



**OPW**

*The Office of Public Works*  
*Oifig na nOibreacha Poiblí*



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Our Ref. FOI 1/1/1115

Ms. Lois Kapila  
76-77 Old Kilmainham  
Dublin 8

[info@dublininquirer.com](mailto:info@dublininquirer.com)

## Freedom of Information

### Request for Information on:

*I would like to request the following records under the Freedom of Information Act 2014. I would like the records by email. If this is not possible, I would like the records by post.*

- 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 that was later provided to the Office of Public Works.*
- 2. Any correspondence between the Office of Public Works and other parties about the report including but not limited to correspondence with the National Standards Authority of Ireland and Western Building Systems.*

Dear Ms.Kapila

I refer to the request received on 3<sup>rd</sup> July 2016 that you have made under the Freedom of Information Act 2014 for records held by this Office.

### Decision

I have been nominated as primary decision-maker under the FOI Act in respect of this case.

I have decided to withhold access from all the records sought. Refusal of access to the records you sought is made under Sections

- 31.1.b because such material would comprise records likely to interfere with the conduct or outcome of an ongoing court case
- 31.2.a because such material would comprise records likely to interfere with the conduct or outcome of an ongoing court case
- 32.1.a.i because disclosure of such material is likely to damage the handling of a particular matter such as the investigation or detection of an

offence, or damage to the processes used for prevention, detection or investigation of offences, or to both.

- 32.1.a.iv because we need to serve the interests of the community, as well as the interests of any accused person
- 36.1.b because any disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, **or** whose disclosure 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 and all parties should be protected until any legal processes have been exhausted

A copy of Sections 31, 32 & 36 of the Act is enclosed for your information.

### **Rights of Appeal**

You may appeal the above decision by writing to

Ms Edel McArdle  
Freedom of Information Unit  
Office of Public Works  
Hebron Road  
Kilkenny

seeking a review of the matter. Please refer to this decision in your letter. A fee of **€30** must accompany your request. A reduced fee of **€10** applies if the person bringing the application is a medical card holder or a dependant of a medical card holder. Should you wish to make payment by electronic means please contact [foiunit@opw.ie](mailto:foiunit@opw.ie). Payment may also be made by way of bank draft, money postal order, or personal cheque made payable to "The Office of Public Works".

You must make your appeal within 4 weeks of the date of this notification. 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 this body and the decision will be communicated to you within 3 weeks.

Yours sincerely



Garret Nolan  
Decision Maker  
Project Management

Sections of the FOI Act 2014 referred to in Decision Letter

Parliamentary, court and certain other matters

**31. (1) A head shall refuse to grant an FOI request if the record concerned—**

- (a) would be exempt from production in proceedings in a court on the ground of legal professional privilege,
- (b) is such that the head knows or ought reasonably to have known that its disclosure would constitute contempt of court, or**
- (c) consists of—
  - (i) the private papers of a member of the European Parliament or a member of a local authority, or
  - (ii) opinions, advice, recommendations, or the results of consultations, considered by—
    - (I) either House of the Oireachtas or the Chairman or Deputy Chairman or any other member of either such House or a member of the staff of the Houses of the Oireachtas Service for the purposes of the proceedings at a sitting of either such House, or
    - (II) a committee appointed by either such House or jointly by both such Houses and consisting of members of either or both of such Houses or a member of such a committee or a member of the staff of the Houses of the Oireachtas Service for the purposes of the proceedings at a meeting of such a committee.

**(2) A head may refuse to grant an FOI request if the record concerned relates 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,**
- (b) any other tribunal or other body or individual appointed by the Government or a Minister of the Government to inquire into specified matters at least one member, or the sole member, of which holds or has held judicial office or is a barrister or a solicitor, or
- (c) any tribunal or other body or individual appointed by either or both of the Houses of the Oireachtas to inquire into specified matters,

**and the request is made at a time when it is proposed to appoint the tribunal, body or individual or at a time when the performance of the functions of the tribunal, body or individual has not been completed.**

(3) *Subsection (2)* does not apply to a record in so far as it relates to the general administration of, or of any offices of, a tribunal or other body or an individual specified

(4) Where an FOI request relates to a record to which *subsection (1)(a)* 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 be contrary to the public interest, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists in that subsection.

#### 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

(c) 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](#) ;

(d) Saint Patrick’s Institution.

#### Commercially Sensitive Information

36. (1) Subject to *subsection (2)*, a head shall refuse to grant an FOI request if the record concerned contains-

(a) trade secrets of a person other than the requester concerned,

(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, or

- (c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

(2) A head shall grant an FOI request to which *subsection (1)* relates if-

- (a) the person to whom the record concerned relates consents, in writing or in such other form as may be determined, to access to the record being granted to the requester concerned,
- (b) information of the same kind as that contained in the record in respect of persons generally or a class of persons that is, having regard to all the circumstances, of significant size, is available to the general public,
- (c) the record relates only to the requester,
- (d) information contained in the record was given to the FOI body concerned by the person to whom it relates and the person 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 concerned is necessary in order to avoid a serious and imminent danger to the life or health of an individual or to the environment,

but, in a case falling within paragraph (a) or (c), the head shall ensure that, before granting the request, the identity of the requester or, as the case may be, the consent of the person is established to the satisfaction of the head.

(3) Subject to *section 38, subsection (1)* does 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 *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.