



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

Our Ref: Fol/Req/18/281

28<sup>th</sup> November 2018

Dear Mr. Guider,

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:

*“Under the Freedom of Information Act 2014, I am seeking the release of the following: any correspondence/emails/letters/briefing material/ minutes of meetings held between the Minister for Foreign Affairs and representatives of Aughinish Alumina from 01 May 2018 to present including but not limited to individuals mentioned this return on the Register of Lobbyists. <https://www.lobbying.ie/return/33100/aughinish-alumina-limited> “*

I refer also to the acknowledgement of your request which was sent to you on 15<sup>th</sup> November 2018.

I have identified 27 records that fall within the scope of your request. The records are listed in the schedule attached. I have made a decision to grant full release of 8 records, partial release of 6 records and am refusing release in full of 13 records.

Where access has been fully refused or only partially released the cases relate to section 29 (1) (a) Deliberations of Public Bodies, section 33 (2)(b)(i) and (ii) Security, defence and international relations, section 35 (1) (a) Information obtained in confidence, section 36 (1) (b) and (c) Commercially sensitive information 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 premature release would negatively impact on the decision making and information sharing process of this Department. In particular I have considered that the case of the company in question is ongoing and I would not want information released to negatively affect the work that this Department is continuing to do. As such, on balance I have decided the

public interest would not best be served and I have applied section 29 to several records that fall within the scope of your FOI request.

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

I have considered section 33(2)(b)(i) and 33(2)(b)(ii) of the Act in making my decision not to release certain documents. 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. To do otherwise would risk compromising the State's capacity to engage with international partners through diplomatic and other channels. As such I have decided to apply Section 33 exemptions to the records detailed in the attached schedule.

### **Section 35 – Information obtained in confidence**

I have weighed carefully the public interest test in applying section 35 (1) (a) of the Act. In particular I have considered whether the disclosure of these records could bring clarity and transparency to the work of the Department in this case and show for the outside reader/researcher how and why the Department acted in the way it did. I believe however that this public interest is outweighed by the need and expectation that this Department can handle and process information that is confidential and that the provider would wish to remain so. In particular I have considered where disclosure would breach this trust and if it would affect the future flow of confidential information, which may be necessary in the Department's engagement with the company in question as well as outside parties. I believe that these concerns do clearly outweigh the public interest and you will therefore see that I have used section 35 frequently in the redacting or withholding in full records that fall within the scope of this FOI.

### **Section 36 – Commercially sensitive information**

In relation to section 36 (1) (b) and (c) of the Act, I have considered if the information were to be released if it would enhance the accountability/transparency of the Department. I have also considered the possibility that released records could assist the requester as a researcher, to understand this Department's engagement with the company and to understand the processes of decision-making of this Department. I believe however that the negatives of releasing these records outweigh the above considerations. In particular I believe that the release of records would unduly impede in the effective pursuit of business of the company in question. It would also no doubt release into the public domain clearly commercially sensitive information that could affect the running of the business in question as well as the conduct of ongoing and future negotiations, critical to its business, that the company is/could be engaged in. As such I have applied this exemption to several records.

## 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. 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.

### 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,  
James Rowan

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