerned,
- (b) any individual to whom the information relates consents, in writing or such other form as may be determined, to its disclosure to the requester,
- (c) information of the same kind as that contained in the record in respect of individuals generally, or a class of individuals that is, having regard to all the circumstances, of significant size, is available to the general public,
- (d) the information was given to the FOI body concerned by the individual to whom it relates and the individual was informed on behalf of the body, before its being so given, that the information belongs to a class of information that would or might be made available to the general public, or
- (e) disclosure of the information is necessary in order to avoid a serious and imminent danger to the life or health of an individual,

but, in a case falling within *paragraph (a)* or *(b)*, the head concerned shall ensure that, before the FOI request concerned is granted, the identity of the requester or, as the case may be, the consent of the individual is established to the satisfaction of the head.

(3) Where an FOI request relates to—

- (a) a record of a medical or psychiatric nature relating to the requester concerned, or
- (b) a record kept for the purposes of, or obtained in the course of the carrying out of, social work in relation to the requester,

and, in the opinion of the head concerned, disclosure of the information concerned to the requester might be prejudicial to his or her physical or mental health, well-being or emotional condition, the head may decide to refuse to grant the request.

(4) Where, pursuant to *subsection (3)*, a head refuses to grant an FOI request—

- (a) there shall be included in the notice under *section 13 (1)* in relation to the matter a statement to the effect that, if the requester requests the head to do so, the head will offer access to the record concerned, and keep it available for that purpose, in accordance

with *section 13 (3)* to such health professional having expertise in relation to the subject-matter of the record as the requester may specify, and

(b) if the requester so requests the head, he or she shall offer access to the record to such health professional as aforesaid, and keep it available for that purpose, in accordance with *section 13 (3)*.

(5) Where, as respects an FOI request the grant of which would, but for this subsection, fall to be refused under *subsection (1)*, in the opinion of the head concerned, on balance—

(a) 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, or

(b) the grant of the request would benefit the individual aforesaid.

the head may, subject to *section 38*, grant the request.

(6) Where—

(a) an FOI request relates to a record to which *subsection (1)* applies but to which *subsection (2)* and *(5)* do not apply or would not, if the record existed, apply, and

(b) in the opinion of the head concerned the disclosure of the existence or non-existence of the record would have the effect specified in *subsection (1)*,

he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.

(7) Notwithstanding *paragraph (a)* of *subsection (2)*, a head shall, subject to *paragraphs (b) to (e)* of that subsection and *subsections (5)* and *(8)*, refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would, in addition to involving the disclosure of personal information relating to the requester, also involve the disclosure of personal information relating to an individual or individuals other than the requester.

(8) Notwithstanding *subsection (1)*, the Minister may provide by regulations for the grant of an FOI request where—

(a) the individual to whom the record concerned relates belongs to a class specified in the regulations and the requester concerned is the parent or guardian of the individual, or

(b) the individual to whom the record concerned relates is dead and the requester concerned is a member of a class specified in the regulations.

(9) In this section “health professional” means a medical practitioner, within the meaning of the Medical Practitioners Act 2007, a registered dentist, within the meaning of the Dentists Act 1985, or a member of any other class of health worker or social worker standing prescribed, after

consultation with such (if any) other Ministers of the Government as the Minister considers appropriate.

Restriction of Act

42. This Act does not apply to—

- (m) a record relating to information whose disclosure could reasonably be expected to reveal, or lead to the revelation of—
 - (i) the identity of a person who has provided information in confidence in relation to the enforcement or administration of the law to an FOI body, or where such information is otherwise in its possession, or
 - (ii) any other source of such information provided in confidence to an FOI body, or where such information is otherwise in its possession.