

7 June 2016

Mr Fiach Kelly
Political Correspondent
The Irish Times

Re: FOI request refusing request FOI/REQ/2016/058

Dear Mr Kelly,

I refer to your request dated 9 May 2016 made under the Freedom of Information Act 2014, which was received by the undersigned on 16 May 2016, for records held by the Department of Foreign Affairs and Trade. Your request sought:

- All correspondence received from the Chinese authorities – such as the Chinese government itself, and state agencies etc – on the Ireland-China beef trade deal since January 1, 2016.
- Correspondence includes any memos, reports, emails, correspondence, records of phone calls, memos, records of meetings, etc that may be available.
- Please also include any translations of received documents in the FOI release.

I have reviewed your application and decided to refuse your request for information. The purpose of this letter is to explain that decision. This explanation has the following parts:

1. A schedule of all of the records covered by your request;
2. An explanation of the relevant findings concerning the records to which access is denied, and
3. A statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

1. Schedule of records

A schedule is enclosed with this letter, it shows the documents that the Department of Foreign Affairs and Trade considers relevant to your request. It describes each document and refers to the sections of the FOI Act which apply to prevent release. The schedule also refers you to sections of the detailed explanation given under heading 2 below, which are relevant to the document in question. It also gives you a summary and overview of the decision as a whole.

2. Findings, particulars and reasons for decisions to deny access

The sections of the Act which can apply to deny access to documents are known as its exemption provisions. Access has been refused under section Section 30.1.(c) – concerning Functions and Negotiations of Public Bodies. This states that:

“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

(c) 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.”

I have refused access to these records because they contain information of a very sensitive nature, relating to negotiations involving Ireland's position in relation to beef market access in China. It is my understanding that the Department of Agriculture, Food and the Marine is engaged with the Chinese authorities in relation to beef market access. However, as these negotiations remain ongoing and in view of the fact that positive working relations have been developed, the release of documents is considered neither timely nor appropriate.

Access has also been refused under Section 33.1.(d) concerning Security, Defence and International Relations, and also section 33.2.b(i) and 33.2.b(ii). Section 33.1.(d) states:

“A head may refuse to grant an FOI request in relation to a record (and in particular but without prejudice to the generality otherwise of this subsection, to a record to which subsection (2) applies) if, in the opinion of the head, access to it could reasonably be expected to affect adversely—

(d) the international relations of the State.”

Section 33.2 b states that

“This subsection applies to a record that—

(b) contains a communication between a Minister of the Government or his or her Department or Office and a diplomatic mission or consular post in the State or of the State or a communication between the Government or an officer of a Minister of the Government or another person acting on behalf of such a Minister and another government or a person acting on behalf of another government—

(i) other than where such information was communicated in confidence or relates to negotiations between the State and the other state in question or in relation to such a state, or is a record of that other state

containing information the disclosure of which is prohibited by that state, or

(ii) other than a record containing analysis, opinions, advice, recommendations and the results of consultations or information the release of which, in the opinion of the head, could reasonably be expected to affect adversely the international relations of the State,

in which case (that is to say, either of the cases falling within subparagraph (i) or (ii)), the request shall be refused.”

A mutuality of confidence exists in the communication between this Department and our interlocutors. If such information was 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. To do otherwise would risk compromising the State's ability to engage with international partners in future trade negotiations, and other sensitive matters, through diplomatic channels.

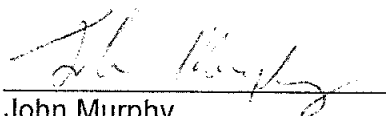
3. Rights of appeal

In the event that you wish to appeal this decision, you can do so by writing to the Freedom of Information Unit, Department of Foreign Affairs and Trade, 76-78 Harcourt Street, Dublin 2 or by e-mail to foi@dfat.ie. Your correspondence should include a fee of €30 (or €10 for a medical card holder) for processing the appeal. For matters of payment please contact the FOI Unit at foi@dfat.ie or on 01-4082857.

You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding, the weekend and public holidays. 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 body.

Should you wish to discuss the above, please feel free contact me at (01) 4082508 or john.murphy@dfa.ie

Yours sincerely,



John Murphy
Assistant Principal Officer
Asia Pacific Unit