



Our Ref: Fol/Req/21/045

8 March 2021

Dear Ms Ní Aodha,

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

1. Emails sent to and from the Minister for Foreign Affairs, the Minister's secretary, the Minister of State for European Affairs, and Department officials; as well as all subsequent replies by the Minister and others to that correspondence about reports that the European Commission was to trigger Article 16 of the Northern Ireland Protocol.  
**Timeline:** 29 January - 9 February.
2. Memos prepared for Minister in relation to Article 16.  
**Timeline:** 25 January - 9 February
3. A schedule or notes of the phone calls made to and from Minister on **29, 30, and 31 January.**

I have identified 3 records, all of which are emails/attachments, which fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to refuse access to all 3 records. I have set out my reasoning for refusing the 3 records falling within the scope of your request below.

**Record 3, Section 30 of the Act (functions and negotiations of FOI bodies)**

Section 30(1)(c) of the Act states: *"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...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."*

This record contains references to positions adopted by the Government in the context of talks between the European Union and the United Kingdom regarding implementation of the Withdrawal Agreement and Protocol on Ireland/Northern Ireland. Subsection (1) requires me to consider whether the public interest would, on balance, be better served by granting than by refusing to grant access to the record requested.



In considering this request, I have given consideration to the ongoing discussions between the European Union and the United Kingdom regarding implementation of the Protocol on Ireland/Northern Ireland. These talks are being carried on by the European Union on behalf of its Member States, including Ireland. It is my opinion that the release of the record would disclose positions taken by the Government in respect of those talks. Having considered whether the public interest would be better served by granting or refusing access to the record, I am satisfied on balance that the public interest would be best served by not releasing the information.

### **Records 1, 2, 3: Section 33 of the Act (international relations)**

Exemptions under section 33 of the Act relate to the security, defence and international relations of the State.

I have exempted records 1, 2, 3 under section 33(2)(b)(ii). These are mandatory exemptions and I am obliged to refuse access to the relevant records.

### **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, 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

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David Walsh  
EU-UK