



**Review Application to the Information Commissioner under the  
Freedom of Information Act 2014 (the FOI Act)**

**Case Number:** OIC-116830-T4D8J5

**Applicant:** Mr. John Hamill, [REDACTED]  
[REDACTED]

**Public Body:** Mayo, Sligo and Leitrim Education and Training Board (MSLETB)

**Issue:** Whether MSLETB was justified in charging search and retrieval fees of €500 in relation to a request for certain records

**Review:** Conducted in accordance with section 22(2) of the FOI Act by Stephen Rafferty, Senior Investigator, who is authorised by the Information Commissioner to conduct this review

**Decision:** The Senior Investigator annulled the decision of MSLETB to charge search and retrieval fees in respect of the records sought and directed it to process the application afresh.

**Right of Appeal:** Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.

## **Background**

In a request dated 12 October 2021, the applicant sought from MSLETB copies of all email invitations received during 2016 for teachers to attend Religious Education in-service days. He said he was seeking invitations received by MSLETB itself, as well as by any schools under its purview.

On 26 October 2021, MSLETB refused the applicant's request under section 27(12) of the FOI Act on the ground that the estimated search and retrieval fees exceeded the ceiling limit of €700. It also asked the applicant to contact its FOI Unit if he wished to explore possible amendments to the request that might reduce or eliminate the charging of fees. The decision letter went on to say that depending on the scope of any revised request, it would advise what, if any, fees would apply at that stage. It then said that, in the meantime, it was obliged to seek a deposit within 10 days of receipt of the original request and requested a deposit of €100 if he wished to proceed with a revised request.

In response, the applicant suggested narrowing the scope to the email accounts of the principal, the main office address, and the religion teachers of five named schools. In response, MSLETB said its FOI unit estimated that the refined request would still require a search of a large number of records as he had not specified how the searches were to be undertaken. It asked him to suggest what search criteria he expected it should use and it asked for further clarifications in respect of the specific email accounts to be searched. In response, the applicant suggested three specific search terms. Following a further email exchange, the precise wording of a refined request was agreed between the parties on 3 November 2021.

On 11 November 2021, MSLETB notified the applicant that it estimated that search and retrieval of the refined FOI request would still take a minimum of 26 hours resulting in an overall fee of €520. It said that the maximum amount chargeable was €500 and it sought a deposit of €156 to allow for the processing of the request to proceed. On the same day, the applicant sought an internal review of the decision to charge SRC fees. He said he had submitted the same FOI request to a number of other ETBs around the country and that none of them had charged fees. On 2 December 2021, MSLETB affirmed its decision to charge SRC fees. The applicant applied to this Office for a review of MSLETB's decision on 3 December 2021.

I have now completed my review in accordance with section 22(2) of the FOI Act. In carrying out my review, I have had regard to the submissions made by the applicant and by MSLETB and to the correspondence between the parties as outlined above. I have decided to conclude this review by way of a formal, binding decision.

## **Scope of Review**

The scope of this review is concerned solely with whether MSLETB was justified, under section 27 of the FOI Act, in deciding to charge a fee of €500 for the search for and retrieval of the records sought by the applicant.

## **Analysis and Findings**

I should say at the outset that the relevant provisions in the FOI Act relating to the charging of SRC fees are quite complex. They are also subject to strict requirements and time-frames which can prove challenging for FOI bodies to meet, given the complexity of the issues to be considered. However, I would also point out that guidance is available on the applicability of the provision, both on our website [www.oic.ie](http://www.oic.ie) and on the website of the Central Policy Unit (CPU) of the Department of Public Expenditure and Reform, [www.foi.gov.ie](http://www.foi.gov.ie). Indeed, the guidance published by the CPU describes the step-by-step process that must be followed when an FOI body is considering the refusal of a request under section 27(12). I fully expect MSLETB to be aware of that guidance and to have regard to it when processing such requests.

