



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

Ken Foxe, Right to Know

09 June 2020

Our Ref: FOI/Req/2020/092

Dear Mr Foxe,

I write further to your request for information of 5 May 2020, made under the terms of the Freedom of Information Act 2014, for access to records held by this Department as follows:

Copies of all correspondence between your department and the Department of Employment Affairs with regard to the following report:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25176>

Copies of all correspondence between your department and the author/organisation responsible for this report:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25176>

Copies of any briefings/submissions, or other such documents prepared for the Minister and/or Secretary General relating to this report:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25176>

I also refer to the acknowledgement of your request sent to you on 11 May 2020 and the confirmation of a one-week extension you granted on 29 May 2020 extending the reply date until 9 June 2020.

At the outset, I would like to take this opportunity to emphasise the importance that Ireland attaches to the international human rights system, including the critically important work of the Special Procedures of the UN Human Rights Council. We take seriously our responsibility to engage with, and respond fully and in a timely manner, to communications received from special procedures. In the course of 2019, we replied in detail to three such communications. We also made numerous submissions in response to requests for information from mandate holders. We were one of only 22 UN Member States to respond to the UN Special Rapporteur on Extreme Poverty's questionnaire on the introduction of digital technologies in the implementation of national social protection systems in May 2019. All of our responses are publicly available on the UN website.

I am the deciding officer in this case and I have identified 78 records in the possession of the Department of Foreign Affairs and Trade that fall within the scope of your request. All relevant documents are listed in the attached schedule.

Of these documents, I have determined that 36 records can be released in full and 1 record can be partially released. The remaining records are exempted from release under the following grounds in the Freedom of Information Act 2014. I have also provided a short explanation for my decisions under each section.

For the 36 records released, some are emails extracted from an email chain of exempted documents. Where this is the case, this is clearly indicated in the schedule e.g. 1 page of a 3 page email chain released. I am attaching all 36 documents, in their original form, saved in PDF format.

Section 29 (1) - Deliberations of FOI bodies

The subject matter of this FoI request remains ongoing, with the State still having opportunities to respond to the Special Rapporteur's Communication. On this basis, I consider that it would not be appropriate to release the documents in the schedule exempted under this provision as it could prejudice the continuing interactions between the Department of Employment and Social Protection, the Department of Foreign Affairs and Trade and the UN on the matter. The release of these records would be contrary to the public interest as they would give an incomplete picture of the Department's stance on the matter before the State has given full consideration to the contents of the Communication.

Section 31(1)(a) - would be exempt from production in proceedings in a court on the ground of legal professional privilege

Documents 13, 17 and 38 contain advice from Counsel and the Attorney General's Office.

Section 33 – Security, defence and the international relations of the state

Under Section 33 of the Act, Security, Defence and International Relations, 33(3)(c)(ii) is a mandatory exemption under the legislation and I am obliged to refuse access to records falling under that section.

I have also exempted records under Section 33(1)(d) of the Act. The Department of Foreign Affairs and Trade operates in a complex and diverse international 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 and other channels.

While there may be arguments in favour of releasing records such as showcasing transparency and the process of informed reporting, I have had to take into account the potential harm or detriment that could occur. This is especially the case in this instance as the records relate to confidential communications between Ireland's Permanent Mission to the

UN in Geneva and the UN Office of High Commissioner for Human Rights. As such, and on balance, I have decided to fully withhold some records with this view in mind.

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 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 staff of this Department.

Yours sincerely,

Emma Hickey
Responding Officer