



29<sup>th</sup> July 2016

Ms Lois Kapila  
[info@dublininquirer.com](mailto:info@dublininquirer.com)

**Re: FOI request – File no. 002/16**

Dear Ms Kapila,

I refer to your request dated 2<sup>nd</sup> July 2016 made under the Freedom of Information Act 2014, which was received on 2<sup>nd</sup> July 2016 for records held by NSAI. Your request sought:

1. A copy of the inspection report put together by the National Standards Authority of Ireland following a 2009 inspection of the Whitehall College of Further Education.
2. Any correspondence between the National Standards Authority of Ireland and other parties about the report including but not limited to correspondence with the Office of Public Works, Western Building Systems, and the Department of Education.

I, Anne Clarke, FOI Officer have now made a final decision to refuse your request on 29<sup>th</sup> July 2016.

The purpose of this letter is to explain that decision. This explanation has the following parts:

1. an explanation of the relevant findings concerning the records to which access is denied;
2. a schedule of all the records covered by your request, 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. Findings, particulars and reasons for decisions to deny access**

The decision to deny access to records has been made under the following sections of the FOI Act 2014:

#### **1.1 Section 32 of the FOI Act 2014, Law Enforcement and Public Safety;**

32. (1) The 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) (i) prejudice or impair – the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of

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lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,

and

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

and

32. (2) A head may refuse to grant an FOI request if the record concerned relate to the appointment or proposed appointment, or the business or proceedings of –

(a) a tribunal to which the Tribunals of Inquiry (Evidence) Act 1921 applies;

Under the provisions of Section 32 (1) (a) (i) and (iv) of the Freedom of Information Act 2014, I consider that the records concerned are subject to court proceedings and to disclose these records could reasonably be expected to prejudice or impair key functions and activities in relation to law enforcement and could prejudice or impair the fairness of criminal proceedings in a court or of civil proceedings in a court or other tribunal;

### 1.2 Section 30 of the FOI Act 2014, Functions and Negotiations of FOI Body;

30. (1) The 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 the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of an FOI body or the procedures or methods employed for the conduct thereof,

Under the provisions of Section 30 (1) (a) of the Freedom of Information Act 2014, I consider that the release of the records concerned may prove prejudicial to the functions and negotiations of an FOI body;

### 1.3 Section 31 of the FOI Act 2014, Parliamentary, Court and Certain Other Matters;

31. (1) The head shall refuse to grant an FOI request if the record concerned –

(b) is such that the head knows or ought to have known that its disclosure would constitute contempt of court,

Under the provisions of Section 31 (1) (b) of the Freedom of Information Act 2014, I consider that the disclosure of the records concerned might constitute contempt of court;

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#### **1.4 Section 35 of the FOI Act 2014, Information Obtained in Confidence;**

35 (1) The head shall refuse to grant an FOI request if –

(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,

Under the provisions of Section 35 (1) (b) of the Freedom of Information Act 2014, I consider that the disclosure of the records concerned would constitute a breach of a duty of confidence;

#### **1.5 Section 36 of the FOI Act 2014; Commercially Sensitive Information;**

36 (1) a head shall refuse to grant an FOI request if the record concerned contains –

(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation,

Under the provisions of Section 36 (1) (b) of the Freedom of Information Act 2014, I consider that the disclosure of the records concerned could prejudice the competitive position of the person concerned;

#### **1.6 Section 37 of the FOI Act 2014, Personal Information**

37 (1) 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),

Under the provisions of Section 37 (1) I consider that disclosure of the records concerned would release personal information about the individual(s) concerned.

## **2. Schedule of records**

A decision has been made not to include a schedule of records under the following provisions:

### **2.1 Section 32 (2) – Neither Confirm nor Deny**

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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.

## **2.2 Section 35 (4) (b) Refusal to Confirm or Deny Provision**

Where 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 whether or not the record exists.

## **2.3 Section 36 (4) (b) Refusal to Confirm or Deny Provision**

Where (a) an FOI request relates to a record to which subsection (1) applies but to which subsections (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.

## **2.4 Section 37 (6) Refusal to Confirm or Deny Provision**

Where (a) an FOI request relates to a record to which subsection (1) applies but to which subsections (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 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.

## **3. Rights of appeal**

If you are unhappy with this decision you may appeal it. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, NSAI, 1 Swift Square, Northwood, Santry, Dublin 9 or by email to [Patrick.bracken@nsai.ie](mailto:Patrick.bracken@nsai.ie) You should make your appeal within 4 weeks from the date of this notification where a day is defined as a working day

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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 NSAI.

Should you wish to discuss the above, please contact me at [anne.clarke@nsai.ie](mailto:anne.clarke@nsai.ie)

Yours sincerely,

Anne Clarke  
FOI Officer

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