### **Section 27**

Section 27(1) provides for the mandatory charging by FOI bodies for the estimated cost of the search for and retrieval and copying (SRC) of records in respect of the grant of an FOI request. Under section 27(5), where the estimated cost of the SRC is likely to exceed the prescribed minimum level, currently €101, the FOI body must charge a deposit of at least 20% of that cost. It must, not later than two weeks after the receipt of the request, issue a notice in writing to the requester requiring payment of the deposit.

Section 27(12) allows an FOI body to refuse to process a request where the cost of the SRC exceeds, or is likely to exceed, a prescribed amount, currently €700. This is referred to as the overall ceiling limit. However, before the body can refuse to process a request on those grounds, it must first assist the requester, if he or she so wishes, in amending or limiting the request to bring the charge below the overall ceiling limit.

Where the requester does not amend or limit the request such that the charge arising or likely to arise is reduced to an amount less than or equal to the overall ceiling limit, the body may refuse to process the request. However, it may also still decide to process the request, in which case the requester will be required to pay the full charge. The prescribed maximum amount of €500 for SRC charges does not apply in such circumstances. However, the body must also comply with the provisions of section 27(5), i.e. it must also issue a notice, not later than two weeks after the receipt of the request, requiring the payment of a deposit in the event that the requester amends the request or the body decides to process the request regardless of any amendment.

The Act is silent on the time-frame within which an FOI body must notify a requester that it is considering refusal under section 27(12). However, if the body is to be in a position to comply with the remaining provisions of section 27, including the provisions relating to the charging of a deposit set out in section 27(5) either in circumstances where the requester is willing to amend the request or where the public body decides to process the request regardless of the fact that the search and retrieval costs exceed €700, then it must issue the notification under section 27(12) within two weeks of receipt of the original request. Failure to do so would mean that the body cannot comply with the provisions of section 27(5).

### The original decision

In this case, MSLETB refused the applicant's initial request on 26 October 2021 under section 27(12) of the Act on the ground that the estimated search and retrieval fees exceeded the ceiling limit of €700. As I have explained above, before an FOI body can refuse a request on those grounds, it must first assist the requester, if he or she so wishes, in amending or limiting the request to bring the charge below the overall ceiling limit. While MSLETB's letter of 2 October 2021 contained an offer to assist the applicant, it purported to be a decision to refuse the request.

I strongly considered annulling MSLETB's decision to charge SRC fees in this case, based alone on this misapplication of the section. However, having regard to the fact that it also offered the applicant an opportunity to refine the request in that same letter and to the fact that the applicant agreed to do so, I have decided that it is appropriate to go on to consider the substantive issue of whether the fee eventually charged was justified.

### The Nature of the engagements between the parties

Before I consider the substantive issue, I would also like to comment upon the manner in which MSLETB engaged with the applicant when seeking a refinement of his request.

In its letter of 26 October 2021, MSLETB said it estimated that it would take well in excess of 36 hours to complete the search and retrieval on the initially worded request, presumably based on the fact that its "FOI Unit would be required to search all teacher's email accounts across all 17 second level schools under the purview of MSLETB and also various email accounts across MSLETB itself". It gave no indication at that stage of the potential volume of emails that might have to be examined.

Upon receipt of that letter, it appears that the applicant reasonably assumed that the processing time that would be required was due to the number of email accounts that may have to be searched. Accordingly, he narrowed the scope of the request to the email accounts of the principal, the main office address, and the religion teachers of five named schools.

Following receipt of that clarification, MSLETB said it estimated that the refined request would still require a large volume of emails to be searched. It did not explain how it came to that conclusion. Instead, it essentially sought to place the onus on the applicant of explaining to it how it should conduct the searches of the relevant email accounts, by asking him to identify precise search terms.

