



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

Our Ref: FOI/Req/19/122

26 April 2019

Dear Mr. Duffy,

I refer to your email request of 12 March 2019, made under the terms of the Freedom of Information Act 2014 (the Act), in which you requested the following:

**I wish to access records relating to the arrangements and research conducted in preparation for holding the recruitment campaign for the 2018 election observation roster including equality monitoring and appropriate accommodation for candidates with special needs, and records relating to the decision not to use interviews or attitude tests, or any possible reasonable alternative to interviews, as part of the selection process.**

I also refer to my email of 3 April 2019 in which I stated that I would require additional time to process the request.

I have identified 145 records which fall within the scope of your request. The records are referenced in the schedule enclosed. I have made the decision to grant 89 records, part-grant 27 records and refuse the release of 29 records. Where access has been refused or part-granted, the information is exempt from release under the following sections of the Act and other legislation:

- Section 15 – Refusal on administrative grounds to grant FOI requests
- Section 30 – Functions and Negotiations of FOI Bodies
- Section 33 – Security, Defence and International Relations
- Section 35 – Information Obtained in Confidence
- Section 37 – Personal Information
- Data Protection obligations

Additionally, I have made the decision that one record falls outside the scope of the request by virtue of section 42(k) of the Act in conjunction with the Standing Orders of the Houses of the Oireachtas (in particular Standing Orders 133 and 134). For ease of reference, Section 42(k) of the Act states that the Act does not apply to:

*"a record relating to any of the private papers (within the meaning of Article 15.10 of the Constitution) of a member of either House of the Oireachtas or an official document of either or both of such Houses that is required by the rules or standing orders of either or both of such Houses to be treated as confidential".*

### Section 15 – Refusal on administrative grounds to grant FOI requests

Under section 15(1)(d) of the Act, a head to whom an FOI request is made may refuse to grant the request where the information is already in the public domain.

One record contain information which is already in the public domain. Accordingly, these records will not be released.

### Section 30 – Functions and Negotiations of FOI Bodies

Under section 30(1)(a) and (b) of the Act, a head may refuse to grant an FOI request if access to the record could (in the opinion of the head) reasonably be expected to prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of an FOI body, or the procedures or methods employed for the conduct thereof.

I have reviewed the records in light of section 30, and assessed the potential harm in releasing the records, and the reasonableness of any expectation that harm may occur. Taking each record on its merits, and considering the circumstances, I have come to the conclusion that it is reasonable to expect harm would be caused by the disclosure of a number of these records.

The release of these documents could prejudice the effectiveness of future selection processes run by the Department of Foreign Affairs and Trade's (the **Department**) Human Resources section (**HR**), as it would disclose the methods employed to assess candidates. In order to effectively carry out its job, HR should be able to freely discuss, consider and evaluate the merits of candidates and of the assessment of same. The release of some of these records could have a detrimental impact on the fair selection of candidates by the Department, as well as the ability of HR to freely carry out its functions.

I have additionally considered whether, notwithstanding this potential harm, it is nonetheless in the public interest to release the documents. In considering whether the public interest is better served through the release of the documents, I have considered the importance of the right of the public to access information, to hold the actions of administrators such as the Department to account, and to scrutinise decision-making processes. I have weighed these considerations against the public interest in promoting the effective and efficient management of the Department, and avoiding impairment to decision-making without a countervailing benefit to the public.

In considering the public interest I am also conscious of the enduring public interest in value for money and effective use of Departmental resources and it is my view that there is a risk to this Department should its internal processes be weakened through the release of the relevant documents. I am satisfied that on balance the public interest would not be best served by releasing the records which fall under section 30 of the Act.

### Section 33 – Security, Defence and International Relations

Under section 33 (1)(d) of the Act a head may refuse to grant an FOI request in relation to a record if, in the opinion of the head, access to it could reasonably be expected to affect adversely the international relations of the State.

Certain of the records relate to how individual members states of the EU, OSCE, and also certain international bodies, for example the OSCE-ODIHR conduct their own selection processes. This information was transferred to the Department in confidence for the specific and limited purpose of shared learning.

