



Our Ref: Fol/Req/2020/021

18th December 2020

Dear Ms. Ingsholt Kelly,

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

1. Number and type including specific job description of positions held by DFAT employees and attachés on loan from DAFM, Ireland (Department of Agriculture, Food and Marine) with the EEAS (External European Action Service) in Rome, Italy between 2011 and 2020.
2. Number of positions within the EEAS, Rome, Italy (external European action service) filled by DFAT employees and attachés on loan from DFAM (department of agriculture, food and marine) , that hold diplomatic status between 2011-2020.
3. Number of attachés on loan from DAFM, Ireland (department of Agriculture, Food and Marine) to DFAT between 2013-2020 and their length of service with DFAT.
4. Number of attachés on loan from DAFM, Ireland to DFAT who held a position with diplomatic immunity between 2013-2020.
5. Rules and regulations in regard to type of position within the DFAT that allows the employee to hold diplomatic status
6. The regulations for diplomatic status within the DFAT, including details the process of how diplomatic status may be withdrawn.

I refer also to the acknowledgement of your request, which was sent to you on 28 January, 2020, an update on progress which was sent to you on 21 February, 2020, and a further update on constraints and delays caused by the Covid-19 pandemic which was sent to you on 23 March, 2020.

The Department of Foreign Affairs comprises headquarters at home and diplomatic, consular and representative offices or missions abroad. Missions abroad perform a wide range of functions in pursuit of Ireland's foreign policy interests, including advancing Government policies, in particular with the EU and the UN, and providing frontline consular services to Irish citizens overseas. They also support Irish culture and enhanced visibility for Ireland overseas and work to advance Ireland's trade, tourism, education and investment objectives. They are critical to the organisation of Ministerial-led Trade Missions and promotional visits and events, helping to advance our values and extend our influence on matters of interest to us. They enhance our outreach and our global visibility.

Secondment of officers to the Department of Foreign Affairs' diplomatic missions

To support the broader goals of the Government of Ireland, the Department of Foreign Affairs facilitates the assignment of officers from other Government Departments to Ireland's



diplomatic missions abroad through a process known as secondment. During the period of secondment to the Department of Foreign Affairs, officers from other Government Departments are treated in the same manner and receive the same supports as officers directly employed by the Department of Foreign Affairs, while also maintaining a connection with their parent, or originating, Department. As with all assignments to Ireland's overseas missions, secondments are finite in duration and, on completion of such assignments, all obligations pertaining to seconded officers are re-assumed by their parent Department.

Secondment of National Experts to the European External Action Service

The Department of Foreign Affairs does not second officers from other Government Departments to the European External Action Service (EEAS). The Department of Foreign Affairs is the accounting Department for the annual budget of the Centrally Funded Scheme for Seconded National Experts, which was established by the Government of Ireland in 2013 to support, fund and encourage the placement by parent Departments of Seconded National Experts in positions that are of strategic importance to Ireland in the EU institutions and international organisations.

The process by and terms under which national experts from the public administrations of European Union Member States may be seconded to the EEAS is set out under the *Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 23 March 2011 establishing the rules applicable to National Experts Seconded to the European External Action Service*. This is publically available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0114%2802%29>

In view of the foregoing and in relation to your request for information on the number and type including specific job description of positions held by DFAT employees and attachés on loan from DAFM, Ireland (Department of Agriculture, Food and Marine) with the EEAS (External European Action Service) in Rome, Italy between 2011 and 2020, I can advise that no officers from the Department of Foreign Affairs, including attachés or secondees from other Government Departments, held positions as Seconded National Experts with the EEAS (External European Action Service) in Rome, Italy between 2011 and 2020.

I have, however, identified 12 records held by the Department of Foreign Affairs and Trade which relate to the secondment by the Department of Food, Agriculture and the Marine of one of their officers to a National Expert position with the EEAS in Rome, Italy. These records are numbered in the attached schedule as: 2, 24, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38.

I am refusing your request in respect of Records Number 2, 29, 30, 31, 32, 33, 36, 37 and 38 under Section 37 (1) - *i.e. "a head shall refuse to grant an FOI request, if in the opinion of the head, access to the record concerned would involve the disclosure of personal information*".

While Section 37 (1) is a mandatory exemption, I am still obliged to consider whether the public interest would be best served by releasing the records, which include personnel files, in full. I have weighed this against the right of individuals to have their personal information remain private. I am satisfied that the public interest in favour of granting the request does not outweigh the public interest in protecting against the invasion of privacy that could result



from placing any personal information in the public domain. In this regard, the language of Section 37 recognises the very strong public interest in protecting the right to privacy. I am satisfied that, on balance, the public interest is best served by protecting the privacy of the officer and refusing access to the relevant records.

I am refusing your request in respect of Records Number 24, 29, 30, and 31 under Section 33 (1) (d) – i.e. *“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 be reasonably expected to affect adversely – [...] (d) the international relations of the State”*

Article 27 (2) of the Vienna Convention on Diplomatic Relations 1961 provides that *‘The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.’* International relations is the cornerstone of the work of the Department of Foreign Affairs. Our ability to conduct business with any government and/or their representatives in confidence is fundamental to the conduct of international relations. The release of records pertaining to diplomatic communications has the capacity to adversely affect the international relations of this State, including its ability to engage with other international partners through diplomatic channels in future.

