



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

Our Ref: FOI Req 18-248

Date: 25 October 2018

Dear Requester,

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

“Copies of any correspondence received by the Department of Foreign Affairs relating to representations, comments, expressions of support or complaints about the Control of Economic Activity (Occupied Territories) Bill 2018 since January 1st, 2018” and “Copies of any internal memos at the Department of Foreign Affairs about concerns around the legality of the Control of Economic Activity (Occupied Territories) Bill 2018.”

I refer also to the acknowledgement of your request which was sent to you on 25 September 2018.

I have identified 64 records that fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to part-grant 58, and refuse 6 of the records. Where access has been refused, the record is exempt from release under sections 28, 31 and 33 of the Act.

I note that several records have been excluded under Section 42(j) of the Act. Under this section, the Act does not apply to records given to a member of Government or a Minister of State for the purposes of proceedings in either House of the Oireachtas or any committee or subcommittee thereof. Several records have also been excluded under Section 42(f) of the Act. Under this section, the Act does not apply to records held or created by the Attorney General or the Office of the Attorney General, other than records relating to general administration.

In relation to the first part of your request, I have identified 57 records of correspondence received by the Department relating to the Bill. I have part-granted all of these records. These records have been redacted under Section 37 of the Act, to withhold personal information (e.g. email addresses, telephone numbers, home addresses, etc.). Please note that, while we have made every reasonable effort to locate records falling within the scope of your request, given that correspondence to the Department is not always filed under the subject matter (e.g. ‘Occupied Territories Bill’), we cannot guarantee that every record has been identified. However, we have no reason to believe that we have in fact missed any.

Exemptions under Section 28 relate to meetings of the Government. I have refused four records under Section 28(1)(c), on the basis that they contain information (including advice) for a member of the Government for use by him or her solely for the purpose of the transaction of business of the Government at a meeting of the Government. Two of those same records contain the whole or part of a statement made at a meeting of the Government or information that reveals, or from which may be inferred, the substance of the whole or part of such a statement. I am obliged, under Section 28(2)(a) of the Act, to refuse access to such records (i.e. this is a mandatory exemption).

Exemptions under section 31(1)(a) relate to records that would be exempt from production in proceedings in a court on the ground of legal professional privilege. I have refused three records on these grounds. I have refused to release information from 6 records under Section 33 of the Act. This Section relates to the Security, defence and international relations of the State. Based on the Department's direct knowledge and expertise in international relations, its strongly held position is that the mere granting of access to this information would adversely affect the State's relations by, among other things, introducing major doubts with regard to the security and confidentiality of our diplomatic communications. It is important to maintain that mutuality of trust in order to protect and promote Ireland's interests internationally. My decision to refuse access to the information contained in this record is informed by my consideration of the likelihood that its release could result in negative consequences, and the likely severity of said consequences. Finally, under Section 18(1) – Access to Parts of Records –, I have exempted information from one record from release on the basis that the information was not relevant to your request.

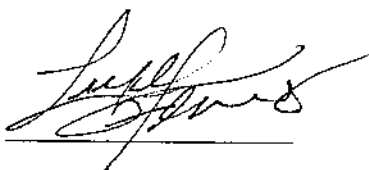
It may be helpful to your understanding to say a little more about the second part of your request, relating to the legality of the Bill. As you see, there are only a small number of records relating to this. This is because there was no need for substantive reflection on this point. When the Bill was introduced, the Department sought legal advice from both its own Legal Division and the Office of the Attorney General. As discussed above, this legal advice is excluded from release under the terms of the Act. The Department accepted the legal advice provided. The Department's position on the legality of the Bill, reflecting this advice, was most fully set out in the Tánaiste's interventions in the Seanad on 30 January and 11 July 2018, and all other records (briefing documents etc.) simply contain brief summaries or restatements of that position as stated in the Seanad. An example of such is the extract from a wider briefing note part-released as record 8.

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 FOI Unit at foi@dfa.ie, or +353 (0)14082857.

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,



Liam O'Flaherty
Middle East and North Africa Unit
Department of Foreign Affairs and Trade
+353 (0)1408-2260, liam.oflaherty@dfa.ie