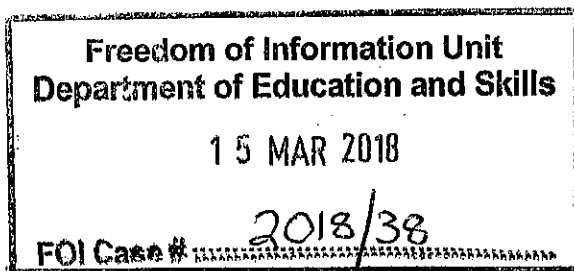


Freedom of Information Unit  
Department of Education  
Marlborough Street  
Dublin 1



14/03/2018

**Re: FOI request 2018/38**

Dear Sir/Madam,

I wish to **appeal** a decision by the Department of Education to refuse access to records under the Freedom of Information Act.

My application sought a copy of the Department's current risk register, which is routinely released by other State agencies such as the HSE.

A schedule of records and the register itself were refused under Section 29 (deliberations of public bodies) and Section 30 (functions and negotiations of public bodies).

I submit the records should be released under **Section 29** on the basis that a case has not been made supported and substantiated by any meaningful facts to show how the release of records would be contrary to the public interest.

This is a strong public interest test – stronger than in other parts of the Act, as acknowledged by the Information Commissioner.

Further, I submit that the deliberative processes do not apply in that the risk register is a monitoring / supervisory process. The Information Commissioner has found that this does not constitute a deliberative process (Case 98078).

In relation to **Section 30 (1)**, this section applies where the granting of access to a record can reasonably be expected to cause harm.

I submit that a mere a general prediction without any supporting evidence is not sufficient to satisfy the requirement that access to the record could reasonably be expected to result in the

outcome envisaged. In the Supreme Court case of *Sheedy v the Information Commissioner* ([2005] 2 I.L.R.M. 374, [2005] 2 IR 272, [2005] IESC 35) Mr J Kearns stated "[A] mere assertion of an expectation of [prejudice] could never constitute sufficient evidence in this regard".

Further, I submit that negative consequences cannot be reasonably be expected given that they have not occurred in the case of other State bodies, such as the HSE, who have released this material under request. This requester, for example, first obtained details of the HSE's risk register under appeal in 2013 (C069/13), and it has been released on a routine basis since.

In addition, I submit that Sub-section 30(1) does not apply under the terms of "public interest override", exemption provided at sub-section (2). Even if the Department feels sub-section (1) has been met, the exemption may still apply.

As stated, other State bodies, such as the HSE, have accepted this strong public interest argument.

Please find a €30 cheque as requested for the processing of this appeal.

Should you request any clarification over the above, please contact me.

Yours sincerely,

A large, irregular black redaction mark covering the signature area of the letter.

Enc.