



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

Our Ref: Fol/Req/2020/068

1 July 2020

Dear Ms. Coyne,

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:

***I would like to request, under the FOI act, all correspondence and documentation held by the department relating to the Cerrejón coal mine and ESB's relationship with it. I would like my FOI request to cover the last year.***

I refer also to the acknowledgement of your request which was sent to you on 27 March 2020. Departmental staff are working remotely during the Covid 19 public health emergency which has impacted our ability to access and prepare records. I sincerely appreciate your patience and understanding in this regard.

I have identified 226 records that fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to grant release of 76 records, grant partial release of a further 136 records and refuse release of 14 records.

Where access has been only partially granted or refused the cases relate to section 29 (1) (a) Deliberations of Public Bodies, section 33. (2) (b) (i) and (ii) Security, defence and international relations, and section 37(1) Personal Information.

#### **Section 29 – Deliberations of FOI bodies**

In relation to Section 29(1)(a) of the Act, I have considered whether the public interest would be better served by releasing the records in question in terms of the right of the public to have access to information and the need for accountability and transparency in the decision making processes of public bodies. However, given the source and nature of these records, I am satisfied that their release would negatively impact on the decision making and information sharing process of this Department. In particular, I believe the release of these records, and the insight they give on politically sensitive issues, would adversely affect the ability and process of this Department to continue its work on these issues and with the same interlocutors. As such, and on balance, I have decided the public interest would not best be served in releasing this small number of records.

### **Section 33 – Security, defence and international relations**

While Section 33. (2) (b) (i) and (ii) Security, defence and international relations, is a mandatory exemption I feel it is warranted that I give reasoning to why it has been used in relation to a number of records. 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 and engage with outside interlocutors and stakeholders. To do otherwise would risk compromising the State's capacity to engage with international partners through diplomatic and other channels. I have therefore decided that refusals must be made for these reasons and I have applied the exemption as appropriate.

### **Section 37 – Personal information**

While Section 37(1) Personal Information is a mandatory exemption I am still obliged to consider whether the public interest would be best served by releasing the records in full. I have taken into account the benefit to the public to be given access to correspondence in a manner which demonstrates transparency and accountability of the Department. In the majority of cases, the information redacted relates to personal contact information and does not affect the substance of the record. I have particularly considered whether releasing the personal information would provide any additional benefit in this regard. I have weighed this against the right of individuals to have their personal information remain private and have found that there is a clear prerogative for this information to remain private.

Matters related to the ESB and where it sources its coal fall under the remit of the Department of Communications, Climate Action and Environment. The Department of Foreign Affairs and Trade has been monitoring issues surrounding the Cerrejón mine in La Guajira, Colombia, including its reported negative impact on the environment and local communities, on an ongoing basis. The Tánaiste has expressed his concern regarding this matter on a number of occasions and in September 2019 wrote to the ESB to seek further information regarding the mine and steps taken to ensure that coal used by the ESB is sourced from responsible producers.

The Embassy of Ireland in Colombia has been following this issue closely since it opened in Bogotá last year and regularly engages on the issue with partner organisations in Colombia that are involved in monitoring human rights in the area. The Embassy conducted a visit to La Guajira in September 2019 and met with a range of stakeholders, including Cerrejón management, local communities, local government, religious leaders, academics and NGOs.

Addressing the risks of adverse impacts of business activities on human rights is a priority of the Government, which is why Ireland has adopted a National Plan on Business and Human Rights to give effect to the United Nations Guiding Principles on Business and Human Rights. Since its launch at the end of 2017, my Department has implemented a number of key commitments including the establishment of the Business and Human Rights Implementation Group, to oversee progress on delivery of the Plan and the completion of an independent

baseline assessment of the current legislative and regulatory framework for business and human rights in Ireland.

### **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 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,  
Niamh Kenny

*Latin America and Caribbean Unit  
Ireland, UK and Americas Division  
Department of Foreign Affairs and Trade*