

An Open Letter To The Information Commissioner

Dear Commissioner,

Thank you for the correspondence from your Office dated 7th October 2021, relating to my Freedom of Information (Fol) request towards the Department of Education (DoE). I am grateful for the opportunity to comment on the current position of the DoE, and the initial conclusions that have been arrived at by your Investigator during my ongoing appeal to your Office.

The context for my Fol request was some public reporting of several joint Religious Education in-service training days during 2016, which involved a combined agenda of speakers from both the Catholic Church and the Professional Development Service for Teachers (PDST). I had sought documents and records relating to these publicly funded in-service days, including the following:

“All correspondence between the PDST and representatives of the Catholic Church (including emails and written correspondence) during calendar year 2016. This is to include Diocesan Advisors working with schools on behalf of the Catholic Church. ”

This request would have covered communications between the PDST and the Catholic Church, relating to the publicly reported joint in-service days.

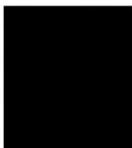
1. The Position Of The DoE

It is now accepted by all parties that the PDST is a part of the DoE for the purpose of the Fol Act. The first formal Fol response to my request under the terms of the Fol Act, which came from the National Director of the PDST, stated that “there have been no jointly arranged in-service days” with the Catholic Church, and also that there had been no “correspondence or communication between the PDST and representatives of the Catholic Church”.

30 January 2018

Atheist Ireland

c/o John Hamill



Dear John,

Further to receipt of your letter on 3 January 2018, please see below PDST's responses to the requests for information.

Request for information: All correspondence between the PDST and representatives of the Catholic Church (including emails and written correspondence) since January 2016. This is to include Diocesan Advisors working with schools on behalf of the Catholic Church.

PDST response: There has been no such correspondence or communication between PDST and representatives of the Catholic Church.

Request for information: A list of all in-service days for religion teachers since January 2016, which were attended both by representatives of the Catholic Church and representatives of the PDST, or arranged by both the Catholic Church and PDST.

PDST response: There have been no jointly arranged in-service days and representatives of the Catholic Church have not attended our in-service days in that capacity.

Request for information: Details of any payments made to the Catholic Church or Diocesan Advisors acting on behalf of the Catholic Church.

PDST response: There have been no payments.

Yours sincerely

Ciara O'Donnell, National Director

Letter from PDST National Director

Subsequently, it was accepted that the same National Director of the PDST had produced a non-public annual report for the DoE, which described eight in-service days during 2016 that had been jointly delivered by the Catholic Church and the PDST. Moreover, it was also accepted that the same National

Director of the PDST had personally exchanged several emails with various representatives of the Catholic Church during 2016, with respect to arranging these in-service days. One such example email exchange is illustrated below.

From: Ciara O'Donnell [redacted] 
Subject: RE: Kerry External Facilitation
Date: 13 January 2016 at 12:01
To: Tomás Kenny [redacted]

Tomás
I understand that Gary has been in touch with you about this input and that it has now been arranged
All the best
Ciara



Disclaimer

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution, or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. Unless stated to the contrary, any opinions expressed in this message are personal to the author and may not be attributed to the PDST. PDST accepts no liability for any loss or damage which may be caused by software viruses transmitted by this e-mail.

From: Tomás Kenny [mailto:[redacted]]
Sent: 09 December 2015 18:14
To: [redacted]
Subject: Kerry External Facilitation

Dear Ciara,
I hope you are well. I'm the Diocesan Advisor for Religious Education for the Diocese of Kerry. I was in touch last year as we had Gary Carley facilitate at an R.E. teacher's in-service. I wanted to request that Gary facilitate at another such in-service in February 2016. Would that be possible.
Kind regards,
Tomás
Tomás Kenny
Post-Primary Diocesan Advisor
Religious Education
Diocese of Kerry

2016 Email Exchange Between PDST And Catholic Church

Whenever you publish your final decision with respect to this appeal, I would be grateful if you could comment on how this initial FoI response from the National Director of the PDST came to be composed. I hope you will agree

that the content is concerning, and it is difficult to understand why present or future responses from the same public body would be any less concerning if your Office continues to studiously ignore this issue.

