



29 November 2024

Mr Fred Logue

FP Logue LLP

[Fred.logue@fplogue.com](mailto:Fred.logue@fplogue.com)

Sent by email.

**Re: FOI request, advice of internal review original decision varied FOI 49/24**

Dear Mr Logue,

I refer to the appeal which you made under the Freedom of Information Act 2014 (as amended) (the "FOI Act") and an acknowledgement letter which issued to you dated 11 November 2024.

I am a more senior member of staff in NSAI than the original decision maker in this case. I have decided today, 29 November 2024, to vary parts 1 & 2 of the original decision and affirm parts 3, 4 & 5 of the original decision made in relation to your request which issued to you by letter dated 25 October 2024 (the "Original Decision"). This review of the original request is an entirely new and separate decision and is explained as such below.

The original request sought access to the following records:

1. *Copies the NSAI file on the development of the website <https://nsai-harmonized-standards-access.ie> and its development of a "readability platform" to make European Harmonised Standards available on the internet*
2. *Copies of the functional specification/design brief given to the web developer*
3. *Copies of all correspondence between the European Commission and the NSAI in relation to the website mentioned in point 1 above*
4. *Copies of all correspondence between the NSAI and CEN (including its agents/representatives) and the NSAI and CENELEC (including its agents/representatives)*
5. *Copies of all records in the nature of a contract or memorandum of understanding recording the terms and conditions or mutual understanding between NSAI and external parties in relation to the content on the same website.*

In arriving at this decision, I have had regard to the original request (the "Request"), the records which were located as part of that request, and the appeal email which you

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submitted in this regard. I enclose for your attention a schedule of these records, this schedule summaries my findings and refers you to the latter part of this letter for a further explanation.

I will now address each part of the Request in turn:

#### **Parts 1 and 2 of the Request:**

I have decided to vary the Original Decision to grant parts 1 and 2 of the Request. The records pertaining to these parts along with a schedule of these records is attached with this letter. Within the schedule I outline the specific records wherein I have varied the Original Decision, granting aspects of these records which had previously been redacted.

#### **Part 3 of the Request:**

On review of the records which were located as part of the Request, I affirm NSAI holds no records, or could find no records, of correspondence between NSAI and the European Commission pertaining to the website mentioned in point 1 of the Request was located. In reaching this conclusion, I note relevant NSAI departments, including the office of the NSAI CEO, the NSAI Director of Standards, NSAI Standards management and other NSAI Standards officers, report that after having conducted searches in all relevant mailboxes and considered physical correspondences which has been submitted to their offices.

#### **Part 4 of the Request:**

I have decided to affirm the Original Decision to refuse part 4 of the Request. I outline an explanation for my decision below. The decision to deny access to records, if held, has been made under the following section of the FOI Act:

#### Section 36 of the FOI Act, Commercially Sensitive Information:

*36. (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—*

*...*

*(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or*

*(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.*

*...*

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*(4) Where—*

- (a) an FOI request relates to a record to which subsection (1) applies but to which subsections (2) and (3) do not apply or would not, if the record existed, apply, and*
- (b) in the opinion of the head concerned the disclosure of the existence or non-existence of the record would have an effect specified in subsection (1), he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.*

For context, the European Union (EU) Regulation (1025/2012) (the “Regulation”) which settles the legal framework for standardisation, has been adopted by the European Parliament and by the Council of the EU, and entered into force on 1 January 2013. NSAI is the ‘national standardisation body’ in accordance with Articles 2(10) and 27 of the Regulation, as nominated by the Commission, see link to Commission website [here](#).

CEN (European Committee for Standardisation) & Cenelec (European Committee for Electrotechnical Standardisation), were nominated as European Standardisation Organisations under the Regulation (see Annex 1 of the Regulation). The Regulation, among other things, establishes rules with regard to the cooperation between European standardisation organisations and national standardisation bodies for the formation and implementation of standards and European standards. Accordingly, NSAI has a legal obligation to engage with CEN and Cenelec (hereinafter referred to collectively as “CEN-CENELEC”) in accordance with the requirements of the Regulation and subject to transparency requirements as outlined in Chapter II of the Regulation.

Many national standards bodies appointed by the Commission sell standards in line with their respective business models. The recent judgment of the Court of Justice of the European Union (“CJEU”) in *Public.Resource.Org and Right to Know v Commission C-588/21 P* (the “Judgement”) has resulted in the mandatory publication of four standards, previously only available for sale, with potential implications for the publication of other standards. The creation of the website as referred to in point 1 of the Request, is in response to the Judgement, and NSAI’s compliance with express implications of the Judgement as well as its potential implications. Such implications may have significant adverse financial impact on the national standards bodies whose business model includes the sale of standards.

On review, I am of the opinion that Part 4 of the FOI request relates to a record to which section 36(1) of the FOI Act, applies but to which subsections (2) and (3) of the same section do not apply or would not, if the records sought existed apply, and in my opinion the disclosure of the existence or non-existence of the record would have an effect specified

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in subsection (1) of that section. Accordingly, I am neither confirming nor denying the existence of the records sought under part 4 of the Request.

**Part 5 of your request:**

On review of the records which were located as part of the Request, I affirm NSAI holds no records, or could find no records, in relation to a contract or memorandum of understanding recording the terms and conditions or mutual understanding between NSAI and external parties in relation to the content on the same website. Records, between NSAI and CEN-CENELEC, if they exist, is addressed in the response to Part 4 of the Request above.

Having regard to the aforementioned I have decided to vary the decision made for parts 1 & 2 of the Request and affirm the decision made for parts 3, 4 & 5 by the original decision maker in relation to the Request, I enclose the schedule of records, records which were varied, and I have enclosed again for your attention a copy of the relevant sections of the FOI Act which this decision relies on.

You may make an 'application for review' of this decision to the Information Commissioner no later than 6 months from the date of this notification. There is a fee of €50 (or €15 if you are a medical card holder). Payment should be made by way of bank draft, money order, postal order or personal cheque: crossed and made payable to the 'Office of the Information Commissioner'.

Alternatively, you can make payment on-line which can be located at: <https://www.oic.gov.ie/en/Apply-for-Review/Fees-Payable/>.

Should you wish to make such an 'application for review' in writing, please use the details below:

Office of the Information Commissioner,  
6 Earlsfort Terrace,  
Dublin, 2.  
DO2 W773

Alternatively you may appeal using the Office of the Information Commissioner on-line application form which can be located at: <https://www.oic.gov.ie/en/apply-for-review/apply-for-review-online/>

If an appeal is made by you and accepted, the Information Commissioner will fully investigate and consider the matter and issue a fresh decision.

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Details of non-personal FOI requests, will be recorded on an FOI disclosure log which will be published on the NSAI website in due course.

Yours sincerely,

Francis Monds  
NSAI Legal & Compliance Officer

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