I am refusing your request in respect of Records Number 24, 29, 30, 31, and 36 under Section 33 (3) (c) (ii) – i.e. *“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 body, or is a record of such a body containing information the disclosure of which is prohibited by the organisation, organ, institution or body...”*

Where access has been refused, the records fall within the scope of this exemption as the European Commission and European External Action Service fall within the definition of an institution or body of the European Union for the purposes of the Act.

In relation to your request for information on the number of attachés on loan from DAFM, Ireland (department of Agriculture, Food and Marine) to DFAT between 2013-2020 and their length of service with DFAT, on the basis that you are referring to officers on secondment to the Department of Foreign Affairs, I have identified 26 records pertaining to your request. These records are numbered in the attached schedule as: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 28, 39, 40, and 41.

I am part-granting your request in relation to the afore-mentioned records. Personal information has been redacted in accordance with Section 37 (1) – i.e. *“a head shall refuse to grant an FOI request, if in the opinion of the head, access to the record concerned would involve the disclosure of personal information”*



Diplomatic Immunity

In relation to your request for information on the rules and regulations in regard to type of position within the DFAT that allows the employee to hold diplomatic status; and, the regulations for diplomatic status within the DFAT, including details the process of how diplomatic status may be withdrawn, diplomatic immunity is governed by the Vienna Convention on Diplomatic Relations 1961 or by the Vienna Convention on Consular Relations 1963, and in accordance with the laws and regulations of the host nation.

The Vienna Conventions are publically available and may be located at:

Vienna Convention on Diplomatic Relations 1961

https://treaties.un.org/doc/Treaties/1964/06/19640624%2002-10%20AM/Ch_III_3p.pdf

Vienna Convention on Consular Relations 1963:

https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

All officers who serve at Ireland's overseas missions, including attachés or secondees from other Government Departments, are notified to the Ministry of Foreign Affairs of the receiving State in accordance with Article 10 of the Vienna Convention on Diplomatic Relations 1963, or, in the case of a Consulate, to the Government of the State in whose territory the head of a consular post is to exercise his functions in accordance with Article 11 of the Vienna Convention on Consular Relations. The appropriate immunities and privileges are afforded by the receiving State for the specified duration of the assignment to the notifying diplomatic mission.

As such and on the basis that you are referring to officers on secondment to the Department of Foreign Affairs, I have identified 26 records pertaining to your request for information on the number of attachés on loan from DAFM, Ireland to DFAT who held a position with diplomatic immunity between 2013-2020. These records are numbered in the attached schedule as: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 28, 39, 40, and 41.

I am part-granting your request in relation to the afore-mentioned records. Personal information has been redacted in accordance with Section 37 (1) – i.e. *“a head shall refuse to grant an FOI request, if in the opinion of the head, access to the record concerned would involve the disclosure of personal information”*.

Ireland's diplomatic staff posted overseas are expected to respect and comply with local laws and to maintain the highest standards of conduct. While Ireland does not have rules and regulations on diplomatic immunities, these being set out in the Vienna Conventions, I have identified three records, listed as Records Number 1, 25 and 27 in the attached schedule of records, in which questions of diplomatic immunity arise.



I am refusing your request in respect of Records Number 1, 25 and 27 under Section 29 (1) (a) – i.e. *“A Head may refuse to grant an FOI request – (a) if the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purposes of those processes)...”*

In reviewing the records in question, I am obliged to consider whether the public interest would be best served by releasing the records. I have weighed this against the requirement for the deliberative processes set out in these records and, where applicable, related decisions arising, to remain confidential in order not to prejudice consideration of ongoing matters or similar matters that may arise in the future. I am satisfied that the public interest in favour of granting the request does not outweigh the public interest in preventing the potential for a negative impact on the capacity to conduct a full and measured consideration of such matters.

I am further refusing your request in respect of Records Number 1, 25 and 27 under the afore-mentioned Section 33 (1) (d) i.e. *“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 be reasonably expected to affect adversely – [...] (d) the international relations of the State”*

I am also refusing your request in respect of Records Number 1, 25 and 27 under the afore-mentioned Section 37 (1) – i.e. *“a head shall refuse to grant an FOI request, if in the opinion of the head, access to the record concerned would involve the disclosure of personal information”*.

I am refusing your request in respect of Records Number 25 and 27 under Section 35 (1) (a) – i.e. *“Subject to 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 similar information from the same person or other persons and it is of importance to the body that further similar information as aforesaid should continue to be given to the body, [...]”*

The records concerned contain information given in confidence and on the understanding that it would be treated as confidential. I believe that the release of this information would prejudice the giving of further similar information to the Department, which would have an impact on the Department’s ability to take appropriately informed decisions and provide suitable advice in the future. I believe that it is of great importance to the work of the Department that further similar information should continue to be provided.

An Roinn Gnóthaí Eachtracha
Department of Foreign Affairs



I am refusing your request in respect of Record Number 25 and 27 under the aforementioned Section 33 (3) (c) (ii) – i.e. “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 body, or is a record of such a body containing information the disclosure of which is prohibited by the organisation, organ, institution or body....”

As set out above, the appropriate immunities and privileges are afforded by the receiving State for the duration of the assignment to the diplomatic mission through which an officer is notified to the host Ministry of Foreign Affairs. I have however identified two records related to your request for information on the number of positions within the EEAS, Rome, Italy (External European Action Service) filled by DFA employees and attachés on loan from DFAM (Department of Agriculture, Food and Marine), that held diplomatic status between 2011-2020. I am granting your request in relation to the afore-mentioned records, which are listed as Records Number 34 and 35 on the attached schedule.

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, 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 the staff of this Department.

Yours sincerely,

Karen Miller

