



An Coimisinéir Faisnéise
Information Commissioner

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

Case Number: OIC-137223-P2S9D4

Applicant: Mr. John Hamill, [REDACTED]

Public Body: Department of Education (the Department)

Issue: Whether the Department was justified, under section 15(1)(a) of the FOI Act, in refusing to release further records containing communications between the Professional Development Service for Teachers (PDST) and the Le Chéile Schools Trust that took place in 2016

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 affirmed the Department's decision.

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 February 2023, the applicant sought access to non-personal records held by the Professional Development Service for Teachers (PDST) relating to communications with the Le Chéile Schools Trust during the calendar year 2016. He said he wanted the search to include two specific PDST email accounts and all emails to and from the domain @lecheiletrust.ie. In addition, he requested all records relating to the arrangement and delivery of an event at the Stillorgan Park Hotel in March 2016.

The Department issued a decision on the request on 10 March 2023. It granted access, in whole or in part, to eleven of twelve records it had identified as relevant to the request, redacting certain information under section 37(1). It refused to release record 10 under section 35(1)(a) on the basis that it contained information given in confidence. It refused access to records relating to the Stillorgan Park Hotel event under section 15(1)(a) on the ground that no relevant records existed.

The applicant sought an internal review of that decision on 13 March 2023, wherein he said the scope of the review could be confined to the redactions that had been applied, and that the names of any students that had been redacted could be omitted from the review. On 14 March 2023, in response to the Department's confirmation that it had received the request for internal review, he made a number of further points, essentially saying that all relevant records had not been identified and released. On 4 April 2023, the Department varied its decision by releasing additional parts of record 2. However, it affirmed the rest of the decision.

On 6 April 2023 the applicant applied to this Office for a review of the Department's decision. In particular, he sought a review of the Department's refusal to share record 10 for what he referred to as "spurious confidentiality reasons"; he pointed to the wording of an email in one of the released records which referred to attached resources that were not released; and he said that the Department's position that it didn't hold further records was not credible and asked that it be directed to conduct a proper search.

In the course of the review, the Investigator wrote to the applicant to give him details of the searches that the Department said that it carried out for records relating to the event in the Stillorgan Park Hotel in March 2016. In addition, she advised him of two further issues that had arisen and offered him an opportunity to comment. In relation to the records refused under section 35 (records 10a to 10bw), which were attachments to an email sent from an individual teacher to a group of other teachers, she said that having examined the email itself, she did not consider it to fall within the scope of the FOI request, and in these circumstances did not propose to consider the records any further. Furthermore, in relation to the Department's failure to release further attachments to an email dated 5 September 2016, the text of which was included in record 2 (on pages 18 and 19), following further clarification with the Department, it emerged that these attachments, which had been shared via a DropBox link that had since expired, were not actually accessible to the PTSD. The Investigator said that, in these circumstances, it seemed that the Department did not in fact hold any further attachments to the email in question, apart from those that had already been released.

The applicant provided a written response to the above points. He referred to previous FOI requests for related records and previous reviews by this Office and essentially argued that it was not credible that the Department did not hold further training materials for training delivered by PDST to religion teachers. He made some disparaging comments about this Office. He made no comment on the Investigator's assessment of records 10a to 10bw, or the attachments to the email of 5 September 2016.

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 Department and by the applicant, and to the exchanges described above. I have also examined the records at issue. I have decided to conclude this review by way of a formal, binding decision.

Scope of Review

During the review, the Investigator initially informed the applicant that the review would be confined to a consideration of the Department's refusal, under section 15(1)(a), to release records relating to the March 2016 meeting, of its refusal to release records 10a to 10bw, and of its refusal to release further attachments to an email dated 5 September 2016.

I am satisfied that records 10a to 10bw fall outside the scope of the FOI request and I will give them no further consideration. I am also satisfied that the Department does not hold any further attachments to the email of 5 September 2016 and similarly I will give this no further consideration.

Accordingly, this review is concerned solely with whether the Department was justified, under section 15(1)(a), in refusing to release further records relating to the event held in the Stillorgan Park Hotel in March 2016.

Preliminary Matters

In communications with this Office, the applicant expressed frustration with his long-running and repeated efforts to access records of communications between the PDST and representatives of the Roman Catholic Church. In an earlier review by this Office [OIC-97611](#), I acknowledged and apologised for our role in contributing to these delays in respect of earlier requests. This current review is confined to the Department's decision on the applicant's request of 12 February 2023. It is important to note that this Office has no remit to investigate complaints regarding the manner in which FOI bodies perform their functions generally, or to act as an alternative dispute resolution mechanism with respect to actions taken by FOI bodies.

