

Atheist Ireland



To: Office of the Information Commissioner

Your Reference: OIC-136616-Z1W9Y4

28 March 2022

Decision by Department of Education to refuse access to records (Reference DES-FOI-2023-014)

Dear Information Commissioner,

We are seeking release of the Documents in the public interest.

State funding of schools

Proposed Deeds of Covenant and Charge Agreements between the Department of Education and the Catholic Church relate to the funding of schools. The meeting was in relation to Non-Ministerial owned school properties. There are constitutional conditions to the funding of schools notwithstanding the fact that they are Non-Ministerial owned school properties.

The funding of schools comes under Article 42.4 of the Constitution., which states that:

The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

State funding is given to the owners of Non-Ministerial owned school properties for the education of children. In this particular case it is the Catholic Church.

Parents have an interest in the conditions for any state funding of schools. Most parents in Ireland have no choice where they send their children to school. That of course means that they must send their children to Non-Ministerial owned schools that are funded by the State. Under Article 42.4 of the Constitution the state 'provides for' the education of minorities in Non-Ministerial owned Catholic schools.

Under Article 44.2.4 it is the Oireachtas, as opposed to the executive, that has a duty in relation to conditions for the funding of schools. Article 44.2.4 states that:

Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

There is a public interest in knowing that the constitutional conditions for any state funding of Non-Ministerial schools will be met or the reasons or purpose behind any state funding. Access to Documents in relation to Deeds of Covenant will assist in the democratic process.

The Supreme Court found the following in relation to Article 42.4 and the funding of schools: ¹

4. It is clear that a right inures to the family under Article 42.1 of the Constitution to be the “primary and natural educator of the child” and the State is required “to respect the inalienable right and duty of parents to provide ... for the religious and moral, intellectual, physical and social education of their children.” Hence, under Article 42.2, the mother and father of Elijah Burke and Naomi Power were “free to provide this education in their homes or in private schools or in schools recognised or established by the State.”

But, while under Article 42.3 the State may require, “as guardian of the common good”, that “children receive a certain minimum education, moral, intellectual and social” (physical is not mentioned, and the minimum standard required is currently set at school leaver-standard for a 16 year old), the State cannot “oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.”

Article 42.4, in requiring the State to provide for “free primary education”, also places an endeavour, but only that, before the State “to supplement and give reasonable aid to private and corporate educational initiative” and “when the public good requires it” towards “other educational facilities or institutions”. An overall saver in the constitutional text is that the State, in providing for free primary education and in endeavouring to assist post-primary education in various forms, have “due regard ... for the rights of parents, especially in the matter of religious and moral formation.” This provision reflects a concern for upholding parental authority; a foundational pillar of the Constitution that accords with Article 41 recognising the family as “the natural primary and fundamental unit group of” Irish society. Hence, society is built around the family.”

The public interest is best served by all documents relating to the funding of schools being in the public domain even during the deliberative process.

Lobbying Register

It is on the Lobbying Register that representatives of the Catholic Church were lobbying Department of Education officials in relation to Deeds of Covenant and a Charge Agreement for Non-Ministerial owned schools.

If the owners of Non-Ministerial owned schools can lobby in relation to the funding of schools then parents should be able to use the democratic process to lobby in relation to the impact any proposed decisions will have on their Constitutional rights or the omissions of those rights in relation to the funding of schools. They also have an interest in whether or not it is value for money.

The Lobbying Register comes under The Lobbying Act 2015. The purpose of the Lobbying Register is: ²

“The purpose of the Registration of Lobbying Bill 2014 is to provide for a register of lobbying to make information available to the public on the identity of those communicating on specific policy, legislative matters or prospective decisions with designated public officials. The Bill allows for the development of a code of conduct by the Standards in Public Office Commission (Commission) it also provides restrictions and conditions on the taking up of certain employments by certain designated officials for a specified period of time where a possible conflict of interest arises.

¹ https://www.courts.ie/viewer/pdf/3739dc28-642c-4532-9bb1-30ee7b0d6b28/2022_IESC_1_Charleton J..pdf/pdf#view=fitH

² <https://www.irishstatutebook.ie/eli/2015/act/5/enacted/en/print#sec9>

The Bill will allow the wider public to reach informed evidence-based judgments about the extent to which different interest groups are accessing key decision makers across the political and public service systems. Regulation would be expected to increase public understanding of lobbying activity in Ireland.”

