



Our Ref: Fol/Req/20/112

7 July 2020

Dear Mr Corkery

I refer to the request that you have made under the Freedom of Information Act 2014 for access to records held by this Department, as follows:

*1 - Any correspondence, reports, files, submissions, minutes of meetings or conversations, that were created, received or exchanged by the Tánaiste or Department of Foreign Affairs officials (above the grade of principal officer) in relation to participation by Irish government officials in the Specialised Committee on the Implementation of the Protocol on Ireland and Northern Ireland.*

*2 - Any correspondence, reports, files, submissions, minutes of meetings, conversations, that were created, received or exchanged by the Tánaiste or Department of Foreign Affairs officials "above the grade of principal officer) in relation to the establishment of an EU office in Belfast as envisaged in the EU-UK Withdrawal Agreement's Protocol on Ireland and Northern Ireland.*

I have identified 10 items, all of which are emails, which fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to grant access to 2 records and refuse access to 8 records. I have set out my reasoning for refusing 8 of the records falling within the scope of your request below.

**Records 2, 3, 4, 5, 7, 8, 9 10: 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."*

These records contain references to positions adopted by the Government in the context of talks between the European Union and the United Kingdom regarding implementation of the Withdrawal Agreement and Protocol on Ireland/Northern Ireland. Subsection (1) 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 discussions between the European Union and the United Kingdom following UK's withdrawal from the European Union on 31 January 2020. These talks 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 talks. 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.

**Records 2, 3, 4, 5, 7, 8, 9 10: Section 33 of the Act (international relations)**

Exemptions under section 33 of the Act relate to the security, defence and international relations of the State.

I have exempted records 2, 3, 4, 5, 7, 8, 9 10 under section 33(2)(b)(ii). These are mandatory exemptions and I am obliged to refuse access to the relevant records. Notwithstanding the mandatory nature of the non-disclosure, it should be borne in mind that the Department of Foreign Affairs and Trade operates in a complex and diverse international environment. A mutuality of confidence exists in the communication between this Department and our interlocutors. There is a possibility and likelihood that the release of this information could result in negative consequences, and prejudice the ability of this Department to effectively discharge its functions. To do otherwise would risk compromising the State's capacity to engage with international partners through diplomatic and other channels.

**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 Street, Dublin 2 or by email to [foi@dfa.ie](mailto:foi@dfa.ie). A fee applies for an appeal for access to 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](mailto: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

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David Walsh  
EU-UK