Analysis and Findings

Section 15(1)(a) of the Act provides for the refusal of a request where the records sought do not exist or cannot be found after all reasonable steps to ascertain their whereabouts have been taken. The Commissioner's role in a case such as this is to review the decision of the FOI body and to decide whether that decision was justified. This means that I must have regard to the evidence available to the decision maker and the reasoning used by the

decision maker in arriving at his/her decision and also must assess the adequacy of the searches conducted by the FOI body in looking for relevant records.

The evidence in “search” cases generally consists of the steps actually taken to search for the records along with miscellaneous and other information about the record management practices of the FOI body, insofar as those practices relate to the records in question. It is important to note that the FOI Act does not require absolute certainty as to the existence or location of records, as situations arise where the records are lost or simply cannot be found. Furthermore, this Office can find that an FOI body has satisfied the requirements of section 15(1)(a), even where records that an applicant believes ought to exist have not been located.

In this case, the applicant sought records relating to an event that took place in the Stillorgan Park Hotel in March 2016. From the records that were released, I note that pages 8, 9, 10 and 11 of record 2 refer to the meeting in question and arrangements made for it. The meeting in question involved a group of religion teachers from schools within the Le Chéile Schools Trust, with an advisor from PDST invited to attend and provide an input which he apparently did. It is the Department’s position that it could find no further records relating to this event.

As noted above, the Department provided this Office with details of the searches it undertook to locate relevant records. Its position is that all reasonable steps have been taken to locate records relevant to the FOI request. As also noted above, the Investigator provided the applicant with a summary of the Department’s submissions. While I do not propose to repeat those details in full here, I confirm that I have had regard to them for the purposes of this review.

In summary, the Department said that the relevant advisor was no longer with PDST but that it retained full access to his Google account. As such, it said that searches were carried out of both his email inbox and Google Drive. It said that it also searched the server at the PDST head office, and the files of the RE admin database. It specified the relevant key words used for these electronic searches.

The Department noted that the event in question (a ‘cluster meeting’) was an external one, organised by the Le Chéile Trust, and as such the arrangements for the meeting were not made by PDST. Beyond recording the date, venue, organisation and advisor name, it said that it would not hold further records of arrangements or reports for such a meeting. It said that it does not have a specific filing system for cluster meeting materials and that its records do not show what topics were dealt with at the meeting.

The Investigator referred the Department to a comment in one of the email records that was released which thanked the PDST advisor and said that “teachers love going home with stuff”, and asked it to explain what this referred to. The Department said that the “stuff” in this instance was likely to have been generic PDST items like graphic organisers or active learning boards, available via the PDST e-store, or hard copy curricular materials available from the Department of Education through the NCCA website. It said that advisors would have a supply of such hard copy items for distribution at CPD events.

In response to a question from the Investigator as to whether there were any other locations/areas where such records might be held, the Department said that the relevant advisor might have had hard copy materials in his home office. For completeness, the PDST sought to contact the advisor to confirm whether or not he held further relevant records. Despite phoning and leaving messages for him, the PDST said that it was not successful in speaking to him.

It is important to note that no evidence has been made available to this Office to suggest that the relevant advisor does, indeed, hold relevant records at this stage. It seems to me that the Department identified the advisor as a potential source purely for the sake of completeness. In the circumstances, and taking into account that that it is approximately seven years since the advisor worked for the PTSD, it seems to me that reasonable efforts have been made to establish the existence of further relevant hard copy records.

Overall, having carefully examined the records that were released, and having considered both the searches that the Department said it carried out, as well as the context and background to the records sought, it seems to me that reasonable searches have been carried out. In these circumstances, I find that the Department was justified, under section 15(1)(a) in refusing access to any further relevant records on the grounds that such records do not exist or cannot be found after all reasonable steps to ascertain their whereabouts have been taken.

Decision

Having carried out a review under section 22(2) of the FOI Act, I hereby affirm the Department's decision. I find that it was justified, under section 15(1)(a), in refusing access to any further records relating to a meeting held on 6 March 2016 on the grounds that no further records exist or can be found.

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.



Stephen Rafferty
Senior Investigator
30 November 2023