



Our ref: FOI/Req/20/037

12 June 2020

Dear Mr. Horgan-Jones,

I refer to the request you have made under the Freedom of Information Act 2014 (the “Act”) on 17 February to this Department, as follows:

All records held by your Department associated with this entry in the lobbying database:

<https://www.lobbying.ie/return/54416/microsoft-ireland-operations-ltd>

I deeply regret the delay in our response.

I have identified 6 records that fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to grant access to 4 records and part-grant access to 2 records. I have set out my reasoning for part-granting two of the records falling within the scope of your request below.

Record 5: Section 35 of the Act (information provided in confidence) and Section 36 of the Act (commercially sensitive information)

Under Section 35(1)(a) of the Act, an FOI request shall be refused if “*the record concerned contains information given to an FOI body, in confidence and on the understanding that it would be treated by it as confidential...and its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that that such further similar information as aforesaid should continue to be given to the body.*”

The record (number 5 of the attached schedule) was provided in confidence to this Department and I am satisfied that were the record to be released, it would be likely to prejudice the giving of similar information to this Department in the future, where such information should be provided to this Department.

Under Section 36 (1)(b) of the Act, an FOI request shall be refused “*...if the record concerned contains....commercial...or other information whose disclosure 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...*”

The record contains information which is commercially sensitive and I am satisfied that none of the reasons set out in 36(2), which would require me to grant the request, apply.

In examining the records exempted under Section 36 of the Act, I have taken the public interest into account. This would include the need to achieve openness, transparency and accountability in decision-making. I have considered whether the public interest would be better served by releasing the record in question in terms of the right of the public to have access to information



and the need for an open and accountable civil service. To ensure the company concerned would not be unduly impeded in the effective pursuit of their business, I have decided that the wider public interest is served by refusing access to the commercially sensitive information contained within the record.

To note, in one instance in the meeting information note (number 2 of the attached schedule) released, the phone numbers of officials have been redacted.

Record 6: Section 30 of the Act (functions and negotiations of FOI bodies)

Section 30(1)(c) of the Act states: *“A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to...disclose positions taken, or 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 an FOI body.”*

The record (number 6 on the attached schedule) contains references to positions adopted by the Government in the negotiations on the future relationship between the European Union and the United Kingdom. These negotiations were taking place at the time of the meeting referred to in your request, and are still ongoing. Subsection (1) of Section 30 requires me to consider whether the public interest would, on balance, be better served by granting than by refusing to grant access to the records requested.

In considering this request, I have given consideration to the ongoing negotiations between the European Union and the United Kingdom following UK’s withdrawal from the European Union on 31 January 2020. These negotiations are being carried on by the European Union on behalf of its Member States, including Ireland. It is my opinion that the release of the records would disclose positions taken by the Government in respect of those negotiations. Having considered whether the public interest would be better served by granting or refusing access to the records, I am satisfied on balance that the public interest would be best served by not releasing the information contained within the record which discloses those positions.

In deciding to part-grant two of the records coming within the scope of your request from which I have redacted information in line with the exemptions set out above, I have had regard to **Section 18 of the Act (access to parts of records)**, where Section 18(1) states: *“Where a request would fall to be granted but for the fact that it relates to an exempt record, by reason of the inclusion in it, with other matter, of particular matter, the head of the FOI body concerned, shall, if it is practicable to do so, prepare a copy, in such form as he or she considers appropriate, of so much of the record as does not consist of the particular matter aforesaid and the request shall be granted by offering the requester access to the copy.”*

Right of Appeal

Should you wish to appeal this decision, you may do so in writing to the Freedom of Information Unit, Department of Foreign Affairs and Trade, 76-78 Harcourt St., Dublin 2 or by email to foi@dfa.ie. A fee applies for an appeal to access non-personal information; the level of this fee has been set at €30. For methods of payment, please contact FOI Unit at foi@dfa.ie, or 01-4082857.

You should make your appeal within 4 weeks (20 working days) from the date of this notification. However, the making of a late appeal may be permitted in appropriate



circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Department.

Yours sincerely,

Aoife Nannery