

6 April 2021

Mr. Dan Dowling

Our Ref: FOI/Req/21/070

Dear Mr. Dowling

I refer to your request received on 8 March 2021, made under the Freedom of Information Act 2014, for access to records held by this Department, as follows:

'all e-mail correspondence between Department of Foreign Affairs and The Dublin Defense Attache Office of US Embassy DublinDAO@state.gov for the month January 2021. I would prefer to receive this information electronically, preferably in its original formatting.'

I have identified 37 records that falls within the scope of your request.

I have decided to refuse access to the records concerned, on the basis of exemptions provided for in the Act in Section 33 and in Section 35, as specified and explained below. I have attached a Schedule of Records setting out the exemptions that apply in the case of each record.

Section 33 – Security, defence and international relation

I have decided to refuse access to the records concerned on the basis of exemptions provided for in the Act in Section 33 (1) (d), Section 33 (2) (b) , Section 33 (2) (b) (i)

(1) 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 reasonably be expected to affect adversely—

- (a) the security of the State,*
- (b) the defence of the State,*
- (c) matters relating to Northern Ireland, or*
- (d) the international relations of the State.*

(2) This subsection applies to a record that—

- (b) contains a communication between a Minister of the Government or his or her Department or Office and a diplomatic mission or consular post in the State or of the*

State or a communication between the Government or an officer of a Minister of the Government or another person acting on behalf of such a Minister and another government or a person acting on behalf of another government—

(i) other than where such information was communicated in confidence or relates to negotiations between the State and the other state in question or in relation to such a state, or is a record of that other state containing information the disclosure of which is prohibited by that state.....’

A mutuality of confidence exists in the communication between this Department and our interlocutors. If such information were to be released it may adversely affect the work of this Department and its ability to effectively discharge its functions. The Department, therefore, needs to maintain this level of confidentiality in respect of diplomatic communications.

Section 35. Information obtained in confidence

I have decided to refuse access to the one record concerned on the basis of exemptions provided for under Section 35 (1) (a) whereby:

‘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 further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body,’

The record contains information given to the Department in confidence. The information was given on the understanding that it would be treated as confidential. Disclosure of the information would prejudice the future giving of such information. It is important that this information should continue to be provided in full to the Department.

Legislative provisions and policy

I would like to take this opportunity to outline the legislative provisions and policy under which this Department operates with regard to the requests of overflights or landings of foreign military aircraft in Ireland.

The Air Navigation (Foreign Military Aircraft) Order, 1952 gives the Minister for Foreign Affairs primary responsibility for the regulation of activity by foreign military aircraft in Ireland and in Irish airspace. The Order provides that no foreign military aircraft shall fly over or land in the State without the express invitation or permission of the Minister. It further provides that the aircraft shall comply with such stipulations that the Minister may make.

Policy

Applications for permission for foreign military aircraft to overfly Ireland are routinely required to include confirmation that the aircraft meets specific criteria; namely that the aircraft is unarmed, carry no arms, ammunition or explosives; and must not engage in intelligence gathering. Furthermore, applications must also specify that the flights do not form part of a military exercise or operation. These conditions are applied to ensure compatibility with Ireland's longstanding policy of military neutrality, which is characterised by non-participation in military alliances. This policy provides a context within which requests for overflights and landing permissions are considered by the Department of Foreign Affairs.

Right of Appeal

Should you wish to appeal this decision, you may do so in writing to

Freedom of Information Unit,
Department of Foreign Affairs,
76-78 Harcourt Street,
Dublin 2

or by sending an 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

You should make your appeal within 4 weeks (20 working days) from the date of this notification. However, the making of a late appeal maybe 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

Eddie Brannigan
International Security Policy Unit
Department of Foreign Affairs