



[REDACTED]

10 April 2018

Re: FOI request, original decision affirmed 2018/38

[REDACTED]

I refer to the appeal which you made under the Freedom of Information Acts 2014 and to the acknowledgement letter dated 15th March 2018.

I am a more senior member of staff in the Department of Education and Skills, than the original decision maker in this case. I have decided today, 10th April, 2018, to affirm the original decision made in relation to your request. This review of your request is an entirely new and separate decision, and is explained as such below.

Your original request sought access to the Department's current risk register, 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 summaries my findings and refers you to the latter part of this letter for a further explanation.

In considering your appeal request I examined the provisions of Section 29(1) (deliberations of public bodies) and Section 30 (functions and negotiations of public bodies) and affirm the position stated in the original decision not to grant access to the records requested.

Section 29(1) (deliberations of public bodies)

Section 29(1) exempts information relating to the deliberative processes of public bodies, (including opinions, advice, recommendations and the results of consultations considered by the body).

Records relating to a deliberative process fall into two distinct phases – deliberative/pre-decision stage and post-decision stage.

Records relating to the deliberative process may continue to be protected after a decision has been made provided the decision maker is satisfied that the balance of the public interest does not favour granting the request.

In relation to Section 29, I considered whether the public interest would be better served by releasing the records in question. The factors I have considered include the right of the public to access information; the need for an open, transparent and accountable civil



service; and the need for the decision making process to be scrutinised. However, I am satisfied that the public interest would not be best served by the release of these records.

The decision is grounded in the fact that risk management is an increasingly important management tool which is part of the deliberative process and informs, on an ongoing basis, senior management decision making. The public interest is best served by a well-managed effective and efficient Department of Education and Skills underpinned by a robust risk management system. This, by definition, includes a requirement for detailed risk registers, which if released, could be detrimental to the decision making, strategic management and operational capacity of the Department and its ability to deliver services to the public.

Section 30 (functions and negotiation of public bodies)

Under section 30 records may be protected where disclosure could harm certain operations of a public body i.e. information which could:-

- prejudice the effectiveness of tests, audits, inquiries, examinations or investigations conducted by or on behalf of an FOI body or the procedure or methods used to conduct such
- have a significant adverse effect on the performance of an FOI body of any of its functions relating to management, including industrial relations and management of its staff
- disclose negotiating positions (including plans, procedures, criteria or instructions) of Government or any FOI body.

In relation to Section 30, my decision is informed by the assessment that the Department's risk register should be considered "examinations" conducted by the Department under Section 30 (a) of the Act and their release would prejudice their effectiveness. The Department of Education and Skills is responsible for the effective oversight, management and governance of the wider Education and Training sector. The release of its detailed risk register could significantly undermine the Department's ability to effectively negotiate with our Education partners and agencies and I consider that these factors outweigh the public interest of release of these records.

Rights of Appeal

You may make an 'application for review' of this decision to the Information Commissioner no later than 6 months from the date of this notification. There is a fee of €50. 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/>.

Should you wish to make such an 'application for review' in writing, please use the details below:

Office of the Information Commissioner,



18 Lower Leeson Street,
Dublin, 2.
DO2 HE97

Additional Information

The Department of Education and Skills has recently finalised its Risk Management and Appetite Statement and given your interest in this matter, I am enclosing a copy of that policy for your information.

Should you have any questions or concerns regarding the above please feel free to contact me at 01 889 6462 or by email: john_rafferty@education.gov.ie.

Yours sincerely

John Rafferty
Corporate Governance