



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

Our Ref: FOI/Req/20/152

06 August 2020

Dear Mr Kelly,

I refer to the request which you made by email on 22 July 2020 under the Freedom of Information Act 2014 (the **FOI Act**), as follows:

1. **Records listing the names of those on the election observation roster on 31 December 2019.**
2. **Records identifying the country of residence of each person on the election observation roster on 31 December 2019.**

I require access to be given both in the form of copies of the records (section 17(1)(a)) and, “where available”, electronic versions of the records (sections 17(1)(c) and 17(1)(h)).

In making my determination on this request I have looked to the purpose of the Act which is articulated in the Long Title as being to enable members of the public to obtain access to information consistent with the public interest and the right to privacy.

Determination

Names of Roster Members

The list of names of the 199 members of the roster was placed on the public record the day before you submitted your request. It is contained in the response to Parliamentary Question Nos. 338 and 342 of 21 July 2020 (the **PQs**) and is available on the Oireachtas website at the following link: https://www.oireachtas.ie/en/debates/question/2020-07-21/338/#pq_338.

Accordingly, under 15(1)(d) FOI Act, your request falls for refusal as this information is already in the public domain.

I have noted that you have specifically requested the names of the persons who were members of the roster on 31 December 2019. While requests for information containing personal data may be refused under section 37(1) of the FOI Act, section 37(5) of the FOI Act provides for the release of personal information of third parties in certain circumstances, including where the public interest in granting the request outweighs, on balance, the public interest in protecting the privacy rights of the individuals concerned. I do not see any public interest in identifying the persons who were members of the roster on 31 December 2019 and

who for various personal and family reasons decided to withdraw from the roster by 21 July 2020. I am of the view that the right to privacy and family life of those persons outweighs any public interest in this matter, if indeed there is such a public interest.

Countries of Residence of Roster Members

Included in the PQs is the detailed consideration the Department gave to the privacy rights of the roster members versus the need for the Department to demonstrate transparency and accountability in its running of the roster. For the considerations outlined in the PQs, the countries of residence of the members is not information which the Department has placed in the public domain.

Under s37 and s35 FOI Act, I am refusing to disclose the countries of residence of roster members.

Section 37 – Personal Information

Under section 2 of the FOI Act, “personal information” includes information about an identifiable individual that is held by an FOI body on the understanding that it would be treated by that body as confidential. I consider a person’s country of residence as personal information.

Under section 37(1), access to a record shall be refused if it would involve the disclosure of personal information relating to individual(s) other than the requester. Prima facie, the records requested relate to individuals other than yourself.

However, under section 37(5)(a), a record that would otherwise be refused to be granted may still be granted where the public interest that it be granted outweighs the public interest that the right to privacy of the individual to whom the personal information relates should be upheld.

I have, therefore, considered the public interest in granting access to the relevant records, and have given consideration to the right of citizens to access information regarding the overseas election observation roster. I have balanced this right with citizens’ rights to have their personal data protected, and the Department’s obligation under the FOI Act to not release personal data without consent or a legitimate reason.

The countries of residence of Roster members is personal information that the Roster members have not consented to be released. In the Department’s consultation with the Data Protection Commissioner, we gave detailed consideration to the balance of rights. From the PQs (linked above), our decision was that in the interests of transparency it was sufficient that the names was released only. This decision also came from the well-grounded concern the Department holds that the disclosure of more personal data could be used to target or harass members of the Roster. The security of the 199 members of the roster (private citizens who do not hold public positions) is of paramount concern to the Department and accordingly further personal information was not placed in the public domain.

Section 35 – Information Obtained in Confidence

Applicants to the Roster were provided with the 2018 Call for Election Observers Volunteer Handbook which explicitly states and repeats that all applications are confidential.¹ All those who applied to the Roster therefore did so with the expectation and on the understanding that their applications would be kept confidential.

Section 35(1)(a) of the FOI Act provides that a head may refuse to grant an FOI request if the record concerned contains information given to the Department in confidence and on the understanding that it would be treated as confidential.

However, like s37 FOI Act, a record that would otherwise be refused to be granted may still be granted where the public interest that it be granted outweighs the public interest that information submitted in confidence can be disclosed.

Reasons an FOI body should weigh in favour of disclosure include: (i) right of the public to access information; (ii) disclosure will reveal reasons for decisions; (iii) citizens given ways to ensure accuracy of personal affairs information held by FOI bodies; or (iv) need for fair treatment for the individual.

I cannot see that any of those reasons apply in this case, nor have I been provided any reason why you should have access to 199 people's countries of residence. While this is not required under the FOI Act, it would have been helpful as I cannot see the public interest in such a disclosure, especially when weighed against the need for this FOI body to be seen to keep information supplied in confidence, confidential.

The Department received the addresses of roster members and holds this data only insofar as it was required to ensure the correct authorities were contacted for domestic vetting checks. This information is contained in the application forms of aspiring roster members submitted by the deadline of 20 August 2018 only.

Furthermore, if the disclosure of such information would impair future sources of information, or impair decision-making of the FOI body without a countervailing benefit to the public, this would mitigate against disclosure. I am of the opinion that (i) disclosure of information given in confidence, on the express condition that it would remain confidential, would impair the Department's ability to receive confidential information in the future. If the Department is not trusted with confidential information, this would have serious consequences for all aspects of its work; and (ii) disclosure would in this case also prejudice future mustering processes (expected to begin again in 2022/2023). The release of such data by the Department – given in confidence – may result in future musterings of the voluntary Roster not attracting the calibre of volunteer that the European Union (EU) and the Organization on Security and Cooperation in Europe (OSCE) require. As such, I find that personal information contained in confidential applications to the Roster should be kept confidential. I refer you to the PQs for the detailed consideration given to the release of such personal information belonging to roster members.

¹ See enclosed 180702 Election Observation Booklet 2018

Accordingly, having considered the nature of the information requested, I am refusing the release of these records as this would contravene the express obligation of confidentiality under which all applicants submitted their applications to join the roster, as well as for the consequences this would have for public trust in the Department and the Department's decision-making.

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 the staff of this Department.

Yours sincerely,

Claire Kerschensteiner

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