



An Roinn Gnóthaí Eachtracha agus Trádála Department of Foreign Affairs and Trade

Our Ref: FOI/Req/20/123

Ken Foxe

23 July 2020

Dear Mr Foxe,

I refer to the request which you made by email on 19 June 2020 under the Freedom of Information Act 2014 (the FOI Act), as follows: **A list of names of people appointed to the most recent election observation roster.**

I refer also to the acknowledgement of your request which was sent to you on 3 July 2020. I further refer to my phone call with you on 16 July 2020 and to my email of same date which stated: **... the Department will be attaching the list of names (surname, initial, i.e. MURPHY, Z.) of roster members to the public record on 21 July 2020. The list will be attached by way of a response to two written Parliamentary Questions (PQ) received today which are due for response on 21 July. I would be grateful if you could confirm that it is acceptable to you that the decision will issue once the Oireachtas website has been updated with the PQ response. This normally happens during the working day which immediately follows the date of the PQ response.**

Finally I refer to your email response of 16 July in which you stated: **As discussed on the phone, I am happy to proceed on the basis outlined in your email.**

Summary of the Decision

Having considered sections 37(1) and 37(5) of the FOI Act, I have decided to partially grant your grant by providing you with the names of the 199 roster members in the format of surname, initial (i.e. MURPHY, Z.). The list is contained in the response to Parliamentary Questions Nos. 338 and 342 of 21 July 2020, and is available on the Oireachtas website at the following link: https://www.oireachtas.ie/en/debates/question/2020-07-21/338/#pq_338

The Decision

The names which you seek are the personal data of 199 individual persons who applied to join a voluntary roster on the basis that their applications would be treated in confidence. There is no legal obligation to release the names of those who volunteered to join the roster and requests may be refused under section 37(1) of the FOI Act where they concern personal information.

37. (1) Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information

It is also the case that section 37(5) of the FOI Act provides for the release of personal information of third parties in certain circumstances, including where the public interest in granting the request outweighs, on balance, the public interest in protecting the privacy rights of the individuals concerned.

The Department is satisfied that there is a public interest in demonstrating accountability and transparency in the administration of a roster managed from public funds. For this reason, for as long as the Department has maintained the roster, a list of names of its members has been attached to the public record by way of a response to a Parliamentary Question. While the Department would like to continue that tradition, the societal context in which the 2019-2023 roster exists is very different from that which existed in the 2000s when the Department assumed responsibility for the then overseas election register. The volunteer roster now sits in the context of digitised lives and the potential for intense social media curiosity.

The roster is not a public body. It is a voluntary register of trained, and security vetted, private citizens who have volunteered their availability to participate at short notice in election observation missions. While the roster is administered from public funds, membership does not confer any employment, representative or other status on any member. There is no remuneration; expenses only are paid to those who participate in a mission¹. While the Department aims that between 2019 and end 2023 each member will have the opportunity to be nominated for at least one mission, there is no guarantee of nomination or, indeed, of selection by the third parties which manage the missions: the EU and the OSCE.

Having balanced the right of the public to information on the roster versus the privacy rights of the volunteer roster members I am satisfied that the public interest is not sufficiently strong to outweigh the public interest in protecting privacy. I am of the view that the public interest in this matter will be satisfied by providing the information in a more proportional, and less intrusive, manner. Therefore I have decided to part-grant your request and am providing a link to the response to Parliamentary Question Nos. 338 and 342 of 21 July 2020 where the list is available in surname/initial format. https://www.oireachtas.ie/en/debates/question/2020-07-21/338/#pq_338

The GDPR

While this request is made under the FOI Act, as the 2019-2023 roster exists within the framework of the GDPR, the Department gave careful thought to the justification, and the legal basis, for publishing the names of roster members. This included detailed consideration of the Guidance Note on the Legal Bases for Processing Personal Data, which the Data Protection Commission (DPC) issued in December 2019. It also included separate consultations with the DPC and the roster members.

The DPC raised a number of important matters: the GDPR right to be forgotten, the possibility of other information being inferred, or inferable, as a result of publication of the names, and whether there had been incidents of members of the roster having suffered harm as a result of

¹ The majority of observers are nominated as Short Term Observers (STOs) who are generally overseas for about 8 days. STOs are paid expenses by the Department or, in the case of EU missions, by the EU directly. However these expenses would not generally fully compensate a person who needs to take annual leave, or to arrange child care, to enable their participation in a mission. Long Term Observers (LTOs) generally spend around 8 weeks on a mission, sometimes more. Observers with significant expertise can apply directly to the EU or OSCE for Core Team positions which can attract fees of €350 and more per day, for deployments of 70 days and longer. The Department has no role in Core Team nominations, selections or payments.

being identified. The DPC stressed that it would be essential to communicate any changes to members of the roster and to ensure that their feedback is heard.

Roster members were informed of the consultation with the DPC and were given the opportunity to raise any final concerns with the Department. They were also given the opportunity to withdraw from the roster. Further to that process the Department is satisfied that there is a legitimate interest in publishing the names in accordance with GDPR article 6(1)(f) provided that this is done in a proportional manner, with minimal impact on the privacy of the roster members and with appropriate safeguards. Among these safeguards is the decision to publish the names of members in the more proportionate and less intrusive format of surname, initial (i.e. MURPHY, Z.). This is intended to balance transparency against the privacy rights of volunteer roster members, in the context of potential intense social media curiosity.

Section 38 FOI

Section 38 requires the FOI body to notify certain third parties that it is proposed to grant the request in the public interest, that the person may make submissions to the FOI body and that the FOI body will consider any such submissions before deciding whether to grant or refuse the request. I am of the view that any section 38 obligation arising in part-granting the request has been satisfied by the advance notice given to roster members that the Department intended to place their names on the public record in surname/initial format, by the information provided to roster on the public interest/legitimate interest and by the Department's consideration of the issues raised by roster members.

As stated above, there are now 199 members of the roster. 204 persons were shortlisted to the roster mustered in 2018/2019. Five individuals withdrew (i.e. are no longer members) for different reasons, including changed personal and family circumstances. Decisions to withdraw were not connected with National Vetting Bureau disclosures or with the publication of names and no inferences should be made regarding same.

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. 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, 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 Ní Fhearghail
Deputy Director
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