The current position of the DoE, as outlined in the correspondence from your Investigator of 7th October 2021, is that no further emails or any other correspondence exists with respect to any of the other seven joint in-service days that took place during 2016. That is, aside from the event in Kerry described in the email above, the DoE has stated that the PDST arranged to attend all seven of the other such events during 2016, in various other dioceses around the country, by communicating with the Catholic Church at all times exclusively on the phone or using other verbal means. Below is the relevant extract from the letter written to me by your Investigator, describing the reason offered by the DoE to explain why no further emails exist.

The Department says that PDST does not correspond with Catholic Church diocesan advisors except when responding on an occasional basis to requests for curricular inputs in relation to RE. It does not make arrangements with any church for the provision of religion in-service days or around the teaching of religion in schools. The content for in-service days is agreed between the PDST/Department and the NCCA and this is delivered at all RE in-service days, regardless of the school's religious ethos. PDST does not pay the Catholic Church or diocesan advisors.

It says that, in addition, PDST says that most events are arranged by telephone. PDST records details of in-service/events at which it is requested to give presentations (i.e. date, venue, duration, and attendance), which it sets out in its annual report and which I note have been released to you. The Department says that PDST has no access to rolls, reports, minutes, records relating to arrangement of venues etc. because they are not PDST events.

Extract 1 From OIC Letter of 7th October 2021

The DoE has told your Office that, "it does not make arrangements with any church for the provision of religion in-service days". However, the email illustrated above from the Catholic Church about a "R.E. teacher's in-service", explicitly asks the National Director of the PDST to "facilitate at another such

in-service”. The response of the PDST to this email request from the Catholic Church, did not in fact state the position that DoE has described to your Office. The PDST did not respond to the Catholic Church stating that they will not make “arrangements with any church for the provision of religion in-service days”. Instead, the response of the PDST was to arrange for two of their representatives to support the in-service day being arranged by the Catholic Church. In fact not only did the PDST fund two public servants to support the event in Tralee, but they also arranged to cover all associated travel, accommodation and subsistence costs from public funds.

It is perfectly clear that the DoE is still not being honest or forthright with either me, or with your Office, on this matter. It is concerning that the reasons given for failing to conduct a proper search for the records that I have requested under the FoI Act, continue to be demonstrably false. Whenever you publish your final decision with respect to this appeal, I would be grateful if you could comment on this continued lack of candour within responses to my FoI request. If your Office were to persist in accepting such transparently false statements from the DoE at face value without comment, that would say a lot more about your Office than it would about the DoE.

2. The Specifics Of My Appeal

The policy described by the DoE in terms of how they say public resources for religious in-service days are awarded, is absolutely extraordinary. The DoE claims that it has created a particular class of private citizen in Ireland, who is not an employee of the DoE and who does not work for any school, but who can nevertheless merely make a phone call to the PDST in order to have have multiple publicly funded representatives turn up in their town to provide free training courses. No written information whatsoever is required about the nature of the private events that these individuals may seek publicly funded support for. For some particular private citizens, the DoE claims that they need only lift the phone and tell the PDST when and where their private event will take place, and they can have free publicly funded training courses delivered on site anywhere in the country.

Other private citizens can't do this. I can't just phone the PDST and have them turn up in my town to deliver free training courses that are funded by the DoE. In contrast though, according to the position described by the DoE, some Catholic Church representatives have been provided with such a

facility. During the pertinent year of 2016, the DoE has said that eight such private Catholic Church events were awarded public support in this manner (roughly one every six weeks). An email was sent to the PDST in relation to one event in Tralee, but the DoE claims that for all of the other seven private events during 2016, publicly funded support was sought and obtained merely by making a phone call.