It is reasonable to expect that the release of these records would render the states and bodies in question less likely to share such information in the future, as the ability to share information in confidence is essential to the maintenance of good working relationships with other countries and international bodies. Should the Department no longer be trusted to only use information shared with it for the purpose in which it was shared, this would have a clear negative impact on the international relations of the State.

### Section 35 – Information Obtained in Confidence

Section 35(1)(a) of the Act provides that a head may refuse to grant an FOI request if the record concerned contains information given to the Department in confidence and in the understanding that it would be treated as confidential.

In considering the records, in light of section 35, I have found that many of the records were given to the Department in confidence, and on the understanding that the Department would treat the records as confidential. Additionally, the disclosure of these records would be likely to prejudice the giving to the Department of further similar information from the same bodies and I find that it is of importance to the Department that such further similar information should continue to be given to the Department.

These records were shared with the Election Observation Desk of the Department by individual member states of the EU, as well as OSCE countries and certain bodies including the OSCE-ODIHR. The records were shared in confidence and for the purpose of shared learning. To release such records given in confidence would hinder future knowledge sharing exercises as well as cause the adverse effects listed above vis-à-vis section 33.

### Section 37 – Personal Information

Under section 2 of the Act, “personal information” includes information about an identifiable individual that is held by an FOI body on the understanding that it would be treated by that body as confidential. Additionally, under section 37(1), access to a record shall be refused if it would involve the disclosure of personal information relating to individual(s) other than the requester.

However, under section 37(5)(a), a record that would otherwise be refused to be granted may still be granted where the public interest that it be granted outweighs the public interest that

the right to privacy of the individual to whom the personal information relates should be upheld.

Records containing such personal information have been considered individually, and in reviewing each, I have weighed the public interest in the right of the public to access information against the right of individuals to not have their personal information shared without their consent, or without a legitimate exemption which would supersede this right.

I have balanced the above interests with citizens' rights to have their personal data protected, and the Department's obligation under the General Data Protection Regulation and the Data Protection Act 2018, (together, **Data Protection legislation**) to not release personal data without consent or a legitimate reason.

I have carefully balanced the considerations in favour and against granting release of the documents in the public interest, including those listed in sections above, and have granted records to the greatest extent possible, only redacting sections containing personal information of third parties.

#### Data Protection Obligations

In addition, in considering this request I am obliged to consider the data protection implications which arise under the Data Protection legislation. Under the Data Protection legislation the Department is obligated to protect citizens' personal data, and to only process such personal data for legitimate reasons, and almost always, with the consent of the data subject. I have considered whether the statutory exemptions<sup>1</sup> for when personal data can be released without consent apply, and find that they do not.

I have considered the records in the light of the Department's data protection obligations, and as for section 37, I have granted records to the extent possible, redacting sections of the records which contain personal data.

#### **Conclusion**

I have granted a large amount of the records which are responsive to this request. To the extent that records have not been released, I rely on the exemptions outlined above, and do so having carefully considered each record. A certain number of documents have been redacted in part, and I have done so having weighed the public interest in their full release against the obligations I am under to not release personal data without consent or a legitimate exemption.

I note also that in reviewing the records covered by this request, I have been cognisant of the public interest in transparency and access to information and have made every effort to release records unless an exemption applies. I note that these records cover the preparations undertaken in order to muster an Election Observation Roster, the running of which has itself

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<sup>1</sup> Article 23 GDPR, and Articles 59, 60, 61, 94 of the Data Protection Act 2018, *inter alia*.

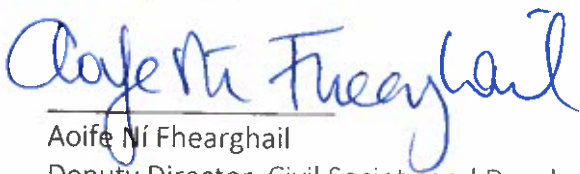
been extensively documented in a variety of fora, notably on the Department's website and in a response to parliamentary questions.

### 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 the Department.

Yours sincerely,



Aoife Ní Fhearghail  
Deputy Director, Civil Society and Development Education Unit  
Development Coordination and Africa Division