



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

Our Ref: FOI/Req/19/259

06 September 2019

I refer to the request which you made by email on 26 August 2019 under the Freedom of Information Act 2014 (the FOI Act), as follows:

Can you kindly furnish me the original correspondence engagement that the Department/Minister had with all persons in which the so called 'Information Notice' was supplied in the first instance.

I refer also to the acknowledgement of your request which was sent to you on 26 August 2019.

Section 15(1)(g) FOI Act provides that “A head to whom an FOI request is made may refuse to grant the request where the request is, in the opinion of the head, frivolous or vexatious or forms part of a pattern of manifestly unreasonable requests from the same requester or from different requesters who, in the opinion of the head, appear to have made the requests acting in concert.”

In making my determination on this request, I have looked to the purpose of the FOI Act. This is articulated in its Long Title as “An Act to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies [...]”.

Determination

In my view, this FOI request forms part of a pattern of conduct that amounts to abuse of the right to access. I have looked at the following relevant factors in assessing your pattern of conduct:

1. Nature and Scope of Your Requests: I note that you revisit the same issue – election observation and the election observation roster – in all of your correspondence with this Department, including your FOI requests and it is the subject of correspondence on your part with other FOI bodies and persons. Most of your requests this year focus on the recent election roster mustering process where you were unsuccessful in your application, building on a similar pattern following your unsuccessful application in the 2013 mustering process.

2. Purpose of the Requests: While for much of the FOI Act, the purpose of FOI requests is not taken into account, in assessing possible abuse of the right of access, the Information Commissioner, as explained in the Guidance published by his office (the **OIC Guidance**¹), considers the purpose behind a request. You were unsuccessful in two mustering processes in being nominated to Ireland's election observation roster. From reviewing your correspondence, a reasonable person could find that the purpose of your requests is to accomplish objectives other than and unrelated to the access process. Taking all of your requests in the round, it is at least arguable that the purpose of your requests is to burden the staff of this Department, with the effect of complicating the efficient and effective management of the election observation roster.
3. Sequencing of the Requests: I note that you have submitted this FOI request while another request is pending (FOI/Req/19/243), and that, to my knowledge, FOI correspondence with statutorily-set deadlines from you this year alone includes 6 FOI requests, 5 Internal Review requests; 6 accepted OIC Appeals (including an OIC review of a 2018 decision) and at least two requests to other FOI bodies. This is in addition to your bilateral correspondence with this Department. Since January 2019, you have submitted over 110 emails to this Department; a reasonable person could find that the volume and sequence of your correspondence is excessive. The OIC Guidance provides that the cumulative effect of the requests is a relevant consideration, "*It is appropriate to consider the requests concerned in the context of other requests made to the FOI body and in the context of the requester's other dealings with the FOI body concerned*".
4. Intent of the Requester: While for much of the FOI Act, the intent of the requester is not taken into account, in assessing possible abuse of the right to access, the Information Commissioner does consider intent. The OIC Guidance asks "*whether the requester's aim is to harass government or to break or burden the system*". Taking all your requests and correspondence into consideration, a reasonable person could conclude that your aim is to burden the system. In any case, the consequence of your actions is that the small team working on the election observation roster is overburdened by your requests. This has required the diversion of other staff to mitigate the resultant adverse effects on the ordinary functioning of the relevant unit. This comes at a direct cost to the State, in terms of both salaries and the opportunity cost of the time spent on your requests.

Notwithstanding the foregoing, I have considered whether there is nonetheless a public interest in granting your request. The Information Note was prepared upon the request of the Joint Committee on Foreign Affairs and Trade, and Defence. I note that you were told of this following your request under section 9 of the FOI Act to have the note amended. We did amend the Information Note upon your request and you have already been informed that the amended Information Note was uploaded on the Irish Aid website, and sent to the Joint Committee on Foreign Affairs and Trade, and Defence, the Public Accounts Committee, the

¹ Available at the following address: [https://www.oic.ie/guidance-and-resources/guidance-notes/1-Section-15\(1\)\(g\)-Guidance-Note.pdf](https://www.oic.ie/guidance-and-resources/guidance-notes/1-Section-15(1)(g)-Guidance-Note.pdf)

Committee on Public Petitions and to a number of elected representatives. As of today's date, the Department has engaged with you on the matter of the Information Note in FOI correspondence FOI/Req/19/185, FOI/Rev19/013, FOI/Req/19/161 and FOI/Rev/19/009. It was also the subject of a data protection request which was answered in May. Further, it has also been discussed with you in detail in email correspondence on 22 July, 6 August, 10 August, and 16 August. I am of the view that the Department has engaged with you extensively and in good faith on this topic. The Department has been open about the amendments made to the Information Note, and has notified all the appropriate bodies. You have been provided with copies of the email notifications. Accordingly, I find that the public interest in transparency has been discharged.

It is for all the above reasons that I make the determination that this request forms part of a pattern of conduct that amounts to an abuse of the right of access. This is not a decision I have come to lightly, and it is after a rigorous review of the requirements of the FOI Act, of the instant FOI request, the other FOI requests you have made, and other related correspondence from you on the same topic.

Accordingly, under section 15(1)(g) FOI Act, I refuse to grant your request.

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 the 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,

Claire Kerschensteiner
Civil Society and Development Education Unit, Development Cooperation and Africa Division