My present appeal to your Office, relates to my request for all PDST email correspondence with the Catholic Church during 2016, including email exchanges with those representatives of the Catholic Church who have been awarded these publicly funded training resources. My initial FOI request in this regard was submitted on 1st January 2018, and sought “all correspondence between the PDST and representatives of that Catholic Church” during 2016. As illustrated above, the National Director of the PDST responded on 30th January 2018 to tell me that there had been no “communication between the PDST and representatives of the Catholic Church”. It was obvious at that time that this response was transparently false, and I have since spent more than three years (and more than €300 in appeal fees) trying to have a proper search conducted for any emails that match the terms of my request.

The most recent letter to me on this topic from the DoE, which was written by Assistant Principal Officer Noel Farrell on 13th May 2021, described the searches for the emails that have been conducted as follows:

Under this internal review the PDST has conducted a search of its electronic files using key words Key words for 2016 - Church, Catholic, Diocesan, Diocese, Religion, Religious Education, Le Cheile, RTAI. The PDST has located 4 additional records relevant to this FOI which are included in the schedule of records for this Internal Review of this FOI.

Extract From DoE Letter of 13th May 2021

My appeal to your Office has sought a search of PDST emails to be conducted, using the names of the Catholic Church representatives who have been awarded the extraordinary privilege of publicly funded training courses being delivered to support their private events. For example, one of the eight private Catholic Church events supported by the PDST during 2016, was the one in Tralee referred to in the email above from Mr Tomás Kenny. In order to

respond to my Fol request for “all correspondence between the PDST and representatives of the Catholic Church”, it seems reasonable that the DoE should conduct a search for all email correspondence with Mr Tomás Kenny. More than three years and many appeals later, no such search has yet been performed.

Moreover, there were another seven such 2016 events whereby other representatives of the Catholic Church have been provided with similar publicly funded supports by the DoE. The PDST knows which private citizens they have decided to award such publicly funded supports to. Specifically, according to the correspondence from your Office to me of 7th October 2021, the “PDST records details of in-service/events at which it is requested to give presentations”. With respect to my Fol request for “all correspondence between the PDST and representatives of the Catholic Church” during 2016, it seems reasonable that the PDST should consult their records to confirm the names of the people who sought and received this publicly funded support for the other seven private events, and then perform a search for emails using these names. After more than three years and many appeals, these very obvious searches have not been performed either.

3. The Position Of The OIC

In the correspondence to me dated 7th October 2021, your Office has taken the view that with respect to my Fol request for “all correspondence between the PDST and representatives of the Catholic Church”, it is unreasonable to expect that searches would be carried out for emails with the names of the people who sought and received publicly funded support for their private 2016 events. That is, despite the fact that the “PDST records details” of these requests, the DoE will only search their email system for words like “Catholic” and “Church”. They will not search their email system for the names of the people who were awarded these publicly funded training facilities for private events.

Below is the response of your Investigator with respect to my request for the PDST email system to be searched for the names of those Catholic Church representatives who sought and received publicly funded training supports from the PDST.

I note that you suggest further searches to be carried out e.g. using the names of those who might have contacted PDST seeking RE input. In my view, such searches go beyond the reasonable searches that the FOI Act expects bodies to carry out, particularly having regard to the Department's description of the way in which PDST would interact with churches generally.

Extract 2 From OIC Letter of 7th October 2021

I would like to ask your Office to reconsider this conclusion, with respect to what is and is not reasonable in the current context. Specifically, I believe that the extraordinary awards of publicly funded support that the PDST has bestowed upon Catholic Church representatives, argues strongly for searches being conducted using these names, and does not argue that such searches "go beyond the reasonable searches that the FOI Act expects".