Given the Constitutional rights of parents it is in the public interest that we are aware of different interest groups accessing key decision makers in relation to prospective decisions with designated public officials that impact on the education of our children. Indeed, we believe that the Department of Education should welcome the interest of all parents in the deliberations of making decisions in the funding of schools.

Section 29

- In this particular case it is in the public interest to reveal documents relating to the deliberative process regarding a negotiation that has yet to be finalised because it could impact significantly on the constitutional rights of parents and their children. In addition parental rights are a foundational pillar of the Constitution particularly in relation to the education of their children so it is in the public interest that all documents relating to any proposed decisions should be released. Parents should not be left with a ‘fait accompli’ which puts them in a position whereby they must accept decisions made in secret that impact on their constitutional and human rights.
- We do not see how releasing the document would prejudice the Department’s ability to properly conclude those deliberations. The only reason that would impede the Department’s ability to properly conclude the deliberations was if we discovered on reading the document that the Constitutional conditions for the funding of schools was not being met and then used the democratic process to challenge the proposals. The democratic process, such as asking the Oireachtas Education Committee to look at the issue should take precedence over any presumed prejudice in concluding the deliberations.
- We do not see in this case how disclosure of the records, which do not disclose the reasons for a decision, may be unfair to the public body and prejudice the integrity of the decision making process. The concern of the Department of Education in relation to being unfair to them because the reasons for any decisions are not disclosed, should not take precedence over the public interest of parents in knowing exactly why the funding is given and are the Constitutional conditions for that funding being met before a decision is made. Parents should be aware of any significant decisions that the Department of Education proposes to make given the rights of parents in relation to the funding of schools under the Constitution.

Section 30

- We do not see how releasing the Document will prejudice the effectiveness of tests, examinations, investigations, inquiries or audits as we do not see how they are part of this process. Even if they are, the public interest in releasing them takes precedence over any alleged prejudice given the rights of parents under the constitution in relation to the funding of schools.
- The Department of Education are in negotiation with representatives of the Catholic Church in relation to schools owned by the Church but funded by the state. It is in the public interest to disclose the positions to be taken, or planned to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or the Department. Given the constitutional rights of parents, the conditions or plans for any Deeds of Covenant in relation to state funding of Non-Ministerial owned schools should not be kept secret from those on behalf of whom the funding is given.

- We do not see in this case how disclosure of the records, which do not disclose the reasons for a decision, may be unfair to the public body and prejudice the integrity of the decision making process. The concern of the Department of Education in relation to being unfair to them because the reasons for any decisions are not disclosed, should not take precedence over the public interest of parents in knowing exactly why the funding is given and are the Constitutional conditions for that funding being met before a decision is made. Parents should be aware of any significant decisions that the Department of Education proposes to make given the rights of parents in relation to the funding of schools under the Constitution.
- It is in the public interest that parents should be aware of any legal information in the document before the transaction is completed because this information could impact on their constitutional rights. Representatives of the Catholic Church are representing Catholic parents in these negotiations but there is no one there to represent parents who have no choice but to send their children to Non-ministerial schools that are funded by the state. The Constitution envisages minorities attending publicly funded Non-ministerial owned schools and has put in place conditions to protect them.

Section 36

- We do not understand why this document and process is regarded as commercially sensitive. Deeds of Covenant between the Department of Education and the Catholic Church in relation to non-ministerial owned schools are not a commercial agreement.
- Parents are entitled to know if any negotiations in relation funding for Deeds of Covenant for non-ministerial owned schools will impact on their constitutional rights as well as whether it will be value for money.
- It is in the public interest that any proposed decisions and publicly known before the Deeds of Covenant are signed given the rights of parents under the Constitution and the conditions for the funding of schools. It is also the duty of the Oireachtas to ensure that legislation providing state aid does not prejudicially affect our rights.

Yours sincerely,

Jane Donnelly
Human Rights Officer

Michael Nugent
Chairperson