



FOI 154/ 2014

04th February 2015

Mr Gavin Sheridan
gavinsblog@gmail.com

Dear Mr Sheridan,

I refer to the request which you made under the Freedom of Information Act 2014 for records held by this Department relating to:

"Ministerial briefing papers for Cabinet meetings for the Minister (Cowan or Lenihan), depending on the date for Cabinet meetings held in September 2007, January 2008, September 2008, October 2008 and January 2009."

I, as the Deciding Officer, have made a final decision to refuse your request of 08 December 2014 in line with the provisions of Section 28, Section 31 (2) (c) and Section 33 (1) (d), of the Freedom of Information Act, 2014. If you have any queries you can contact me by telephone at (01) 604 5502.

I regret the delay in replying to your request.

Relevant sections of the Freedom of Information Act 2014.

The relevant sections of the Freedom of Information Act, 2014 are sections 28, 31 and 33.

Section 31 (2) of the Freedom of Information Act, 2014 provides:

(2) A Head may refuse to grant a FOI request if the record concerned relates to the proposed appointment or the business or proceedings of –

(a) A tribunal to which the Tribunal of Inquiry (Evidence) Act, 1921 refers

(b) Any other tribunal or other body or individual appointed by the Government or a Minister of the Government to inquire into specified matters at least one member or sole member which holds or has held judicial office or is a barrister or solicitor

(c) Any tribunal or other body or individual appointed by the Houses of the Oireachtas to inquire into specified matters

And the request is made when it is proposed to appoint the tribunal, body or individual at a time when the performance of the functions of the tribunal, body or individual has not been completed.

Detail

As regards section 28 of the Freedom of Information Act, 2014 records which reveal the content of Cabinet discussions or from which the content of Cabinet discussions can be inferred must not be released pursuant to an FOI request.

The release of these records is therefore refused under section 28 of the Freedom of Information Act, 2014.

Section 28 is attached in the annex of this letter.

Section 28 has no public interest test.

As regards section 31 of the Freedom of Information Act, 2014 the relevant section is 31(2)(C) and the additional part which applies to all of section 31.

(a) Any tribunal or other body or individual appointed by the Houses of the Oireachtas to inquire into specified matters

and the request is made when it is proposed to appoint the tribunal, body or individual at a time when the performance of the functions of the tribunal, body or individual has not been completed.

The Oireachtas Banking Inquiry was formally established on 26 November, 2014 to conduct a "Part 2" inquiry under the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013 into certain aspects of the banking crisis for submission to, and evaluation by, the Committee on Procedure and Privileges. The inquiry is expected to be completed by November 2015.

The Joint Committee of Inquiry into the Banking Crisis will have the power to compel written and oral evidence along with being able to publish findings of fact. The Committee is considering the preparation of a draft plan for the Context Phase of the Inquiry. This will consist of technical briefings for the Committee in areas such as reviewing existing crisis

reports; policy context and early warnings; banking policies; systems and practices; bank regulation, supervision and financial stability monitoring; and other relevant topics such as the role of the ECB, role of the media and the nature, cost, and scope of the bank guarantee.

It is considered that the records which are the subject of the FOI are likely to be requested by the Committee of Inquiry into the Banking Crisis as one of the issues that they propose to examine is the cost and scope of the guarantee in the Context phase of the process.

The relevant section of the Act provides that a "Head may refuse an FOI request if the record relates...or the business or proceedings of...Or at a time when the performance of the functions of the tribunal, body has not been completed. It is also considered that the inquiry has only commenced its work that it is appropriate to refuse to release these records.

Section 31 has no public interest.

As regards Section 33 (1) (d)

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—

(d) the international relations of the State.

2) This subsection applies to a record that—

(b) (ii) other than a record containing analysis, opinions, advice, recommendations and the results of consultations or information the release of which, in the opinion of the head, could reasonably be expected to affect adversely the international relations of the State,

in which case (that is to say, either of the cases falling within *subparagraph (i)* or *(ii)*), the request shall be refused.

The release of these records is there refused under section 33 (1) (d) of the Freedom of Information Act, 2014.

Section 33 has no public interest test.


Rights of Appeal

Under the FOI Acts I am required to inform you that if you are not satisfied with this decision you may appeal in writing to the Freedom of Information Unit, Department of Finance, 7-9 Merrion Row, Dublin 2.

You must make this appeal within four weeks from the date of this notification (the making of a late appeal may be allowed in appropriate circumstances). The appeal process known as internal review, will involve a complete reconsideration of the matter by a more senior member of the staff of this Development.

The decision on the internal review will be given within 3 weeks of receipt of your letter. Please note that there is a fee of €30 for making an appeal or €10 for medical card holders. The fee, which should accompany your appeal, should be paid by electronic transfer, details of which are available from the FOI Unit.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mary Carrick', written over a horizontal line.

Mary Carrick

Deciding Officer

Annex 1:

28. (1) A head may refuse to grant an FOI request if the record concerned—

(a) has been, or is proposed to be, submitted to the Government for its consideration by a Minister of the Government or the Attorney General and was created for that purpose,

(b) is a record of the Government other than a record by which a decision of the Government is published to the general public by or on behalf of the Government, or

(c) contains information (including advice) for a member of the Government, the Attorney General, a Minister of State, the Secretary General to the Government for use by him or her solely for the purpose of the transaction of any business of the Government at a meeting of the Government.