The FOI Act is silent on the level or nature of assistance that FOI bodies are required to provide in compliance with section 27(12). The level or nature of the assistance to be provided can vary significantly from case to case and will depend on the particular facts and circumstances of the case. Often, the requester may be in a position to refine the request to a narrower category of records sought. On other occasions, the FOI body may be in a position to assist by describing the nature and types of records it holds and how it stores such records. However, it is entirely unreasonable, in my view, for an FOI body to expect a requester to provide such detailed information as that sought by MSLETB in this case. It seems to me that the FOI body that holds the records and has a far greater understanding of

how it stores its records would be in a much stronger position to decide how searches of its email systems and accounts should be undertaken to locate records. While a certain amount of clarification with the requester on the nature of the searches to be conducted is reasonable and indeed sensible, I find that the level of specificity requested from the applicant in this particular case was not appropriate.

#### The SRC estimate

As I have explained above, the applicant subsequently agreed that the searches could be limited to the email accounts of principals, the school office and teachers rostered to teach religion in 2016, in five named schools, using five specific search terms: “@achonrydiocese.org”, “@pdst.ie”, “R.E. in”, “religion in” and “RE in”.

Based on its acceptance of that refined request, MSLETB estimated that processing the request would still take a minimum of 26 hours. The applicant’s position is that this estimate is totally excessive. In his submissions to this Office, he sent in decision letters from other ETBs around the country in response to equivalent FOI requests he had made to them. He pointed out that none of the other ETBs had charged fees and that many of them had carried out searches that were broader than what was agreed with MSLETB. He pointed to the small number of records found in these searches; some of them found no relevant records.

While I understand the applicant’s concerns, the charging of search and retrieval fees in respect of the grant of requests is mandatory, provided the requirements of section 27 are met. As such, the fact that the other ETBs may not have charged search and retrieval fees can play no part in my consideration of whether MSLETB was justified in charging a fee in this case. MSLETB also made the point in its communications with this Office, which I think is fair, that just because only a small number of records was identified and released, this is not an indicator of how much time was taken by the ETB in question to carry out the necessary searches to ultimately reach that conclusion.

In its submissions, MSLETB provided details of the steps required to search for and retrieve the records sought in this case, and the time estimated for each step, using the headings set out in section 27(2):

1. Determining whether MSLETB holds the information requested - 2 hours in total:
  - Contacting each school to find out how many teachers were rostered to teach religion in 2016 so an estimate can be calculated: 5 mins x 5 schools = 25 mins
  - Time taken by each school to find out how many teachers were rostered to teach religion in 2016: 15 mins x 5 schools = 75 mins
  - Contacting each school to find out if they can carry out relevant searches of email inboxes of principals, main school office, and teachers rostered to teach religion in 2016: 5 mins x 5 schools = 25 mins
2. Locating the information or documents containing the information / time taken to find the documents falling within the scope of the request – 21 hours in total:
  - Total number of email inboxes to be searched: 21 (5 main offices, 5 principals, 11 teachers)

- Estimate of 1 hour to search each relevant email account for 2016. Given that there are 5 keywords to be searched and the fact that some keywords may reveal a large number of records (for example, “religion”), on average it could potentially take 12 mins to search records revealed by each keyword.
3. Extracting the information from the files, documents, electronic or other information sources– 1.5 hours in total
    - Schools extracting files from all email accounts and compiling into single document or zipped file and sending to MSLETB FOI Unit – 45 mins
    - FOI Unit extracting information from all 5 schools, printing scanning and preparing for release: 45 minutes
  4. Preparing a schedule specifying the records for release: 1.5 hours

The Investigating Officer followed up further with MSLETB about the SRC calculations, outlining her initial view that the estimates seemed quite high. MSLETB emphasised that the schools were under-resourced and that the searches would have to be carried out on top of all the other teaching and administrative responsibilities of the teachers and other staff in the school. It said that there is also a varying level of experience and comfort with ICT among the schools and the staff which could impact on how long the searches could take. It said that it had raised the FOI request with some of the teachers and school secretaries and it had been discussed at a meeting of principals.

The Investigating Officer pointed out that one of the search terms was, for example, “religion in” rather than “religion”, which she thought should have the effect of reducing the likely number of search results considerably. This was accepted by MSLETB but it said that it still believed such a search could return a high volume of results which would then have to be gone through one by one to see if they were actually relevant to the applicant’s request. MSLETB acknowledged that it was possible that the searches might return a very small number or even zero relevant records, and if it turned out to be much quicker to conduct the searches than it had estimated, then of course the applicant would only be charged for the time actually taken (and potentially have his deposit refunded if it didn’t exceed 5 hours). However, until it actually carried out the searches it said that it didn’t know how long it would take but it believed that its estimate was reasonable.

