

3 August 2021

Dan Dowling

Our Ref: FOI/Req/2021/139

Dear Mr. Dowling,

I refer to your request, received on 7 July 2021, under the Freedom of Information Act 2014 for access to records held by this Department, as follows:

‘All available documents re aircraft 02-0203 a US Military C-40 which landed in Shannon from Maryland USA on Tuesday 06/07/2021 its way to Ben Gurion Int’l. callsign Boxer40 ‘

I have identified three records that fall within the scope of your request. I have decided to refuse access to one record and grant partial access to two records. The attached schedule lists the records and reasons.

Section 33 – Security, defence and international relation

I have decided to refuse access to one record on the basis of exemptions provided for in the Act in Section 33 (1) (d), and Section 33 (2) (b) (i)

(1) 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—

- (a) the security of the State,*
- (b) the defence of the State,*
- (c) matters relating to Northern Ireland, or*
- (d) the international relations of the State.*

(2) 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.....

...in which case, the request shall be refused'

The refusing of the record under Section 33 (1) (d) reflects the fact that in our relations with other states a mutuality of confidence exists in communications. As for the Section 33 (2) (b) (i) the record is a communication from another State's diplomatic representative, falls under one of the elements outlined in 33 (2) (b) (i). If such information were to be released it may adversely affect 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 diplomatic communications.

I have decided to grant partial access to two records, on the basis of Section 18(1), which allows for the partial release of a record with redactions. The redactions are made on the grounds of section 37 (1) on personal information, providing for redaction of personal information, and on the basis of Section 33 (1) (d) and Section 33 (2) (b) (i) which, as explained in the foregoing paragraph, relate to the confidentiality of diplomatic communications.

'Where a FOI request would fall to be granted but for the fact that it relates to a record that is an exempt record, by reason of the inclusion in it, with other matter, of particular matter, the head of the FOI body concerned, shall, if it is practicable to do so, prepare a copy, in such form as he or she considers appropriate, of as much of the record as does not consist of the particular matter aforesaid and the request shall be granted by offering the requester access to the copy.'

Legislative provisions and policy

I would like to take this opportunity to outline the legislative provisions and policy under which this Department operates with regard to the requests for permission for overflights or landings of foreign military aircraft in Ireland.

The Air Navigation (Foreign Military Aircraft) Order, 1952 gives the Minister for Foreign Affairs primary responsibility for the regulation of activity by foreign military aircraft in Ireland and in Irish airspace. The Order provides that no foreign military aircraft shall fly over or land in the State without the express invitation or permission of the Minister. It also provides that the aircraft shall comply with such stipulations that the Minister may make.

Policy

Requests for permission for foreign military aircraft to overfly Ireland are routinely required to include confirmation that the aircraft meets specific criteria; namely that the aircraft is unarmed, carry no arms, ammunition or explosives; and must not engage in intelligence gathering. Furthermore, applications must also specify that the flights do not form part of a military exercise or operation. These conditions are applied to ensure compatibility with Ireland's longstanding policy of military neutrality, which is characterised by non-participation in military alliances. This policy provides a context within which requests for overflights and landing permissions are considered by the Department of Foreign Affairs.

Right of Appeal

Should you wish to appeal this decision, you may do so in writing to

Freedom of Information Unit,
Department of Foreign Affairs,
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

You should make your appeal within 4 weeks (20 working days) from the date of this notification. However, the making of a late appeal maybe 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

p.p. Suzanne Farrell

Eddie Brannigan
International Security Policy Unit
Department of Foreign Affairs