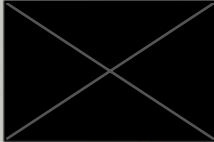




Oifig an Choimisinéara Faisnéise  
Office of the Information Commissioner

Our Reference: 180072

Mr John Hamill



21 August 2018

Dear Mr Hamill,

I refer to your application for a review of the decision of the Professional Development Service for Teachers (the PDST) to refuse your request for information under the Freedom of Information Act 2014 (the FOI Act) on the ground that it is not a public body for the purposes of the Act.

For the reasons I have set out below, I am satisfied that the PDST is not a public body for the purposes of the Act and that it was justified in refusing to process your FOI request.

Section 6(1) of the FOI Act contains details of the bodies that are considered to be public bodies for the purposes of the Act. It provides as follows:

6(1) Subject to this section, each of the following shall be a public body for the purposes of this Act:

- (a) a Department of State;
- (b) an entity established by or under any enactment (other than the Companies Acts);
- (c) any other entity established (other than under the Companies Acts) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Companies Acts) by a Minister of the Government under any scheme;
- (d) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government;
- (e) a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (d) relates;
- (f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates;



- (g) a higher education institution in receipt of public funding;
- (h) notwithstanding the repeal of the Act of 1997 by section 5, and subject to this Act, any entity that was a public body (including bodies or elements of bodies prescribed as such) within the meaning of the Act of 1997 on the enactment of this Act.

For the PDST to be a public body for the purposes of the Act, it must come within one or more of the categories as set out in paragraphs (a) to (h) as described above. PDST argues that none of the relevant paragraphs apply. According to PDST, it is a service provider under the aegis of the Teacher Education Section (TES) of the Department of Education and Skills (the Department). It stated that in 2010, TES re-conceptualised the provision of school support and teacher continuing professional development services to provide for a new generic cross-sectoral support service, i.e. PDST. It stated that it encompasses the supports previously provided by other programmes. It contended that it was not established by or under an enactment or by the Government or a Minister of the Government.

PDST added that it is funded by the Department and that while it reports to the Department in relation to its programme of work, the Department plays no role in its day to day functions. It stated that it also reports to Dublin West Education Centre (DWECC), which is a public body for the purposes of the Act. It argued, however, that it is not directly or indirectly controlled by DWECC as, among other things, it operates independently of DWECC and does not receive funding from it.

Having regard to the nature of its role and establishment, I am satisfied that PDST is not captured by paragraphs (a), (b), (d), (e), (g), or (h). This leaves me to consider whether it is captured by paragraphs (c) or (f).

In relation to paragraph (c), while you have argued that PDST was established by the Minister for Education and Skills, no evidence has been presented to suggest that this was the case. It seems to me that PDST is not a separate legal entity but rather it is essentially a programme or service for the delivery of certain support services to teachers. It was the TES that decided to amalgamate and restructure a number of services and to provide for a new generic cross-sectoral support service. Indeed, PDST argued in its submission that it has no legal basis or status and was advised that it cannot provide access to records legally because of this. I am satisfied that it is not an entity coming within paragraph (c).

Paragraph (f) captures entities that are directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates. In your application for review, you argued that PDST "is a fully State-funded organisation that is a function of the Department". Essentially, your argument is that PDST is directly or indirectly controlled by the Department. PDST argued that while it reports to the Department in relation to its programme of work, the Department plays no role in the day to day functions of PDST. However, it also correctly pointed out that paragraph (f) is confined to bodies that are controlled by an entity to which paragraph (b), (c), (d) or (e) relates and that the Department is an entity to which paragraph (a) relates. For this reason, I am satisfied that PDST is not an entity coming within paragraph (f).