The bulk of MSLETB’s estimate of 26 hours for SRC is comprised of the 21 hours estimated to be required for carrying out the searches of 21 email inboxes using the five agreed search terms. This is based on an estimate of 12 minutes per search term/one hour per email inbox. It is difficult to say whether this estimate is or is not reasonable when no objective basis has been provided for it.

I fully accept that what is required of the FOI body in such cases is that it must estimate the SRC fee, without actually carrying out the steps required to locate the record sought. Accordingly, most disputes about fees will turn on the question of the FOI body’s estimate of the time to be spent on a search, retrieval and copying exercise that has yet to take place. The view of this Office is that the Oireachtas intended to confer some latitude on FOI bodies in their estimation of the time to be spent on a search and retrieval of records, but that this latitude was to have its limits. In all cases, we expect the FOI body to be able to explain how

its estimate of the costs of search and retrieval was arrived at. If the FOI body concerned gives reasons for its estimate which indicate that there was a reasonable basis for the calculation of the fee or deposit decided upon by it, we are not inclined to interfere with that decision.

Having considered MSLETB's explanation of the basis on which it calculated the SRC estimate in this case, I am not satisfied that its estimate is reasonable, for a number of reasons. Firstly, and most importantly, as MSLETB itself concedes, it has no information whatsoever of the potential volume of emails that may have to be examined in this case. In my view, it would not have been unreasonable for MSLETB to arrange for a sample search to be carried out of one or more sample email accounts that may have allowed for more accurate conclusions to be drawn of the potential volume of emails that might be returned. The time spent doing so would be minimal and would have given a more informed indication of the volume of records that might have to be examined.

Secondly, one of the reasons offered by MSLETB for the estimate of time that would be required was the fact that the schools were under-resourced and that the searches would have to be carried out on top of all the other teaching and administrative responsibilities of the teachers and other staff in the school. This does not provide a basis for calculating time spent on searching for and retrieving records.

Thirdly, MSLETB said that there is also a varying level of experience and comfort with ICT among the schools and the staff which could impact on how long the searches could take. It is important to note that under section 27(3), the cost of SRC must be calculated at the rate of such amount per hour as stands prescribed in respect of the time that was spent, or ought to have been spent, by each person concerned in carrying out the search and retrieval **efficiently**. The fact that some of the individuals involved in the search and retrieval process may not be as experienced or comfortable with ICT does not provide a valid basis for justifying the expenditure of more time and resources than would be taken were the search and retrieval conducted efficiently.

Having carefully considered the matter, I am not satisfied that MSLETB has justified its decision to charge SRC fees of €500 in this case. However, I am not in a position to simply provide an alternative estimate. Neither do I consider it appropriate to simply direct MSLETB to process the request without charging SRC fees in circumstances where I have no knowledge of the potential amount of records that might have to be searched to locate the records sought. In the circumstances, I consider that the most appropriate course of action to take is to annul the decision and direct MSLETB to process the request afresh. When doing so I would strongly urge it to take steps to ensure that any SRC estimate is based on a more informed estimate of the volume of records that will have to be searched to identify what relevant records, if any, it holds. I would also suggest that it consults with one or more of the various schools in order to identify the most appropriate search terms for locating the records sought. If those search terms are different to those identified by the applicant, MSLETB should seek the agreement of the applicant to proceed on that basis in light of the fact that it essentially compelled him to identify relevant terms in the first instance.

## **Decision**

Having carried out a review under section 22(2) of the FOI Act, I hereby annul the decision of MSLETB to charge SRC fees in respect of the applicant's request and direct it to process the FOI request afresh.

## **Right of Appeal**

Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.



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Stephen Rafferty  
Senior Investigator  
11 May 2022