(2) A head shall refuse to grant an FOI request if the record concerned—

(a) contains the whole or part of a statement made at a meeting of the Government or information that reveals, or from which may be inferred, the substance of the whole or part of such a statement, and

(b) is not a record—

(i) referred to in *paragraph (a) or (c) of subsection (1)*, or

(ii) by which a decision of the Government is published to the general public by or on behalf of the Government.

(3) Subject to this Act, *subsection (1)* does not apply to a record referred to in that subsection—

(a) if and in so far as it contains factual information relating to a decision of the Government that has been published to the general public, or

(b) if the record relates to a decision of the Government that was made more than 5 years before the receipt by the head concerned of the FOI request concerned.

(4) A decision to grant an FOI request in respect of a record to which *paragraph (a)* or *(b)* of *subsection (1)* applies shall not be made unless, in so far as it is practicable to do so, the head concerned has, prior to the making of the decision, consulted in relation to the request with—

(a) the leader of each political party to which belonged a member of the Government that made any decision to which the record relates, and

(b) any member of the Government aforesaid who was not a member of a political party.

(5) Where an FOI request relates to a record to which *subsection (1)* applies, or would, if the record existed, apply, and the head concerned is satisfied that the disclosure of the existence or non-existence of the record would be contrary to the public interest, he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.

(6) In this section—

“decision of the Government” includes the noting or approving by the Government of a record submitted to them;

“record” includes a preliminary or other draft of the whole or part of the material contained in the record;

“Government” includes a committee of the Government, that is to say, a committee appointed by the Government whose membership consists of—

(a) members of the Government, or

(b) one or more members of the Government together with either or both of the following:

(i) one or more Ministers of State;

(ii) the Attorney General.

FOI Request Reference: 154/2014

Schedule of Records: Summary of Decision Making:

Record No.	Brief Description & Date of Record	No. of Pages	Decision: Grant/Part Grant/Refuse	Basis of Refusal – Section of Act	Reason for Decision	Public Interest Consideration (if applicable)
1	Background Note for Finance Minister for Finance for Cabinet meeting 29/10/2008	2	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document	N/A
2	Speaking Points for Minister for Finance for Cabinet meeting 29/10/2008	3	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document	N/A
3	Speaking Points for use at Cabinet meeting 02/10/2008 – Taxation of CB/ECS	4	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document	N/A
4	Note for Tánaiste re Memo on Finance Bill for meeting 30/01/2008	1	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document	N/A
5	Note for Tánaiste re Memo on Finance Bill for meeting 23/01/2008	1	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document	N/A
6	Possible Speaking Points re Memo for meeting 23/01/2008	4	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document	N/A

7	Briefing note for Minister & Finance Bill 2008 Timetable for meeting 16/01/2008	2	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document	N/A
8	Proposal to provide financial assistance from the EU to Hungary for meeting 29/10/2008	2	Refuse	Section 28 Section 33(1)(d)	Content of Cabinet discussions could be inferred from this document. Relates to confidential discussions of the EU and could adversely effect the international relations of the state	N/A
9	Speaking Point on proposal to provide financial assistance from EU to Hungary for meeting 29/10/2008	1	Refuse	Section 28 Section 33(1)(d)	Content of Cabinet discussions could be inferred from this document. Relates to confidential discussions of the EU and could adversely effect the international relations of the state	N/A
10	Memo for the Information of the Government on proposal to provide financial assistance from EU to Hungary for meeting 29/10/2008		Refuse	Section 28 Section 33(1)(d)	Content of Cabinet discussions could be inferred from this document.	N/A

						Relates to confidential discussions of the EU and could adversely effect the international relations of the state	
11	Background note for the Minister for Finance to update Government on Financial Market Developments to 17 September 2008	3	Refuse	Section 28 Section 31 (2) (c)	Content of Cabinet discussions could be inferred from this document. Document to be requested by the Oireachtas Banking Inquiry	N/A	
12	Information Note for Government meeting of 3 September 2008, to provide briefing, if required, on current financial market conditions and outlook	10	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A	
13	Speaking Points for Cabinet Meeting, Wednesday, 7 January 2009	1	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A	
14	Office of the Minister for Finance SECRET Memorandum on the Budgetary Position 7 January 2009	7	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A	
15	Aide Memoire Cover for meeting 14/10/08	1	Refuse	Section 28	Content of Cabinet discussions could be	N/A	

						inferred from this document.	
16	Jim O'Brien Cover note for meeting 14/10/08		1	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A
17	Office of the Minister for Finance SECRET Memorandum for the Information of Government Budget 2009		2	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A
18	Headline Economic Developments for meeting 23/01/08		6	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A
19	Budget 2009 Inflation Briefing for meeting 23/01/08		1	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A
20	Briefing for Cabinet meeting 23/01/08		1	Refuse	Section 28	Content of Cabinet discussions could be inferred from this document.	N/A
21	Memorandum for the Government on Government Decision to Safeguard Irish Banking System meeting 30/09/08		2	Refuse	Section 28 Section 31 (2) (c)	Content of Cabinet discussions could be inferred from this document. Document to be requested by the Oireachtas Banking Inquiry	N/A