

Our Reference : 170490

20 March 2018

Mr X

Dear Mr X

I refer to your correspondence with this Office concerning the decision of Education Training Boards Ireland (ETBI) to refuse your request for records 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. Having considered the matter, I am satisfied that ETBI is not a public body for the purposes of the FOI Act, for the reasons I have set out below.

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.

You have argued that ETBI negotiates on behalf of the Education and Training Boards (ETBs) and that it is captured by paragraph 1(f) of the definition on the ground that it is directly or indirectly controlled by the various ETBs. I am satisfied that the ETBs are entities to which paragraph (b) relates. Accordingly, the question to be considered is whether the ETBs directly or indirectly control ETBI.

In my view, they do not. In a submission to this Office, ETBI stated that it is a private members' representative body that was established as a voluntary association members' body. It is important to note that ETBI operates under its own constitution and that membership is not compulsory. Under its constitution, ETBI Board members must be independent and are required to treat all information received while acting as board members as confidential and must not disclose information received in their role to their respective nominating forum. I also note that if an ETB member does not comply with the rules or responsibilities of membership, the ETBI Board has the power to cease membership as per its constitution.

The voluntary nature of the membership of ETBI and the fact that it is a representative association operating under its own constitution suggests to me that ETBI is intended to and does operate independently and outside of the control of its members. As a representative association, it is entirely logical that there is an overlap in the objectives of ETBI and the various ETBs. Accordingly, I am satisfied that the ETBs cannot be said to control ETBI, either directly or indirectly and that section 6(1)(f) does not apply.

For the avoidance of doubt, I also find that ETBI is not captured by any of the remaining paragraphs of section 6(1).

In conclusion, therefore, I find that ETBI is not a public body for the purposes of the FOI Act as it is not captured by the provisions of section 6(1).

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Yours sincerely

Stephen Rafferty
Senior Investigator