



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

Our Ref: FOI/Req/16/214

John Cunningham  
RTÉ Current Affairs,  
RTÉ,  
Donnybrook,  
Dublin 4.

9 February 2017

Dear Mr. Cunningham,

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

***Any correspondence, documentation, briefing material and/or financial reports that relate to the University College Dublin - Yantai, China, project/partnership/university that are held by the Department of Foreign Affairs.***

***In addition, I also request any recorded footage, photographs or other associated media that relate to the above project/partnership that the department may have on file.***

I refer also to the acknowledgement of your request which was sent to you on the 7th January.

I have identified 30 records that fall within the scope of your request. The records are listed in the attached schedule. I have made a decision to grant 12 of the records, part-grant 1 of the records and refuse 17. The purpose of this letter is to explain that decision. This explanation has the following parts:

1. A schedule of all of the records covered by your request;
2. An explanation of the relevant findings concerning the records to which access is denied,  
and
3. A statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

**1. Schedule of records**

A schedule is enclosed with this letter, it shows the documents that the Department of Foreign Affairs and Trade considers relevant to your request. It describes each document and refers to the sections of the FOI Act which apply in the case of exemptions. The schedule also refers you to sections of the detailed explanation given under heading 2 below, which are relevant to the document in question. It also gives you a summary and overview of the decision as a whole. Where information has been redacted because it is deemed outside of the scope of the request, this has been noted in the schedule.

## **2. Findings, particulars and reasons for decisions to deny access**

The sections of the Act which can apply to deny access to documents are known as its exemption provisions. Access to certain documents has been refused based upon the exemptions in the Act relating to “Security, defence and international relations” (s33)(1)(d), (s33)(2)(b)(i) and (s33)(2)(b)(ii); “Information obtained in confidence” (s35)(1)(a) and “Commercially sensitive information” (s36)(1)(a)(b)(c).

**Section 33(1)(d)** states:

“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(2)(b)** states:

“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, or

(ii) other than a record containing analysis, opinions, advice, recommendations and the results of consultations or information the release of which, in the opinion of the head, could reasonably be expected to affect adversely the international relations of the State,

in which case (that is to say, either of the cases falling within subparagraph (i) or (ii)), the request shall be refused.”

I have considered **section 33** of the Act in making my decision not to release certain documents. The Department of Foreign Affairs and Trade operates in a complex and diverse environment. A mutuality of confidence exists in the communication between this Department and our interlocutors. This is particularly the case in respect of diplomatic communications. I have considered the possibility and likelihood that the release of these records could result in negative consequences, and prejudice the ability of this Department to effectively discharge its functions. To do otherwise would risk compromising the State’s capacity to engage with international partners through diplomatic channels.

**Section 35(1)(a)** states:

“Subject to the provisions of this section, a head shall refuse to grant an FOI request if -

(a) the record concerned contains information given to an FOI body in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body..”

I have also considered **Section 35** of the Act in making my decision not to release certain documents. The factors I have considered include the right of the public to have access to information; the need for an open, transparent and accountable civil service and the need for decision-making to be scrutinised. However, on balance, I am satisfied that the public interest would not be better served by the release of these records.

This decision is grounded in the fact that the Department of Foreign Affairs & Trade is regularly provided with information by interlocutors on the basis that it be treated confidentially. Access to such information proves essential in allowing the Department to advance Ireland’s prosperity abroad and serve its interests. In this instance, the release of such material could reasonably be expected to preclude further access to such information, with adverse consequences for the ability of the Department to carry out its functions.

**Section 36(1)(2)** states:

“(1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains-

(a) trade secrets of a person other than the requester concerned,

(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or

(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

(2) A head shall grant an FOI request to which subsection (1) relates if-

(a) the person to whom the record concerned relates consents, in writing or in such other form as may be determined, to access to the record being granted to the requester concerned,

(b) information of the same kind as that contained in the record in respect of persons generally or a class of persons that is, having regard to all the circumstances, of significant size, is available to the general public,

(c) the record relates only to the requester,

(d) information contained in the record was given to the FOI body concerned by the person to whom it relates and the person was informed on behalf of the body, before its being so given, that the information belongs to a class of information that would or might be made available to the general public, or

(e) disclosure of the information concerned is necessary in order to avoid a serious and imminent danger to the life or health of an individual or to the environment,

but, in a case falling within paragraph (a) or (c), the head shall ensure that, before granting the request, the identity of the requester or, as the case may be, the consent of the person is established to the satisfaction of the head.

I have also considered **Section 36** of the Act in making my decision not to release certain documents. As outlined above, access to certain confidential information is essential in order to allow the Department of Foreign Affairs & Trade to execute its functions. In certain instances, such information may also be of a commercially sensitive nature. In this case, I am satisfied that these documents contain commercially sensitive information, the release of which could reasonably be expected to have adverse consequences.

In weighing these adverse consequences against the public interest, I have again considered the right of the public to have access to information; the need for an open, transparent and accountable civil service and the need for decision-making processes to be adequately scrutinised. I am satisfied that the balance favours refusal rather than release on this occasion.

### **3. Rights 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@dfat.ie](mailto:foi@dfat.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@dfat.ie](mailto:foi@dfat.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

Shane Sargeant