

**Lennon, Claire**

**From:**  
**Sent:**  
**To:**  
**Subject:**

[REDACTED]  
15 January 2018 10:09  
Freedom of Information  
FOIREQUEST-CRRTE-Clifden school

**Freedom of Information Unit  
Department of Education and Skills**

15 JAN 2018

FOI Case # .....2018/21.....

Freedom of Information Officer,

[REDACTED] I would like to make a request of the Department of Education for the release of information under the Freedom of Information Act 2014.

My request relates to a public procurement procedure completed by your organisation. Specifically, my request relates to a tender awarded to JJ Rhatigan for the redevelopment of Scoil Phobail Community School, Clifden, Galway.

I seek:

- A copy of the successful bid documents related to the above referenced tender and the supplementary tenders submitted in 2016.
- A copy of the unsuccessful bids – In the case of unsuccessful bids I am happy to have the identity of the bidders redacted.
- A copy of the bid evaluation report or memo.
- A copy of the Construction waste management plan for the project.
- A copy of the contract with the successful bidder.
- Details of all change requests, approvals and payments made as part of the tender.
- Any correspondence in relation to the management and implementation of the Construction waste management plan.
- The details of all sums paid to the successful bidder as part of the tender or subsequent related work.

As part of this request I would like to draw the decision maker's attention to a number of previous issues dealt with under the Freedom of Information Act relating to public procurement and tendering.

I note the Department of Public Expenditure's Central Policy Unit Guidance Document number 5, which deals with related matters.

*"In general, the Information Commissioner takes the view that when a contract is awarded, successful tender information loses confidentiality with respect to price and the type and quantity of the goods supplied. He has also taken the view that the public interest favours the release of such information, but points out that exceptions may arise."*

I would also draw attention to the following Information Commissioner cases:

- Mr A and Beaumont Hospital, case number 150420.
- Ms N and the Department of Justice (no case number published).
- ABC Ltd and Roscommon County Council, August 12 2010.

All three cases discussed the different levels of confidentiality afforded to unsuccessful and successful bidders in a tender process and in particular I would like to point to the comment made by the Office of the

Information Commissioner in ABC Ltd and Roscommon County Council, which is echoed in previous and subsequent decisions.

*"I take the view that the public interest in openness and transparency in the matter of public money is a very significant public interest favouring release in this case. There is no evidence, since the release of successful tender information under FOI, that it has damaged the competitive nature of tendering nor that it has acted as a deterrent to companies tendering."*

Similarly in this case the OIC ruled that information relating to a commercial transaction entered into by the IDA should be released. In forming its view the OIC said that people entering into commercial arrangements with the State should be aware of disclosure rules and that transparency was vital in such transactions. It said: *"In my view, the expectation of a diminution of privacy rights, at least in relation to the disclosure of details of commercial transactions with public bodies, is a necessary consequence of entering into such arrangements."*

I would also draw attention to a decision of the OIC in [redacted] vs Cork City Council in which it said that State bodies relying on commercial sensitivity as a grounds of refusal must satisfy certain criteria. In particular the OIC said: *"This Office expects that a body seeking to rely on this exemption would be able to show that contractual or other negotiations were in train or were reasonably foreseen which might be affected by the disclosure. It should be able to explain how exactly the disclosure could prejudice the conduct or the outcome of such negotiations."* With that in mind I would ask for any decision relying on this exemption to set out, in order to inform future appeals officers, how the release could prejudice negotiations.

Under Section 17 (2) of the Act I am requesting that the information I am requesting that the information is released in the original electronic file format.

I am happy to modify the request to reduce any unnecessary workload or duplication.

Kind regards,  
[redacted]

[redacted]  
[redacted]  
[redacted]