



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

Our Ref: FOI/Req/19/243

30 August 2019

I refer to the request which you made by email on 2 August 2019 under the Freedom of Information Act 2014 (the FOI Act), as follows:

**Access to records within your control concerning the decision to extend the 2013 election observation placement roster by one year to 31 December 2018.**

I refer also to the acknowledgement of your request which was sent to you on 8 August 2019.

Section 15(1)(g) FOI Act provides that *“A head to whom an FOI request is made may refuse to grant the request where the request is, in the opinion of the head, frivolous or vexatious or forms part of a pattern of manifestly unreasonable requests from the same requester or from different requesters who, in the opinion of the head, appear to have made the requests acting in concert.”*

In making my determination on this request, I have looked to the purpose of the FOI Act. This is articulated in its Long Title as *“An Act to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies [...]”*.

### Determination

In my view, this FOI request forms part of a pattern of conduct that amounts to abuse of the right to access. I have looked at the following relevant factors in assessing your pattern of conduct:

1. Nature and Scope of Your Requests: I note that you revisit the same issue – the election observation roster – in all of your correspondence with this Department, including your FOI requests and it is the subject of correspondence on your part with many other FOI bodies and persons. Most of your requests this year focus on the recent election roster mustering process where you were unsuccessful in your application, building on a similar pattern following your unsuccessful application in the 2013 mustering process.

2. Purpose of the Requests: While for much of the FOI Act, the purpose of FOI requests is not taken into account, in assessing possible abuse of the right of access, the Information Commissioner, as explained in the Guidance published by his office (the **OIC Guidance**<sup>1</sup>), considers the purpose behind a request. You were unsuccessful in two mustering processes in being nominated to Ireland's election observation roster. From reviewing your correspondence, a reasonable person could find that the purpose of your requests is to accomplish objectives other than and unrelated to the access process. Taking all of your requests in the round, it is at least arguable that the purpose of your requests is to burden the staff of this Department, with the effect of complicating the efficient and effective management of the election observation roster.
3. Sequencing of the Requests: I note that you have submitted another FOI request (FOI/Req/19/259) while this request is pending, and that, to my knowledge, you have at least three other current FOI requests to other FOI bodies on the same topic. FOI correspondence with statutorily-set deadlines from you this year alone includes 6 FOI requests, 4 Internal Review requests; 6 accepted OIC Appeals and 7 FOI Requests to other bodies. As you are aware, where you have made requests to other offices that relate to documents held by this unit, they are obliged to contact us and seek our input. Since January 2019, you have submitted over 110 emails to this Department; a reasonable person could find that the volume and sequence of your correspondence is excessive. The OIC Guidance provides that the cumulative effect of the requests is a relevant consideration, "*It is appropriate to consider the requests concerned in the context of other requests made to the FOI body and in the context of the requester's other dealings with the FOI body concerned*".
4. Intent of the Requester: While for much of the FOI Act, the intent of the requester is not taken into account, in assessing possible abuse of the right to access, the Information Commissioner does consider intent. The OIC Guidance asks "*whether the requester's aim is to harass government or to break or burden the system*". Taking all your requests and correspondence into consideration, a reasonable person could conclude that your aim is to burden the system. In any case, the consequence of your actions is that the small team working on the election observation roster is overburdened by your requests. This has required the diversion of other staff to mitigate the resultant adverse effects on the ordinary functioning of the relevant unit. This comes at a direct cost to the State, in terms of both salaries and the opportunity cost of the time spent by the diverted staff on your requests.

Notwithstanding the foregoing, I have considered whether there is nonetheless a public interest in granting your request. However, as the matter has been answered in Parliamentary Questions nos. 106 and 109 of 24 July 2018, and in the Information Note requested by, and sent to, the Joint Committee of Foreign Affairs and Trade, and Defence, of which you are aware (including through multiple FOI requests), I deem that the public's right to information has been discharged.

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<sup>1</sup> Available at the following address: [https://www.oic.ie/guidance-and-resources/guidance-notes/1-Section-15\(1\)\(g\)-Guidance-Note.pdf](https://www.oic.ie/guidance-and-resources/guidance-notes/1-Section-15(1)(g)-Guidance-Note.pdf)

It is for all the above reasons that I make the determination that this request forms part of a pattern of conduct that amounts to an abuse of the right of access. This is not a decision I have come to lightly, and it is after a rigorous review of the requirements of the FOI Act, of the instant FOI request, the other FOI requests you have made to this Department, the other FOI requests you have made to other FOI bodies and persons, and other related correspondence from you on the same topic.

Accordingly, under section 15(1)(g) FOI Act, I refuse to grant your request.

Moreover, under section 15(1)(d) FOI Act, *"A head to whom an FOI request is made may refuse to grant the request where the information is already in the public domain."* As detailed above, the answer to your request has been published on numerous occasions and is already in the public domain.

#### **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,



Claire Kerschensteiner

Civil Society and Development Education Unit, Development Cooperation and Africa Division