



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

Our Ref: FoI/Req/18/306

Date 10 January 2019

Mr. Luke Ming Flanagan  
European Parliament  
Brussels

Dear Mr. Flanagan,

I refer to the request which you have made, dated 7 December 2018, under the Freedom of Information Act 2014 for access to records held by this Department, as follows:

*Copies of any briefing materials, memos, emails between officials in the Department regarding the decision to bring the ratification of two Status of Forces Agreements to Cabinet on 27/11/2018.*

I refer also to the acknowledgement of your request which was sent to you on 14 December 2018.

I have identified 31 records that fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to refuse access to 25 records on the following basis:

### Section 28 – Meetings of the government

I have made a decision to refuse access to 25 records concerned on the basis of an exemption provided for under Section 28 (1) (a) of the 2014 Act where the record “has been, or is proposed to be, submitted to the Government for its consideration by a Minister of the Government or the Attorney General and was created for that purpose”

### Section 29-Deliberations of FOI bodies

I have further decided to redact information which concern issues subject to the deliberative process of this Department, as provided for under Section 29 (1) “A head may refuse to grant an FOI request (a) if the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the

body or of the staff of the body for the purpose of those processes)". Having also taken into account the public interest, I am satisfied that on balance the public interest would not be best served by releasing this information.

#### Section 31 – Parliamentary, court and certain other matters

I have further decided to refuse access to the records on the basis of an exemption provided for under Section 31 (1) (a) that such records "would be exempt from production in proceedings in a court on the ground of legal professional privilege," I have considered whether the public interest would be better served by releasing the records in question in terms of the right of the public to have access to information and the need for transparency in decision making process. However, given the sources and nature of the records I am satisfied that on balance the public interest would not be best served by releasing the information.

#### Section 33 – Security, defence and international relations

I have decided to refuse access to the records concerned on the basis of exemptions provided for under Section 33 (1) (d) and Section 33 (2)(b)(i) where "A head may refuse to grant a 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 and such records include "...communication between a Minister of the Government or his or her Department or Office and a diplomatic mission or consular post in the State"

Access to these records have been refused under Section 33(1)(d). A mutuality of confidence exists in the communication between this Department and our interlocutors. If such information were to be released it would have an adverse effect on the work of this Department and its ability to effectively discharge its functions. The Department, therefore, needs to maintain this level of confidentiality in respect of sensitive diplomatic communications.

Under Sections 33(2)(b)(i) I have exempted 3 records. This is a mandatory exemption under the legislation and I am obliged to refuse access to records falling within those sections.

#### Section 37 – Personal Information

While Section 37(1) Personal Information is a mandatory exemption I am still obliged to consider whether the public interest would be best served by releasing the records in full. I have taken into account the benefit to the public to be given access to correspondence in a manner which demonstrates transparency and accountability of the Department. I have particularly considered whether releasing the personal information; which includes names, addresses, and email addresses etc.; would provide any additional benefit in this regard. I have weighed this against the right of individuals to have their personal information remain private. The personal information which I have redacted does not have any bearing on the substance or detail of the records, and does not diminish or alter the views expressed, and as such, I am satisfied that on balance the decision to partially redact the records and remove identifiable information is correct.

### Section 42 – Restriction of the Act

Finally, Section 42 of the FOI Act sets out the exclusion of certain records from the scope of FOI legislation. Any records “held or created by the Attorney General or the Director of Public Prosecutions or the Office of the Attorney General or the Office of Director of Public Prosecutions, other than a record relating to general administration”, are exempt under Section 42(f) of the Act.

### 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



Marcella Smyth  
Deputy Director  
International Security Policy Unit  
Department of Foreign Affairs and Trade