It is also important to note that in arriving at this conclusion, your Investigator has assumed that the DoE is making an argument that the DoE has not in fact made. That is, your Investigator is assuming that the DoE believes it would be too onerous an expectation for the PDST to do the extra work of searching for the relevant names, rather than just searching for words like "Catholic" and "Church". However, the DoE has not argued that there would be anything at all onerous about undertaking this task. In fact if the DoE is to be believed, there would be no further emails to be found in response to searches for these names, since all of these events were arranged by phone. As such, conducting these searches shouldn't take any more than five minutes. It is amazing that the DoE has spent more than three years refusing to search for these names (even though they claim it wouldn't take more than five minutes) and now your Office is supporting their refusal to search for these names on the basis that it would be too onerous an expectation to place upon the PDST.

However, the position of your Office is in fact even more hostile to the freedom of information than this. Given that the "PDST records details" of these requests from Catholic Church representatives, it might be assumed that an alternative route towards having proper searches conducted, would be to first submit a separate FOI request for all PDST records relating to such requests. Such a separate FOI request would presumably provide the names of those who made the requests, and then those names could be used as part of yet another FOI request to have proper searches of the email system carried out. Unfortunately though, your Office has also taken the view that

within any PDST records of such requests from Catholic Church representatives, the names of the people making the request must be redacted before they are provided in a Fol response.

Below is the response of your Investigator with respect to redacting the names of those Catholic Church representatives, who have sought and received publicly funded supports from the PDST.

Details have been withheld from another record which identify a Diocesan Advisor and it seems to me that the Commissioner must consider the application of the mandatory section 37 of the FOI Act in that regard. It is not relevant whether you or others generally are aware of the identity concerned.

Extract 3 From OIC Letter of 7th October 2021

The DoE has described a policy to your Investigator, whereby a certain class of private citizen can procure publicly-funded on-site training courses anywhere in the country, merely by making a phone call. Without seeking any written description of these private events, the DoE will fund public servants to travel around the country delivering training courses at public expense, because representatives of the Catholic Church seek to benefit from such State-funded endowments. On learning about this policy from the DoE, your Investigator decided that the identity of the people who seek and receive such publicly funded privileges, must be kept secret from the Irish citizens who pay for these activities. This conclusion is very informative in terms of understanding the perspective from which your Investigator has processed the present appeal.

4. Conclusion

My current Fol request, which this appeal relates to, continues to seek “all correspondence between the PDST and representatives of the Catholic Church” during 2016. It is entirely within the spirit and letter of the Fol Act, that the PDST can be reasonably expected to hit Ctrl-F and search for emails involving Mr Tomás Kenny. Moreover, the PDST can also be reasonably expected to hit Ctrl-F a few more times, and search for the names of the other

people who sought and received public support for private Catholic Church events during 2016. If the DoE continues to be so confident that all communication with these individuals was carried out by phone, then why would it be such a problem for them to conduct these searches? Why have they spent more than three years refusing to perform these very reasonable searches?

The current position described to me in the most recent correspondence from your Office, is that the PDST need not perform these searches, and should not reveal to me the names of the people who sought and received this public support for private Catholic Church events. Moreover, throughout more than three years of dealing with this issue over five related appeals that have been directed by your Office (including literally dozens of letters to you in which I have complained about the consistently and repeatedly false statements made by the PDST and the DoE in response to my Fol requests) you have studiously avoided making any comment whatsoever on their lack of candour.

I believe that the current position of your Office with respect to these issues is inconsistent with the letter and the spirit of the Fol Act, and inconsistent with the right of citizens to access information within public bodies. The logic of the position currently described by your Office, is that I must compose a list of the huge number of people who worked for the Catholic Church in Ireland during 2016, and then submit a large number of new Fol requests seeking email searches for all of their names. That is, if your Office concludes that I am not allowed to know the names of the Catholic Church representatives who sought and received the relevant public support for their private events, I will have to request searches for the names of all Catholic Church employees until I find the right people. I am certainly willing to undertake this project, but it does not seem to me that this would be a good use of my time or that of the DoE, since the PDST already knows the only eight names that are relevant. It does not seem to me either that this is what the Fol Act expects, and so I hope that you can reverse the conclusions described in the letter from your Office dated 7th October 2021.

Yours etc.