



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

Our Ref: FOI/Req/2020/212

4 December 2020

Dear Mr \_\_\_\_\_,

I refer to the request that you made under the Freedom of Information Act 2014 (“the FOI Act”) to the Department of An Taoiseach on 5 November 2020, as follows:

*“According to the attached Times article the government decided to suspend Ireland's participate in international election observation missions on basis of covid-19. I wish to request access to records within your department on this decision.”*

I refer also to the acknowledgement of your request that was sent to you on 17 November 2020 by Department of Foreign Affairs. In this acknowledgement you were informed that your request was transferred to this Department, as the Department of An Taoiseach has no records covered by the scope of the request and the subject of the request falls within the scope of the Department of Foreign Affairs.

### **Determination**

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 [...]”*. In addition, 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.”*

I have reviewed all the factors and most especially the overall pattern of interaction with the Department, including but not limited to the high volume and extent of previous requests. Taking into account the history of your dealings with this Department, and the level of correspondence, records, files (both within the FOI Act and outside the FOI Act) that we have already released to you, I am satisfied that the instant request is vexatious and forms a pattern of manifestly unreasonable requests submitted over a sustained and prolonged period of time; forming as it does, a pattern of conduct that amounts to an abuse of process or right of access.

In coming to this decision I note that an FOI Body is “*entitled to have regard to the context in which the request [was made]*” when assessing 15(1)(g). I have regard to the finding of the Office of the Information Commissioner (OIC) with regard to numerous appeals by you relating to election monitoring, the election observation roster, and the Department’s deployments of Irish election observers from the roster, dating back to 2013. The Decision in the OIC case 53493-P8G5X1, of 18 February 2020 states:

*“Your request in this case involves, yet again, a request for information relating to the election observation roster. In my decision in case 160308, I formed the view that from the time you were unsuccessful in your application for appointment to the election observation roster in 2013, you had pursued all available avenues to challenge the decision, including through making FOI requests. I noted from an email you sent to the Department on 12 June 2016 that you stated that it was your intention to “pursue a resolution” of the non-payment of a grant (in respect of election observation missions) and your ongoing exclusion from nomination for election observation opportunities by the Department “by using various fora” and “ultimately if necessary by litigation”.’*

This Decision also highlights a number of principles that the OIC consider relevant including:

- *“The fact that a requester may be in a position to identify a legitimate basis for seeking access to certain records does not, of itself, mean that the request cannot be deemed frivolous or vexatious.”*
- *“We are satisfied that it is entirely appropriate to have regard to the broader issue of the manner in which a requester has engaged with the public body to date on a particular matter”.*

The Decision, referring again to OIC case 160308, goes on to state:

*“I found that submitting FOI requests had become an integral part of your strategy in pursuing an ongoing grievance with the Department relating to your exclusion from the roster. I found that the purpose of your request in that case was directed at an objective unrelated to the right of access to records, namely that it was being used tactically for the purposes of pursuing the dispute. I found that a pattern of conduct existed relating to your use of FOI which suggested an abuse of the FOI process with no regard had for the burden which the pursuit of your grievance had placed on the Department.”*

Further, I also have regard to the judgment of the High Court upholding the decision of the Information Commissioner in OIC case 160308, which found that *“In these circumstances, I am satisfied that the respondent properly came to the view that the request of 28<sup>th</sup> May 2016 was to further the appellant’s personal grievance and it was within the jurisdiction of the respondent to classify such a request as being vexatious so that the request might be refused.”* Although, as noted in the Commissioner’s decision on OIC case 53493-P8G5X, that determination has been appealed to the Court of Appeal, the decision in case 160308 *“remains a valid decision unless and until it is declared void by the Court of Appeal”.*

Accordingly, having regard to the background against which this request was made and your established pattern of conduct related to the subject of this request, under section 15(1)(g) FOI Act, I refuse to grant your request.


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 to this Department, the other FOI requests you have made to other FOI bodies and persons, and other related correspondence from you on the same topic. In taking this decision, I am following guidance from the Department's FOI Unit and the Central Policy Unit of the Department on Public Expenditure and Reform.

**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](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 four 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,



Catherine Lawlor

Civil Society Unit, Development Cooperation and Africa Unit