



Our ref: FOI/Req/21/021

18 February 2021

Dear Mr. Corkery,

I refer to the request you have made under the Freedom of Information Act 2014 (the “Act”) on 18 January to this Department, as follows:

1 - any correspondence, briefing notes, research or analysis exchanged internally or externally by the Department of Foreign Affairs - at, or above, the rank of principal officer, including ministers and ministers of state - regarding the implementation of the EU-UK Trade and Co-operation deal.

2 - the minutes of any meetings held internally or with external parties regarding the implementation of the EU-UK Trade and Co-operation deal, as well as any correspondence or briefing notes prepared in anticipation of, or in the aftermath of, such meetings. Such meetings would involve at least one department official at the rank of principal officer or above, or ministers or ministers of state.

The time period I am interested in is from December 24, 2020 to January 18, 2021.

As the decision-maker for this request, I note that you have requested records relating to the implementation of the Trade and Cooperation Agreement (the ‘TCA’) reached between the EU and the UK on 24 December 2020. As the Council of the European Union, acting by the unanimity of all 27 EU Member States, adopted a decision authorising the signature of the TCA as an EU-only agreement, and its provisional application as of 1 January 2021, domestic steps required to implement the TCA at Member State level were limited, and this context should be recalled in reviewing the findings of this FOI request.

I have identified 27 records that fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to grant access to 4 records and refuse access to 23 records. I have set out my reasoning for refusing to grant access to the specified records falling within the scope of your request below.

Records 3 – 7: Section 33 of the Act (Security, defence and international relations)

Section 33(1)(d) of the Act states that “*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(3)(c)(ii) of the Act states that “*a head shall refuse to grant an FOI request if the record concerned— (c) contains information communicated in confidence—(ii) from, to, or within an international organisation of states or a subsidiary organ of such an organisation or an institution or body of the European Union, or relates to negotiations between the State and such an organisation, organ, institution or within or in relation to such an organisation, organ, institution or body, or is a record of such a body containing information the disclosure of which is prohibited by the organisation, organ, institution or body...*”

Section 33(1)(d) of the Act requires me, as decision maker, to assess whether, in my opinion, the release of the records could reasonably be expected to adversely affect the international relations of the State. Having considered the records, I have had regard to the right of the public to seek access to information and the need for a transparent and accountable civil service. I have also considered that the relevant records detail sensitive information that was communicated to this Department in confidence, as part of the conduct of Ireland’s international relations with its Embassy network.

I am satisfied that were these records to be released, this could reasonably be expected to adversely affect the perception of the security and confidentiality of Ireland’s diplomatic communications and am therefore satisfied that the balance favours refusal rather than release.

For those records which are exempt under Section 33(3)(c)(ii), as this is a mandatory exemption, I am obliged to refuse to disclose records falling under that section.

Records 8 – 19: Section 28 of the Act (Meetings of the Government)

Section 28(1) of the Act states “*A head may refuse to grant an FOI request if the record concerned—*

(a) 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;

.....

(c) contains information (including advice) for a member of the Government, the Attorney General, a Minister of State, the Secretary General to the Government for use by him or her solely for the purpose of the transaction of any business of the Government at a meeting of the Government.”

The abovementioned records, which are documented in the attached schedule, pertain to either Memos to Government or briefing material provided to the Minister for Foreign Affairs for his use at Cabinet meetings, and are therefore exempt under S28(1).



In considering records 12, 15 and 18, which consist of correspondence on the drafting and processing of Memos to Government, I have had regard to S28(6) of the Act, where, for the purposes of S28, a “record” includes a preliminary or other draft of the whole or part of the material contained in the record”.

Records 20, 21, 22, 25, 26, 27: Section 31 of the Act (Parliamentary, court and certain other matters)

Section 31(1)(a) of the Act states that “A head shall refuse to grant an FOI request if the record concerned –

- (a) would be exempt from production in proceedings in a court on the ground of legal professional privilege”

The abovementioned records were generated by this Department’s Legal Division, acting as legal advisors to the Department and therefore are protected by legal professional privilege. This is a mandatory exemption and obliges me to refuse to disclose records coming within the scope of this exemption.

I would direct your attention to a list of Statutory Instruments, enacted by the Minister of Foreign Affairs to give effect to certain aspects of the TCA in Ireland, which are listed in the section below.

Section 15 of the Act (refusal on administrative grounds to grant FOI requests)

A number of Statutory Instruments were enacted by the Minister for Foreign Affairs to give effect to certain aspects of the TCA in Ireland and these can be accessed by clicking through the hyperlinks below:

1. [Criminal Justice \(Mutual Assistance\) Act 2008 \(Designation of United Kingdom\) Order 2020](#)
2. [European Arrest Warrant Act 2003 \(Designated Member States\) \(Amendment\) Order 2020](#)
3. [European Arrest Warrant \(Application to Third Countries\) \(United Kingdom\) Order 2020](#)
4. [European Union \(International Cooperation\) Regulations 2020](#)
5. [Criminal Justice \(Forensic Evidence and DNA Database System\) Act 2014 \(Section 110\) \(Designation of United Kingdom\) Order 2020](#)

I am aware that an identical Freedom of Information request was made to the Department of the Taoiseach, which resulted in the disclosure of records relating to the Assistant Secretary Group on Brexit readiness. This group is co-chaired by senior officials from the Department of the Taoiseach and the Department of Foreign Affairs



(DFA). For the period in question, several officers from DFA's Brexit Unit including the Director (who is at PO level) were assigned to the Secretariat which supported meetings of this Group. On this basis, the Director would have access to the records disclosed to you in the Department of the Taoiseach's response.

As agreed in our discussion over the phone on 18 February 2021, you will have access to these records from the Freedom of Information request made to the Department of the Taoiseach and I have therefore not included them in the schedule to this letter. In making this decision, I have had regard to Section 15(1)(i)(i) of the Act, which states that *"A head to whom an FOI request is made may refuse to grant the request where-- the request relates to records already released, either to the same or a previous requester where—(i) the records are available to the requester concerned..."*

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 St., Dublin 2 or by email to foi@dfa.ie. A fee applies for an appeal to access 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, 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,

Aoife Nannery